

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

Wednesday, December 14, 2016

Hearing Room 303

10:00 AM

6:16-19624 Joan M Beavers

Chapter 7

#1.00 Pro se Reaffirmation Agreement Between Debtor and 21st Mortgage Corporation re 2005 Fleetwood Manufactured Home

EH__

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joan M Beavers

Represented By
Michael Smith

Trustee(s):

Karl T Anderson (TR)

Pro Se

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11:00 AM

6:11-34566 Jeffrey Steven Dean

Chapter 7

#2.00 Application for Compensation of Second Interim Fees and/or Expenses for Squar Milner Peterson Miranda & Williamson LLP, Accountant, Period: 11/1/2014 to 10/31/2016, Fee: \$7,532.00, Expenses: \$105.16

Also #3

EH__

Docket 106

Tentative Ruling:

12/14/2016

No opposition has been filed.

Service was Proper.

The applications for compensation of Counsel and the Accountant for the Trustee have been set for hearing on the notice required by LBR 2016-1. Pursuant to the Applications of the associated professionals, the following administrative claims will be allowed:

	<u>Fees</u>	<u>Costs</u>
Counsel for Trustee	\$3,724.50	\$78.18
Accountant to Trustee	\$7,532	\$105.16

However, absent from the Applications is a declaration by the Trustee in support of the Applications indicating that he has reviewed the Applications and finds the amounts requested reasonable.

Based on the foregoing, the Court is inclined to GRANT the amounts requested in the Applications conditioned on the filing of a declaration in support of the Applications

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CONT... Jeffrey Steven Dean

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being filed prior to the lodgement of the orders.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jeffrey Steven Dean

Represented By
Bryant C MacDonald

Movant(s):

Squar Milner Peterson Miranda &

Pro Se

Trustee(s):

Christopher R Barclay (TR)

Represented By
Yosina M Lissebeck
Michael D Breslauer

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#3.00 Application for Compensation (Second Interim) and Reimbursement of Expenses by Lissebeck Law Counsel for Christopher R. Barclay, Chapter 7 Trustee for Lissebeck Law, Trustee's Attorney, Period: 11/16/2014 to 11/7/2016, Fee: \$3724.50, Expenses: \$78.18

Also #2

EH__

Docket 108

Tentative Ruling:

12/14/2016

No opposition has been filed.

Service was Proper.

The applications for compensation of Counsel and the Accountant for the Trustee have been set for hearing on the notice required by LBR 2016-1. Pursuant to the Applications of the associated professionals, the following administrative claims will be allowed:

	<u>Fees</u>	<u>Costs</u>
Counsel for Trustee	\$3,724.50	\$78.18
Accountant to Trustee	\$7,532	\$105.16

However, absent from the Applications is a declaration by the Trustee in support of the Applications indicating that he has reviewed the Applications and finds the amounts requested reasonable.

Based on the foregoing, the Court is inclined to GRANT the amounts requested in the

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Applications conditioned on the filing of a declaration in support of the Applications being filed prior to the lodgement of the orders.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jeffrey Steven Dean

Represented By
Bryant C MacDonald

Movant(s):

Lissebeck Law

Represented By
Yosina M Lissebeck

Trustee(s):

Christopher R Barclay (TR)

Represented By
Yosina M Lissebeck
Michael D Breslauer

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6:13-22710 Jesus M. Tapia

Chapter 7

#4.00 Motion to Avoid Lien re: Attorney lien with Lopez McHugh

Also #5

EH__

Docket 42

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jesus M. Tapia

Represented By
Michael Smith

Movant(s):

Robert Whitmore (TR)

Represented By
Douglas A Plazak
Troy A Brenes

Trustee(s):

Robert Whitmore (TR)

Represented By
Douglas A Plazak
Troy A Brenes

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6:13-22710 Jesus M. Tapia

Chapter 7

#5.00 Motion to Seal Document. Motion for Entry of Order Authorizing the Filing of a Proposed Settlement Agreement Under Seal [11 U.S.C. SECTION 107(B)]

Also #4

EH__

Docket 44

Tentative Ruling:

12/14/2016

BACKGROUND

On July 25, 2013 (the "Petition Date"), Jesus Tapia (the "Debtor") filed his petition for chapter 7 relief. Robert Whitmore is the duly appointed chapter 7 trustee ("Trustee").

Prepetition, a claim arose by the Debtor against a defendant medical device manufacturer and other defendants (the "Defendants"). The Debtor did not disclose the potential lawsuit in his schedules filed on the Petition Date. As such, the case closed on November 5, 2013. On April 22, 2016, the Debtor filed a motion to reopen his case to amend his schedules and disclose the lawsuit. On April 27, 2016, the Debtor reopened his case and amended Schedule B to add a product liability lawsuit in the amount of \$1,200,000 (the "Product Liability Suit"). Subsequently, on Request by the United States Trustee ("UST"), the Trustee was appointed on June 30, 2016. On August 2, 2016, the Court entered an Order Granting the Trustee's Application to Employ Brenes Law Group as special counsel to handle the Product Liability Suit.

On November 23, 2016, the Trustee filed a motion for entry of an order authorizing the filing of the proposed settlement with the Defendants under seal ("Motion").

DISCUSSION

Section 107(b) provides that on request of a party in interest, the bankruptcy court shall, and on the bankruptcy court's own motion, the bankruptcy court may--

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Jesus M. Tapia

Chapter 7

- (1) protect an entity with respect to a trade secret or confidential research, development, or commercial information; or
- (2) protect a person with respect to scandalous or defamatory matter contained in a paper filed in a case under this title.

