

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

**Tuesday, October 18, 2016**

**Hearing Room 303**

10:00 AM

**1:14-15182 Mark Alan Shoemaker**

**Chapter 7**

Adv#: 1:14-01206 U.S. Trustee v. Shoemaker

- 
- #1.00** Motion on Shortened Time for Determination of Scope of Waiver of Attorney-Client Privilege as to Certain Pre-Petition and Post-Petition Communications with Counsel William H. Brownstein by Defendant Mark Alan Shoemaker

Docket No: 161

**Tentative Ruling:**

William Brownstein & Assocs. ("Brownstein") moves for an order confirming that Brownstein has not been counsel to debtor-defendant Mark Alan Shoemaker ("Shoemaker") since December 31, 2010.

Plaintiff United States Trustee (the "UST") moves for a determination of the scope of waiver of the attorney-client privilege by Shoemaker with respect to certain communications between Shoemaker and Brownstein.

Background

Shoemaker filed a petition for chapter 13 relief on March 6, 2010 [10-15744-VK]. Brownstein was Shoemaker's counsel and filed the chapter 13 petition papers, including a "Disclosure of Compensation of Attorney for Debtor" form [Local Bankruptcy Form B203] that stated that Brownstein had "agreed to render legal service for all aspects of the bankruptcy case . . . , including [analysis regarding the decision to file, preparation of the petition and schedules, and representation at the meetings of creditors and confirmation hearing] and any adjourned hearings thereof . . . ." "NONE" was noted under the question asking which services were not included. This chapter 13 was dismissed on March 15, 2010 for failure to timely file the schedules.

Shoemaker filed a petition for chapter 7 relief on May 25, 2010. Brownstein was Shoemaker's counsel and filed the chapter 7 petition,

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

Tuesday, October 18, 2016

Hearing Room 303

---

10:00 AM

CONT... **Mark Alan Shoemaker**

**Chapter 7**

including (i) an LBF B203 essentially identical to the B203 filed in the chapter 13 and (ii) a "Declaration re: Limited Scope of Appearance Pursuant to Local Bankruptcy Rule 2090-1" [former LBF 2090-1.1; "Limited Scope Dec."]. In the Limited Scope Dec. Brownstein's representation was described as limited to preparing and filing and petition and schedules and to representing the debtor "at the 341(a) meeting." [bk. dkt. 1 at 111.]

On April 8, 2011, the UST commenced this adversary proceeding seeking a denial of Shoemaker's discharge pursuant to §727(a)(2), (a)(3), and (a)(4). Shoemaker's operative First Amended Answer (to the UST's operative Second Amended Complaint) frequently asserts "advice of counsel" and "insufficiency of counsel" as a defense or as a predicate to a defense.

The UST has served Brownstein with a subpoena for a deposition and 23 requests of production of documents. Shoemaker filed a motion to quash the subpoena and stay the deposition until issues of attorney-client privilege between Shoemaker and Brownstein can be resolved. Brownstein and the UST have filed these two motions to determine to what extent attorney-client privilege between Shoemaker and Brownstein bars Brownstein's testimony at the deposition and his production of documents. Brownstein's deposition is now set for November 1, 2016.

**Brownstein's Motion**

Motion - Brownstein argues that:

- The scope of his services in Shoemaker's chapter 7 was limited to preparing the petition and schedules and appearing at the §341(a) meeting;
- Brownstein's last involvement as counsel in Shoemaker's chapter 7 was when Brownstein appeared at the final July 13, 2010 §341(a) meeting;

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

Tuesday, October 18, 2016

Hearing Room 303

---

10:00 AM

CONT...

**Mark Alan Shoemaker**

**Chapter 7**

- This Court has already determined that Brownstein has not been counsel to Shoemaker since not later than July 13, 2010. [*I recall some such ruling, but was unable to pinpoint what Brownstein was referring to.*]

To avoid confusion, Brownstein asks that the Court enter an order relieving Brownstein as counsel to the Debtor *nunc pro tunc* to December 31, 2010. (Brownstein has never formally withdrawn as counsel to Shoemaker in his chapter 7.)

