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

Tuesday, October 27, 2020 **Hearing Room 303**

9:00 AM
1: - **Chapter**

#0.01 **The 10:00 am calendar will be conducted remotely, using ZoomGov video and audio.**

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Video/audio web address: https://cacb.zoomgov.com/j/16184052371

Meeting ID: 161 8405 2371

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Password: 479916

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

Tuesday, October 27, 2020 **Hearing Room 303**

9:00 AM
CONT... **Chapter**

Docket 0

Tentative Ruling:

- NONE LISTED -

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

Tuesday, October 27, 2020 **Hearing Room 303**

10:00 AM

1:10-24968 Glen E Pyle **Chapter 7**

#1.00 Trustee's Motion For Clarification Of The Courts January 30, 2018 Order Granting Motion For Relief From The Automatic Stay

fr. 9/15/20

Docket 90

Tentative Ruling:

Nothing new received as of 10/24/20.

prior tentative ruling (9/15/20)

Although Ian Campbell passed away and his claim and judgment are now legally in the possession of Mary Casamento as the successor trustee of the Campbell Trust, for ease in this write-up the name Campbell is used to refer to that claim and judgment at all times.

On 1/30/18 the Court entered an order granting the Campbell relief from stay to proceed to liquidate its state court claims. The order does not contain the restrictions in the motion that there will be no enforcement of the judgment other than filing a proof of claim. After obtaining the state court judgment, Campbell filed an abstract of judgment, which attached to the prepetition interests of the Debtor in property, which is now property of the estate. This would convert the unsecured Campbell claim to a secured claim. Campbell now asserts a claim in excess of $202,000 purportedly secured by the Vermont and Sunland properties.

Opposition by Campbell Estate

The thrust of this opposition is that the Court intended this lien to come into existence. The order for relief from stay (rfs) had no limitation on it and in subsequent hearings the Court acknowledged that Campbell was foreclosing on Sunland and Vermont. At the time of the Campbell judgment, the bankruptcy estate did not hold title. This was no clerical error by the Court.

The rfs motion was prepared by Ian Campbell pro se and had numerous ambiguities and contradictions. It declared that the stay would remain in effect as to enforcement of

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CONT... Glen E Pyle **Chapter 7**

the judgment and did not seek annulment. The Court granted the motion and prepared the order itself. The Court did not check the box as to limitations on enforcement of the judgment. Even though this did not match the prayer, it was fully within the discretion of the Court to leave it unlimited.

At the non-dischargeability status conference, the Court noted that although Campbell was trying to bring the properties into the bankruptcy estate, at that time title was in the Pyle Trust and so Campbell could go against the Pyle Trust (against which Campbell had a judgment) without delay. Campbell's attorney explained that he was seeking the 523(a) judgment as a protection in case there was a title issue as to the Pyle Trust due to the multiple transfers concerning Sunland and Vermont. Although all parties now realize that the properties belong to the bankruptcy estate and not the Pyle Trust, that should not stop Campbell from retaining the lien.

There is also an argument concerning the Berry amended lis pendens, which Campbell states shows that the Trustee did not intend to prevent Campbell from enforcing his liens and the bankruptcy estate would receive what remained. But because it appears that the sale price for Vermont and the proposed abandonment of Sunland will not yield sufficient money, the Trustee is attacking Campbell's secured claim.

Reply

The reason for this motion is to determine whether Campbell's claim is secured or unsecured. It was filed as an unsecured claim of $75,103 (claim 3-1). Later Campbell filed a judgment lien for $154,342.58. These are both based on the same underlying debt. The motion for RFS and the order do not support the assertion that this was converted from an unsecured to a secured claim

As to the issue of Campbell's intent, the motion itself states that the stay will remain in effect as to enforcement of any judgment against the Debtor or property of the Debtor's bankruptcy estate. Because of this, the Order was unclear as to whether Campbell was being authorized to enforce his judgment against the Properties. This clarification order is needed to direct the Trustee as to what to pay. Beyond that, Campbell now asserts that the amount owed is more than $202, and if the Court grants this motion, Campbell should be required to amend or withdraw its claim to comport with the nature of its debt.

Analysis and Proposed Ruling

The motion for rfs is a standard motion which allows the movant to proceed to liquidate his claim, but not to execute on it – either as to Pyle individually or property of this

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CONT... Glen E Pyle **Chapter 7**

bankruptcy estate. The Order only granted what was requested in the motion. This allowed Campbell to proceed to judgment, but did not allow any enforcement mechanism since boxes 5(a) or 5(b) were not checked. There was no confusion at that point in time. No enforcement was allowed. There is no question of the Court's "original intent,' since the Order is absolutely clear.

Thereafter there were a series of status conferences, held at the time that the title to Vermont and Sunland were both believed to be in the Pyle Trust and not the bankruptcy estate. The discussion allowing the Campbell judgment to proceed against the properties was based on the timing in that they were not then property of the bankruptcy estate. But it was understood by Mr. King that if there was a title issue as to the properties, it was important that they proceed to declare the debt owed to Campbell will not be discharged in the bankruptcy. And Campbell prevailed on that as well as on the cause of action that denied Pyle his discharge (second amended complaint).

It was known by Campbell and all parties that Mr. Berry was prosecuting a case to bring the properties into the bankruptcy estate. If he did not prevail, then Campbell would be doubly protected – by his judgment lien and by the non-dischargeable nature of his debt [and ultimately the denial of discharge as to Pyle]. So it was appropriate at that time to allow Campbell to record his abstract of judgment so that his priority would be obtained in case the Berry case failed.