Here, the Trustee's sole asserted basis for filing of the proposed settlement under seal is that the Defendants are "still involved in on-going litigation related to the same transactional facts as the Lawsuit with third parties unrelated to the Lawsuit, and because Defendants believe that disclosure of certain terms of the Settlement Agreement to the public at large (in particular, the settlement amount) will prejudice Defendants in their on-going litigation involving third parties, Defendants are requiring that the settlement be filed under seal as a condition of settlement." (Mot. at 3:19-28).

This condition of Defendants plainly does not fit within the meaning of § 107 (b). In contrast to the case cited by Trustee, other courts have held that the plain language of § 107(b) provides for the sealing of public documents only in the limited circumstances set forth in the statute. In *In re Alterra Healthcare Corp.*, 353 B.R. 66, 76 (Bankr. D. Del. 2006), for example, a debtor argued that if unsettled claimants were privy to the settlement amounts, the claimants would use the information as leverage to force higher settlements in their respective cases. The *Alterra* Court found, however, that "an unfair advantage to a tort claimant ... does not create an unfair advantage to ... market competitors." Here, the Trustee does not argue that the settlement agreement at issue fits within the exceptions carved out under § 107(b). Instead he essentially requests that this Court set aside the Requirements of § 107 in the interests of expediency and obtaining approval of the settlement. However, § 107 is grounded in the presumption in bankruptcy cases for public access to papers. "A paper filed in a case under this title and the dockets of a bankruptcy court are public records and open to examination by an entity at reasonable times without charge." *In re Dana Corp.*, 412 B.R. 53, 57-58 (S.D.N.Y. 2008) (citing 11 U.S.C. § 107(a)); see also *Geltzer v. Andersen Worldwide*, S.C., No. 05 Civ. 3339, 2007 WL 273526, at *3-4 (S.D.N.Y. Jan. 30, 2007). Additionally, ruling in a different context, the Ninth Circuit confirmed that § 107 removes bankruptcy court's discretion to create exceptions to the general rule of public disclosure. See *In re Roman Catholic Archbishop of Portland in Oregon*, 661 F.3d 417, 430 (9th Cir. 2011).

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TENTATIVE RULING

Based on the foregoing, the Court is inclined to DENY the Motion for failure to demonstrate that the proposed settlement agreement would result in any disclosures protected by the exceptions to public disclosure delineated under § 107.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jesus M. Tapia

Represented By
Michael Smith

Movant(s):

Robert Whitmore (TR)

Represented By
Douglas A Plazak
Troy A Brenes

Trustee(s):

Robert Whitmore (TR)

Represented By
Douglas A Plazak
Troy A Brenes

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6:13-23869 Carlos Diaz and Angelica Diaz

Chapter 7

#6.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

Docket 34

Tentative Ruling:

12/14/2016

This application for compensation has been set for hearing on the notice required by LBR 2016-1. Pursuant to the review of the Trustee's Final Report, the following administrative claims will be allowed:

1. Fees \$ 1,750
2. Expenses \$ 242.98

The application for compensation is approved and the trustee may submit on the tentative. Trustee to lodge an order within 7 days.

APPEARANCES ARE WAIVED.

Party Information

Debtor(s):

Carlos Diaz

Represented By
Terrence Fantauzzi

Joint Debtor(s):

Angelica Diaz

Represented By
Terrence Fantauzzi

Trustee(s):

Larry D Simons (TR)

Pro Se

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6:13-27610 Baleine LP

Chapter 7

Adv#: 6:15-01271 Ebarb v. Revere Financial Corporation

#7.00 CONT Status Conference RE: Adversary case 6:15-ap-01271. Complaint by Nicole Ebarb against Revere Financial Corporation . (72 (Injunctive relief - other)) (91 (Declaratory judgment))

From: 12/2/15, 1/27/16, 7/27/16, 11/2/16

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 3/1/17 AT 11:00 A.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Baleine LP

Represented By
Summer M Shaw

Defendant(s):

Revere Financial Corporation

Represented By
Franklin R Fraley Jr

Plaintiff(s):

Nicole Ebarb

Pro Se

Trustee(s):

Larry D Simons (TR)

Represented By
Carmela Pagay
Todd A Frealy

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6:13-29922 Nancy Ann Howell

Chapter 7

#8.00 Motion to Reconsider the order granting plaintiffs motion to reopen and order denying plaintiffs motion for relief from stay. (related documents 43 Motion to Reopen Case, 45 Motion for Relief from Stay.

EH__

Docket 71

Tentative Ruling:

12/14/2016

The Court has notified both parties that this hearing is being trailed to 2:00 p.m. to be heard in conjunction with several matters currently on calendar in the related Law Offices of Andrew Bisom et. al. v. Howell adversary proceeding.

Background:

On December 12, 2013, Nancy Howell ("Debtor") filed a voluntary chapter 7 petition for relief. Prior to filing the instant bankruptcy case, on November 3, 2008, the Law Office of Andrew S. Bisom and Eisenberg Law Firm, APC (together "Movants") obtained a state court judgment ("Judgment") in case no 07CC06921.

On March 14, 2014, Movants filed an adversary proceeding against the Debtor objecting to the dischargeability of the Judgment under 11 U.S.C. §§ 523 (a)(2) and (a)(6) ("Adversary Proceeding"). This Adversary Proceeding is still pending. Debtor received a discharge on April 1, 2014, and her bankruptcy case was closed on April 9, 2014.

On December 14, 2015, Debtor filed a Notice of Appeal of the state court judgment, which is the subject of the adversary proceeding filed by Movants. On March 15, 2016, the Court of Appeals issued an order staying the appeal because of Debtor's bankruptcy filings.