Opposition – Shoemaker argues that:

Brownstein's B203 forms (filed in both the chapter 13 and the chapter 7) indicate that he agreed to render services in all aspects of the case. (Shoemaker also notes that he considered the chapter 7 to be an extension of the chapter 13.) Brownstein never provided a written agreement limiting the scope of services in the chapter 7. Brownstein continued to act as Shoemaker's counsel well after July 13, 2010: including, among other things, signing a stipulation on August 18, 2010; advising Shoemaker on various matters including continuances of the §341(a) meeting; filing amended schedules on January 5, 2011; responding to inquiries by the UST; and appearing at a February 23, 2011 §341(a) meeting. [Opposition at 18:12-23:9.] [*The Court notes that the interactions detailed in the Opposition that occurred after the February 23, 2011 §341(a) meeting appear to be limited to e-mails about the continued 341(a) meetings, the possession and disposition of records belonging to Shoemaker's affiliate, a letter that Brownstein had received on Shoemaker's behalf, and Shoemaker updating Brownstein on his litigation with the Department of Real Estate.*]

Reply – Brownstein argues that:

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

Tuesday, October 18, 2016

Hearing Room 303

---

10:00 AM

CONT...

**Mark Alan Shoemaker**

**Chapter 7**

If the February 23, 2011 §341(a) meeting transcript proffered by Shoemaker is correct, then that meeting was the last time that Brownstein had anything to do with Shoemaker's bankruptcy case. Brownstein requests an order confirming that he was no longer counsel to Shoemaker effective February 24, 2011. Although (contrary to what Shoemaker contends), there is no magic to an order determining whether Brownstein was counsel to Shoemaker.

The record makes it abundantly clear that Shoemaker, acting *pro per*, has been active in every element of his bankruptcy case, including preparing and filing an additional set of schedules in 2012.

The Opposition misstates facts and distorts the truth. Shoemaker's chapter 13 failed because Shoemaker misstated the facts to Brownstein. Under threats from Shoemaker, Brownstein has been paid only the initial retainer for the chapter 13 [*which appears to be \$1,250*] for filing both the chapter 7 and the chapter 13.

Analysis

The documentation and other relevant facts indicate that Brownstein was retained on a limited scope basis – to advise on filing bankruptcy, to prepare the petition and the schedules, and to attend the §341(a) meetings. The Limited Scope Dec. and the Form B203 filed in the chapter 7 each enumerate only these services. (Although the B203 does state that Brownstein has "agreed to render legal services for all aspects of the bankruptcy case," that phrase is followed by a list of enumerated services that is consistent with the Limited Scope Dec., with "NONE" noted for other services.) Furthermore, Brownstein states that he received only the initial retainer from the chapter 13 (which appears to be \$1,250) for both the prior chapter 13 and this chapter 7. [Brownstein Dec. filed in support of Reply at ¶ 5.] Shoemaker had been an attorney, he cannot have expected a chapter 13

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

Tuesday, October 18, 2016

Hearing Room 303

10:00 AM

CONT... **Mark Alan Shoemaker**

**Chapter 7**

filing, a chapter 7 filing and any additional litigation to be covered by \$1,250. Furthermore, Shoemaker's active handling of the chapter 7 both supports the interpretation that limited scope representation was intended and that, in any event, Debtor took over the case from Brownstein and handled it *pro per*. For instance, on December 30, 2010, Shoemaker opposed the UST motion to extend time to file a complaint objecting to discharge. [bk. dkt. 40-42.] He filed amended schedules on June 20, 2012. [bk dkt. 64.]