But once these properties came into the bankruptcy estate, Campbell's pre-petition unsecured claim was not transformed into a secured claim. The lien cannot remain on the properties except as to any surplus that may exist after all bankruptcy claims have been paid. Exactly how that is to be documented is something that the Trustee and the title insurance company will need to resolve. But as to this motion. The Campbell judgment is an unsecured claim and for bankruptcy purposes its amount is set at the time that this bankruptcy case was filed. Unless this is a surplus estate with a dividend to be paid to unsecured creditors, because there is no discharge, the unpaid amount of the judgment will actually accrue interest and costs that can be enforced against Pyle and any surplus or property that is not property of the bankruptcy estate.

Party Information

Debtor(s):

Glen E Pyle Pro Se

Trustee(s):

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CONT... Glen E Pyle **Chapter 7**

Amy L Goldman (TR)

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

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1:10-24968 Glen E Pyle **Chapter 7**

#2.00 Trustee's Motion for Order Approving:
(1) Settlement Agreement with Linda Daniel;
and (2) Approving form of Settlement Agreement

fr. 9/15/20

Docket 92

Tentative Ruling:

Nothing new received as of 10/24.

prior tentative ruling (9/15)

The Trustee wishes to sell the entire property at 225226 Vermont Dr., Santa Clarita (the Property). Linda Daniel is a 50% owner of record. It is uncertain as to how this 50% relationship of Pyle and Daniel came into being. Daniel says that in 1990 she sold to Pyle, but he never paid her and in 1991 he illegally locked her out of the Property and asserted complete control of the Property. She also asserts that he collected rents and never shared them with her nor paid her for the 50% interest that he purchased from her. Daniel had judgments from the LA Superior Court from 1992 for $56,000 and $1,200 respectively.

The Trustee is informed and believes that Pyle denies all of these allegations and asserts that he paid Daniel everything owed to her and that she has no interest in the Property.

Neither Daniel nor Pyle has presented to the Trustee any evidence to support their allegations. Nonetheless there are multiple title reports that show Daniel's interest.

The four factors to consider in approving a compromise are as follow:

1. The probability of success in the litigation
2. The difficulties, if any, to be encountered in the matters of collection
3. The complexity of the litigation and the expense, inconvenience, and delay necessarily attending to it
4. The paramount interest of creditors and the proper deference to their reasonable views.

In this case, the Trustee has determined that the estate has at least a 50% interest in the Property and that the other 50% is owned by Daniel. But the Trustee believes that

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there is a strong claim that the estate owns 100% of the Property and that Daniel is an unsecured creditor. This is based on her delays and failures in acting as an owner such as paying taxes and failing to enforce the judgments against the Debtor. But the judgment that Daniel has shows that Pyle failed to make a $56,000 payment and there is no evidence of this payment or of payment of any other amount.

Beyond that, in a litigation the only witness that the Trustee would have is the Debtor who has been unreliable and uncooperative.

Because of all this, the fees and costs of a litigation make settlement an excellent option. The approval of the settlement is of significant value to the estate and its creditors because Daniel is paying the lion's share of her proceeds to the estate and the Trustee can consummate the sale without having to commence an adversary proceeding under sec. 363(h) and FRBP 7001, which would be costly. This settlement is in the best interest of creditors in that the estate will realize $169,000 without the uncertainties and costs of litigation.

The terms of the settlement are that the Trustee can sell Daniel's co-ownership interest. She will instruct escrow to pay the Trustee 80% of her 50% share. This will become property of the estate free and clear of any liens and encumbrances and of Daniel's interest. This carved out amount is to be used solely for unpaid professional fees and expenses of the legal advisors of the Trustee, fees payable to the clerk of court or the OUST, and holders of general unsecured claims. There will be mutual releases. [Other professionals of the Trustee are not included in the carve out.]

Pyle Opposition

On August 14, 2020, August 23, 2020, and August 24, 2020 Glen Pyle sent emails and documents to Leonard Pena, counsel for Trustee. Pena has sent these to the Court and apparently attempted to file them, but they are not on the docket. Mr. Pyle asserts shows that he had paid off Linda Daniel for her interest in Vermont. On about September 10, the Court received a batch of documents from Mr. Pyle. Because I am not working from my office, I have not yet seen these and will only look at them just before the hearing. These may or may not be duplicates of the documents that Mr. Pena received and mailed to the Court. It is assumed that they are without an actual accounting, as has been the habit of Mr. Pyle when he produced documents in the past. It is also assumed that he is submitting these as evidence of payments that he made to Linda Daniel. On September 3, Pyle filed his opposition to this motion and to the sale, which is a declaration that contains the following

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facts and arguments:

The 1992 judgment is void as it was never enforced. As to the background to the 1992 judgment, in 1990 Daniel owed $65,000 on the loan that she had received in 1988. Daniel asked Pyle to bail her out of the foreclosure and if he did she would grant him a 50% interest in the Vermont Property. Pyle brought the loan current and did it again three more times. In April 1991 Pyle received a notice that Daniel was again in default. Daniel's mother and brother had been living in the Vermont Property, but they moved out due to Daniel's irresponsible behavior. Daniel also moved out.