On July 29, 2016, Movants filed a Motion for Relief from the Automatic Stay

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("RFS Motion") seeking authority to proceed in with the appeal. On October 12, 2016, this Court entered its order holding that the automatic stay terminated on April 9, 2014, by operation of law pursuant to 11 U.S.C. § 362(c)(2)(A) (the "RFS Order"). On October 25, 2016, the Debtor filed a motion to reconsider the RFS Order ("Motion"). On October 31, 2016, the Movants filed an objection to the Motion of the Debtor and to her previously overruled objections to the form of the order ("Response").

Discussion:

Application of the Local Bankruptcy Rules

First, the Debtor indicates that the mandatory form was not used by the Movants when the order was lodged. However, the Court entered its RFS and specifically overruled the objections of Debtor to this effect. Local Bankruptcy Rule 9021(b)(3)(C) states that "[i]f it finds the ends of justice so requires, the court may conduct a hearing on the proper form of the order or decide any objection thereto without a hearing." Here, the Court reviewed the Objections to the form of the order previously filed by the Debtor and specifically overruled those objections in its RFS Order. Additionally, LBR 1001-1(d) provides, in pertinent part, that

The Local Bankruptcy Rules apply uniformly throughout the district, but are not intended to limit the discretion of the court. The court may waive the application of any Local Bankruptcy Rule in any case or proceeding, or make additional orders as it deems appropriate, in the interest of justice.

In this case, the Court previously found that the order as lodged by Movants was sufficiently clear. For these reasons, the Court finds it unnecessary to modify the order or have the order placed in the Mandatory Form. Additionally, the Court does not agree with Debtor that the tentative ruling discussion attached to the RFS Order in any way disparaged, prejudiced, or mislabeled Debtor. Moreover, the Court's discussion of the automatic stay in the tentative ruling attached to the RFS Order, the Court was contrasting between an order of the Court pursuant to a motion, which is subject to FRBP 9024 and the automatic stay, a creature of statute, which arises by operation of law and for which § 362 imposes no time limit on the filing of a motion for relief from stay. Additionally, the Debtor's arguments that the tentative ruling

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attached to the RFS Order are either prejudicial or disparaging are unpersuasive and unfounded.

Rooker-Feldman

The Debtor asserts that the Orange County Court of Appeals' has ruled that the appeal of the Judgment entered against her in State Court cannot continue at the State level until a determination of dischargeability is made by the bankruptcy court. (Mot. at 8). The Debtor argues that this Court's RFS Order violated the *Rooker-Feldman* doctrine by making a decision that conflicts with a State Court's ruling. The Debtor's reliance on *Rooker-Feldman* is misplaced. The *Rooker-Feldman* doctrine takes its name from *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 44 S.Ct. 149, 68 L.Ed. 362 (1923), and *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 103 S.Ct. 1303, 75 L.Ed.2d 206 (1983). Under *Rooker-Feldman*, a federal district court does not have subject matter jurisdiction to hear a direct appeal from the final judgment of a state court. The United States Supreme Court is the only federal court with jurisdiction to hear such an appeal.

Here, there has been no direct appeal from either a state trial court or from the Orange County Court of Appeals to the bankruptcy court. Instead, there was a motion in the bankruptcy court for ruling on an issue unique to bankruptcy law –the operation of the automatic stay under § 362. State courts have no authority to modify the automatic stay because such an act constitute an intervention in the operation of an ongoing federal bankruptcy case, the administration of which is vested exclusively in the bankruptcy court. *In re Gruntz*, 202 F.3d 1074, 1084 (9th Cir. 2000). *Rooker-Feldman* does not allow a state court to interfere with the core administrative functions of an operative bankruptcy. *Id.* Just as federal district courts are not part of the state appellate system, neither are state courts granted supervisory or appellate jurisdiction over federal courts. *Id.* Thus, *Rooker-Feldman* does not nullify federal courts' authority to enforce the automatic stay, nor does it strip this Court of any jurisdiction over the determination made in the RFS Order.

Relief from Stay

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Debtor mistakenly believes that the automatic stay is modified pursuant to Rule 9024. Indeed, an order by the Court modifying or annulling the automatic stay may be reconsidered under Rule 9024. However, that did not happen with respect to the Court's RFS Order. Instead, the authority of the Court for entering the RFS Order was pursuant to § 362(c)(2) which indicates when the automatic stay terminates by operation of law.

The remainder of the Debtor's pleading is simply not relevant to her request for reconsideration and as such need not be considered.

Order Reopening the Case

Finally, the Debtor has provided no cognizable grounds for reconsideration of the Court's order reopening this case. For this reason, the Motion is DENIED as to reconsideration of the Order reopening the Debtor's case.

Tentative Ruling:

Based on the foregoing, the Court's tentative ruling is DENY Debtor's Motion in its entirety.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Nancy Ann Howell	Pro Se
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Movant(s):

Nancy Ann Howell	Pro Se
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Trustee(s):

Steven M Speier (TR)	Pro Se
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6:13-30133 Nabeel Slaieh

Chapter 7

Adv#: 6:14-01224 United States Trustee for the Central District of v. Slaieh

#9.00 CONT Status Conference re: [1] Adversary case 6:14-ap-01224 Complaint Objecting To Discharge Or, Alternatively, Seeking Dismissal Of Case For Abuse

From: 11/5/14, 7/29/15, 8/19/15, 1/13/16, 3/23/16, 4/27/16, 6/22/16, 8/31/16, 9/21/16, 10/5/16

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 2/8/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nabeel Slaieh

Represented By
George A Saba

Defendant(s):

Nabeel Slaieh

Represented By
Bruce A Boice
George A Saba

Plaintiff(s):

United States Trustee for the Central

Represented By
Jason K Schrader
Abram Feuerstein esq
Mohammad Tehrani

Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood

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CONT...