Brownstein acknowledges that if the February 23, 2011 transcript is accurate then he acted as counsel to Shoemaker until February 23, 2011. However, he agreed to represent Shoemaker at any adjourned hearing of the §341(a) [see B203, bk dkt. 1 at 109], and the §341(a) continued to be adjourned until late 2011. This is also relatively consistent with Shoemaker's description of his communications with Brownstein and his office. Thus, he continued to be Shoemaker's attorney until later in 2011: July 6, 2011 is the last date for a §341(a) meeting noticed on the docket [bk. dkt. 58] and Shoemaker contends that the §341(a) meeting was continued until at least October 2011 [Opposition at 10:26]. Although Brownstein never formally withdrew, his limited scope representation terminated under its own terms at the time of the last adjourned date of a §341(a) meeting in late 2011.

The date that Brownstein's representation ended may not ultimately be significant. Regardless of when Brownstein's representation ended, any communications relating to that representation remain protected by the attorney-client privilege:

Pursuant to Fed. R. Evid. 501, federal law governs the availability and scope of the attorney-client privilege in nondiversity actions. See *United States v. Hodge & Zweig*, 548 F.2d 1347, 1353 (9th Cir.1977); *Odmark v. Westside Bancorporation*, 636 F.Supp. 552, 554–55 (W.D.Wash.1986). In *In re Fischel*, 557 F.2d 209 (9th Cir.1977), we set forth the essential elements of the attorney-client privilege:

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

Tuesday, October 18, 2016

Hearing Room 303

10:00 AM

CONT...

**Mark Alan Shoemaker**

**Chapter 7**

- (1) Where legal advice of any kind is sought
- (2) from a professional legal adviser in his capacity as such,
- (3) the communications relating to that purpose,
- (4) made in confidence
- (5) by the client,
- (6) are at this instance permanently protected
- (7) from disclosure by himself or by the legal adviser,
- (8) unless the protection be waived.

557 F.2d at 211, citing 8 Wigmore Evidence § 2292 at 554  
(McNaughton rev. 1961).

*Admiral Ins. Co. v. U.S. Dist. Court for Dist. of Arizona*, 881 F.2d 1486, 1492  
(9th Cir. 1989). Brownstein cannot testify or produce documents that fall  
within this privilege, unless – as the UST argues – Shoemaker has waived the  
privilege.

**UST Motion**

Motion – the UST argues:

Shoemaker has waived attorney-client privilege by making "advice of counsel" the basis of his Third, Fifth, Tenth, Twentieth, and Twenty-First affirmative defenses in this First Amended Answer [adv. dkt. 146]. Advice of counsel or insufficiency of counsel also underlie Shoemaker's First, Ninth, Eighteenth, and Nineteenth affirmative defenses. His First Amended Answer explicitly attributes his failure to disclose his receipt of a \$23,516 wire from the George McFarland Trust to advice of counsel. [Answer ¶¶ 42, 55, 57, 154, 156, 280, 282, 310, 312].

Thus, Shoemaker has implicitly waived the attorney-client privilege by asserting claims that the opposing party cannot adequately dispute without access to the privileged materials. See *Bittaker v. Woodford*, 331 F.3d 715, 719-20 (9th Cir. 2003). Simply put, it is unfair for Shoemaker to rebut one or more elements of the UST's case by alleging that he acted under advice of counsel and then prevent the UST from conducting discovery on the

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

**Tuesday, October 18, 2016**

**Hearing Room 303**

10:00 AM

**CONT... Mark Alan Shoemaker**

**Chapter 7**

substance of that legal advice.

This waiver is limited to the specific communications that have been placed at issue. In this case, the UST must be allowed access to any and all communications underlying his express advice of counsel affirmative defenses in this adversary action.

The UST also notes that the attorney work product privilege is similarly waived with respect to work product placed at issue by Shoemaker in his defenses. Further, the chapter 7 trustee's action against Brownstein (which was supported by Shoemaker) also resulted in a waiver of privilege as Brownstein provided the trustee's counsel with virtually all of his firm's files.