On October 4, 1991 Pyle leased the house to Linda Hunter for $950 a month and Pyle states that he has the check for first and last month's rent of $1,900. Meanwhile, Pyle heard nothing from Daniel and on October 30, 1992 he filed a quiet title case (PC03296). The stipulated agreement/judgment was that he was to pay $56,000 for her interest and when he paid she was to transfer that interest to Pyle.

Daniel's 50% interest was encumbered by a loan to her from Coast S&L in the amount of $65,000, which was recorded against the Property. Thus she could not transfer her 50% interest without paying off the $65,000 loan. After the hearing [apparently the stipulation in case PC03296], Daniel indicated that she was not going to pay the Coast S&L debt. So Pyle had no choice but to pay that mortgage even though it was recorded only against Daniel and there was no co-signer and Pyle was not a party to the loan and under no obligation to pay it.

The stipulated judgment does not state how or when Pyle would pay Daniel the $56,000.

Because Pyle paid the Coast mortgage, "Linda received all the proceeds of that loan all $65,000 thus Linda would get another $56,000 plus the $30,000 or so that I paid out for my 50% before and after the first default 3 X for a maybe $100,000 house at that time."

There was adverse possession in that Pyle paid Coast, WAMU, Chase Bank, all property taxes, insurance, maintenance, and remodel (new windows, doors, kitchen floors, 2 new bathrooms, added a shower in one, new garage door, etc.) Pyle had complete possession from 1996 through 2000 when the property was transferred to the Pyle Irrevocable Trust on 1/2000. This constitutes adverse possession under Civ. Code 325.

Pyle can go to state court and resolve this with Daniel for a filing fee and very little additional cost (not over $2,500).

Analysis and Proposed Ruling

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There is no proof of service on the Pyle opposition and no indication that the Trustee has received it. It was filed on Sept.3 (dkt. 113) and as of Sept. 13 no reply has been received.

Mr. Pyle has raised some important questions, some or all of which may be clarified in the stacks of documents that he has provided to the Court. Not only is there the issue of whether Ms. Daniel is entitled to any of all of the approximately $42,000 that she would receive from the proposed sale, but also whether the Trustee is entitled to a carve out of the $169,400 from her alleged interest. While it is important to protect professionals employed by the Court (in this case the attorneys), it is more important to make sure that the various classes of creditors are treated within the parameters of the bankruptcy law. If this $200,000+ really belongs to the Estate as owners of the 50% that Ms. Daniel claims, that will be a major benefit to all creditors.

Mr. Pyle has provided a plausible story which may be supported by the evidence and the law. There is no reason to go forward in state court as these issues can be decided here, though it appears that it must be by and adversary proceeding.

Because all that has been provided is a stack of documents, the Court does not have the staff or ability to do a proper organization and calculation. I have found from past dealings with Mr. Pyle that ordering him to prepare such accountings is a very time consuming affair and would not work well at the present time. I suggest that the Trustee provide these and any other documents that Pyle has (there would be a definite deadline for providing additional documents) to her accountant to prepare the initial accounting. Mr. Pyle needs to understand that this will then be an administrative expense of the estate and will reduce the amount, if any, that he will recover from the sale of these properties. If he has an accounting, he should provide this forthwith since it is in his benefit to do so.

As to the two legal issues that Pyle raises, even though the judgment may not be enforceable due to its age, it does not change the outcome of the state court quiet title case and vest Pyle with title to 100% of the property.

As to adverse possession, that is a matter that the Court has not seen in many years. It will need to be briefed as part of the adversary proceeding and the Trustee might find it worthwhile to her case.

In the meantime, if Ms. Daniel agrees, the sale (if approved) can go forward and her alleged 50% can be held by the Trustee until the issue of her actual interest is resolved. The Court is aware that she may decide to withdraw from the stipulation due to this and that would be acceptable. If there is no agreement to go forward, the Trustee will need to bring an adversary proceeding to allow the sale and also to determine the exact interest (if any)

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CONT... Glen E Pyle **Chapter 7**
that Ms. Daniel owns.

Party Information

Debtor(s):

Glen E Pyle — Pro Se

Trustee(s):

Amy L Goldman (TR) — Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

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1:10-24968 Glen E Pyle **Chapter 7**

#3.00 Trustee's Motion For An Order Directing The Law Offices Of Raymond H. Aver APC and Marc H. Berry To Discharge Liens As Violating Automatic Stay

Docket 124

Tentative Ruling:

The liens in question are as follows:

Jan. 4, 2016	Law Offices of Raymond Aver	Unknown amount (trust deed)
July 30, 2020	Marc H. Berry	$42,747.50 (abstract of judgment)
July 31, 2020	Marc H. Berry	$ 8,000 (abstract of judgment)
July 31, 2020	Marc H. Berry	$ 4,000 (abstract of judgment)

As to all of these, the Trustee seeks a determination that the automatic stay prevented the filing of these post-petition liens under 11 USC §362(a)(3) and (4). The automatic stay applies because these are actions against property of the estate and seek to improve the lienholders' status post-petition from a post-petition creditor to a secured creditor. Because they are in violation of the stay, they are void.

Beyond that, the filing of the bankruptcy gave the Trustee the status of a hypothetical judgment lien creditor who has levied as of the date of the petition and therefore she has priority over these liens. 11 USC §544(a). The Trustee may avoid these transfers under §549.

Also, these lienholders are not creditors of the estate because their claims did not exist pre-petition or arise at the time that the petition was filed. §101(10).