Nabeel Slaieh

Matthew Grimshaw

Chapter 7

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6:15-10609 Donald W McCasland and Victoria F McCasland

Chapter 7

#10.00 Motion for Order Disallowing in part Claim No 6 of West Coast Equipment LLC

EH__

Docket 85

Tentative Ruling:

12/14/2016

Claim No.: 6
Hamburg

Claimant: West Coast Equipment, LLC and counsel, Adam

Claim filed: 5/11/2015

Claim Amount: \$267,043.75

Objection: Chapter 7 Trustee asserts that the claim should be reduced to \$20,000 and that \$247,043.75 of the claim should be disallowed because a settlement was reached by Claimant which liquidated the amount of liability of Claimant vis-à-vis the Debtors.

Discussion:

Federal Rule of Bankruptcy Procedure 3001(f) and 11 U.S.C. § 502(a) provide that a claim or interest as to which proof is filed is "deemed allowed," the burden of initially going forward with the evidence as to the validity and the amount of the claim is that of the objector to that claim. In short, the allegations of the proof of claim are taken as true. If those allegations set forth all the necessary facts to establish a claim and are not self-contradictory, they prima facie establish the claim. *In re Holm*, 931 F.2d 620 (9th Cir. 1991).

Should objection be taken, the objector is then called upon to produce evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves. But the *ultimate burden of persuasion is always on the claimant*. Thus, it may be said that the proof of claim is some evidence as to its validity and amount. It is strong enough to carry over a mere

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Chapter 7

formal objection without more. *Id.* at 623 (emphasis added).

Further, "creditors have an obligation to respond to formal or informal requests for information." *Id.* at 436. The request for information can "come in the form of a claims objection, if it is sufficiently specific about the information required." *Id.*

Claim Objection

Here, the basis for Claimant's claim against the Debtors' estate was based on a lawsuit in which the Debtor Donald McCasland and Claimant were both named as Defendants by Bank of the West. The proof of claim asserts that the claim arises because Debtor exposed Claimant to liability in the amount of the lawsuit - \$267,043.75. However, the Trustee has come forward with evidence from Bank of the West that the aforementioned lawsuit was settled as between Claimant and Bank of the West in the amount of \$20,000; that Claimant paid the amount owed under the settlement agreement; and that the claims against Claimant were subsequently dismissed with prejudice by Bank of the West. Additionally, Claimant though properly served has failed to file any opposition to the Trustee's Objection. As such, the Court deems the failure to oppose as consent to the sustaining of the Objection.

Tentative Ruling

Based on the foregoing, the Court SUSTAINS the Trustee's Objection. Claim No. 6 shall be disallowed in the amount of \$247,043.75, leaving Claimant with a total allowed claim in the amount of \$20,000.

APPEARANCES WAIVED. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

Donald W McCasland

Represented By
Ronald L Brownson

Joint Debtor(s):

Victoria F McCasland

Represented By
Ronald L Brownson

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Trustee(s):

Karl T Anderson (TR)

Represented By
Robert A Hessling

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6:15-19998 Jack C Pryor

Chapter 7

#11.00 CONT Motion For Contempt for violation of Turnover Order, Sanctioned, and Ordered to Turnover Corporate Documents

From: 10/5/16, 11/16/16

EH__

Docket 157

Tentative Ruling:

10/5/16

BACKGROUND:

On October 13, 2015, Jack Pryor ("Debtor") filed a voluntary chapter 11 petition for relief. The case was converted to a chapter 7 on February 25, 2016, and Karl Anderson was appointed as the chapter 7 trustee ("Trustee"). On August 25, 2016, the Court entered an order ("Turnover Order") granting Trustee's motion and ordering the Debtor to turnover the following documents (collectively the "Requested Documents"):

1. DPI bank statements for 12 months prior to the Petition Date;
2. DPI tax returns;
3. DPI financial statements for the past 3 years;
4. DPI Quickbooks for the 12 months prior to the Petition Date;
5. Internal accounting and other documents related to the alleged theft of Access Solar, including names of those liable;
6. Documents evidencing the DPI receivables;
7. Pink Slips for the Range Rover and 2013 Sonata;
8. Closing statement on 9395 Calle Escorial;
9. Any documents related to the sale of the El Camino, Ford F550 and Mercedes 240D;
10. Access Solar bank statements for the 12 months prior to the Petition Date;
11. Individual bank statements for the 12 months prior to the Petition Date;
12. Access Solar tax returns for 2013, 2014, and 2015;

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CONT...

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13. Access Solar financial statements for the past 3 years; and
14. Any loan applications in the last 3 years.

On September 9, 2016, Trustee filed a Motion for an Order to Show Cause Why the Debtor Should Not be Held in Contempt for Violation of the Turnover Order ("Motion"). On September 16, 2016, Debtor filed an opposition ("Opposition") to the Motion, and on September 26, 2016, Trustee filed a reply ("Reply") to the Opposition.

DISCUSSION:

Trustee alleges that Debtor has not fully complied with the Turnover Order and requests that the Court issue an Order to Show Cause Why the Debtor Should Not Be Held in Contempt, and Why Sanctions Should Not Issue Against the Debtor in the amount of \$4,160.00 ("OSC").