Opposition – Shoemaker argues:

Shoemaker is the holder of the privilege. California law holds the privilege to be fundamental to the legal system and jealously guards the privilege, unless there is a clear and intentional waiver. Any waiver should be no broader than is needed to insure fairness and the holder may preserve confidentiality by choosing to abandon claims that give rise to waiver. The Court must be able to bind parties receiving the privileged materials to the court's conditions and limitations.

The UST has had access to these documents since 2015, when Shoemaker allowed e-mails to be part of the adversary against Brownstein. The UST has always maintained that this is an easy case, why can't the UST then defeat Shoemaker's defenses without Brownstein's deposition?

[The Opposition also contains a number of accusations and derogatory terms that are not relevant to the determination of this motion.]

Reply – The UST argues:

Shoemaker attributes his concealment and dissipation of estate assets to alleged advice and instruction from Brownstein. It would be fundamentally unfair to allow Shoemaker to shield the very communications that underlie his defense. Shoemaker has not abandoned this defense, so any and all of his communications with counsel are at issue and attorney-client privilege should

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

Tuesday, October 18, 2016

Hearing Room 303

10:00 AM

CONT... Mark Alan Shoemaker  
be waived.

Chapter 7

Analysis

Ninth Circuit precedent makes it quite clear that an "advice of counsel" defense will waive the attorney-client privilege with respect to that advice:

The privilege which protects attorney-client communications may not be used both as a sword and a shield. *United States v. Bilzerian*, 926 F.2d 1285, 1292 (2d Cir.1991). Where a party raises a claim which in fairness requires disclosure of the protected communication, the privilege may be implicitly waived. *Id.* In *Bilzerian* the defendant's intent was in issue because he thought his actions were legal, and had discussed the allegedly fraudulent transactions with his attorney. According to the Second Circuit this "would have put his knowledge of the law and the basis for his understanding of what the law required in issue. His conversations with counsel regarding the legality of his schemes would have been directly relevant in determining the extent of his knowledge and, as a result, his intent." *Id.* at 1292. Similarly, to the extent that Pennzoil claims that its tax position is reasonable because it was based on advice of counsel, Pennzoil puts at issue the tax advice it received. In his declaration, Chairman Liedtke stated that insofar as Pennzoil's decision to proceed with the Chevron investment was based on tax considerations, that decision was made based upon the advice of counsel. Pennzoil cannot invoke the attorney-client privilege to deny Chevron access to the very information that Chevron must refute in order to demonstrate that Pennzoil's Schedule 13D is materially misleading.

*Chevron Corp. v. Pennzoil Co.*, 974 F.2d 1156, 1162–63 (9th Cir. 1992); see also, e.g., *Rock River Commc'ns, Inc. v. Universal Music Grp., Inc.*, 745 F.3d 343, 353 (9th Cir. 2013); *Kaiser Found. Health Plan, Inc. v. Abbott Labs., Inc.*, 552 F.3d 1033, 1042–43 (9th Cir. 2009). (This same fairness considerations would support waiver of attorney work product in appropriate circumstances. See e.g., *In re Broadcom Corp. Sec. Litig.*, (C.D. Cal. Apr. 7, 2005), *aff'd*

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

Tuesday, October 18, 2016

Hearing Room 303

10:00 AM

CONT... **Mark Alan Shoemaker**  
(C.D. Cal. May 10, 2005).