Berry Opposition

The Court intended Pyle to pay the sanctions immediately after they were awarded without regard to the automatic stay. The payments were not made and no repayment plan was negotiated. There was a deadline of 3/26/12 for repayment and this was while the automatic stay was in effect. Had Berry thought of it, he would have sought relief from the automatic stay at that time.

The second sanctions award was made on 12/18/18 and was to be paid "forthwith." The Court did not intend this to be stayed by the automatic stay and this is an implied

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waiver of the automatic stay.

But the automatic stay only applies to pre-petition debts and this was a new obligation that arose after the bankruptcy was filed.

Beyond that, the automatic stay had expired before Berry recorded his two abstracts and therefore should have terminated by a notice of termination of stay. Once the discharge was denied, the rationale for the stay disappeared. There should have been a notice of the order denying discharge from the clerk of court per Rule 2002, but this was not received by Berry. However, he was well aware that the denial of discharge took place on 5/4/20 and these three liens were not recorded for an additional three months.

As to the 7/30/20 lien being duplicative, Berry does not dispute that he only seeks to collect once on his 2001 civil judgment and does not care which lien is deemed to protect that right.

Aver Opposition (the Court uses the term "Aver" and "Aver firm" interchangeably)

To force removal of a lien, one must use an adversary proceeding. Rule 7001 states that an action to remove a lien requires an adversary proceeding. This would have to be a separate free-standing lawsuit, subject to the rules set forth in the 7000 section of the FRBP. This requires denial of this motion.

The Aver firm has represented Pyle in the adversary proceeding for fraudulent transfer. Some of the motions, etc. are attached to this opposition.

Equitable considerations require leaving the lien. At the time of the Vermont trust deed, the Debtor contended that it was property of the irrevocable trust and not of Pyle. Aver took this trust deed to be sure that he would be paid because Pyle did not have the money to pay his fees. It was not property of the estate at the time that the trust deed was taken. And even if it was and there was an automatic stay, the court has the power to retroactively relieve Aver of the stay. This requires a balancing test of weighing the equities on a case-by-case basis and that decision will only be overturned on an abuse of discretion.

This trust deed was recorded in 2016 and no one challenged it until now. Minimally, Aver should be allowed to seek retroactive relief from the stay.

The statute of limitations has run for the Trustee to use his strong-arm powers since more than 2 years have passed since the trust deed was recorded. Sec. 549(d).

The Aver Firm became part of this case when he substituted in as a defense counsel for Pyle and for the Pyle Irrevocable Trust in the Berry adversary for fraudulent transfer.

Trustee Reply

As to the Berry liens:

While there is no stay to collect a post-petition debt from property of the debtor,

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there is a stay as to property of the estate. This remains in effect until the property is no longer property of the estate. Vermont is property of the estate. As to the effect of the denial of discharge, this only terminates the stay as to property of the debtor, not as to property of the estate.

As to the 7/30/20 lien, Berry admits that this is a duplicate and therefor it should be discharged as the Trustee requests.

As to the Aver Firm lien:

First of all, the recording of the trust deed was a void act, not a voidable one, because it violated the automatic stay. *In re Schwartz*, 954 F.2d 569 (9th Cir. 1992). It is not necessary for the Trustee to bring a section 549 action. Since it was void ab initio, there is no statute of limitations to prevent the court from removing it. To hold otherwise would defeat the purpose of the automatic stay. *In re Garcia*, 109 B.R. 335, 339 (D.C.N.D. Ill. 1989).

The time limitations of sec. 549(d) only apply to actions to recover property brought under sec. 549. The only way that the lien can be protected retroactively is by annulling the stay on an appropriate motion. *In re Schwartz*, supra. There is no conceivable way that Aver could justify collecting its post-petition debt from property of the estate.

Proposed Ruling

As to the Berry Liens:

There is no dispute that the July 30 lien is duplicative and will be removed. The history of the state court judgment is that the original judgment in the case of *Berry v. Pyle*, 99CK0380, was entered on 8/7/00 and recorded on 3/25/05. The original judgment was for $11,369.45 and the renewed judgment was for $22,582. The secured proof of claim that was filed on 4/6/15 was for $23,515.83, which included all interest through 11/29/10. Apparently Mr. Berry renewed the judgment again on 5/31/19. The original abstract and, thus, the amount of that claim would have increased over time and needs to be calculated. The sale motion states that Mr. Berry will receive the amount of $34,092.65. Obviously this will increase until it is actually paid.

The two abstracts filed on 7/31 are for payment of sanctions orders. The sanctions orders cannot be collected from property of the estate because they were never against the estate. They were personally against Mr. Pyle and are collectable only at to his property. Vermont is not his property, but is property of the estate.

It is probable that there was no automatic stay as to collecting from Mr. Pyle because these were post-petition obligations. Thus, if a chapter 7 debtor went out and used

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a credit card between filing and discharge, the creditor could seek to collect from his property, but not from property of the estate. To the extent that the automatic stay may have applied, the Trustee is correct that the automatic stay terminated ONLY as to Mr. Pyle when his discharge was denied. It did not terminate as to the estate or property of the estate. Mr. Berry can seek payment directly from Mr. Pyle (but not from property of the estate). To the extent that he is not willing or able to pursue Pyle's own property, he can seek an administrative claim, though the Court does not know whether these qualify for that. But these sanctions orders do not create a secured claim against property of the estate. Grant the motion as to all three of the liens recorded in July 2020. Within 30 days of the entry of the order, Mr. Berry is to file the appropriate papers to discharge these liens.

