

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, October 11, 2016

Hearing Room 303

10:00 AM

1:95-19539 Ivds Interactive Acquisition Partners

Chapter 7

#1.00 Eighth Interim Application for Allowance and
Payment of Fees to Green Hasson & Janks LLP

Period: 1/2/2014 to 9/8/2016
Fees: \$43,375.50 Expenses: \$1,826.00

Docket No: 638

Tentative Ruling:

This is the eighth interim application for allowance and payment of fees to the accountant for the Trustee. This covers the period from 1/2/14-9/8/16 and is in the amount of \$43,375.50 fees and \$1,826 costs. The Trustee supports this application in a stipulated reduced amount of \$35,000 total. Although he has sufficient funds on hand to pay it. However, there are massive other accrued administrative expenses, so I don't understand how he can say that if he pays it there will be sufficient appropriate reserves for future payment of expenses of administration of the estate. Please clarify this.

As of 10/6, no clarification has been received.

Party Information

Debtor(s):

Ivds Interactive Acquisition Partners

Represented By
Grant L Simmons
Uzzi O Raanan ESQ

Trustee(s):

Richard K Diamond (TR)

Represented By
J Jeffrey Craven
Uzzi O Raanan ESQ
Howard Kollitz
Richard K Diamond (TR)
Richard K Diamond
Ruba M Forno

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

1:09-16561 Hossein Ghalari and Shahla Ghalari

Chapter 7

#2.00 Motion to allow debtors to file OSC

Docket No: 0

***** VACATED *** REASON: withdrawal filed on 9/30/16. lf.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Hossein Ghalari

Represented By
Devin Sawdayi

Joint Debtor(s):

Shahla Ghalari

Represented By
Devin Sawdayi

Trustee(s):

David Seror (TR)

Pro Se

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10:00 AM

1:10-10442 Victor Hugo Hernandez

Chapter 11

#3.00 Motion for Order Authorizing Unsecured Postpetition Financing and Hardship Distribution of 401k Funds, for Priority Claims Plan Payment

Docket No: 285

Tentative Ruling:

In order to confirm his chapter 11 plan, Mr. Hernandez needs to borrow money from his 401K Plan, obtain a hardship distribution from that pplan and borrow additional money from a friend's 401K Plan (paying interest at 5%). This will allow him to payoff the attorney's fee award to his ex-wife and the administrative arrears on the first trust deed on the Vena property (for advanced property taxes). These funds are from non-estate assets.

As to the borrowings, these will be repaid within the Second Amended Plan in place of the payments to be made to his ex-wife. The additional tax obligations and interests will still be considerably lower that the accruing 10% per year on the state court judgment.

No opposition received as of 10/6. Grant.

No appearance necessary if you submit on the tentative ruling. Except in the case of a trustee's final report and simultaneous hearing on applications for approval of professional fees, the prevailing party is to lodge a proposed order in conformance with this tentative ruling within seven court days after the hearing, serving all interested parties with a copy of the proposed order.

Party Information

Debtor(s):

Victor Hugo Hernandez

Represented By
David I Brownstein
Bonni S Mantovani

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1:10-10442 Victor Hugo Hernandez

Chapter 11

#4.00 Status Conference on Chapter 11 Case

fr. 1/11/11, 3/29/11, 4/12/11, 6/14/11, 8/23/11, 10/25/11,
1/17/12, 1/31/12, 2/28/12, 4/10/12, 6/12/12, 7/31/12,
9/11/12, 11/20/12, 12/11/12, 2/26/13, 4/30/13, 6/18/13,
8/27/13, 11/19/13, 1/14/14, 2/4/14, 3/11/14, 4/1/14, 6/24/14,
9/16/14, 11/18/14, 12/16/14, 1/20/15, 2/24/15; 3/31/15; 5/12/15
6/30/15; 8/18/15, 9/22/15, 2/9/16; 3/15/16; 4/26/16,
6/7/16, 7/12/16, 8/16/16; 9/13/16

Docket No: 1

Tentative Ruling:

On July 12, 2016 the hearing on the Second Amended Disclosure Statement was taken off calendar. If the motion to borrow, etc. is granted, please make the corrections needed and file either an Amended Second Amended or a Third Amended Disclosure Statement. Let's set it on shortened notice and finish this up. The only prior objections were O'Neill and Leichter-Maroko and they are being paid off through the borrowing/distribution.

Continue without appearance to Oct. 25 at 10:00 a.m. You can set your amended disclosure statement for hearing at that time so long as it is served by 10/11/16.

prior tentative ruling (7/12/16)

On 9/9/16, Debtor filed a motion for unsecured post-petition financing and hardship distribution for 401K funds.. This is to pay the priority claims. This is set for 10/11/16. Continue the status conference without appearance to 10/11/16 at 10:00 a.m.

prior tentative ruling (8/16/16)

Debtor and his ex-spouse stipulated to distribute his remaining home sales sales proceeds to pay her support payments. This was approved by an order entered on 8/5/16. Although Ms. O'Neill's counsel signed off on the stipulation, it does not affect his claim.

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CONT... Victor Hugo Hernandez

Chapter 11

The disclosure statement was taken off calendar on 7/12, largely due to the objection of Mr. Leichter-Maroko. What is the status of that?

Party Information

Debtor(s):

Victor Hugo Hernandez

Represented By
David I Brownstein
Bonni S Mantovani

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10:00 AM

1:10-15070 60th & K, LLC

Chapter 11

#5.00 Post Confirmation Status Conference

fr. 12/14/10, 3/8/10, 9/20/11, 12/13/11, 1/3/12, 4/10/12
7/3/12, 10/9/12, 1/15/13, 4/9/13, 7/9/13, 11/19/13, 2/4/14,
3/25/14, 4/22/14, 6/3/14, 9/2/14, 11/10/14, 2/10/15, 3/10/15,
4/14/15, 5/26/15, 7/21/15, 9/29/15, 11/17/15, 12/22/15,
2/9/16; 4/5/16; 6/21/16

Docket No: 1

Tentative Ruling:

Per the status report, the effective date of the Plan is 11/5/16. The Debtor has sufficient cash to comply with the Plan and pay its post-confirmation expenses.

Continue without appearance to 12/20/16 at 10:00 a.m.

Party Information

Debtor(s):

60th & K, LLC

Represented By
Raymond H Aver

Movant(s):

60th & K, LLC

Represented By
Raymond H Aver

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10:00 AM

1:10-24366 Lawrence Erwin Weisdorn

Chapter 11

#6.00 Application for Compensation for
Michael N Sofris, Debtor's Attorney

Period: 1/31/2012 to 8/26/2016
Fee: \$91800.00 Expenses: \$250.50

Docket No: 350

Tentative Ruling:

Previous fees have been approved in the amount of \$56,117. It appears that Mr. Sofris is seeking an additional \$91,800 in fees and \$205.50 in costs. This covers a four year period.

I need a comment letter by the Debtor. None has been received as of 10/6.
Continue without appearance to 10/25 at 10:00 a.m.

Party Information

Debtor(s):

Lawrence Erwin Weisdorn

Represented By
Michael N Sofris

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1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

■

#7.00 Motion For Summary Judgment By Defendants
Glen E. Pyle And The Glen E. Pyle Irrevocable Trust

fr. 9/13/16, 9/27/16

Docket No: 114

***** VACATED *** REASON: Order ent continuing hrg to 1/17/17 at
10:00 a.m. - jc**

Tentative Ruling:

Hearing continued to 1/17/17 by order entered 9/28/16.

Party Information

Debtor(s):

Glen E Pyle	Pro Se
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Defendant(s):

Glen E Pyle Irrevocable Trust	Represented By Raymond H. Aver
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Sweetwater Management Company	Pro Se
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Glen E Pyle	Represented By Raymond H. Aver
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Movant(s):

Glen E Pyle Irrevocable Trust	Represented By Raymond H. Aver
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Glen E Pyle	Represented By Raymond H. Aver
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Plaintiff(s):

Marc H Berry	Represented By Marc Berry
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CONT... Glen E Pyle

Chapter 7

Trustee(s):

Amy L Goldman (TR)

Represented By

Amy L Goldman

Amy L Goldman (TR)

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1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

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#7.01 Status Conference re: Order Setting
Deposition and Production of Documents Date

fr. 8/2/16, 9/27/16

Docket No: 0

Tentative Ruling:

Off calendar. I believe that discovery is now completed. This motion was subsumed into the OSC re sanctions.

Party Information

Debtor(s):

Glen E Pyle	Pro Se
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Defendant(s):

Glen E Pyle Irrevocable Trust	Represented By Raymond H. Aver
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Sweetwater Management Company	Pro Se
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Glen E Pyle	Represented By Raymond H. Aver
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Plaintiff(s):

Marc H Berry	Represented By Marc Berry
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Trustee(s):

Amy L Goldman (TR)	Represented By Amy L Goldman Amy L Goldman (TR)
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1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

■

#7.02 Motion for Sanctions Against Glen Pyle, Sweetwater Management Company Inc and Glen E Pyle Irrevocable Trust

fr. 1/24/12, 4/10/12, 5/29/12, 6/19/12, 9/11/12, 10/2/12, 3/19/13, 6/4/13, 8/27/13, 11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14, 12/16/14, 3/10/15, 5/12/15, 6/2/15, 9/1/15, 9/8/15; 11/17/15; 1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16

Docket No: 9

Tentative Ruling:

Since the deposition took place, I am not sure what is left of this motion. However, I will continue it without appearance to 1/17/17 at 10:00 a.m. when I have a hearing on the motion for summary judgment.

prepared on 7/29/16:

On July 25, Mr. Berry filed a supplemental declaration (note that dkt. 111 and 112 are identical, though filed on different dates). One of the conditions for continuing the deposition was that Mr. Aver provide a written response to the settlement proposal at least 10 days before the continued date. This was not done and no written response was ever provided although Berry sent a reminder email to Aver. The deposition did take place on 6/29/16.

Further, neither Aver nor Pyle has ever returned vol 1 and vol 2 of the original deposition transcripts, although the signed signature pages have been received. There is be significant cost to creating copies for the trial.

When Berry sent notices to Pyle on 3/22/16, 4/26/16, and 5/25/16, the envelopes were returned by the Post Office marked "Return to Sender, no mail receptacle, unable to forward." Then he sent two other envelopes to Pyle at the same address on 6/2/16 and 6/9/16, they were returned marked "return to sender, undeliverable as addressed, (or) no such street, unable to forward."

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CONT... Glen E Pyle

Chapter 7

As noted in my order of 3/29/16 (dkt. 103), since Pyle has apparently interfered with the receipt of his mail, he is deemed to be aware of the content and the Court will make rulings accordingly.

He did appear at the agreed-to rescheduled date of the deposition. As to the documents to be produced, I do not know whether Mr. Berry gave a list, but none was filed with the Court as had been ordered in dkt. 103. Therefore apparently Mr. Pyle brought the required documents or none were actually required. As to the settlement offer, that is deemed rejected. I cannot force the parties to settle.

As to the deposition, Mr. Aver is to bring the original to the hearing on August 2 or is to provide a copy for the Court at his own expense.

Let's set a trial date and complete this case. This sanctions motion is not completed. I will continue it and may still strike the answer, etc. if Mr. Pyle and his attorney do not cooperate in the trial preparations, etc.

prior tentative ruling (6/7/16)

An initial partial ruling was entered on 3/29/16 and this was continued to 6/7. The Court is concerned that Mr. Pyle is still not accepting the mailings from Mr. Berry. However, Mr. Pyle seems to be in touch with his attorney. The parties have agreed by email to continue the deposition to 6/29/16 and to other matters set forth in Berry's email:

I will agree to continue the deposition and the document production on the following conditions:

- 1. You agree that your client Glen Pyle will appear on the new date as I have no contact with him. All notices/correspondence to him are returned by the post office.*
- 2. The deposition and document production are continued to the earliest of June 16, 17, 21, 28 or 29, at 10:00 am. at my office [I am not available from June 30, 2016, to July 19, 2016].*
- 3. All orders remain in full force and effect including, but not limited to, all of Judge*

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CONT... **Glen E Pyle**

Chapter 7

Mund's orders regarding the consequences if Mr. Pyle is not compliant with the May 27, 2016, deposition/document production date; provided those orders are modified only by changing the date of his appearance for deposition and document production.

4. The status conference will be continued from June 7, 2016, to the earliest date set by Judge Mund's Clerk, and a copy of this letter will be sent to the clerk.

5. You will give me a written response to the settlement proposal (still not an offer) at least ten days before the deposition.

6. You fax or email me your agreement to the above before 4:00 p.m. today, the earlier the better because of the court reporter.

Although Mr. Aver is to prepare a written stipulation to that effect, the Court finds that the email exchange is sufficient for the Court to enter an order and will do so without anything further from the parties.

The motion is continued without appearance to 8/2/16 at 10:00 a.m. If this is not an available date for the parties, please notify the other side and choose an agreeable date from my self-calendering notice or appear by phone on 6/7 to set the hearing.

prior tentative ruling (3/1/6)

On 2/24/16, Mr. Berry emailed the parties and the Court that he will be appearing by Court Call. Can we go to trial without further delays?

prior tentative ruling (1/12/16):

These matters will be continued due to the health of Mr. Berry. He proposed a date, but the Court has not yet had confirmation of it from Mr. Aver. Please appear by phone or file something showing and agreed-to continued date.

prior tentative ruling (11/17/15)

At the hearing on 9/8, the Court ordered Mr. Pyle to produce all responsive documents to Mr. Berry by 10/30/15. If Mr. Pyle fails to do so, he will be unable to use the documents at trial. The production is also to include a list of all documents submitted. Mr. Pyle and Mr. Avery are to retain a set of all

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CONT... **Glen E Pyle**

Chapter 7

of the documents that they are submitting to Mr. Berry.

prior tentative ruling (9/8/15)

On 8/26/15 Mr. Berry filed a declaration that shows that once again Mr. Aver is not responding to correspondence or phone calls. He requests \$1,024 in sanctions against Mr. Aver.