1. Turnover

Trustee alleges that the Debtor has not produced the following documents to the Trustee ("Corporate Documents"):

1. DPI bank statements for 12 months prior to the Petition Date;
2. DPI tax returns;
3. DPI financial statements for the past 3 years;
4. DPI Quickbooks for the 12 months prior to the Petition Date;
5. Internal accounting and other documents related to the alleged theft of Access Solar, including names of those liable;
6. Documents evidencing the DPI receivables;
7. Access Solar bank statements for the 12 months prior to the Petition Date;
8. Individual bank statements for the 12 months prior to the Petition Date;
9. Access Solar tax returns for 2013, 2014, and 2015; and
10. Access Solar financial statements for the past 3 years.

Additionally, Trustee's counsel alleges that on September 6, 2016, she was provided documents from a creditor reflecting that DPI was advertising many of its assets for sale. Trustee's auctioneer, Jack Pope, advised Trustee's counsel that the items appear to be worth close to \$300,000.00.

Debtor's Opposition to the Motion reflects a lack of understanding of the

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CONT... **Jack C Pryor**

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Debtor's duties in chapter 7 bankruptcy and contains many irrelevant and inaccurate allegations. Debtor is required to cooperate with the trustee as necessary to enable the trustee to perform the trustee's duties and surrender to the trustee all property of the estate and any recorded information, including books, documents, records, and papers relating to the property of the estate under 11 U.S.C. §§ 521(a)(3) and (4). Debtor's bankruptcy estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). Debtor's Amended Schedule B listed ownership of: (1) 1,000 shares in Diversified Product Industries ("DPI"); (2) 1,000 shares in Access Solar, Inc. ("Access Solar"); (3) 1,000 shares in Cabazon Development Corp. ("Cabazon"); and (4) \$1,100,000.00 in accounts receivable for DPI, contingent upon a judgment in DPI's favor (collectively the "Corporate Assets"). Thus, the Corporate Assets are part of Debtor's bankruptcy estate, and Debtor's interest and legal right to the Corporate Documents are also part of the bankruptcy estate. Because the Corporate Assets and Debtor's legal right to the Corporate Documents are part of Debtor's bankruptcy estate, the Debtor is required to turnover to the Trustee books, documents, records and papers, which he has a legal right to, relating to the Corporate Assets. Here, Debtor has only partially complied with the Turnover Order and Debtor has not offered any explanation or evidence that he is unable to comply with the Turnover. To the contrary, the Opposition reflects that the Debtor mistakenly believes that he is not obligated to comply with the Turnover Order because of an alleged stay pending appeal, and because the Trustee is purportedly acting improperly.

The Court notes that Debtor listed the receivables of DPI on his Amended Schedule B indicating that he and DPI are on in the same. Additionally, the California Secretary of State website reflects that Debtor is the agent for service of process for DPI. The California Secretary of State website also reflects that DPI and Cabazon are FTB suspended.

Debtor's argument that he does not need to fully comply with the Turnover Order because his counsel, Stephen Wade, had assured him there would be a stay pending appeal is without merit because Debtor never obtained a stay pending appeal. Debtor never requested a stay pending appeal from this Court, and there is no evidence that the Debtor ever requested a stay pending appeal from the appellate court. Additionally, the e-mail from Debtor's counsel (Exhibit 1 to the Opposition) dated February 29, 2016, and states "**IF** [a stay on appeal] is granted, the trustee will

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CONT... Jack C Pryor

Chapter 7

be without power until the appeal is resolved and Jack would be a debtor in possession, again. **IF** denied, it would allow the trustee to function as a Chapter 7 trustee until the appeal is decided." (**EMPHASIS ADDED**). Thus, the e-mail reflects that Debtor was aware that there was no stay pending appeal.

The Opposition implies that the Trustee is acting improperly because he is attempting to pierce the corporate veil, and attempting to bring a collective action against the officers of DPI, and Access Solar. First, there is no evidence that the Trustee is attempting to pierce the corporate veil. The Trustee is performing his duties and attempting to assess what value, if any, the Corporate Assets may have to the bankruptcy estate. Second, piercing the corporate veil occurs when the corporate veil is lifted and the corporation's shareholders or directors are personally liable for the corporation's actions or debts. *See United States v. Standard Beauty Supply Stores, Inc.*, 561 F.2d 774, 777-778 (9th Cir. 1977). Here, the Trustee is attempting to determine whether the Corporate Assets are of any value. Third, a collective bargaining action (Debtor references a collective action) allows a group of employees with similar claims to band together in lawsuit to sue their employer. *See Esparza v. Two Jinn, Inc.*, 2009 U.S. Dist. LEXIS 88108, 7-8 (C.D. Cal. Sept. 9, 2009). Here, the Trustee is not attempting to assert any collective action against DPI and Access Solar. Thus, Debtor's argument regarding Trustee's lack of standing to bring a collective action is irrelevant.

The Opposition also contains many arguments that are irrelevant and without merit. For example, Debtor alleges that the Turnover Order is "too confusing to satisfy" and cites to FRCP 8 and 9; however neither are applicable here. Next, Debtor alleges that Trustee is improperly favoring creditor Blue Tee Corp., dba Brown-Strauss Steel ("Blue Tee"). Debtor appears to take the position that Blue Tee has an invalid or unenforceable lien against the Debtor's estate. However, the validity of Blue Tee's lien is not at issue at this time, and does not provide the Debtor with a defense for failure to fully comply with the Turnover Order. The Opposition's conclusion (Opposition page 10) references a protective order. However, Debtor has never filed a motion for a protective order, nor did Debtor oppose the motion for turnover. Last, Debtor alleges that Trustee has not provided evidence that DPI is attempting to sell certain assets, but this is irrelevant to the Court's analysis of whether Debtor has not complied with the Turnover Order.