As to the Aver trust deed:

The law is quite clear that a lien or act taken when the automatic stay is in effect is void ab initio. Section 549(d) does not create a statute of limitations as to violations of the automatic stay.

As to the necessity to bring an adversary proceeding under these circumstances, the parties are entitled to the process described in Part VII of the FRBP, such as discovery. But in this case there is no discovery or other issues to be resolved. It is undisputed that the trust deed was recorded post-petition. If Vermont was property of the estate, recording a lien on that property is a violation of the automatic stay and was void ab initio – see *In re Schwartz,* supra. The only questions are as follows: (1) was the Aver firm granted relief from stay? There is no dispute that this did not occur; and (2) was Vermont property of the estate. Although title appeared to be in the name of the Pyle Trust at the time, it has since been judged by final order that Vermont was and is property of the estate and not of the Pyle Trust. It does not matter that title was unclear at the time that the Aver firm recorded its lien. Vermont was always property of the estate.

Mr. Aver argues that because a review of the legal documents at the time of the recording of the trust deed appeared to show title in the Pyle Trust, his lien should stand as though the actual ownership at that instant was in the Pyle Trust. It was not. Had property that was owned by Pyle as an individual actually been owned by the Pyle Trust at that moment in time, the retransfer to Mr. Pyle would not have removed the Aver lien since the recording of the lien would not have violated the automatic stay. But this is not the fact of this case. Vermont was always the property of Glen Pyle, individually, and thus became property of the estate upon the filing of this bankruptcy case. Grant the motion. Within 30 days of the entry of the order, the Aver firm and Mr. Aver are to file the appropriate paperwork to discharge the lien.

The Aver firm did not intentionally breach the automatic stay. Thus the Trustee has

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not asked for sanctions and the Court would not have awarded them had they been requested. Mr. Aver acted reasonably under the circumstances, but that did not protect him from losing the lien.

As to his indication that he will seek to retroactively annul the stay, no such motion has been filed. Should this occur, the Court will deal with it. If the Aver firm intends to bring such a motion, it is to be filed within one week and be set for hearing on shortened notice for Nov. 17 at 10:00. Both parties have had ample time to be prepared to deal with this without delay.

Party Information

Debtor(s):

Glen E Pyle	Pro Se

Trustee(s):

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

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

Tuesday, October 27, 2020 **Hearing Room 303**

10:00 AM
1:15-14213 Michael Robert Goland **Chapter 7**
Adv#: 1:20-01063 Burk v. Zamora

#4.00 Status Conference Re Complaint for
1 - Declaratory Judgment
2 - Breach of Fiduciary Duty - Taxes
3 - Failure to Collect Rent - Estate
4 - Failure to Collect Rent - Plaintiff

fr. 8/25/20, 10/6/20

Docket 1

Tentative Ruling:

Continued by stipulation to December 22 at 10:00 a.m. The parties are seeking to mediate.

Party Information

Debtor(s):

Michael Robert Goland	Represented By David S Hagen

Defendant(s):

Nancy Zamora	Pro Se

Plaintiff(s):

Gerry Burk	Represented By Michael N Sofris

Trustee(s):

Nancy J Zamora (TR)	Represented By Jessica L Bagdanov David Seror Ezra Brutzkus Gubner

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1:15-14213 Michael Robert Goland **Chapter 7**
Adv#: 1:20-01063 Burk v. Zamora

#5.00 Motion to Dismiss Complaint with Prejudice

fr. 8/25/20, 10/6/20

Docket 9

Tentative Ruling:

Off calendar. The motion to dismiss was withdrawn by stipulation and a first amended complaint is to be filed.

Complaint –

Burk seeks declaratory judgment that he is the proper owner of the Property at 5721-5711 Compton Ave, LA, that the Trustee breached her fiduciary duty by failing to collect and pay taxes, that the Trustee failed to collect fair market rent for the Estate in an amount exceeding $110,000, and that the Trustee failed to collect fair market rent for Burk and interfered with his possessory rights to the Property.

The complaint sets forth the chain of title. Goland's bankruptcy petition was filed 12/20/15, but Goland never showed ownership in the Property. In 2014, KCC purchased the property at foreclosure. On 3/2/17 KCC issued a grant deed to Burk as trustee for the 5721 Trust. On 6/21/17 the Trustee filed a motion to operate the Property claiming that the Estate owned the Property and had the right to collect rent.. This was approved by the Court. The Trustee indicated that she would later file an adversary complaint to determine title. She never did and on 11/26/19 she abandoned all Estate claims to the Property. On 1/19/20 the Court approved the sale of all Estate rights to the tenant, Triple Images, LLC (TI).

Motion to Dismiss

Burk had actual notice of the Trustee actions as to the Property and has not complained during the three years. The Trustee originally obtained the right to collect rent through the settlement with Bret Lewis, which was approved by the Court. That was a final order and Burk should have objected at the time. This lawsuit is an improper, very late attempted collateral attach

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on the Rent Settlement Order as well as later orders allowing the Trustee to collect rent. The Trustee is immune from potential liability arising from breaches of fiduciary duties owed to creditors of the Estate since she was acting with the authority of Court orders.

As creditor, Burk will receive a pro rata distribution from the Estate.

As to payment of taxes, the property taxes had not been paid for more than 20 years and as of Oct. 2019 there was $350,000+ owing to the LACTTC. In Oct. 2019 the Trustee and the LACTTC stipulated to relief from the automatic stay so that the LACTTC could hold a tax sale. They had already tried to hold such a sale in 2005, 2007, and 2014. Burk was served with this stipulation. Burk received the tax bills and never forwarded them to the Trustee. The Trustee had been authorized to pay taxes, but not directed to do so.