On 8/28 Mr. Pyle filed his opposition. I have reviewed this and I have heard it all before in this and other cases.

No one should have to work as hard as Mr. Berry has to schedule discovery. The sanctions appear to be warranted assuming that Mr. Berry can link them to a code provision or other legal authority and follow the proper notice requirements for that code provision or other legal authority.

Per Mr. Aver's declaration, Mr. Pyle did not appear on 8/26 and no documentation provided?

Mr. Berry - do you really need this stuff? I know that a lot of things were previously provided. Is this enough for you to proceed? I would simply like to go to trial. I would give Mr. Pyle a few weeks to prepare his trial documentation and provide it. If there is anything that he does not provide, I would not let him put it in later.

prior tentative ruling (6/2/15)

At the last hearing, Mr. Aver was ordered to advise Mr. Berry of the date for Mr. Pyle's deposition. He was given a choice of dates and was to respond by 5/15. According to Mr. Berry, this did not occur. According to Mr. Aver, he notified Mr. Berry on 5/28 that he and Mr. Pyle would be available on July 8. Without having received this, Mr. Berry stated that he prefers 7/13/15, which is also an acceptable date for Mr. Mendoza. Since Mr. Aver is withdrawing, his wishes are no longer relevant and the deposition will take place on 7/13/15. Mr. Berry is to give written notice to Mr. Pyle and Mr. Mendoza of the time and date. If Mr. Aver does not withdraw, the deposition will still take place on 7/13 unless the parties agree to a different date.

As to sanctions, the ultimate one would be to strike Mr. Pyle's answer and

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CONT... **Glen E Pyle**

Chapter 7

enter a default. If he wishes to defend, he needs to appear for his deposition and cooperate in it.

prior tentative ruling (5/12/15)

I received emails that this matter had settled, but it was to be documented. Mr. Berry filed a unilateral status conference that this has not occurred. I believe that it was Mr. Aver's task to document this and on April 17, 2015 Mr. Berry sent him a letter to this effect. In his unilateral status report, Mr. Aver states that the Debtor is unable to perform the settlement and wants to proceed to trial. He also will be filing a motion to withdraw as counsel.

Mr. Aver will be appearing by phone. Mr. Berry can also so appear. Let's set a date for Mr. Aver's motion to withdraw and a trial date if the Debtor is also on the phone. If he is not, then the motion to withdraw is to be filed no later than June 1 and will be heard on June 30 at 10:00 a.m. (Sorry for the delay, but I will be on vacation much of June.) I would like to get trial dates from Mr. Berry and these will be given to the Debtor and on June 30 we will set the actual trial. I will need a trial time estimate.

prior tentative ruling (3/10/15)

Mediation set for 3/24/15. Continue without appearance to 5/12/15 at 1:00 a.m.

prior tentative ruling (10/7/14)

The mediation has been delayed. Continue without appearance to 12/16/14 at 10:00 a.m.

prior tentative ruling (8/5/14)

This is scheduled for a settlement conference before Judge Ryan on 9/22/14. Continue without appearance to 10/7/14 at 10:00 a.m. I would like a status report for that hearing.

prior tentative ruling (3/11/4)

At the prior hearing this was continued to see if Mr. Pyle appeared for his deposition, which was scheduled for 2/10 at 10:00 a.m. at Mr. Berry's office. Per the status report filed 3/4, he did so and Berry intends to schedule another session at a mutually agreeable date. I will continue this as a holding

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Chapter 7

date to make sure that future discovery is complied with.

prior tentative ruling (11/19/13)

At the hearing on 8/17 I determined that if Mr. Pyle is not well enough to be deposed, he is not well enough to be present at the trial. He is not to testify or be in the courtroom. Mr. Aver can defend and bring in other witnesses, but not documents that should have been produced and were not.

As of 11/18 at 8:27 a.m. Mr. Aver has not filed a status report. I have warned him many times about this and ordered him to respond to every email and letter that is sent by Mr. Berry. If this has not been done, I will set an OSC on sanctions as to Mr. Aver.

I want to set this for trial.

prior tentative ruling (8/27/13)

At the hearing on June 4 the issue arose of Mr. Pyle's health. I ordered Mr. Aver to contact Mr. Berry by 6/7 as to whether Pyle would be available for the scheduled 6/14 deposition. If not, Pyle was to submit a doctor's note to the Court as to the nature of the health disability and when he would be available. Once that was known, Aver and Berry were to reach a mutually agreeable date for the deposition.

Late filed status report states that Mr. Aver tried a variety of times to gain the cooperation of Mr. Pyle's treating physician, but did not receive anything until 8/19. The letter is attached. It says that Pyle had a heart attack. He is just started to be allowed some mild walking and it stay away from stress. He should stay away from stress for the "unforeseeable future given his guarded prognosis."

I will continue this and the sanctions motion to November 19 at 10:00 a.m.
The parties will have the following choices:

- (1) Pyle - can be deposed in whatever reasonable location and time increments that he wishes and then we can set the matter for trial;
- (2) Berry - if Pyle is not able to be deposed, I will declare him unavailable and Berry can proceed to trial. Pyle will not be allowed to be present, to testify, or

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CONT... **Glen E Pyle**

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to provide any evidence not previously given in discovery. His attorney can call other witnesses and defend.

prior tentative ruling (3/19/13)

At the hearing on 10/2, Mr. Pyle was ordered to bring in the originals of the checks (or the copies that he has if he does not have the originals) from 2000 through 2008. He was told that the court would make copies at the hearing. If he has the checks and no additional copies, he is to give them to the court reporter, who will make two sets of copies (1 for Mr. Berry and 1 for me) and return the set to Mr. Pyle.

prior tentative ruling (10/2)

At the hearing on 9/11, Mr. Pyle was ordered to mail to Mr. Berry by 9/14 clean copies of everything that he gave his accountant starting with calendar year 2005. He had said that he gave the accountant a written accounting, so that is to be included.

Nothing further received by the court as of 9/30.

prior tentative ruling (9/11/12)

A transcript of the 6/19 hearing has been filed. Mr. Pyle and the Trust were represented by Richard Singer. Pyle did not fully comply with my prior order to turn over an accounting, but I ordered the deposition to take place anyway. It was agreed by the parties that it would be on 8/8. Counsel in the Campbell §523 action indicated that he might also attend the deposition. The status conference and motion to compel were continued to 9/11 to see what came happened at the deposition.

I also ordered that the tax returns for 2009, 2010, and 2011 of both Pyle and the Trust be prepared and filed by 8/3. These are to be complete tax returns, both state and federal. By August 3, he was also to give an accounting and checks for the period of 2006, 2007, and 2008.

Mr. Berry filed a proposed Order and Findings on the motion to compel, etc. Does Debtor's counsel have any objections to it? [Mr. Singer has filed a motion to withdraw as attorney for Pyle, which is set for hearing on 10/2 at

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CONT... Glen E Pyle
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Berry also filed a declaration as to compliance. According to this, some but not all of the documents were received late. The tax returns were not signed by Pyle or his accountant and there is not evidence that they were filed. The accountings were not received. The accountings are necessary to ascertain if Pyle used trust monies for his own personal expenses. Berry wishes the court to strike Pyle's answer and enter default.

prior tentative ruling (6/19)

A transcript of the 5/28 hearing has been filed. At that hearing I told Mr. Pyle that this was his last chance to provide complete and legible information or that I would not allow him to put on any evidence (written or oral) or income and expenses. I told him that I expected actual tax returns that had either been filed or where about to be filed and on the proper tax forms. Also as to the ledger sheets, he is to provide a check number and a statement as to where the money came from that was paid: the bank account number, the check number, and the date of the check.

The new accounting was due by 6/12 from 2009-2012. On 6/15 Berry filed a declaration as to the deficiency. We will go over this at the hearing.

prior tentative ruling (4/10)

On 4/3 Marc Berry filed a declaration of findings after hearing. These were mailed to debtor's counsel on 3/2 and he was asked about it on 3/12. No comments from debtor's counsel. Sanctions of \$4,000 were to be paid to plaintiff's counsel by 3/26, but nothing has been paid. Defendants were to provide an accounting of rental income from the date of transfer, but that was not provided.

Some documents were timely provided, but not the bank statements reflecting the rental income. Apparently many of these are in the possession of defendants' attorney, but have not yet been turned over to plaintiff.

Proposed findings are attached. I will sign these.

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CONT... Glen E Pyle

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The deposition has been continued to May. Unless the sanctions are paid and the bank records turned over, I will strike the answer.

prior tentative ruling (1/24)

This adversary proceeding seeking to avoid fraudulent transfers was commenced against debtor and related entities on 3/7/11. An amended complaint was filed on 3/29/11 to which defendants filed an answer on 5/6/11.

On 5/11/11, the chapter 7 trustee brought a motion to sell her avoidance rights to plaintiff in connection with the debtor's 2006 transfer of certain real estate assets into a trust in exchange for 40% of any potential recovery. Oddly, the 6/17/11 order approving the sale refers to certain business assets sold by the debtor to an employee prepetition.

The last meeting of creditors on this case was set for 12/16/11 and the docket does not show whether that meeting was continued.

Argument

On 4/6/11, plaintiff propounded requests to produce on all defendants but received no response despite several attempts to contact defendants' counsel. On 7/27/11, debtor served an inadequate and incomplete response; no responses were ever provided on behalf of the other defendants (Sweetwater Management Co., Inc. and Glen E. Pyle Irrevocable Trust). On 8/26/11, plaintiff's counsel sent defendants' counsel a "meet and confer" letter explaining that the responses were inadequate but received no reply or objections to production.

Several meetings of creditors were continued due to debtor being unable to locate records required by the trustee. At the 9/23/11 meeting, debtor said that it is financially impossible to provide any more of the records.

Plaintiff requests that the court compel production of the records that have not been produced (as outlined on p.7-10 of the motion) or that defendants provide a declaration regarding their diligent search or reasonable inquiry. Further, pursuant to FRCP Rule 37(a)(5) plaintiff requests that \$4,000 in sanctions be assessed against defendants for plaintiff's attorney's fees and

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CONT... **Glen E Pyle**

Chapter 7

costs in having to bring this motion.

Opposition

Contains debtor's declaration that he has "recently" given to his attorney "all available documents in my possession that, to the best of my ability, conform with Plaintiff's request." He also declares that no financial documents were ever prepared for Sweetwater. In addition, although the trust was formed in 2000, it had no assets until 2004 and as such, no financial documents exist covering the years 2002-04. The trust had no income until 2005 and did not file a tax return before that (the tax return has been provided to plaintiff). Plaintiff also declares that he cannot provide an accounting regarding the properties that were put into the trust because it would cost him \$5,000 which he does not have.

The opposition also contains a declaration by debtor's counsel that all the documents in his possession have been turned over to plaintiff and that debtor be allowed to prepare an accounting himself and submit it under penalty of perjury, since he does not have the funds to hire an accountant.

Analysis

To what extent have the documents produced to date resolved the issue? Is plaintiff satisfied with debtor's declaration as to the missing documents? If not, what else should be addressed? Will plaintiff accept an accounting prepared by the debtor?

As to sanctions, those must be granted pursuant to Rule 37(a)(5), even if the responses were provided after the motion was filed, unless (1) plaintiff had not attempted in good faith to obtain disclosure before filing the motion, (2) the nondisclosure was substantially justified or (3) an award of expenses is unjust. The opposition does not address the issue of sanctions directly but indirectly states that nondisclosure was substantially justified. If that is the case, why did defendants' counsel not provide that information to plaintiff's counsel before the motion was filed and kept ignoring plaintiff's counsel's requests?

Party Information

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CONT... Glen E Pyle

Chapter 7

Attorney(s):

Law Offices Of Raymond H. Aver, A F Represented By
Raymond H Aver

Richard S. Singer Pro Se

Debtor(s):

Glen E Pyle Pro Se

Defendant(s):

Glen E Pyle Irrevocable Trust Represented By
Raymond H Aver

Sweetwater Management Company Pro Se

Glen E Pyle Represented By
Raymond H Aver

Movant(s):

Marc H Berry Represented By
Marc Berry

Plaintiff(s):

Marc H Berry Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR) Pro Se

Amy L Goldman (TR) Represented By
Amy L Goldman
Amy L Goldman (TR)

US Trustee(s):

United States Trustee (SV) Pro Se

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1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

■

#7.03 Plaintiff's Application for More Time to Conduct
Discovery Before Determination of Defendant's
Motion for Summary Judgment

fr. 9/27/16

Docket No: 127

Tentative Ruling:

Off calendar. By order entered on 9/28, this was denied except to allow Berry to find creditors as described in the order.

prior tentative ruling (10/11/16)

Denied. The motion for summary judgment was continued by stipulation to 10/11/16. As to the request, there is sufficient time to obtain a certified copy of the petition of Daina Parlee. The Court can take judicial notice of the dates of the second bankruptcy, so no certified copy is required. As to the list of creditors, I do not know of any law that holds that if the statute of limitations has not run as to one creditor due to the filing of the bankruptcy, it does not run as to all creditors. Each judgment must stand on its own and Berry cannot piggy back on the cases of others filed against Pyle.