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CONT... **Jack C Pryor**
2. Attorney's Fees

Chapter 7

Trustee's counsel is requesting that the court issue an OSC why Debtor should not be sanctioned \$4,160.00 in fees under FRBP 7037 and FRCP 37. It is unclear why Trustee's counsel is requesting fees under FRBP 7037 and FRCP 37, instead of under § 105(a). The case law cited by Trustee's counsel primarily references a violation of a **discovery order**. Here, there is no discovery order, but only the Turnover Order, and Trustee has not presented any argument that Rule 7037, which applies in adversary proceedings, extends to a turnover order based on section 542. Regardless, the Court notes that Trustee's counsel is requesting payment of fees that Trustee's counsel would be required to perform regardless of Debtor's compliance with the Turnover Order (i.e. prepare for meeting of creditors, correspondence with Debtor's counsel regarding document production, and preparing the motion for turnover). Under 11 U.S.C. § 105(a), only the costs and fees related to the enforcement of the court's orders are authorized. *Leonard v. Piccirilli (In re Mega-C Power Corp.)*, 2014 Bankr. LEXIS 4583 (9th Cir. B.A.P. Oct. 30, 2014) (citing *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1195 (9th Cir. 2003)). Accordingly, the Court is inclined to DENY the request for attorney's fees, without prejudice, as such fees were not incurred to enforce the Turnover Order.

TENTATIVE RULING:

Based on the foregoing, the Court's tentative ruling is to GRANT the Motion and issue an OSC, to the extent Debtor has failed to comply with the Turnover Order. The Court is inclined to DENY all other requests for relief.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Jack C Pryor

Represented By
Stephen R Wade

Movant(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe

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Chapter 7

Trustee(s):

Karl T Anderson (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe

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6:16-17389 William Mark Eddington

Chapter 7

#12.00 Motion for order extending time for the Chapter 7 Trustee and the US Trustee to file a complaint of object to debtor's discharge; (11 U.S.C. sect 727)

EH__

Docket 11

Tentative Ruling:

12/14/2016

BACKGROUND

On August 18, 2016 ("Petition Date"), William Mark Eddington (the "Debtor") filed for chapter 7 relief. Todd Frealy is the duly appointed Chapter 7 trustee (the "Trustee").

On November 21, 2016, the Trustee, prior to the expiration of the deadline for objecting to discharge, the Trustee timely filed the instant Motion seeking an extension of the deadline to object to the Debtor's discharge (the "Motion"). Service was proper and no opposition has been filed.

DISCUSSION

Pursuant to Federal Rule of Bankruptcy Procedure ("FRBP") 4004 and 1017, Trustee seeks to extend the deadline for Trustee and U.S. Trustee to file a complaint objecting to Debtor's discharge under 11 U.S.C. § 727, for an additional 60 days from November 21, 2016, to January 17, 2016.

Under FRBP 4004(a) and 1017(e), on a motion of any party in interest, the court may for cause extend the time to object to discharge or to seek dismissal. Fed. R. Bankr. P. 4004, 1017.

As a matter of practice what constitutes "cause" rests within the discretion of the bankruptcy court. *See In re James*, 187 B.R. 395, 397 (Bankr. N.D. Ga. 1995). Also, Courts are generally unified in the view that the term "for cause" should receive a liberal construction. *Id.* Notwithstanding that fact, however, a creditor must exhibit

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CONT... William Mark Eddington

Chapter 7

some minimum degree of due diligence prior to seeking such an extension, and the Court should not allow the motion to serve as license for a baseless "fishing expedition." *Id*; See also *In re Leary*, 185 B.R. 405, 406 (Bankr. D. Mass. 1995). To establish cause movant must (1) show that he had, with reasonable diligence, attempted to investigate the facts and circumstances, and (2) offer a reasonable explanation of why that investigation could not be completed within the allotted time. See *In re Bomarito*, 448 B.R. 242, 251 (Bankr. E.D. Cal. 2011).

The Trustee has provided evidence that he has examined the Debtor about extensive business activities, including the operation of an aircraft leasing business with assets in excess of \$47,000,000. (Frealy Decl. ¶3). The Trustee is informed and believes that the Debtor's business brokered sales and leases of aircraft which entitled it to significant income streams. (*Id.*). To investigate these issues, the Trustee has requested financial documents and records, including from the Debtor's business for a three year period. (*Id.*). Documents were finally provided to the Trustee on November 9, 2016, however, the Trustee requires time to evaluate the documents before completing his investigation. (*Id.* at ¶¶4-5). Here, the Trustee has established cause that he has diligently requested documents from the Debtor and that due to the volume of the documents, requires additional time to complete his investigation.

TENTATIVE RULING

Accordingly, the Court is inclined to GRANT the relief requested and provide the Trustee and UST extensions of 60 days for the filing of a complaint under § 727.

APPEARANCES WAIVED. Movant to lodge an order within 7 days.

Party Information

Debtor(s):

William Mark Eddington

Represented By
Jenny L Doling

Movant(s):

Todd A. Frealy (TR)

Pro Se

Trustee(s):

Todd A. Frealy (TR)

Pro Se

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6:11-16835 RIO RANCHO SUPER MALL LLC

Chapter 11

#13.00 CONT Post Confirmation Case Management Conference re: [530] Amended Chapter 11 Plan Modified Sixth Amended Plan

From: 12/17/14, 4/22/15, 6/23/15, 7/7/15, 8/18/15, 9/1/15, 11/10/15, 2/2/16, 3/1/16, 5/3/16, 5/10/16, 6/7/16, 8/3/16, 8/30/16, 9/20/16, 10/19/16

Also #14

EH__

Docket 530

Tentative Ruling:

8/30/2016

This matter shall be CONTINUED to September 20, 2016 at 2:00 p.m., to be heard in conjunction with the continued Status Conference and continued hearing on Motion for Summary Judgment in Adversary Proceeding Case No. 15-01299.