The Trustee decided to sell the Estate's interest (whatever that was) because it was not an efficient use of resources to challenge legal title to the property. The Sale Motion took place and Burk did not file an objection or appeal.

A complaint may be dismissed under Rule 12(b)(6) when an affirmative defense appears on the face of the complaint. In this case the affirmative defenses of laches and the Trustee's quasi-judicial immunity are clear. This complaint should be dismissed with prejudice.

Opposition to Motion to Dismiss

The Trustee never filed the adversary proceeding to determine the ownership of the Property and the rental income, but sought to use that money to pay herself and her professionals. This money belongs to Burk. Further, at least $118,000 or the $131,900 collected by the Trustee during the three years is not property of the Estate, but belongs to Burk.

As to the stipulation with the LACTTC, there would be no tax sale if the Trustee had used the rents to pay the taxes.

The motion to dismiss includes additional facts which are outside the complaint itself and cannot be considered. This motion ignores these additional facts.

As to laches, the Court never decided that the rents belong to the Estate. The Trustee was allowed to collect rent, but not necessarily own them. Thus laches as to the ownership of the Property and of the rents has never been decided. This is clear from the tentative ruling on the sale of the

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CONT... Michael Robert Goland **Chapter 7**

Property when it dealt with the Cohen opposition and claim of ownership.

Laches requires to pongs: that there was a significant delay without justifiable reason and that the delay is prejudicial to defendant's ability to respond. One rule of thumb is to compare the claim to the statute of limitations with additional time added. You look at it in the context of the ongoing litigation and whether evidence and witnesses will be lost or tainted or no longer available.

That is not the situation in the Trustee's motion. The three year delay is not shown to be unreasonable, particularly since the statute of limitations is four years (CCP sec. 337.2).and probably would not have started running until the Trustee sold the interest in the Property or the motion to make distribution. Given the length of a bankruptcy proceeding, three years is not unreasonable.

Burk also had a justifiable reason for delay because the Trustee had planned to bring an adversary action to determine ownership of the Property.

The Trustee has not shown any actual prejudice such as witnesses or documents having become unavailable.

There was no final determination that the rent belonged to the Estate and there was no prior litigation on the issue, so collateral estoppel cannot apply. The settlement with Lewis only dealt with the Estate's interest in rent Lewis had collected, not future rents. Being put on notice of the settlement is simply not enough to create collateral estoppel.

The Trustee does not enjoy absolute immunity, only qualified immunity under the business judgment rule. The Trustee never made a business judgment or attempted to hire an experienced property manager. Also what the Trustee did was a routine duty, not a task that is judicial in nature. And if the Property is not property of the Estate, there is no immunity.

Litigation privilege does not exist to bar causes of action involving fiduciary duty, negligence and ownership of estate assets.

Reply

The Trustee has immunity from the claims for breach of fiduciary duty. Beyond the various orders, the Trustee file monthly operating reports that showed the rent collected and expenses paid. So all actions were under court order, which allowed the Trustee to receive rent of $2,100 per month. There were allegations of hazardous waste and no appraisal was required. Bringing

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CONT... Michael Robert Goland **Chapter 7**

the motion to collect rents and to continue to operate the Property were business decisions of the Trustee.

As to property taxes, the Trustee did not pay these since she received no bills. This is a judicially noticeable fact. The Trustee had authority to pay property taxes, but was not ordered to do so. In fact, Burk was the one who received the property tax bills. Burk was lying in wait and concealed facts from the Trustee. Thus the Court can treat this issue as a motion for summary judgment and rule in that manner.

As to the declaratory relief claim, that is barred by collateral estoppel and equitable estoppel. Burk has said nothing while the Trustee collected the rents. No matter who legal owns the rents, the question is whether Burk should be collaterally estopped from challenging whether the Trustee was authorized to collect them for the benefit of the estate. This was actually litigated in connection with the Motion to Operate. At that time, no one objected to the Trustee's right to operate the property. The Trustee never intended to collect the rents for Burk's benefit.

Laches applies even if the statute of limitations has not run. Burk knew or should have known of the Trustee's claim to an interest in the rents as early as February 2017 when Burk and his attorney received actual notice of the Lewis settlement. The Trustee employed professionals and incurred significant expense in this case and they all believed that they would be at least partially paid from the rents collected.

The Trustee's statements as to payment of taxes or ascertain title is cannot be the basis of the action.

ANALYSIS

Evidentiary Objections to Burk Declaration

Paragraph 3 – Overruled as to whether Burk actually told the tenant that the rent was being raised in that it is not admitted for the truth that this was the fair market value at the time it was said.

Paragraph 4 – Sustained. Irrelevant. Does not show foundation or personal knowledge.

Paragraph 5 – Sustained.

Paragraph 6 – Overruled. This goes to Burk's basis of action at this time, not the truth of the third party statement.

The initial claim for relief is for declaratory relief to determine the rights of the Estate in the Property and in the rent generated from the Property. This is a critical determination. If Goland does not have rights in the Property, the Estate has no rights or interest in the rent. If Burk is, in fact, the owner of the Property (either as an individual or through an entity that he owns), the rents are not property of the Estate.