Party Information

Debtor(s):

Glen E Pyle

Pro Se

Defendant(s):

Glen E Pyle Irrevocable Trust

Represented By
Raymond H. Aver

Sweetwater Management Company

Pro Se

Glen E Pyle

Represented By
Raymond H. Aver

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CONT... Glen E Pyle

Chapter 7

Plaintiff(s):

Marc H Berry

Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)

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1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

▪
#7.04 Status Conference re: Complaint to Set Aside
or Annul Fraudulent Conveyances; Alter Ego;
and for Damages

fr. 4/27/11, 6/15/11, 10/4/11, 1/24/12, 4/10/12, 5/29/12,
6/19/12, 9/11/12, 10/2/12, 11/6/12, 3/19/13, 6/4/13, 8/27/13,
11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14,
12/16/14, 3/10/15, 5/12/15, 6/2/15, 9/1/15, 9/8/15; 11/17/15;
1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16

Docket No: 1

Tentative Ruling:

Continued without appearance to 1/17/17 at 10:00 a.m. when I have a hearing on the motion for summary judgment.

prior tentative ruling (3/1/16)

On 2/24/16, Mr. Berry emailed the parties and the Court that he will be appearing by Court Call. Can we go to trial without further delays? How does this fit in with the Campbell case?

prior tentative ruling (1/12/16):

This has been continued from time to time. I believe that Mr. Aver and Mr. Pyle have reached an agreement. Please provide me with an order withdrawing this motion or reset it for hearing. If neither is received by January 19, I will deny the motion. Continue without appearance to January 26, 2016 at 10:00 a.m.

prior tentative ruling (6/2/15)

Mr. Aver filed a motion to withdraw on May 11. It has never been set for hearing. At the status conference on 5/12, Mr. Pyle said that he would oppose this because he cannot pay Mr. Aver what he requests and because - although he can represent himself - the corporation and the trust must have counsel.

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CONT... Glen E Pyle

Chapter 7

I cannot force Mr. Aver to represent the defendants if he is not being paid. Unless something is worked out between him and Mr. Pyle, I will grant the motion. When we go to trial, the corporation and the trust will be declared in default, but no judgment would be entered except after trial. The "prove up" would be the trial itself and it seems to me that the same evidence would be offered against these entities as against Mr. Pyle. Since Mr. Pyle can defend himself and since any judgment against the corporation and the trust are dependent on his past actions, there would only be a judgment against these two unrepresented entities if there is a judgment against Mr. Pyle.

Having said that, Mr. Pyle should understand that representation by counsel is a very wise idea and that Mr. Aver is a competent and experienced attorney. Nonetheless, it is up to Mr. Pyle whether he can make a deal with Mr. Aver and, if not, he will be representing himself.

I would like to take this to trial without further delay. I will be gone most of June, but will be here (with a few short breaks) in July and August. Let's find some trial dates. I will be able to find a courtroom for a day here and a day there, but I could have a courtroom for the week of July 20. So if we need more than one day, perhaps we can schedule it during that week.

Party Information

Attorney(s):

Law Offices Of Raymond H. Aver, A F	Represented By Raymond H Aver
Richard S. Singer	Pro Se

Debtor(s):

Glen E Pyle	Pro Se
-------------	--------

Defendant(s):

Glen E Pyle Irrevocable Trust	Represented By Raymond H Aver
Sweetwater Management Company	Pro Se

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CONT... **Glen E Pyle**
Glen E Pyle

Chapter 7

Represented By
Raymond H Aver

Plaintiff(s):

Marc H Berry

Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR)

Pro Se

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)

US Trustee(s):

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court
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10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01181 Campbell v. Pyle

▪
#7.05 Status Conference re: Complaint for
Determination that Debt is Nondischargeable
and/or to Recover Money

fr. 5/11/11, 6/22/11, 10/4/11, 1/24/12, 2/14/12,
4/24/12, 6/19/12, 9/11/12, 10/2/12, 11/6/12,
2/12/13, 3/19/13, 8/27/13, 8/27/13, 11/19/13,
2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14,
12/16/14, 3/10/15; 5/12/15; 6/2/15, 9/1/15,
9/8/15, 11/17/15; 1/12/16, 3/1/16, 6/7/16,
8/2/16, 9/27/16

Docket No: 1

Tentative Ruling:

I believe that Mr. Campbell was trying to obtain counsel. It is best to keep this together with Berry v. Pyle. Therefore continue it without appearance to 1/17/17 at 10:00 a.m. when I have a hearing on the motion for summary judgment in the Berry v. Pyle case.

prior tentative ruling (8/2/16)

Mr. Campbell is now representing himself. How does he wish to proceed to get this ready for trial?

prior tentative ruling (3/1/16)

Per the status report filed by Plaintiff on 2/23/16, discovery is not complete. Plaintiff wants to take Mr. Pyle's deposition and audit the records.

This was trailing the Berry v. Pyle matter, but given Mr. Berry's health, I think that it should go forward alone and complete the discovery. Feel free to appear by phone at the status conference and let's get some dates to complete discovery. Please advise Mr. Pyle, who is not represented by counsel in this case, to appear in person or by phone.

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CONT... **Glen E Pyle**

Chapter 7

prior tentative ruling (1/12/16)

This has nothing to do with Mr. Berry's health and Mr. Pyle is not represented by counsel. The 1/5/16 status report said that plaintiff will be ready for trial on 2/1. He figures 2-3 days. Let's set a trial date. Possible dates when there is a courtroom available are Feb. 16-17 and Mar. 23-24.

prior tentative ruling (9/8/15)

This has been trailing Berry v. Pyle. On 8/18/15 Plaintiff filed a status report. He is ready to go to trial in February 2016. He needs another 4-6 months to complete discovery, which includes Mr. Pyle's deposition and an audit of the records.

In htis case Mr. Pyle is not represented by counsel. So let's get a deposition date and move forward.

prior tentative ruling (3/10/15)

Mediation set for 3/24/15. Continue without appearance to 5/12/15 at 1:00 a.m

prior tentative ruling (10/7/14)

The mediation has been delayed. Continue without appearance to 12/16/14 at 10:00 a.m.

prior tentative ruling (8/5/14)

The Berry v. Pyle matter is scheduled for a settlement conference before Judge Ryan on 9/22/14. Is this case part of the settlement conference? If so, continue without appearance to 10/7/14 at 10:00 a.m. If not, the status report filed by Plaintiff on 7/21 requests mediation. How do you wish to proceed?

prior tentative ruling (4/22/14)

On 4/8/14, counsel for plaintiff filed a status report. He believes that he will be ready for trial in 6 months. There is still discovery to be done, including completing Debtor's deposition. A mediation will take place in May or June. **Continue without appearance to August 5, 2014 at 10:00 a.m.**

prior tentative ruling (3/11/14)

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CONT... **Glen E Pyle**

Chapter 7

This complaint is both under §523 and §727 as well as §§547 and 548. This has been trailing the Berry v. Pyle adversary proceeding. Mr. Mendoza attended the 2/10/14 deposition of Mr. Pyle, which is a joint deposition in both this case and the Berry v. Pyle case. Pyle is not represented by counsel in this adversary proceeding.

Mr. Mendoza, should this continue to trail the Berry adversary or are you ready to go forward on your own?

prior tentative ruling (4/24)

The parties have stipulated that plaintiff will have until 4/20 to file a Second Amended Complaint. A second amended complaint was filed on 4/20. Per the status report, the parties think that they need 4-5 months to complete discovery. The parties wish to mediate. Plaintiff has no co-counsel and may wish to propound more discovery and seek relief from stay as to certain trust assets.

Continue the status conference without appearance to June 19 at 10:00 a.m.
This will allow sufficient time for there to be a response to the second amended complaint and for new co-counsel to move forward. In the meantime, please complete a mediation order since it often takes weeks to schedule a mediation.

prior tentative ruling (2/14)

Per the status report filed on 1/24, the parties feel that they will not be ready for trial until late in 2012. Set a discovery cutoff date of 7/30/12. Although neither party wants mediation at this time, plaintiff's counsel is willing to attend mediation.

As of 2/12 there is no response to the amended complaint. What is the status of that? When do the parties think that mediation might be beneficial?

prior tentative ruling (1/24)

An answer was filed on 7/15. Plaintiff filed an amended complaint on 1/12, but this was done without leave to amend.

Counsel, in the future please confer with knowledgeable bankruptcy counsel

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CONT... **Glen E Pyle**

Chapter 7

before filing things in bankruptcy court. Your original cover sheet indicated that this was only a complaint to recover money under §§547 and 548. That is incorrect. The original complaint is under §523 and §727 (although that is not mentioned on the caption) and may include §§547 and 548 (although the uploaded copy has some pages missing, so I can't tell for sure). The amended complaint has all of these claims for relief. The court picked up that there was a §727 claim, but we should not have to review the complaint to do this.

prior tentative ruling (10/4)
Nothing further received as of 10/2.

prior tentative ruling (6/22)
As of 5/9 there has been no return on service on the summons. The plaintiff has counsel. There is no status report as of 5/8. If there is no appearance at the 5/11 hearing, I will issue and OSC re: dismissal for failure to prosecute.

Party Information

Attorney(s):

Klinedinst PC

Represented By
Hartford O Brown

Richard S. Singer

Pro Se

Debtor(s):

Glen E Pyle

Pro Se

Defendant(s):

Glen Pyle

Pro Se

Plaintiff(s):

Ian Campbell

Pro Se

Trustee(s):

Amy L Goldman (TR)

Pro Se

Amy L Goldman (TR)

Represented By

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CONT... Glen E Pyle

Chapter 7

Amy L Goldman
Amy L Goldman (TR)

US Trustee(s):

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

1:10-26168 John Michael Licursi

Chapter 7

Adv#: 1:15-01236 California Bank & Trust v. Licursi et al

■
#8.00 Status Conference re: Complaint

fr. 1/6/16; 1/12/16, 3/1/16, 6/7/16,
7/12/16

Docket No: 1

Tentative Ruling:

Per the status report filed on 9/28/16, the parties are still trying to settle. The Plaintiff sent discovery requests to the Defendants, but the parties agreed that the Defendants would have until 15 days after the rejection of their settlement proposal to respond, but no later than 12/31/16. If it does not settle, CB&T plans to file a motion for summary judgment in January. Trial on remaining issues would be in February.

Discovery cutoff has come. Other than the outstanding discovery described above, there will be no further discovery without order of the court.

Continue without appearance to 1/17/17 at 10:00 a.m. But that time this case should be settled or a motion for summary judgment should have been filed. If neither, the trial date will be set for February.

prior tentative ruling (7/12/16)

Per the status report filed on 6/30/16, CB&T rejected the initial settlement offer and it is now reviewing a revised proposal. They have met and conferred about a discovery plan. They agree to a discovery cutoff date of 9/30/16 with an anticipated motion for summary judgment to be heard in November or December. Trial would be in January 2017.

Continue the status conference without appearance. Discovery cutoff will be 9/30/16. The status conference will be continued to 10/11/16 at 10:00 a.m.

prior tentative ruling (6/7/16)

Per the status report filed on 5/31/16, CB&T is currently reviewing the

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CONT...

John Michael Licursi

Chapter 7

debtors' proposal as to a global settlement. The original settlement offer was rejected and now there is a revised settlement offer being considered by CB&T.

I am willing to defer discovery for a month to see what happens on the settlement offer. But after that this case must move forward.

Continue the status conference without appearance to July 12, 2016 at 10:00. Let's see whether it has settled. If it has not by that time, I will want to know the discovery plans from both sides and then will set a discovery cutoff date.

prior tentative ruling (3/1/16)

This is a non-dischargeability complaint. The chapter 11 was converted to chapter 7 on 7/20/15.

Plaintiff's predecessor (Alliance Bank, hereinafter "the Bank") loaned Spectrum Aluminum \$393,000+. Debtors were 100% owners and the officers and directors of Spectrum Aluminum ("Aluminum"). The Bank took a security interest in all personal property of Aluminum. Debtors guaranteed this loan. In 2010 Plaintiff filed a state court lawsuit against Aluminum for breach of contract, etc. In 2011, Plaintiff obtained judgment in the superior court case and filed proof of claim 16-1 for \$468,000+.

In 2012 Plaintiff discovered the existence of Spectrum Glass & Mirror, Inc. ("Mirror"). Mirror is wholly owned by Debtors. In February 2010, Aluminum sold all of its assets to Mirror. Debtors had not revealed this to the Plaintiff and, in fact, concealed it.

In 2013 Plaintiff filed a state court complaint against Mirror for fraud, conversion, etc. Plaintiff prevailed on summary judgment against Mirror as to successor liability.

This complaint asserts fraud as to the assets of Aluminum and the value of them and due to the transfer to Mirror. It also alleges false statements in writing as to the net worth of the Debtors and the value of Aluminum. There is a claim under §523(a)(4) that the Debtors as shareholders, officers, and directors of Aluminum owed a fiduciary duty to the Plaintiff and under §523(a)(6) that they willfully and maliciously injured the Plaintiff. Plaintiff seeks damages of \$618,000.

Debtors have filed their answer.

Per the joint status report, the parties have engaged in discussions for

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CONT... John Michael Licursi

Chapter 7

a global settlement, which will also take care of the related state court action against Spectrum Glass and Mirror. The defendants have submitted a settlement proposal to CB&T, which is now being reviewed by the credit committee.

CONTINUE WITHOUT APPEARANCE TO JUNE 7, 2016 AT 10:00 A.M.

prior tentative ruling (1/12/16)

A joint status report was filed on 12/30/15. The parties feel that they will be ready for trial by September 2016 and discovery will be complete by June. Defendant wants to mediate and plaintiff has not indicated one way or the other.

Plan to appear in person or by phone so that we can discuss what discovery needs to take place. The latest would be 6/1/16 and that would only be so that you can attempt a mediation. I believe that most of the discovery has already taken place in the Spectrum Glass and Spectrum Mirror matters. This case will go to trial this coming summer (or hopefully sooner if I don't find that much discovery is needed) unless it is settled.