Chapter 7

Furthermore, Shoemaker admits that he voluntarily waived privilege with respect to e-mails Brownstein sought to file under seal in the chapter 7 trustee's suit against Brownstein. [Opposition at 2:28-3:10; 14-ap-1211 dkt. 33 at ¶4.] This is 2332 pages comprised all of the e-mails between Brownstein's firm and Shoemaker. [14-ap1211 dkt. 30 at 5:20-26.] Shoemaker argues that he specifically waived privilege only as to those e-mails and only in the chapter 7 trustee's adversary against Brownstein. However, such voluntary disclosure waives privilege for "all other communications on the same subject." *Weil v. Investment/Indicators, Research & Management, Inc.*, 647 F.2d 18, 24 (9th Cir.1981); *United States v. Plache*, 913 F.2d 1375, 1379 (9th Cir. 1990). And such voluntary disclosure, destroys the privilege as to the "world at large." *In re Pac. Pictures Corp.*, 679 F.3d 1121, 1127 (9th Cir. 2012)(rejecting "selective waiver").

**Conclusion**

Although Brownstein ceased to be Shoemaker's attorney in late 2011, any and all confidential communications between Brownstein and Shoemaker relating to Brownstein's services as Shoemaker's attorney are subject to attorney client privilege.

However, Shoemaker (i) expressly waived privilege on all communications relating to the subject matter of the e-mails released (with Shoemaker's consent) in the chapter 7 trustee's adversary proceeding against Brownstein and (ii) implicitly waived privilege on all communications relating to the advice of counsel and insufficiency of counsel alleged in his First Amended Complaint. As the e-mails in (i) were all e-mails between Shoemaker and Brownstein's firm, it is difficult to imagine any communications between Brownstein and Shoemaker that are not within the subject matter of those e-mails and thus covered by the waiver.

**Party Information**

**Debtor(s):**

Mark Alan Shoemaker

Represented By

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

Tuesday, October 18, 2016

Hearing Room 303

---

10:00 AM

CONT... Mark Alan Shoemaker

Chapter 7

William H Brownstein

**Defendant(s):**

Mark Alan Shoemaker

Represented By  
William H Brownstein

**Plaintiff(s):**

U.S. Trustee

Represented By  
Kenneth G Lau  
Hatty K Yip

**Trustee(s):**

Alfred H Siegel (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
San Fernando Valley  
Judge Geraldine Mund, Presiding  
Courtroom 301 Calendar**

Tuesday, October 18, 2016

Hearing Room 301

10:00 AM

**1:14-15182 Mark Alan Shoemaker**

**Chapter 7**

**#2.00** Motion for Order Confirming That  
William H. Brownstein & Associates,  
Professional Corporation Have Not  
Been Counsel for the Debtor since  
December 31, 2010

Docket No: 165

**Tentative Ruling:**

See calendar #1.

**Party Information**

**Debtor(s):**

Mark Alan Shoemaker

Represented By  
William H Brownstein

**Trustee(s):**

Alfred H Siegel (TR)

Pro Se

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

**Tuesday, October 18, 2016**

**Hearing Room 303**

10:00 AM

**1:14-15182 Mark Alan Shoemaker**

**Chapter 7**

Adv#: 1:14-01206 U.S. Trustee v. Shoemaker

■

**#3.00** Status Conference re: Complaint for Denial of Discharge Pursuant to 11 USC 727(a)(2), (a)(3), (a)(4) and (a)(5)

fr. 3/25/15; 5/12/15, 9/1/15, 12/8/15, 12/22/15, 3/1/16, 6/7/16, 10/25/16

Docket No: 1

**Tentative Ruling:**

Per the joint status conference report filed on 5/16/16, Plaintiff will have completed discover by mid-August and be ready for trial a month later. The trial estimate is 8 hours by Plaintiff and 5-7 days by Defendant. Defendant requests a pretrial and mediation; Plaintiff does not. Mediation will not be of benefit in a §727 action since it is "all or nothing." However, a pretrial would be of help in focusing the issues.

At the status conference on 6/7, let's figure out the best way to prepare this matter for trial. I have a courtroom available for the last two weeks of Spetember. So even if the trial takes as long as Mr. Shoemaker estimates, we can complete it at that time.