As to the issue of collateral estoppel, no final determination has been made. From the beginning, the Trustee asserted that she would bring an adversary proceeding to determine ownership rights, but she did not do so. She – and the Court – just assumed that the rents could be collected by the Trustee and used to fund the Estate because no one else came forward to dispute this. But that did not mean that silence at that time was consent. Until the Trustee triggered something, Burk or any other owner could sit back and allow the Trustee to collect the rents, knowing that eventually there would be a judicial determination of his/their rights. But that determination never came.

The settlement with Bret Lewis was just that – a settlement with a creditor who claimed a right to collect rent. It was not a determination that other parties did not have any rights in the Property.

Only when the Trustee filed her final report and did seek a determination that the Estate could keep the rent money did it become incumbent on Burk to act. That only happened within the last year. No statute of limitations has run and there is no automatic determination of laches. The argument that the Trustee and her professionals depended on the pot of rent for their fees is just an argument at this time. Perhaps in the litigation the Trustee can show the detriment that she or the Estate suffered due to the timing, but this is not a given and grounds for dismissal as an affirmative defense. The motion to dismiss the first cause of action is denied.

As to the issue of fiduciary duty for failure to pay taxes, the Estate does not seem to be liable for the collection and payment of taxes. The owner of the Property is responsible for the payment of property taxes. If the property is sold at a tax sale, that is not a loss to the Estate since it sold its interest (if any) at a noticed sale. Burk and his attorney had notice of this sale and the order is final. If Burk is, in fact, the owner, taxes are his responsibility whether there was rent collected or not. Under the circumstances of this

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CONT... Michael Robert Goland **Chapter 7**

case, the Trustee did not owe a fiduciary duty to Burk as the purported owner of the Property or to the Estate. Thus the motion to dismiss the Second Cause of Action with prejudice will be granted.

The third and fourth causes of action concern the failure of the Trustee to collect fair market rent for the use of the property – the third claim is as to the Estate and the fourth is as to Burk. In his opposition brief, Burk asserts that he advised the Trustee of the fair market rental value and, in fact, had given the tenant notice of this prior to the filing of the bankruptcy. But this is not included in the complaint itself and the statements in his declaration are only partially admissible. Assuming that the complaint is amended to include sufficient facts to show that the amount collected by the Trustee was below fair market rental value, the third and fourth causes of action can survive. As a creditor of this Estate, Burk has standing to bring the third cause of action. As the purported owner of the Property and the rents collected, he also has standing to bring the fourth cause of action. The motion to dismiss the Third Cause of Action is granted with leave to amend. The motion to dismiss the Fourth Cause of Action is granted with leave to amend.

The amended complaint is to be filed by September 11, 2020. The Trustee will have until September 28, 2020 to respond. The status conference will be continued to October 27, 2020 at 10:00 a.m.

Party Information

Debtor(s):

Michael Robert Goland	Represented By David S Hagen

Defendant(s):

Nancy Zamora	Represented By Jessica L Bagdanov

Plaintiff(s):

Gerry Burk	Represented By Michael N Sofris

Trustee(s):

Nancy J Zamora (TR)	Represented By

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

Tuesday, October 27, 2020 **Hearing Room 303**

10:00 AM

CONT... Michael Robert Goland **Chapter 7**

Jessica L Bagdanov
David Seror
Ezra Brutzkus Gubner

10:00 AM
1:16-11538 Majestic Air, Inc. **Chapter 11**
Adv#: 1:18-01133 Majestic Air, Inc. et al v. Lufthansa Technik Philippines, Inc.

#6.00 Status Conference Re: Third Amended Complaint Objecting to Proof of Claim No. 3; and for Contractual Indemnification

fr. 3/5/19; 6/11/19; 7/16/19; 8/20/19; 9/24/19, 12/17/19, 12/23/19; 2/11/20; 4/7/20; 6/23/20, 7/7/20, 7/21/20; 9/15/20

Docket 159

Tentative Ruling:

The third amended complaint was filed on 8/25/20. On 9/29/10 LTP filed an answer and countclaim against Hiongbo Cue and Majestic Air. On 10/23, LTP filed an amended counterclaim against Majestic Air. No status report has been filed as of 10/24. Where do we go from here?

Prior tentative ruling (7/21/20)
This is just to find out if there is any possibility of settlement. The estate has very few assets and most of those will go to LTP or perhaps be eaten up in attorney fees. While LTP apparently has substantial assets, the Plantiffs would have to win a large judgment in order to collect on those, given the amount of the judgments against them. This will also be a hard-fought and expensive case. Because Ms. Havkin is counsel for the estate, I requested that she appear as any settlement would have to be on behalf of the estate as well as the Tessie Cue probate.

So please update me on the settlement possibility. Meanwhile, I am working on the motion to dismiss. That hearing is set for 9/15/20 at 10:00 a.m.

Prior tentative ruling (7/7/20)
The adversary is proceeding very slowly. Please note that there is less than $100,000 in the estate and the Court cannot tell the chances of an actual

10:00 AM

CONT... Majestic Air, Inc. **Chapter 11**

reorganization. Is this still an operating company? Will it be operating in the future? It seems from the last report that it has less than $50,000 worth of inventory for resale.

What is the amount available from the Tessie Cue Estate?

There are very few claims in this case - and it appears that the LTP and Tessie Cue claims are the only unsecured ones.

Looking at this there is a serious question of whether you should settle this without further expenditure.