Party Information

Debtor(s):

John Michael Licursi

Represented By
Andrew Goodman
Yi S Kim
James R Felton

Defendant(s):

Susan Annette Licursi

Represented By
James R Felton

John Michael Licursi

Represented By
James R Felton

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CONT... **John Michael Licursi**

Chapter 7

Joint Debtor(s):

Susan Annette Licursi

Represented By
Catherine Christiansen
Andrew Goodman
Yi S Kim
James R Felton

Plaintiff(s):

California Bank & Trust

Represented By
Anthony J Napolitano

Trustee(s):

Diane Weil (TR)

Pro Se

US Trustee(s):

United States Trustee (SV)

Pro Se

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10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#9.00 Status Conference re: Ch 11 Case

fr. 1/24/2013, 4/30/13, 5/14/13, 7/23/13, 8/6/13,
9/17/13, 9/24/13, 11/19/13, 12/17/13, 1/21/14, 2/18/14,
3/11/14, 4/15/14, 5/6/14, 6/24/14, 9/9/14, 9/23/14,
10/7/14, 11/24/14, 1/6/15, 1/20/15, 2/10/15, 3/10/15,
4/28/15; 5/12/15; 9/29/15, 10/22/15, 12/8/15, 3/1/16,
6/7/16, 7/12/16, 8/16/16

Docket No: 1

Tentative Ruling:

Mr. Reitman has been adding staff. I have no other indication of what is happening since no status report was filed. It may be that he has not calendared this hearing. If there is no appearance, I will continue it and make sure that he knows that date and to give notice to all interested parties.

prior tentative ruling (8/16/16)

On 8/12 Mr. Reitman filed an application to employ his firm as counsel for the Trustee. No hearing was scheduled. I will hold this for the lodging period to see if there are any objections.

This is a case where the professional fees have become immense due to a variety of factors. I want to be sure that Mr. Reitman will keep a close handle on fees and will not pass on to attorneys work that is properly done by the Trustee himself. Also, Ms. McClure is able to provide some assistance, though her desire to run the case may interfere with her utility. Let's discuss this.

As to the overlaps in various matters which are disclosed in the application, I am sure that the Firm can set up a structure so that there is no conflict.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By

**United States Bankruptcy Court
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CONT... Shirley Foose McClure

Chapter 11

Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Elaine Nguyen

**United States Bankruptcy Court
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10:00 AM

1:13-11566 Nelly R. Randin

Chapter 11

#10.00 Post Confirmation Status Conference

fr. 5/14/2013, 9/17/13,10/1/13,10/29/13, 12/17/13,
3/11/14, 3/25/14, 5/6/14, 6/3/14, 6/24/14, 9/9/14,
9/23/14, 1/6/15, 2/10/15; 3/31/15, 5/26/15; 6/2/15,
6/30/15, 7/21/15, 9/1/15; 9/29/15; 10/20/15; 11/17/15
12/8/15; 1/12/16; 1/26/16; 6/21/16

Docket No: 1

Tentative Ruling:

Nothing further received as of 10/6/16. No fee application has been filed.

prior tentative ruling (6/21/16)

The plan was confirmed by order entered on 2/9/16. Per the status report filed on 6/13/16, counsel will file her fee application by mid-July and set it for hearing. Debtor has made her payments according to the plan and is current on her tax liabilities.

Continue without appearance to October 11, 2016 at 10:00 a.m.

Party Information

Debtor(s):

Nelly R. Randin

Represented By
Dana M Douglas

**United States Bankruptcy Court
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1:11-11180 Bethel Healthcare, Inc.

Chapter 11

#11.00 Post Confirmation Status Conference
re: Chapter 11 Case

fr. 3/1/11, 6/14/11, 8/30/11, 9/13/11, 9/27/11,
10/4/11, 10/18/11, 11/1/11, 11/8/11, 11/15/11,
11/22/11, 12/6/11, 2/21/12, 7/24/12, 12/4/12, 12/11/12,
5/14/13, 7/9/13, 7/23/13, 8/27/13, 9/17/13, 10/29/13,
12/17/13, 4/1/14, 4/11/14, 6/3/1, 9/9/14,
12/16/14, 2/24/15, 4/28/15, 7/28/15; 11/17/15, 3/1/16,
8/2/16
6/7/16

Docket No: 1

Tentative Ruling:

I am trailing this with the 2013 case. Continue without appearance to
11/15/16 at 10:00 a.m.

Party Information

Debtor(s):

Bethel Healthcare, Inc.

Represented By
David B Golubchik
Juliet Y Oh
Monica Y Kim
Carmela Pagay
Hamid R Rafatjoo
Ashley M McDow
Michael T Delaney

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1:13-12220 **Bethel Healthcare, Inc.**

Chapter 11

#12.00 Status Conference re: Chapter 11 Case

fr. 4/30/13, 7/9/13, 8/27/13, 9/17/13, 10/29/13,
12/17/13, 4/1/14, 4/11/14, 6/3/14, 9/9/14, 12/16/14;
2/24/15, 4/28/15; 7/28/15, 9/8/15; 11/17/15, 3/1/16,
6/7/16, 8/2/16

Docket No: 1

Tentative Ruling:

Per the status report filed 9/27/16, the Debtors and the Committee are preparing a motion for an orderly dismissal of the bankruptcy cases. They hope to have this heard on 11/15.

As to the two pending adversary proceedings, the declaratory relief one should be resolved shortly by the parties. The Debtors' estates do not have any interest in the funds at issue in that one. A tentative settlement has been reached in the adversary against the former insiders of the Debtor. All non-insider aviodance actions have been resolved.

Continue without appearance to 11/15/16 at 10:00 a.m.

prior tentative ruling (6/7/16):

There are two remaining adversary proceedings which, once resolved, will allow the Debtor and the Committee to file a motion for an orderly dismissal. There is an adversary against the former insiders, which did not settle. The answer deadline is 5/24/16. By the status conference, the Court and interested parties should have a better idea of whether the former insiders intend to defend the actions. The Committee seeks a 90 day continuance.

In fact, the answers were filed. Continue without appearance to 8/2/16 at 10:00 a.m.

prior tentative ruling (3/1/6)

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, October 11, 2016

Hearing Room 303

10:00 AM

CONT... Bethel Healthcare, Inc.

Chapter 11

Per the status report filed on 2/16/16, nothing has changed. There are still three actively litigated avoidance actions. The Committee requests a continuance of the status conference for about 90 days so that they can pursue informal settlement discussions. The Committee is agreeable to being ordered to mediation to the extent that any defendant is agreeable.

Continue without appearance to June 7 at 10:00 a.m.

prior tentative ruling (11/17/15)

Per the status report filed on 11/3/15, the Debtors (both Bethel and Corinthian) and the Committee have been working together to formulate an appropriate exit strategy. Bethel will be filing a motion to dismiss and Corinthian will be filing a liquidation plan.

All of the Bethel avoidance actions against third parties have been completed. There are three of the Corinthian ones that are still being litigated. These have status conferences on 12/8/15. The Bethel action against insiders and affiliates is still pending.

Continue without appearance to March 1, 2016 at 10:00 a.m.

prior tentative ruling (7/28/15)

Per the status report filed on 7/13/15, the Debtor and the Committee are working together to formulate an exit strategy in both Bethel and Corinthian. They have decided that Bethel will file a motion to dismiss and Corinthian will file a liquidating plan. There are avoidance actions pending in both cases.

Continue without appearance to 11/17/15 at 10:00 a.m.

Party Information

Debtor(s):

Bethel Healthcare, Inc.

Represented By

Hamid R Rafatjoo

Hamid R Rafatjoo

Ashley M McDow

Michael T Delaney

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, October 11, 2016

Hearing Room 303

10:00 AM

1:13-12220 Bethel Healthcare, Inc.

Chapter 11

Adv#: 1:15-01109 Jeffer Mangels Butler & Mitchell LLP v. Bethel HealthCare, Inc. et al

▪
#13.00 Status Conference Re Complaint in Interpleader

fr. 9/22/15; 9/29/15; 11/17/15; 1/12/16, 2/9/16, 3/1/16,
6/7/16, 8/2/16

Docket No: 1

Tentative Ruling:

Off calendar. Order approving the stipulation to disburse and dismissing this adversary case was entered on 9/9/16.

Party Information

Counter-Defendant(s):

Jeffer Mangels Butler & Mitchell LLP	Represented By Joseph A Eisenberg
--------------------------------------	--------------------------------------

Cross Defendant(s):

Gracevilla, Inc.	Pro Se
Genesis Healthcare Center, Inc.	Pro Se
United States of America by and through	Represented By Najah J Shariff
United States Trustee (SV)	Pro Se
Corinthian Sub-Acute & Rehabilitation	Represented By Hamid R Rafatjoo
Bethel HealthCare, Inc.	Represented By Hamid R Rafatjoo
Ephesian Wellness Center, Inc.	Pro Se
Culver Dairy, Inc	Pro Se

**United States Bankruptcy Court
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San Fernando Valley
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10:00 AM

CONT... **Bethel Healthcare, Inc.**

Chapter 11

Cross-Claimant(s):

Matthew Karp dba Villa Serena

Represented By
J Rudy Freeman

Long Beach Post Acute, LLC

Represented By
J Rudy Freeman

Debtor(s):

Bethel Healthcare, Inc.

Represented By
Hamid R Rafatjoo
Hamid R Rafatjoo
Ashley M McDow
Michael T Delaney

Defendant(s):

Culver Dairy, Inc

Represented By
Johnny White

Gracevilla, Inc.

Pro Se

United States of America by and throug

Represented By
Najah J Shariff

Matthew Karp dba Villa Serena

Represented By
J Rudy Freeman

Long Beach Post Acute, LLC

Represented By
J Rudy Freeman

Corinthian Sub-Acute & Rehabilitation

Represented By
Hamid R Rafatjoo

Bethel HealthCare, Inc.

Represented By
Hamid R Rafatjoo

Ephesian Wellness Center, Inc.

Represented By
Michael T Delaney

Genesis Healthcare Center, Inc.

Represented By
Michael T Delaney

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, October 11, 2016

Hearing Room 303

10:00 AM

CONT... **Bethel Healthcare, Inc.**

Chapter 11

Interested Party(s):

Courtesy NEF

Represented By
Ashley M McDow

Douglas Flahaut

Represented By
M Douglas Flahaut

Aram Ordubegian

Represented By
Aram Ordubegian

Plaintiff(s):

Jeffer Mangels Butler & Mitchell LLP

Represented By
Joseph A Eisenberg

US Trustee(s):

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, October 11, 2016

Hearing Room 303

10:00 AM

1:13-12220 Bethel Healthcare, Inc.

Chapter 11

Adv#: 1:15-01060 The Official Committee of Unsecured Creditors v. Henry et al

■
#14.00 Status Conference re: Complaint

fr. 6/2/15, 9/1/15; 11/17/15, 3/1/16, 6/7/16,
8/2/16

Docket No: 1

Tentative Ruling:

Continue without appearance to 11/15/16 at 10:00 a.m.

prior tentative ruling (8/2/16)

Settlement drafts are circulating. Continue without appearance to Oct. 11, 2016 at 10:00 a.m.

prior tentative ruling (6/7/16)

This is the action against the former insiders. On 5/26 Genesis Healthcare Center, Inc. and Ephesian Wellness Center, Inc. have filed answers. The Henrys filed their answer on 5/27. Richard Brenner has not filed his answer, but apparently intends to do so shortly.

Per the status report, the parties are in active settlement talks. They intend to do written discovery and depositions and should be through with discovery by the end of September.

Continue the status conference without appearance to August 2, 2016 at 10:00 a.m. If it has not settled by the time, I will be imposing a discovery cutoff date.

Party Information

Debtor(s):

Bethel Healthcare, Inc.

Represented By
Hamid R Rafatjoo
Hamid R Rafatjoo
Ashley M McDow

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, October 11, 2016

Hearing Room 303

10:00 AM

CONT... **Bethel Healthcare, Inc.**

Chapter 11

Michael T Delaney

Defendant(s):

Genesis Healthcare Management, Inc.	Pro Se
Genesis Healthcare Group, Inc.	Pro Se
Ephesian Wellness Center, Inc.	Pro Se
Genesis Healthcare Center, Inc.	Pro Se
Susan Henry	Pro Se
Randy Henry	Pro Se
Richard Brenner	Pro Se

Interested Party(s):

MUFG Union Bank, N.A.	Represented By Isabelle L Ord
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Plaintiff(s):

The Official Committee of Unsecured C	Represented By Andy Kong M Douglas Flahaut
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US Trustee(s):

United States Trustee (SV)	Pro Se
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, October 11, 2016

Hearing Room 303

10:00 AM

1:13-12220 Bethel Healthcare, Inc.

Chapter 11

Adv#: 1:15-01060 The Official Committee of Unsecured Creditors v. Henry et al

■

#15.00 Status Conference re: Crossclaim by Richard Brenner
against Genesis Healthcare Center, Inc., Genesis
Healthcare Group, Inc., Randy Henry, Susan Henry

fr. 8/30/16

Docket No: 15

Tentative Ruling:

Continue without appearance to 11/15/16 at 10:00 a.m.

Party Information

Debtor(s):

Bethel Healthcare, Inc.

Represented By
Hamid R Rafatjoo
Hamid R Rafatjoo
Ashley M McDow
Michael T Delaney

Defendant(s):

Genesis Healthcare Management, Inc.

Represented By
Ashley M McDow

Genesis Healthcare Group, Inc.

Represented By
Ashley M McDow

Ephesian Wellness Center, Inc.

Represented By
Ashley M McDow

Genesis Healthcare Center, Inc.

Represented By
Ashley M McDow

Susan Henry

Pro Se

Randy Henry

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Tuesday, October 11, 2016

Hearing Room 303

10:00 AM

CONT... Bethel Healthcare, Inc.

Chapter 11

Richard Brenner

Represented By
Scott W Carlson

Plaintiff(s):

The Official Committee of Unsecured C

Represented By
Andy Kong
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, October 11, 2016

Hearing Room 303

10:00 AM

1:11-11185 Corinthian Sub-Acute & Rehabilitation Center, Inc.