Please mark your calendars for trial starting on September 19 and continuing through September 30. Once we see the pretrial, I will be able to release some of those days.

prior tentative ruling (3/1/6)

The discovery cutoff date has passed. The UST has a little work to do as to my proposed ruling on the protective order. Apparently Shoemaker has not responded to discovery requests. If this is so, does the UST plan to do a motion to compel? There will be no more discovery except (1) that already propounded, but not yet responded to and (2) any discovery that reasonably arises from information provided in these new responses.

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

Tuesday, October 18, 2016

Hearing Room 303

10:00 AM

CONT... Mark Alan Shoemaker

Chapter 7

Let's set a date for a pretrial.

<b>Party Information</b>
--------------------------

**Attorney(s):**

Bret D Lewis

Represented By  
Bret D Lewis

**Counter-Claimant(s):**

Mark Alan Shoemaker

Pro Se

**Counter-Defendant(s):**

Alfred H Siegel

Pro Se

Peter C Anderson

Represented By  
Kenneth G Lau

**Debtor(s):**

Mark Alan Shoemaker

Represented By  
William H Brownstein

**Defendant(s):**

Mark Alan Shoemaker

Represented By  
William H Brownstein

**Plaintiff(s):**

U.S. Trustee

Represented By  
Kenneth G Lau  
Hatty K Yip

**Trustee(s):**

Alfred H Siegel (TR)

Represented By  
Anthony A Friedman

Alfred H Siegel (TR)

Pro Se

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

**Tuesday, October 18, 2016**

**Hearing Room 303**

---

10:00 AM

**CONT... Mark Alan Shoemaker**

**Chapter 7**

**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 18, 2016

Hearing Room 303

10:00 AM

**1:16-12408 Massoud Aaron Yashouafar**

**Chapter 11**

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

fr. 10/11/16

Docket No: 155

**Tentative Ruling:**

Order approving Motion signed on 10/17/16. Therefore, no appearances necessary.

This was continued to deal with any problems in the order.

prior tentative ruling (11/11/16)

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

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

Tuesday, October 18, 2016

Hearing Room 303

---

10:00 AM

CONT... **Massoud Aaron Yashouafar**

**Chapter 11**

"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.

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

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

Tuesday, October 18, 2016

Hearing Room 303

---

10:00 AM

CONT...

**Massoud Aaron Yashouafar**

**Chapter 11**

- 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 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

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

Tuesday, October 18, 2016

Hearing Room 303

10:00 AM

CONT... **Massoud Aaron Yashouafar**

**Chapter 11**

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).

<b>Party Information</b>
--------------------------

**Debtor(s):**

Massoud Aaron Yashouafar

Represented By  
Brian L Davidoff  
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  
Courtroom 303 Calendar**

Tuesday, October 18, 2016

Hearing Room 303

10:00 AM

**1:16-12255 Solyman Yashouafar and Solyman Yashouafar**

**Chapter 11**

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

fr. 10/11/16

Docket No: 139

**Tentative Ruling:**

Order approving Motion signed on 10/17/16. Therefore, no appearances necessary.

This was continued to deal with any problems in the order.

prior tentative ruling (11/11/16)

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

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

Tuesday, October 18, 2016

Hearing Room 303

---

10:00 AM

CONT... **Solyman Yashouafar and Solyman Yashouafar** **Chapter 11**

"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.

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

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

Tuesday, October 18, 2016

Hearing Room 303

10:00 AM

CONT... **Solyman Yashouafar and Solyman Yashouafar** **Chapter 11**

- 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 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

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

Tuesday, October 18, 2016

Hearing Room 303

---

10:00 AM

**CONT... Solyman Yashouafar and Solyman Yashouafar Chapter 11**

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).

<b>Party Information</b>
--------------------------

**Debtor(s):**

Solyman Yashouafar

Represented By  
Mark E Goodfriend

Solyman Yashouafar

Pro Se

**Trustee(s):**

David Keith Gottlieb (TR)

Represented By  
Jeremy V Richards