APPEARANCES WAIVED.

5/10/2016

This matter shall be CONTINUED to June 7, 2016 at 2:00 p.m., to be heard in conjunction with the continued Status Conference and continued hearing on Motion for Summary Judgment in Adversary Proceeding Case No. 15-01299.

APPEARANCES WAIVED.

7/7/15

The Court's tentative ruling is to continue the post-confirmation case management conference to August 18, 2015, at 2:00 p.m. to coincide with the continued hearing on the Motion for the Final Decree.

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CONT... RIO RANCHO SUPER MALL LLC

Chapter 11

APPEARANCES ARE WAIVED.

Party Information

Debtor(s):

RIO RANCHO SUPER MALL LLC

Represented By
Christopher J Langley
David Samuel Shevitz

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6:11-16835 RIO RANCHO SUPER MALL LLC

Chapter 11

#14.00 Motion to Dismiss Chapter 11 Bankruptcy Case

Also #15

EH__

Docket 658

Tentative Ruling:

12/14/2016

BACKGROUND

On March 2, 2011 (the "Petition Date"), Rio Rancho Super Mall, LLC ("Rio Rancho" or the "Debtor") filed its petition for chapter 11 relief. Among Rio Rancho's assets as of the Petition Date was commercial property located at 25211 Sunnymead Blvd, Moreno Valley, CA (the "Property").

Rio Rancho's chapter 11 plan was confirmed on October 3, 2014.

On November 22, 2016, Creditor Butterfield Valley Partners ("Butterfield") filed its Motion to Dismiss Chapter 11 Case ("Motion"). The Debtor filed its opposition to the Motion on November 30, 2016. Butterfield replied on December 7, 2016. Separately, on December 8, 2016, Creditor DSD Note Investors, LLC ("DSD") filed a Notice of Joinder indicating that it also opposes dismissal of the Debtor's case.

DISCUSSION

Section 1112(b)(1) provides:

Except as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests

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CONT... **RIO RANCHO SUPER MALL LLC**
of creditors and the estate.

Chapter 11

Section 1112(b)(4) sets forth a nonexhaustive list of what constitutes "cause" to convert or dismiss a case under § 1112(b)(1). *In re Warren*, 2015 WL 3407244, at *4 (9th Cir. BAP May 28, 2015). Included in the list of items constituting "cause" to convert or dismiss is a "material default by the debtor with respect to a confirmed plan." § 1112(b)(4)(N). "The movant bears the burden of establishing by preponderance of the evidence that cause exists." *Sullivan v. Harnisch (In re Sullivan)*, 522 B.R. 604, 614 (9th Cir. BAP 2014) (citing *StellarOne Bank v. Lakewatch, LLC (In re Park)*, 436 B.R. 811, 815 (Bankr.W.D.Va.2010)).

Material Default

Here, Butterfield has provided evidence that the Debtor failed to make a \$30,000 payment that was due on November 1, 2014; that Debtor failed to make five payments of \$3,000 due on August 1, September 1, October 1, November 1, and December 1; and that the Debtor failed to make CAM payments owed on the Property. After applying certain CAM credits, the Debtors defaults amount to a balance due to Butterfield of \$43,727.70. The Debtor for its part does not dispute that it has fallen behind and instead argues for an opportunity to cure the amounts owed as follows: \$25,000 by December 31, 2016; and payments of \$2,000 per month until fully cured. These facts establish that "cause" exists for conversion or dismissal because the Debtor is in material default as to Butterfield. *See Kenny G. Enters., LLC v. Casy (In re Kenny G. Enters.)*, No. BAP CC-13-1527, 2014 WL 4100429, at *14 (9th BAP Cir. Aug. 20, 2014) (noting that failure to pay creditors as required by a confirmed plan is a material default and cause for conversion or dismissal of a debtor's case) (citing *AMC Mortg. Co. v. Tenn. Dep't of Revenue (In re AMC Mortg. Co.)*, 213 F.3d 917, 921 (6th Cir.2000)); *see also State of Ohio, Dept. of Taxation v. H.R.P. Auto Center, Inc (In re H.R.P. Auto Center, Inc.)*, 130 B.R. 247, 256 (Bankr.N.D.Ohio 1991) (holding three missed payments to a single creditor over the course of a year was a material default of a confirmed chapter 11 plan); 7 COLLIER ON BANKRUPTCY ¶ 1112.04[6] [n] ("Although the Code does not define the term material, certainly the failure to make payments when due under the plan would constitute a material default.").

Conversion or Dismissal

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If the bankruptcy court finds that cause exists to grant relief under § 1112(b)(1), it must then: "(1) decide whether dismissal, conversion, or the appointment of a trustee or examiner is in the best interest of creditors and the estate; and (2) identify whether there are unusual circumstances that establish that dismissal or conversion is not in the best interest of creditors and the estate." *In re Sullivan*, 522 B.R. at 612 (citing § 1112 (b)(1), (b)(2), and *Shulkin Hutton, Inc., P.S. v. Treiger (In re Owens)*, 552 F.3d 958, 961 (9th Cir.2009)). In choosing between dismissal or conversion, a bankruptcy court must consider the interests of all creditors. *Id.* (citing *In re Owens*, 552 F.3d at 961). "If cause is established, the decision whether to convert or dismiss the case falls within the sound discretion of the court." *Id.* (citing *Mitan v. Duval (In re Mitán)*, 573 F.3d 237, 247 (6th Cir. 2009) and *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (9th Cir. BAP2006)).