Chapter 11

#16.00 Post Confirmation Status Conference
re: Chapter 11 Case

fr. 3/1/11, 6/14/11, 8/30/11, 9/13/11, 9/27/11,
10/4/11, 10/18/11, 11/1/11, 11/8/11, 11/15/11, 11/22/11,
12/6/11, 2/21/12, 7/24/12, 12/4/12, 12/11/12, 4/3/13,
4/8/13, 4/30/13, 7/9/13, 7/23/13, 8/27/13, 9/17/13, 10/29/13,
12/17/13, 4/1/14, 4/11/14, 6/3/14, 9/9/14, 12/16/14, 2/24/15,
4/28/15, 7/28/15; 11/17/15, 3/1/16, 6/7/16, 8/2/16

Docket No: 1

Tentative Ruling:

I am trailing this with the 2013 case. Continue without appearance to 11/15/16 at 10:00 a.m.

Party Information

Debtor(s):

Corinthian Sub-Acute & Rehabilitation

Represented By
David B Golubchik
Juliet Y Oh
Monica Y Kim
Carmela Pagay

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, October 11, 2016

Hearing Room 303

10:00 AM

1:13-12221 Corinthian Sub-Acute & Rehabilitation Center, Inc.

Chapter 11

#17.00 Status Conference re: Chapter 11 Case

fr. 4/30/13, 7/9/13, 7/23/13, 8/27/13,
9/17/13, 10/29/13, 12/17/13, 4/1/14,
4/11/14, 6/3/14, 9/9/14, 12/16/14, 2/24/15,
4/28/15, 7/28/15; 11/17/15, 3/1/16, 6/7/16,
8/2/16

Docket No: 1

Tentative Ruling:

Per the status report filed 9/27/16, the Debtors and the Committee are preparing a motion for an orderly dismissal of the bankruptcy cases. They hope to have this heard on 11/15.

As to the two pending adversary proceedings, the declaratory relief one should be resolved shortly by the parties. The Debtors' estates do not have any interest in the funds at issue in that one. A tentative settlement has been reached in the adversary against the former insiders of the Debtor. All non-insider avoidance actions have been resolved.

Continue without appearance to 11/15/16 at 10:00 a.m.

prior tentative ruling (3/1/16)

Per the status report filed on 2/16/16, nothing has changed. There are still three actively litigated avoidance actions. The Committee requests a continuance of the status conference for about 90 days so that they can pursue informal settlement discussions. The Committee is agreeable to being ordered to mediation to the extent that any defendant is agreeable.

Continue without appearance to June 7 at 10:00 a.m.

prior tentative ruling (11/17/15)

Per the status report filed on 11/3/15, the Debtors (both Bethel and Corinthian) and the Committee have been working together to formulate an

**United States Bankruptcy Court
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San Fernando Valley
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CONT... **Corinthian Sub-Acute & Rehabilitation Center, Inc.** **Chapter 11**

appropriate exit strategy. Bethel will be filing a motion to dismiss and Corinthian will be filing a liquidation plan.

All of the Bethel avoidance actions against third parties have been completed. There are three of the Corinthian ones that are still being litigated. These have status conferences on 12/8/15. The Bethel action against insiders and affiliates is still pending.

Continue without appearance to March 1, 2016 at 10:00 a.m.

prior tentative ruling (7/28/15)

Per the status report filed on 7/13/15, the Debtor and the Committee are working together to formulate an exit strategy in both Bethel and Corinthian. They have decided that Bethel will file a motion to dismiss and Corinthian will file a liquidating plan. There are avoidance actions pending in both cases.

Continue without appearance to 11/17/15 at 10:00 a.m.

Party Information

Debtor(s):

Corinthian Sub-Acute & Rehabilitation	Represented By Hamid R Rafatjoo
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**United States Bankruptcy Court
Central District of California
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Tuesday, October 11, 2016

Hearing Room 303

10:00 AM

1:13-12221 Corinthian Sub-Acute & Rehabilitation Center, Inc.

Chapter 11

Adv#: 1:15-01061 The Official Committee of Unsecured Creditors v. Henry et al

■
#18.00 Status Conference re: Complaint

fr. 6/2/15, 9/1/15; 11/17/15, 3/1/16, 6/7/16,
8/2/16

Docket No: 1

Tentative Ruling:

Continue without appearance to 11/15/16 at 10:00 a.m.

prior tentative ruling (8/2/16)

Settlement drafts are circulating. Continue without appearance to Oct. 11, 2016 at 10:00 a.m.

prior tentative ruling (6/7/16)

This is the action against the former insiders. On 5/26 Genesis Healthcare Center, Inc. and Ephesian Wellness Center, Inc. have filed answers. The Henrys filed their answer on 5/27. Richard Brenner has not filed his answer, but apparently intends to do so shortly.

Per the status report, the parties are in active settlement talks. They intend to do written discovery and depositions and should be through with discovery by the end of September.

Continue the status conference without appearance to August 2, 2016 at 10:00 a.m. If it has not settled by the time, I will be imposing a discovery cutoff date.

prior tentative ruling (9/1/15)

Summons served on 4/7/15. No response as of 8/23. No new status report. But this is the companion to adv. 15-01060, which is in the Bethel case. So same tentative ruling:

Continue without appearance to 11/17/15 at 10:00 a.m

Party Information

**United States Bankruptcy Court
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San Fernando Valley
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Tuesday, October 11, 2016

Hearing Room 303

10:00 AM

CONT... **Corinthian Sub-Acute & Rehabilitation Center, Inc.**

Chapter 11

Debtor(s):

Corinthian Sub-Acute & Rehabilitation	Represented By Hamid R Rafatjoo
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Defendant(s):

Genesis Healthcare Management, Inc.	Pro Se
Genesis Healthcare Group, Inc.	Pro Se
Ephesian Wellness Center, Inc.	Pro Se
Genesis Healthcare Center, Inc.	Pro Se
Susan Henry	Pro Se
Randy Henry	Pro Se
Richard Brenner	Pro Se

Plaintiff(s):

The Official Committee of Unsecured C	Represented By Andy Kong
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US Trustee(s):

United States Trustee (SV)	Pro Se
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Courtroom 303 Calendar**

Tuesday, October 11, 2016

Hearing Room 303

10:00 AM

1:13-12221 Corinthian Sub-Acute & Rehabilitation Center, Inc.

Chapter 11

Adv#: 1:15-01061 The Official Committee of Unsecured Creditors v. Henry et al

■

#19.00 Status Conference re: Crossclaim by Richard Brenner
against Genesis Healthcare Center, Inc., Genesis
Healthcare Group, Inc., Randy Henry, Susan Henry

fr. 8/30/16

Docket No: 13

Tentative Ruling:

Continue without appearance to 11/15/16 at 10:00 a.m.

Party Information

Debtor(s):

Corinthian Sub-Acute & Rehabilitation	Represented By Hamid R Rafatjoo
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Defendant(s):

Genesis Healthcare Management, Inc.	Represented By Ashley M McDow
Genesis Healthcare Group, Inc.	Represented By Ashley M McDow
Ephesian Wellness Center, Inc.	Represented By Ashley M McDow
Genesis Healthcare Center, Inc.	Represented By Ashley M McDow
Susan Henry	Pro Se
Randy Henry	Pro Se
Richard Brenner	Represented By Scott W Carlson

**United States Bankruptcy Court
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Tuesday, October 11, 2016

Hearing Room 303

10:00 AM

CONT... Corinthian Sub-Acute & Rehabilitation Center, Inc.

Chapter 11

Plaintiff(s):

The Official Committee of Unsecured C

Represented By
Andy Kong
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, October 11, 2016

Hearing Room 303

10:00 AM

1:13-15929 KSL MEDIA INC

Chapter 7

Adv#: 1:15-01212 Gottlieb v. Landau et al

■

#20.00 Plaintiff's Motion for an order compelling Mediation and
Appointing a Mediator

fr. 8/2/16

Docket No: 135

Tentative Ruling:

Off calendar This is moot.

Party Information

Debtor(s):

KSL MEDIA INC

Represented By
Rodger M Landau
Monica Rieder
Jon L Dalberg

Defendant(s):

TV 10's LLC

Pro Se

Fulcrum 5 Inc

Pro Se

TV 10's LLC

Pro Se

Rodger M Landau

Represented By
Kyle Kveton
Edith R Matthai
T. John Fitzgibbons

Landau Gottfriend & Berger LLP

Represented By
Kyle Kveton
Edith R Matthai
T. John Fitzgibbons

Fulcrum 5 Inc

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, October 11, 2016

Hearing Room 303

10:00 AM

CONT... KSL MEDIA INC

Chapter 7

Plaintiff(s):

David K Gottlieb

Represented By
Eric R Wilson

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeffrey W Dulberg
Steven J Kahn
Scotta E McFarland
Eric R Wilson
Jason S Pomerantz
Philip D Robben
Andrew W Caine
Jeffrey P Nolan

**United States Bankruptcy Court
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Tuesday, October 11, 2016

Hearing Room 303

10:00 AM

1:13-15929 KSL MEDIA INC

Chapter 7

Adv#: 1:15-01212 Gottlieb v. Landau et al

■

#21.00 Status Conference re: Counterclaim of Defendant of
Landau Gottfriend & Berger LLP

fr. 7/12/16, 8/2/16

Docket No: 102

Tentative Ruling:

Per the status report filed in 10/5, the district court has not yet ruled on the motions for leave to appeal the Rule 12 motion to dismiss or the motion to strike and the motion for reconsideration.

The mediation is scheduled in front of Judge Bluebond on 11/17/16.

Continue without appearance to 12/20/17 at 10:00 a.m.

prior tentative ruling (8/2/16)

Motions for leave to appeal both the initial ruling and the motion to reconsider have been filed and opposition has also been filed. FRBP 8004 makes it clear that these motions are to be decided in the district court or the BAP. Continue the status conference to 10/11/16 at 10:00 a.m. to let that happen.

prior tentative ruling (7/12/16)

Per the status reports filed on 6/14/16 and on 7/1/16, the Plaintiff has filed a motion for leave to appeal this court's order granting in part and denying in part the Defendants' Rule 12(b)(6) motion to dismiss. *[On 6/21 the Court denied the motion to reconsider and I assume that this will also be part of the motion for leave to appeal.]* Defendant has filed an opposition. This is filed in the District Court (2:16-cv-03165-AB) and nothing is pending in this Court.

The parties are trying to find a suitable mediator and are deferring discovery until then.

Continue without appearance to 8/2/16 at 10:00. Let's see if the appeal is

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10:00 AM

CONT... KSL MEDIA INC

Chapter 7

allowed. Meanwhile, keep searching for a mediator. If you do not have one by that time, I will want to discuss a method for you to find one.

Party Information

Counter-Claimant(s):

Landau Gottfriend & Berger LLP	Pro Se
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Counter-Defendant(s):

David K Gottlieb	Pro Se
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Debtor(s):

KSL MEDIA INC	Represented By Rodger M Landau Monica Rieder Jon L Dalberg
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Defendant(s):

Landau Gottfriend & Berger LLP	Represented By Kyle Kveton Edith R Matthai T. John Fitzgibbons
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Rodger M Landau	Represented By Kyle Kveton Edith R Matthai T. John Fitzgibbons
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Interested Party(s):

Courtesy NEF	Represented By John P Reitman Jennifer A Landau
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Plaintiff(s):

David K Gottlieb	Represented By Eric R Wilson
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**United States Bankruptcy Court
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Tuesday, October 11, 2016

Hearing Room 303

10:00 AM

CONT... KSL MEDIA INC

Chapter 7

Respondent(s):

Peter I. Isola

Represented By
William K Mills
Peter L Isola

John P. Reitman

Represented By
John P Reitman

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeffrey W Dulberg
Steven J Kahn
Scotta E McFarland
Eric R Wilson
Jason S Pomerantz
Philip D Robben
Andrew W Caine
Jeffrey P Nolan

David Keith Gottlieb (TR)

Represented By
Eric R Wilson

US Trustee(s):

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, October 11, 2016

Hearing Room 303

10:00 AM

1:15-12309 Roberta Mackey

Chapter 7

Adv#: 1:15-01221 Gordon et al v. Mackey

■
#22.00 Motion pursuant to FRCP rule 60 (b) to
 vacate order for sanctions

Docket No: 111

Tentative Ruling:

To be heard by Judge Kaufman on November 9, 2016 at 2:30 p.m.

Party Information

Debtor(s):

Roberta Mackey

Represented By
James R Selth

Defendant(s):

Roberta Mackey

Represented By
David Brian Lally

Plaintiff(s):

Jacquelynn Y. Gordon

Represented By
Ray B Bowen Jr

William M. Gordon

Represented By
Ray B Bowen Jr

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, October 11, 2016

Hearing Room 303

10:00 AM

1:15-12309 Roberta Mackey

Chapter 7

Adv#: 1:15-01221 Gordon et al v. Mackey

■
#23.00 Plaintiffs motion in limine

Docket No: 108

Tentative Ruling:

PLAINTIFF'S MOTION IN LIMINE (DKT. 108)

Objections to Declaration and Exhibits

Ex. A - overrule

Ex. B - overrule

Ex. C - sustain in that there is no indication of the expertise or licensing of Razmig Krumian

Declaration ¶¶5, 6, 7 - sustain

Plaintiff seeks to excuse the appearance and testimony of William and Jacquelynn Gordon (ages 92 and 95 respectively) due to age, illness, and infirmity. Mr. Gordon has been diagnosed with progressive senile dementia and lacks the capacity to manage his financial and personal affairs. Mrs. Gordon is in hospice with less than six months to live. Further, she suffers near deafness in both ears. [*Court: See the objections in that some of this is not admissible*]

Opposition

The deposition would be from a different case in a different court involving different issues. There is no competent, admissible evidence supporting the motion. The motion fails to explain what depositions Mr. Bowen seeks to admit into evidence. No transcripts are attached.

In the superior court, the judge granted judgment for the defendant as to fraud. The issues under §523(a)(6) and §727 are not part of the superior court lawsuits.