Party Information

Debtor(s):

Majestic Air, Inc.	Represented By Stella A Havkin

Defendant(s):

Lufthansa Technik Philippines, Inc.	Pro Se

Plaintiff(s):

Majestic Air, Inc.	Represented By Stella A Havkin
Tessie Cue	Represented By Stella A Havkin

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

Tuesday, October 27, 2020 **Hearing Room 303**

10:00 AM
1:16-11538 Majestic Air, Inc. **Chapter 11**

#7.00 Status and Case Management Conference

fr. 8/4/16(xfr from Judge Tighe's calendar); 8/30/16, 9/27/16; 10/25/16; 11/15/16, 2/21/17, 5/16/17; 6/27/17, 8/29/17, 1/23/18; 6/19/18, 9/18/18; 12/4/18; 2/12/19; 5/7/19 6/11/19; 7/16/19; 8/20/19; 9/24/19, 12/17/19; 12/23/2019; 2/11/20, 4/7/20; 6/23/20; 7/7/20, 7/21/20, 9/15/20

Docket 1

Tentative Ruling:

This will trail the adversary proceeding. No status reports are needed. No appearances are needed. Please check the future tentative rulings to see whether and appearance and/or status report will be required.

Prior Tentative Ruling (7/7/20)
This will trail the adversary proceeding. No appearance is needed on July 7 and no further status report is needed until you are notified by the Court that one is necessary.

Party Information

Debtor(s):

Majestic Air, Inc. Represented By
Stella A Havkin

10:00 AM
1:16-11538 Majestic Air, Inc. **Chapter 11**
Adv#: 1:18-01133 Majestic Air, Inc. et al v. Lufthansa Technik Philippines, Inc.

#8.00 Status Conference Re: Amended Complaint Objecting to Proof of Claim No. 3; and for Contractual Indemnification

fr. 3/5/19; 6/11/19; 7/16/19; 8/20/19; 9/24/19, 12/17/19, 12/23/19; 2/11/20; 4/7/20; 6/23/20, 7/7/20, 7/21/20, 9/15/20

Docket 82

Tentative Ruling:

Off calendar. This is now a duplicate of the status conference on the third amended complaint.

for 9/15/20-
Continued without appearance to October 27, 2020 at 10:00 a.m. per the order granting the motion to dismiss the second amended complaint with leave to amend.

Prior tentative ruling (7/21/20)
This is just to find out if there is any possibility of settlement. The estate has very few assets and most of those will go to LTP or perhaps be eaten up in attorney fees. While LTP apparently has substantial assets, the Plantiffs would have to win a large judgment in order to collect on those, given the amount of the judgments against them. This will also be a hard-fought and expensive case. Because Ms. Havkin is counsel for the estate, I requested that she appear as any settlement would have to be on behalf of the estate as well as the Tessie Cue probate.

So please update me on the settlement possibility. Meanwhile, I am working on the motion to dismiss. That hearing is set for 9/15/20 at 10:00 a.m.

Prior tentative ruling (7/7/20)

10:00 AM

CONT... Majestic Air, Inc. **Chapter 11**

The adversary is proceeding very slowly. Please note that there is less than $100,000 in the estate and the Court cannot tell the chances of an actual reorganization. Is this still an operating company? Will it be operating in the future? It seems from the last report that it has less than $50,000 worth of inventory for resale.

What is the amount available from the Tessie Cue Estate?

There are very few claims in this case - and it appears that the LTP and Tessie Cue claims are the only unsecured ones.

Looking at this there is a serious question of whether you should settle this without further expenditure.

Party Information

Debtor(s):

Majestic Air, Inc.	Represented By Stella A Havkin

Defendant(s):

Lufthansa Technik Philippines, Inc.	Pro Se

Plaintiff(s):

Majestic Air, Inc.	Represented By Stella A Havkin
Tessie Cue	Represented By Stella A Havkin

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

Tuesday, October 27, 2020 **Hearing Room 303**

10:00 AM

1:19-13099 Marshall Scott Stander **Chapter 7**

Adv#: 1:20-01025 Rob Kolson Creative Productions, Inc. v. Stander

#9.00 Status Conference Re: Complaint Objecting to Discharge Pursuant to Section 727 of the Bankruptcy Code.

fr. 5/6/20; 6/24/20(MT); 7/21/20

Docket 1

Tentative Ruling:

Per the status report filed on 10/16, an answer was filed. Both parties think that discovery cut-off at the end of March is workable and that the trial will be ready in June. Both sides want to do discovery. Both sides want a pretrial conference in late May. Plaintiff does not want mediation at this time, though Defendant does. Given that Plaintiff needs to determine the strength of its case as noted immediately below, it seems that an order to mediation at this time is premature. Though, of course, the parties can always agree to mediate.

There seems to be a discovery issue concerning communications that may be covered by attorney-client privilege. That may be key to settlement. Plaintiff intends to depose Peter Babos, Defendant's non-bankrutpcy counsel, and that may give Plaintiff grounds to attack the attorney-client privilege.

It seems that this is such a key issue that it needs to be resolved first. Let's talk about how Plaintiff intends to proceed on it and set some dates and continuances.

Party Information

Debtor(s):

Marshall Scott Stander — Represented By Leslie A Cohen

Defendant(s):

Marshall Scott Stander — Pro Se

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

Tuesday, October 27, 2020 **Hearing Room 303**

10:00 AM
CONT... Marshall Scott Stander **Chapter 7**

Plaintiff(s):

Rob Kolson Creative Productions, Represented By
Lane M Nussbaum

Trustee(s):

David Keith Gottlieb (TR) Pro Se