In the present action, Mr. Gordon failed to make discovery and both he and Bowen were sanctioned. Summary judgment has been granted on §523(a)(2) and (a)(4) and also on §727(a)(2). Only actions under §523(a)(6) and §727(a)(4) remain. As to the issue of insurance claims, Plaintiffs had a day

**United States Bankruptcy Court
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10:00 AM

CONT... **Roberta Mackey**

Chapter 7

and a half to present evidence in the superior court, but later that was rejected as not bearing on the issue of the loans.

FRCP 32 does not apply because the depositions were not taken in this case. The causes of action in the superior court were different and so the transcripts are irrelevant. The Defendant would be precluded from cross-examining the Plaintiffs. Because the issues are different, the deposition transcripts are irrelevant. Luce v. United States is a criminal case and so has no bearing on this adversary proceeding. Rule 32(a)(8) allows the use of a deposition in a prior action only if it involves the same subject matter between the same parties or their representatives or successors in interest. Here the subject matter is different.

If the Plaintiffs are incompetent, who is Bowen taking direction from?

As to Mrs. Gordon, there is no competent evidence that she is unavailable. There is only a letter from Dr. Krumian and no declaration.

It is critical that the Defendant be able to cross-examine her accusers.

Defendants are entitled to attorney's fees and costs of \$3,850 for defending this motion.

Reply

The necessary facts are no longer in issue. Nothing will be accomplished by requiring the Gordons to attend and testify at the risk of permanent bodily injury or death. In the state court judgment, it stated that "Roberta Mackey knew or should have known that her conduct of borrowing \$100,000 from plaintiffs on April 30, 2012, to be paid back in full within 90 days by August 1, 2012, was likely to be harmful to the plaintiffs." There was also a finding that the conduct of Roberta Mackey fell within the definition of financial elder abuse.

Ignoring the physical status of the Gordons is further elder abuse. The Plaintiffs have provided sufficient evidence of the status of the Gordons. Mr. Lally's language and accusations are outrageous.

The two issues are (a) whether the state court judgment is non-dischargeable because Mackey willfully and maliciously injured the plaintiffs at the moment she obtained the loan from them and (b) whether Mackey knowingly and fraudulently made a false oath in her bankruptcy schedules because she failed to disclose the transfer of half of her insurance agency business to her daughter prior to filing for bankruptcy. The only element under §727 is whether Mackey made the false oath knowingly and

**United States Bankruptcy Court
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10:00 AM

CONT...

Roberta Mackey

Chapter 7

fraudulently. The Gordons have no knowledge on this, so there is no reason for them to testify as to this. As to §523, the Defendant has had an opportunity to examine the Plaintiffs in the prior trial.

As to the use of the prior depositions, the subject matter of the case has not changed. It continues to be the \$125,000 that the Defendant unlawfully obtained from Plaintiffs and failed to repay as promised. The only remaining issue is the Defendant's state of mind at the time that she obtained the funds.

Deposition transcripts are not to be lodged until 7 days before the trial (LBR 7030-1(b)).

Defendant had the opportunity to cross-examine in the state court trial and can object to the deposition testimony to the extent that it would be tendered on the Gordons' behalf. Thus, their right to due process is not affected.

The special interrogatories were timely responded to.

There is no legal or factual basis for the request for attorney's fees and costs.

Analysis

I'm a little confused as to who wants testimony from the Gordons. Looking at the witness lists in the joint pretrial statement, Mr. Gordon is not listed by either side. Ms. Gordon is listed only by the Plaintiff. Since no one intends to call Mr. Gordon, why does this motion include him?

As I understand it, the only claim left under §727(a) is §727(a)(4) and the remaining portion only has to do with whether the Defendant made the false oath knowingly and whether she made it fraudulently. It does not appear that the Gordons have any knowledge of this transfer of the insurance agency and would not testify in this section of the trial.

The only issue left under §523(a) is §523(a)(6). Mr. Lally submitted his summary of witness testimony for trial (dkt. 106), but Mr. Bowen has not submitted his. But I have now read the deposition transcript of Jacquelynn Gordon (attached as an exhibit to the Lally motion in limine, dkt. 123) and it is clear that she was thoroughly examined by Ms. Mackey's state court counsel as to her knowledge of the loans. Thus, this is relevant to Plaintiff's case and is the same parties and the same subject matter as this adversary proceeding.

The state court found that Ms. Mackey committed elder abuse. Cal.

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CONT... **Roberta Mackey**

Chapter 7

We. & Inst. Code §15610.30 describes that findings that must be made:

- (a) "Financial abuse" of an elder or dependent adult occurs when a person or entity does any of the following:
 - (1) Takes, secretes, appropriates, obtains, or retains real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
 - (2) Assists in taking, secreting, appropriating, obtaining, or retaining real or personal property of an elder or dependent adult for a wrongful use or with intent to defraud, or both.
 - (3) Takes, secretes, appropriates, obtains, or retains, or assists in taking, secreting, appropriating, obtaining, or retaining, real or personal property of an elder or dependent adult by undue influence, as defined in Section 15610.70.
- (b) A person or entity shall be deemed to have taken, secreted, appropriated, obtained, or retained property for a wrongful use if, among other things, the person or entity takes, secretes, appropriates, obtains, or retains the property and the person or entity knew or should have known that this conduct is likely to be harmful to the elder or dependent adult.
- (c) For purposes of this section, a person or entity takes, secretes, appropriates, obtains, or retains real or personal property when an elder or dependent adult is deprived of any property right, including by means of an agreement, donative transfer, or testamentary bequest, regardless of whether the property is held directly or by a representative of an elder or dependent adult.
- (d) For purposes of this section, "representative" means a person or entity that is either of the following:
 - (1) A conservator, trustee, or other representative of the estate of an elder or dependent adult.
 - (2) An attorney-in-fact of an elder or dependent adult who acts within the authority of the power of attorney.

While I find no specific finding that Ms. Mackey "knew or should have known that this conduct is likely to be harmful to the elder," that is an element of §15610.30 and thus the state court discovery is relevant and on the same

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subject matter as this adversary concerning §523(a)(6).

As noted above, since Mr. Gordon is not on anyone's witness list, his deposition is not relevant.

UPON RECEIPT OF ADMISSIBLE EVIDENCE OF THE STATUS OF MRS. GORDON'S HEALTH, GRANT THE MOTION TO EXCUSE BOTH MR. AND MRS. GORDON FROM APPEARING AND TESTIFYING. ALLOW PLAINTIFF TO USE TESTIMONY FROM THE STATE COURT DEPOSITION OF MRS. GORDON TO THE EXTENT THAT IT IS RELEVANT TO THIS TRIAL.

DEFENDANT'S MOTION IN LIMINE (DKT. 123)

Although this is not scheduled for hearing until 10/25, it is the flip side to the Plaintiff's motion and the Court will determine it on oral argument at the hearing on 10/11. These are elderly plaintiffs and it is the Court's intent to complete the trial asap. No further delays are warranted.

Defendant seeks to exclude the discovery responses of William Gordon and all testimony of Jacquelynn Gordon.

As to the responses of Mr. Gordon, he signed them while incapacitated.

As to the testimony of Mrs. Gordon, she admitted in her superior court deposition that she has no knowledge of the loans and did not see the promissory notes, and thus has no personal knowledge of the underlying facts of this case.

Proposed Ruling:

- (1) Grant as to the responses (such as they are) of Mr. Gordon. Mr. Bowen made no representation that Mr. Gordon had signed these. In fact, he signed them and stated that because Mr. Gordon is mentally incapacitated, the responses were provided by Mr. Bowen based on information that he had collected from Mr. Gordon over the year(s). Mr. Bowen did nothing wrong.

At this point all of the trial documents have been provided. I have reviewed the Plaintiff's Third Amended Trial Exhibit List and I don't

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see anything that might be considered a surprise.

The responses to interrogatories are not admissible and not intended to be admissible. They were prepared to comply with a Court order that Mr. Lally obtained, knowing the mental issue of Mr. Gordon. So of course they will be excluded.

- (2) As to the testimony of Mrs. Gordon, her deposition speaks for itself. She will not be testifying in person. It is clear that she has no personal involvement in the basis of the loans. However, she did make out the checks and she had at least one substantive conversation with Debtor's husband. She also testified as to her relationship to Ms. Mackey and her expectation that the loans would be repaid. The Court will rule on the relevance of admitting the transcript when sections of it are proffered.

Party Information

Debtor(s):

Roberta Mackey

Represented By
James R Selth

Defendant(s):

Roberta Mackey

Represented By
David Brian Lally

Plaintiff(s):

Jacquelynn Y. Gordon

Represented By
Ray B Bowen Jr

William M. Gordon

Represented By
Ray B Bowen Jr

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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1:15-12309 Roberta Mackey

Chapter 7

Adv#: 1:15-01221 Gordon et al v. Mackey

■

#24.00 Pretrial conference re: complaint for determination of non-dischargeability of debt [11 U.S.C. sec 523(a)(2)(A), (a)(4), (a)(6); and objecting to the debtor's discharge pursuant to 11 U.S.C. sec 727(a)(2) and (4)

fr. 12/2/15; 5/18/16; 8/3/16, 8/24/16(xfr from Judge Kaufman's calendar) 8/30/16

Docket No: 1

Tentative Ruling:

Per the declaration of Ray Bowen, on 8/31 he faxed and mailed to David Lally a revised draft of the proposed joint pretrial stipulation. This contained the changes that Lally requested at the hearing on 8/30. Bowen received no response and followed up with a faxed letter on 9/15. On 9/19, Lally requested some changes and authorized the use of his signature if the changes were made. This included agreeing that he has provided all of the exhibits, though he has not done so.

Bowen made the requested changes, but put in the issue as to the exhibits as a contention statement. There were other requests that Lally respond, but he did not do so and Bowen filed this as a unilateral pretrial statement.

In response, Lally accuses of Bowen of various unreasonable and unethical behavior. He declares that he was incapacitated for a few days, but on 9/23 he emailed the signed Pre-Trial Stipulation to Bowen, but Bowen never filed his signature.

Attached is the email that shows that Lally does not agree to the contention on page 13, section E. If Bowen would cross that provision out, it is okay to sign. The complained of statement is that the "Defendants has not filed or exchanged a Witness List Submitted by Defendant of witnesses to be called at trial."

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Court ruling:

I don't know what is going on her between counsel, but it must stop - NOW! This is a "gotcha" situation and that will not be tolerated. It is obvious that there is bad blood, but both of you are acting unprofessionally. As to Mr. Lally, please restrain your language and accusations. As to Mr. Bowen, you should have removed the sentence at issue since there is a witness list in the Pre-Trial, so it is not being withheld.

The Pre-Trial Stipulation is now deemed filed with the striking out of the sentence on page 13, line 25-26.

GIVEN THE AGES OF THE PLAINTIFFS, I INTEND TO TAKE THIS TO TRIAL ASAP. THIS IS ANTICIPATED TO BE A TWO DAY TRIAL. BECAUSE I SHARE COURTROOMS, I AM SOMEWHAT LIMITED ON WHEN I CAN HOLD TRIALS. HOWEVER, A COURTROOM IS AVAILABLE FOR OCT. 26, 27, AND 28 AND ALSO ON NOV. 7 AND 8. PLEASE CHECK YOUR CALENDARS AND THOSE OF YOUR WITNESSES AND COORDINATE DATES BEFORE COMING TO COURT ON 10/11.

prior tentative ruling (8/30/16)

It looked like Mr. Lally was withdrawing as counsel for defendant, but then he withdrew his application to withdraw. He has not substantively been part of preparing a joint pretrial order. This is unacceptable.

I will hold this until the end of the calendar. The parties are to confer. As to any statement in the unilateral pretrial order that Mr. Lally disagrees with - he is to be prepared to explain to me the reason for the disagreement and the evidence that he will have as to his position. As to the exhibits, it appears that most or all of Mr. Lally's exhibits are already in the hands of the Plaintiff - they are transcripts and prior responses to discovery. How about the Stock Minutes?

This has a 2 day trial estimate. Let's get it set.

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CONT... Roberta Mackey

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Debtor(s):

Roberta Mackey

Represented By
James R Selth

Defendant(s):

Roberta Mackey

Pro Se

Plaintiff(s):

Jacquelynn Y. Gordon

Represented By
Ray B Bowen Jr

William M. Gordon

Represented By
Ray B Bowen Jr

Trustee(s):

Nancy J Zamora (TR)

Pro Se

Nancy J Zamora (TR)

Pro Se

US Trustee(s):

United States Trustee (SV)

Pro Se

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1:16-11387 Real Estate Short Sales Inc

Chapter 11

#25.00 Motion Under 11 USC 1112(b) To Dismiss Or
Convert Case With An Order Directing Payment
Of Quarterly Fees And For Judgment Thereon

Docket No: 68

Tentative Ruling:

The Debtor is not making its monthly operating reports. It missing those for
May, June and July 2016) and August will be due by the time of the hearing.
There was a prior OUST motion for non-compliance, which was later
resolved. Why can't this Debtor stay in compliance?

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Giovanni Orantes

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1:16-11670 The Automart, Inc.

Chapter 11

#26.00 Status and Case Management Conference

Docket No: 1

Tentative Ruling:

Per the status report filed 9/27/16, Debtor has the consensual use of cash collateral from its secured lender. It has assumed the major contracts to which it is a party - namely the real property lease and the third party reps sales agreements. On 9/6/16 it filed a motion to extend the exclusivity periods and there has been not opposition.

The disclosure statement was filed on 9/2. Debtor has reached an informal agreement with HSBC as to the HSBC claims and when the stipulation is completed, that will avoid any confirmation objections.

The West Marine Inc. v. Automart adversary is moving forward.

The Debtor is current with the requirements of the UST.

Trail this with the disclosure statement/plan hearings.

Party Information

Debtor(s):

The Automart, Inc.

Represented By

Blake J Lindemann

Blake J Lindemann

Blake J Lindemann

Blake J Lindemann

Jonathan Shenson

Jonathan Shenson

Jonathan Shenson

Jonathan Shenson

Lauren N Gans

Lauren N Gans

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Lauren N Gans
Lauren N Gans

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1:16-11670 The Automart, Inc. and Scott Spiegel

Chapter 11

#27.00 Hearing re: Disclosure Statement Describing
The Automart's Chapter 11 Plan of Reorganization
Dated September 2, 2016

Docket No: 111

Tentative Ruling:

Per the disclosure statement: This is a family-business that designs, imports, and sells high quality kitchen and bath products. In 2000, the Debtor decided to focus on the marine industry, designing products uniquely suited for boats and the salt air.

Starting in 2005, Debtor began importing and selling uniquely designed, private label folding bicycles that can be compactly stored on boats and used no shore. Its sole customer was West Marine Products, which is a chain of 350 retail boating stores. In 2013 the Consumer Product Safety Commission recalled two of the models of bicycles based on West Marine's claim that three of the bicycles had cracked frames due to welding errors. Debtor believes that this was a bad faith, arbitrary, and overbroad recall by West Marine. The relations and actions by West Marine are laid out in detail. Eventually West Marine stopped paying for the bicycles and for the faucets and sinks and on March 25, 2016, West Marine filed an action against Debtor and its principal in the LASC. Defendants filed a demurrer and on June 5, 2016, Automart filed this chapter 11 case. The superior court case has been removed to this court.

The effectiveness of the Plan is not dependant on the outcome of the litigation.

The Debtor plans to wind-down its bicycle business and reorganize around its core marine OEM and consumer business. The Spiegel Family Trust will provide \$25,000 cash on the effective date and make loans and other financial contributions to the Debtor. In turn, it will receive new equity on the Debtor. the loans could aggregate as much as \$50,000, with compound interest of 5% for a five year period. Scott Spiegel will continue to receive the

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Chapter 11

same salary as on the petition date and will receive 51% of the shares of the Reorganized Debtor on the effective date and the additional 49% over three years as additional consideration for acting as president.

There are 7 classes:

class 1 - HSBC - can vote **(the loan terms are being slightly modified)**

class 2 - Other Secured Claims - deemed to accept **(the Debtor has the option of treatment. Why is this deemed to accept?)**

class 3 - Priority Claims - can vote **(p. 26 says that this is unimpaired, and is entitled to vote)**

class 4 - Trade Claims - can vote **(will be paid in full within 90 days of the effective date or 14 days after the claim is allowed. Full amount about \$12,000)**

class 5 - General Unsecured Claims other than Trade Claims - can vote **(class 5 and 6 creditors will share pro rata a \$120,000 Note to be issued by the Reorganized Debtor. This note will be paid in quarterly installments of \$6,250 for five years. The Debtor is analyzing whether it can equitably subordinate the West Marine Claims, which would then not share in these payments).**

class 6 - Chase - can vote **(Chase shares in the note, but the Reorganized Debtor can reinstate the Chase claim to make it unimpaired or provide a different treatment if Chase and the Debtor agree. If that happens, the Note proceeds that would go to class 6 will go to class 5). court - what is the basis for separate classification of Chase?**

class 7 - equity - deemed to reject **(The equity holder is A2Z Ventures and its interest will be extinguished.)**

No opposition received as of 10/6/16. If there is none received after that date, approve the disclosure statement and set for confirmation hearing.

Party Information

Debtor(s):

The Automart, Inc.

Represented By

Blake J Lindemann

Blake J Lindemann

Blake J Lindemann

Blake J Lindemann

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Jonathan Shenson
Jonathan Shenson
Jonathan Shenson
Jonathan Shenson
Lauren N Gans
Lauren N Gans
Lauren N Gans
Lauren N Gans

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1:16-11670 The Automart, Inc.

Chapter 11

Adv#: 1:16-01098 West Marine Products, Inc v. The Automart, Inc. et al

■

#28.00 Status Conference and OSC re Remand in a
Removed Proceeding

fr. 8/30/16

Docket No: 1

***** VACATED *** REASON: New Summons was issued re Doc. #18.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

The Automart, Inc.

Represented By
Blake J Lindemann
Jonathan Shenson
Lauren N Gans

Defendant(s):

Scott Spiegel

Represented By
Lauren N Gans
Jonathan Shenson

Martin Spiegel

Represented By
Lauren N Gans
Jonathan Shenson

The Automart, Inc.

Represented By
Lauren N Gans
Jonathan Shenson

Plaintiff(s):

West Marine Products, Inc

Represented By
Shani Williams

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10:00 AM

1:16-11670 The Automart, Inc.

Chapter 11

Adv#: 1:16-01098 West Marine Products, Inc v. The Automart, Inc. et al

■
#29.00 Motion to Dismiss Adversary Proceeding

fr. 9/13

Docket No: 6

Tentative Ruling:

Off calendar as first amended complaint was filed.

Party Information

Debtor(s):

The Automart, Inc.

Represented By
Blake J Lindemann
Jonathan Shenson
Lauren N Gans

Defendant(s):

Scott Spiegel

Represented By
Lauren N Gans
Jonathan Shenson

Martin Spiegel

Represented By
Lauren N Gans
Jonathan Shenson

The Automart, Inc.

Represented By
Lauren N Gans
Jonathan Shenson

Movant(s):

Martin Spiegel

Represented By
Lauren N Gans
Jonathan Shenson

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CONT... The Automart, Inc.
The Automart, Inc.

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Represented By
Lauren N Gans
Jonathan Shenson

Plaintiff(s):

West Marine Products, Inc

Represented By
Shani Williams

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1:16-11670 The Automart, Inc.

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Adv#: 1:16-01098 West Marine Products, Inc v. The Automart, Inc. et al

■
#30.00 Motion to Dismiss Plaintiff's First Amended Complaint

fr. 8/30/16; 9/13/16

Docket No: 27

Tentative Ruling:

Per the Court's notice, matter continued to 10/25/16 at 10:00 a.m.

Party Information

Debtor(s):

The Automart, Inc.

Represented By
Blake J Lindemann
Jonathan Shenson
Lauren N Gans

Defendant(s):

Scott Spiegel

Represented By
Lauren N Gans
Jonathan Shenson

Martin Spiegel

Represented By
Lauren N Gans
Jonathan Shenson

The Automart, Inc.

Represented By
Lauren N Gans
Jonathan Shenson

Movant(s):

Scott Spiegel

Represented By
Lauren N Gans
Jonathan Shenson

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CONT... **The Automart, Inc.**
Martin Spiegel

Chapter 11

Represented By
Lauren N Gans
Jonathan Shenson

The Automart, Inc.

Represented By
Lauren N Gans
Jonathan Shenson

Plaintiff(s):

West Marine Products, Inc

Represented By
Shani Williams

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1:16-11670 The Automart, Inc.

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Adv#: 1:16-01098 West Marine Products, Inc v. The Automart, Inc. et al

■

#31.00 Status Conference re: Amended First Complaint
by Shani Williams on behalf of West Marine Products, Inc
against all defendants

fr. 9/27/16

Docket No: 18

Tentative Ruling:

Per the Court's notice, matter continued to 10/25/16 at 10:00 a.m.

Party Information

Debtor(s):

The Automart, Inc.

Represented By
Blake J Lindemann
Jonathan Shenson
Lauren N Gans

Defendant(s):

Martin Spiegel

Represented By
Lauren N Gans
Jonathan Shenson

The Automart, Inc.

Represented By
Lauren N Gans
Jonathan Shenson

Plaintiff(s):

West Marine Products, Inc

Represented By
Shani Williams

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1:16-12255 Solyman Yashouafar

Chapter 11

#32.00 Motion for relief from stay and relief from turnover by Prepetition Receiver or other Custodian

fr. 9/15/16(xfr from Judge Tighe's calendar), 9/27/16

Docket No: 22

Tentative Ruling:

Continued by stipulation to 10/25/16 at 10:00 a.m.

prior tentative ruling (9/27/16)

There are several actions proceeding in front of District Judge John Walter. In August 2012, Abselet obtained a judgment against Alliance Lending Group and both Yashouafars, CV11-00815-JFW(JEMx). The judgment was for \$5,986,580.20 plus costs and fees of \$804,520, all of which accrues interest at 6% per annum. (Solyman dkt. 21, ex. 2) At this point Abselet has received only \$5,060 and the judgment has grown to over \$10 million.

On January 29, 2015, Abselet levied on, and on April 29, 2015 he purchased the Judgment Debtors' stock in ECP Building, Inc (ECP Building), Roosevelt Lofts, Inc. (RLI), and Alliance Property Investments, Inc. (APII). Together these are referred to as the Corporations. The children of the Judgment Debtors and the Judgment Debtors moved to set aside the sale. Judge Walter denied some of the motions and deferred others pending the outcome of an action in Oklahoma as to which court should hear the motion. It was referred back to Judge Walter, who denied more of the motions. An appeal was taken, part of which is still pending.

Abselet filed a case in Oklahoma (Abselet v. Alliance Lending Group, Inc, et. al) as to the real property that APII owns indirectly. That property is in receivership and now in escrow with expected net proceeds of over \$20 million. This motion as to retaining the custodian only refers to the real

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property at 18661 Ventura Blvd., Encino.

As to Encino Corporate Plaza, Judge Walter held that ECP Building is the sole general partner of Encino Corporate Plaza, LP, which owns the real property. Abselet obtained a charging order and the appointment of William J. Hoffman as receiver. Raymond Yashuoafar tried to stop this by filing a new bankruptcy for Encino Corporate Property, LP, but that case was dismissed. The Receiver took control of the building in April 2016.

There is an appeal concerning Abselet's purchase of the Yashouafar's stock in ECP Building. This Stock Appeal is pending in the Ninth Circuit (16-55257). Briefs are due. On Dec. 10, 2015, Judge Walter awarded Abselet post-judgment fees and costs of \$1.7+ million. That is now on appeal (The Fee Appeal - 15-55526).[Jointly "the Appeals."] The two appeals have been consolidated by the Court of Appeals.

Beyond that there is a fraudulent transfer to Kadima, which is another Yashouafar company. In ECP, there is a turnover order, but the 2011 to 2014 tax returns have not been turned over and the preparer has not been identified.

Title and transfers: Abselet asserts that he now owns all of the Yashouafar's stock in ECP Building and APII and also 46.7% or 93.4% of the stock in RLI. Those rulings are part of the Stock Appeal pending in the 9th circuit. The Debtors' children claim ownership of the ECP Building and APII stock and the Yashouafars have affirmatively disavowed any interest in that stock.

UPDATED STATUS:

On August 22, 2016, Abselet filed motions to withdraw the reference in these bankruptcy cases [2:16-CV-06296 and 2:16-CV-06297]. Both were denied by Judge Walter. Meanwhile there are two other cases in front of Judge Walter brought by Abselet against the Yashouafars and other related entities. These are both stayed pending appeal in the Stock Appeal [2:15-cv-

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7625 (declaratory relief and fraudulent transfer); 2:15-cv-8570 (RICO and fraudulent transfer)]. And there is another case by Abselet against Levene Neale Bender Yoo and Brill, et al. for conversion, etc. (2:16-cv-6263).

The only case that names the Yashouafars and is not already stayed by Judge Walter is the one in which a Receiver is in control of the property at 1661 Ventura Blvd (2:11-cv-00815). This is the custodian that Abselet wishes to keep in place.

Per the declaration of William Hoffman, Receiver:

Per Judge Walter's order, he is to sell the 9 story building and to manage it until sold. He hired Holiday Fedoglio Fowler (HFF) as the broker. There have been dozens of prospective purchasers. He expects offers by 9/7, to select a buyer by 9/21, and to close by 11/18/16.

During the receivership, he terminated the property management agreement with Whiterock Realty Solutions, which seems to be owned by two of the Yashouafar children. Trigild is not the property manager. This company has managed hundreds of commercial properties.

He terminated the asserted lease with Kadima Parking Management as to the parking structure. Judge Walter found that this asserted lease was a fraudulent transfer. LPS of America, Inc. now manages the parking garage.

OPPOSITIONS

Massoud asserts that this should wait until the Chapter 11 Trustee and analyze the situation and make sure that the assets are used to benefit all creditors (not just Abselet) and that their value is maximized. He thinks that some deals can be made and that the Trustee should be given time to form a plan of action.

Solyman wants there to be more time for the Trustee to analyze this situation.

The Petitioning Creditors believe that Abselet will be an unsecured, not a secured, creditor. The Petitioning Creditors are in a similar situation as Abselet, having loaned millions of dollars to the Debtors in the course of their

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Solyman Yashouafar

Chapter 11

businesses and not having been repaid. There are other lawsuits around the country arising out of this same kind of conduct.

The relief from stay here concerns the Encino Plaza property. There are disputes as to who owns it, who has the right to liquidate it, and who is entitled to the distribution of the money when it is sold. The Chapter 11 Trustee needs time to marshal and evaluate the assets of the Estates before assets are liquidated solely for the benefit of Abselet. There should be time for an appraisal of the property before it is sold. The duties of a Receiver, which is to satisfy the Abselet judgment, are not the same as those of the Trustee, who is a fiduciary to all creditors.

Further as to turnover, it is the movant's burden to establish cause and that has not occurred. The issue of Debtor mismanagement is not an issue since there is now a trustee in place. And to allow a sale before the "true nature" of the Abselet claim can be determined in the bankruptcy case, gives Abselet a windfall.

As to the 2015 stock sale that invested Abselet with the ownership of ECP Building, the doctrine of equitable redemption may be utilized to allow the Debtors to redeem the general partnership interests for the benefit of all creditors of the Estate, particularly since Abselet only paid \$10 for the purchase, which is a grossly inadequate price.

I am aware of the evidentiary objections filed by Ms. McDow and choose not to deal with them at this time.

REPLIES:

Encino – 16661 Ventura Blvd Trust asserts that it is a senior secured creditor of Encino Corporate Plaza, L.P. (ECPLP), which holds the first priority lien on the real property. It does not want the property turned over to the Trustee, who has no right to administer the assets of ECPLP, which is not a debtor. The Yashouafar Debtors do not own this property. The automatic stay does not apply to the receiver's ongoing management, operation, marketing, or sale of the property. §543 only applies to property of the debtor or of the estate. This is neither.

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CONT... Solyman Yashouafar

Chapter 11

Abselet replies through his attorney. He has spoken to the attorney for the first trust deed and they will foreclose if the property is not sold. Their demand is \$34.5 million.

PROPOSED RULING:

As far as I can tell, the Receiver has done a professional job and has properly marketed the property. I know from prior hearings as part of the Encino Corporate Plaza case that the predecessor to the current first lienholder gave a short time to sell the building or it would foreclose. Although Mr. David's reply is hearsay as to his conversations with the Venable law firm, it does appear that the first lienholder has a right to foreclose regardless of the automatic stay or the case in front of Judge Walter. At best the Yashouafars would be considered to be the principals and/or shareholders of the actual owner of the building. Thus, the sale of the building is not stayed by their bankruptcy.

The real issue here is where do the excess proceeds go. There is also a side issue as to whether the sale is after proper marketing, etc. It appears that the Receiver has done so. Will the Receiver be bringing a motion to sell before Judge Walter? If so and if the Trustee does not agree with the sale process, he should object to the sale in front of Judge Walter.

As noted, it appears that the bankruptcy estate may be able to assert an ownership in the stock of ECP Building, but not in the building itself.

Although Judge Walter has refused to withdraw the reference, he had I can deal jointly – as needed – on some of these issues. He can also withdraw the reference at any time. Perhaps it might be a good idea for Judge Walter and me to hold a joint hearing on how to proceed with the sale, etc.

Given the structure of ownership of the building (that it is owned by an entity of which the Yashouafars may or may not be owners and not by the Yashouafars themselves), there really was not need to bring this motion to retain the Receiver. But in an abundance of caution, it is wise that it was

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Chapter 11

brought. And, in an abundance of caution:

The Trustee notified the Court that there may be an agreement between him and the Receiver. This will still not deal with the objections of the Debtors. In the meantime, leave the Receiver in place as to 16661 Ventura Blvd. Continue this to October 25 at 10:00 a.m. to allow the Trustee time to respond.

Party Information

Debtor(s):

Solyman Yashouafar

Pro Se

Movant(s):

Howard L. Abselet

Represented By
Henry S David

**United States Bankruptcy Court
Central District of California
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1:16-12255 Solyman Yashouafar

Chapter 11

#33.00 Status Conference re: Chapter 11 case

fr. 9/1/16(xfr from Judge Tighe's calendar), 9/27/16

Docket No: 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Solyman Yashouafar

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, October 11, 2016

Hearing Room 303

10:00 AM

1:16-12255 Solyman Yashouafar and Solyman Yashouafar

Chapter 11

#34.00 Trustee's Motion for Authorization to Provide Waiver
of Redemption Rights and Consent to Sale

Docket No: 139

Tentative Ruling:

Chapter 11 Trustee David K. Gottlieb (the "Trustee") of the chapter 11 estates of Massoud Aaron Yashouafar and Solyman Yashouafar ("Massoud," "Solyman" and the "Debtors") moves for authorization to waive redemption rights and consent to the sale of the First National Center in Oklahoma City (the "Property"), pursuant to Bankruptcy Code §363 and §105.

Service: appears to be in order. Served on all parties requesting notice, all parties on the creditor matrix, and the US Trustee, in compliance with order shortening time.

Background:

Howard Abselet ("Abselet") obtained a multi-million dollar judgment (the "Judgment") against the Debtors in United States District Court for the Central District of California (the "California Action").

Abselet commenced an action in United States District Court for the Western District of Oklahoma (the "Oklahoma Court") against the Debtors, various companies that they directly or indirectly control or own, and other third parties, seeking to enforce the Judgment against the Property (the "Oklahoma Action"). (The Debtors assert a direct or indirect interest in the Property.)

On September 3, 2015, the Oklahoma Court appointed a receiver to administer and sell the Property (the "Oklahoma Receiver").

On January 11, 2016, the Oklahoma Receiver obtained an order from the Oklahoma Court approving the sale of the Property for \$22 million (the "Sale"), subject to various conditions.

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CONT...

Solyman Yashouafar and Solyman Yashouafar

Chapter 11

On August 3, 2016, several creditors filed involuntary petitions for chapter 11 relief against each of the Debtors. On September 9, 2016, the parties stipulated to the entry of an order for relief in both cases (which was entered on September 20, 2016). On September 16 and 20, 2016, the Trustee was appointed chapter 11 trustee in both cases.

On September 26, 2016, the Oklahoma Court entered an order in aid of the Sale setting forth a five step sale process that enables the purchaser to obtain title insurance (which is necessary to effectuate closing.) On the same day, the Oklahoma Court entered an (amended) escrow order that provides for the net proceeds of the Sale to be held, pending determination of conflicting claims to these funds (including the claims of Abselet and the Debtors).

Motion

One of the conditions to the closing of the Sale is that the Debtors (and the various companies that they own) waive their right to redemption against the buyer and consent to the Sale. Accordingly, the Trustee is seeking authorization to enter into the *acknowledgement of Waiver of Redemption Rights and Consent to Sale by Receiver* (the "Waiver Agreement"), under which the Trustee will:

- Waive the right of redemption as to the buyer only,
- Ratify the order appointing the Oklahoma Receiver and consent to the Sale,
- Waive 28 U.S.C. §2001(b) regarding appraisal or publication re: the Sale, and
- Waive any claim that the Oklahoma Court lacked jurisdiction or venue re: the Sale.

The Trustee is not waiving his rights or remedies with respect to the net proceeds of the Sale (including rights of redemption against any parties asserting rights to the net proceeds of the Sale).

[The motion continues: "The foregoing reservation of rights shall expressly apply to any waivers and consents previously delivered by the

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CONT... Solyman Yashouafar and Solyman Yashouafar Chapter 11

Debtor and any company he owns and controls." It is not clear what this sentence would cover and it seems highly doubtful that the Court has the power to order such a retroactive reservation of rights.]

Bankruptcy Code §363(b)(1) allows a trustee to use, sell, or lease property of the estate not in the ordinary course of business after notice and a hearing. The trustee's business judgment is subject to great judicial deference and a transaction should generally be approved where the trustee articulates a business justification for the transaction.

After review of relevant documents and discussions with the Oklahoma Receiver and with the goal of maximizing the value of the Debtors' assets, the Trustee has determined that it is in the best interest of the Debtors' estates to enter into the Waiver Agreement. The Trustee believes that if he does not do so, the delay of the Sale could adversely affect whether net sale proceeds will inure to the benefit of the estates.

The Trustee also requests waiver of the 14-day stay under Fed. R. Bankr. P. 6004(h), so that the Sale can take place as quickly as possible, which will inure to the benefit of the estates.

Opposition

No opposition has been filed. Opposition may be made orally at the hearing.

Analysis

The Trustee has exercised his reasonable judgment in determining that entering into the Waiver Agreement will maximize the value of the estates' assets and thus is in the best interests of the estates. Accordingly, the Court is inclined to grant the motion (subject to any opposition made at the hearing).

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

**United States Bankruptcy Court
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Courtroom 303 Calendar**

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10:00 AM

CONT... Solyman Yashouafar and Solyman Yashouafar
Solyman Yashouafar Pro Se

Chapter 11

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards

**United States Bankruptcy Court
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San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, October 11, 2016

Hearing Room 303

10:00 AM

1:16-12408 Massoud Aron Yashouafar

Chapter 11

#35.00 Howard Abselet's Motion for (A) Relief from the Automatic Stay Under 11 USC 362 (Real Property) and (B) Relief from Turnover Under 11 USC 543 by Prepetition Receiver or Other Custodian

fr. 9/15/16(xfr from Judge Tighe's calendar), 9/27/16

Docket No: 28

***** VACATED *** REASON: Order ent continuing hrg to 10/25/16 at 10:00 a.m. - jc**

Tentative Ruling:

Continued by stipulation to 10/25/16 at 10:00 a.m.

Party Information

Debtor(s):

Massoud Aron Yashouafar

Pro Se

**United States Bankruptcy Court
Central District of California
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Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, October 11, 2016

Hearing Room 303

10:00 AM

1:16-12408 Massoud Aaron Yashouafar

Chapter 11

#36.00 Trustee's Motion for Authorization to Provide Waiver of Redemption Rights and Consent to Sale

Docket No: 155

Tentative Ruling:

Chapter 11 Trustee David K. Gottlieb (the "Trustee") of the chapter 11 estates of Massoud Aaron Yashouafar and Solyman Yashouafar ("Massoud," "Solyman" and the "Debtors") moves for authorization to waive redemption rights and consent to the sale of the First National Center in Oklahoma City (the "Property"), pursuant to Bankruptcy Code §363 and §105.

Service: appears to be in order. Served on all parties requesting notice, all parties on the creditor matrix, and the US Trustee, in compliance with order shortening time.

Background:

Howard Abselet ("Abselet") obtained a multi-million dollar judgment (the "Judgment") against the Debtors in United States District Court for the Central District of California (the "California Action").

Abselet commenced an action in United States District Court for the Western District of Oklahoma (the "Oklahoma Court") against the Debtors, various companies that they directly or indirectly control or own, and other third parties, seeking to enforce the Judgment against the Property (the "Oklahoma Action"). (The Debtors assert a direct or indirect interest in the Property.)

On September 3, 2015, the Oklahoma Court appointed a receiver to administer and sell the Property (the "Oklahoma Receiver").

On January 11, 2016, the Oklahoma Receiver obtained an order from the Oklahoma Court approving the sale of the Property for \$22 million (the "Sale"), subject to various conditions.

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10:00 AM

CONT... **Massoud Aaron Yashouafar**

Chapter 11

On August 3, 2016, several creditors filed involuntary petitions for chapter 11 relief against each of the Debtors. On September 9, 2016, the parties stipulated to the entry of an order for relief in both cases (which was entered on September 20, 2016). On September 16 and 20, 2016, the Trustee was appointed chapter 11 trustee in both cases.

On September 26, 2016, the Oklahoma Court entered an order in aid of the Sale setting forth a five step sale process that enables the purchaser to obtain title insurance (which is necessary to effectuate closing.) On the same day, the Oklahoma Court entered an (amended) escrow order that provides for the net proceeds of the Sale to be held, pending determination of conflicting claims to these funds (including the claims of Abselet and the Debtors).

Motion

One of the conditions to the closing of the Sale is that the Debtors (and the various companies that they own) waive their right to redemption against the buyer and consent to the Sale. Accordingly, the Trustee is seeking authorization to enter into the *acknowledgement of Waiver of Redemption Rights and Consent to Sale by Receiver* (the "Waiver Agreement"), under which the Trustee will:

- Waive the right of redemption as to the buyer only,
- Ratify the order appointing the Oklahoma Receiver and consent to the Sale,
- Waive 28 U.S.C. §2001(b) regarding appraisal or publication re: the Sale, and
- Waive any claim that the Oklahoma Court lacked jurisdiction or venue re: the Sale.

The Trustee is not waiving his rights or remedies with respect to the net proceeds of the Sale (including rights of redemption against any parties asserting rights to the net proceeds of the Sale).

[The motion continues: "The foregoing reservation of rights shall expressly apply to any waivers and consents previously delivered by the

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10:00 AM

CONT... **Massoud Aaron Yashouafar**

Chapter 11

Debtor and any company he owns and controls." It is not clear what this sentence would cover and it seems highly doubtful that the Court has the power to order such a retroactive reservation of rights.]

Bankruptcy Code §363(b)(1) allows a trustee to use, sell, or lease property of the estate not in the ordinary course of business after notice and a hearing. The trustee's business judgment is subject to great judicial deference and a transaction should generally be approved where the trustee articulates a business justification for the transaction.

After review of relevant documents and discussions with the Oklahoma Receiver and with the goal of maximizing the value of the Debtors' assets, the Trustee has determined that it is in the best interest of the Debtors' estates to enter into the Waiver Agreement. The Trustee believes that if he does not do so, the delay of the Sale could adversely affect whether net sale proceeds will inure to the benefit of the estates.

The Trustee also requests waiver of the 14-day stay under Fed. R. Bankr. P. 6004(h), so that the Sale can take place as quickly as possible, which will inure to the benefit of the estates.

Opposition

No opposition has been filed. Opposition may be made orally at the hearing.

Analysis

The Trustee has exercised his reasonable judgment in determining that entering into the Waiver Agreement will maximize the value of the estates' assets and thus is in the best interests of the estates. Accordingly, the Court is inclined to grant the motion (subject to any opposition made at the hearing).

Party Information

Debtor(s):

Massoud Aaron Yashouafar

Represented By
Brian L Davidoff

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Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, October 11, 2016

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10:00 AM

CONT... Massoud Aaron Yashouafar

Chapter 11

C John M Melissinos

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, October 11, 2016

Hearing Room 303

10:00 AM

1:16-12408 Massoud Aron Yashouafar

Chapter 11

#37.00 Status Conference re: chapter 11 case
fr. 9/27/16

Docket No: 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Massoud Aron Yashouafar

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, October 11, 2016

Hearing Room 303

10:00 AM

1:16-12388 Major Textile Imports Inc.

Chapter 7

#38.00 Motion for Order to allow claimant
Sepehr Omrani to file Supplement
Declarations of Beth Chrisman
and Sepehr Omrani

fr. 9/27/16

Docket No: 93

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Major Textile Imports Inc.

Represented By
Jaenam J Coe
Michael Jay Berger

Trustee(s):

Carolyn A Dye (TR)

Represented By
Christian T Kim
James A Dumas Jr