Here, the Debtor does not have the wherewithal to cure the defaults as to Butterfield within a reasonable time. The Debtor's supporting declaration indicates that its revenues have been lower than expected. The record demonstrates that the Debtor does not have sufficient liquidity to remain current under the terms of its confirmed plan. Additionally, the Court notes that this is not the first instance of post-confirmation failures by the Debtor to stay current. For example, on May 26, 2015, DSD filed an opposition to the Debtor's Motion for a Final Decree based on a failure by the Debtor to remain current on its post-petition tax obligations. The opposition of DSD to the entry of a final decree was eventually resolved by a stipulation between the Debtor and the County of Riverside. However, such issues have plagued the Debtor's case from its inception. The docket reflects that confirmation itself took several months during which feasibility was established with difficulty and required a cash infusion by the Plan Proponent, Mr. Eric Kim, as well as by a new investor – Mr. Francisco Kim. Additionally, based on the Debtor's approved disclosure statement filed with the Court on March 29, 2014 (Docket No. 528), assuming for the moment that the Debtor's cash on hand and value of accounts receivables have decreased due to the same market conditions impacting Debtor's ability to cure the monies owed to Butterfield, a Chapter 7 trustee is unlikely to have any assets to administer for the benefit of creditors. This is further compounded by the fact that in connection with confirmation, the Debtor and DSD agreed to value the Property at approximately \$9.9 million (i.e. resulting in Debtor's primary asset being fully encumbered by DSD). Thus, based on the history of this case, the ongoing inability of the Debtor to

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CONT... RIO RANCHO SUPER MALL LLC

Chapter 11

demonstrate that its plan is feasible, the evidence in the record of the case which supports dismissal, and the lack of evidence on the record to support conversion, the Court is inclined to GRANT the Motion and dismiss the case.

Finally, the Court notes that the Debtor has not come forward with any "unusual circumstances" to support conversion rather than dismissal.

TENTATIVE RULING

The Court is inclined to GRANT the Motion.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

RIO RANCHO SUPER MALL LLC

Represented By
Christopher J Langley
David Samuel Shevitz

Movant(s):

Butterfield Valley Partners

Represented By
Barry R Gore

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6:11-16835 RIO RANCHO SUPER MALL LLC

Chapter 11

Adv#: 6:15-01299 RIO RANCHO SUPER MALL LLC v. Pacific City Bank, Its Successors

#15.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01299. Complaint by RIO RANCHO SUPER MALL LLC against Pacific City Bank, Its Successors and/or Assigns, Wilshire Bank, its successors and/or assigns, BFG Company, its successors and/or assigns, Butterfield Valley Partners, its successors and/or assigns, Lamar Company, LLC, its successors and/or assigns. (Charge To Estate \$350.00). Nature of Suit: (21 (Validity, priority or extent of lien or other interest in property)),(91 (Declaratory judgment))

HOLDING DATE

From: 12/29/15, 1/5/16, 3/1/16, 5/3/16, 5/10/16, 6/7/16, 8/3/16, 8/30/16, 9/20/16, 10/19/16

EH__

Docket 1

Tentative Ruling:

8/30/2016

This matter shall be CONTINUED to September 20, 2016 at 2:00 p.m., to be heard in conjunction with the continued Post Confirmation Status Conference and continued hearing on Motion for Summary Judgment in Adversary Proceeding Case No. 15-01299.

APPEARANCES WAIVED.

Party Information

Debtor(s):

RIO RANCHO SUPER MALL LLC

Represented By
Christopher J Langley
David Samuel Shevitz

Defendant(s):

Butterfield Valley Partners, its

Represented By

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Chapter 11

Barry R Gore

Lamar Company, LLC, its

Pro Se

BFG Company, its successors and/or

Pro Se

Pacific City Bank, Its Successors

Represented By
Benjamin Nachimson

Wilshire Bank, its successors and/or

Pro Se

Plaintiff(s):

RIO RANCHO SUPER MALL LLC

Represented By
Christopher J Langley
David Samuel Shevitz
Steven P Chang

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6:11-36779 HN Engineering, Inc.

Chapter 7

#16.00 Motion to Use Property of the Estate to Preserve Estate's Interest in 1247 North School Lane, Amargosa Valley, Nevada

EH__

Docket 173

Tentative Ruling:

12/14/2016

BACKGROUND

On August 22, 2011, HN Engineering, Inc. ("Debtor") filed for chapter 7 relief. Todd Frealy is the duly appointed chapter 7 trustee ("Trustee").

On November 14, 2014, this Court entered judgment in favor of the Trustee and against the Debtor's principal, Horst Uwe Harneit ("Harneit"), for avoidance and recovery of fraudulent transfers (the "Judgment"). The Judgment was in the amount of \$821,974.20.

In May 2011, Harneit and his wife executed a quitclaim deed by which they transferred their interests in real property located at 1247 North School Lane, Amargosa Valley, Nevada 89020 (the "Property"), to "HORST UWE HARNEIT AND SIGRID U. HARNEIT, Trustees of the HARNEIT FAMILY 1999 TRUST. The Trustee is informed and believed that the Property has a fair market value ranging between \$400,000 and \$600,000. The Property is encumbered only by the lien of the Nye County Treasurer in the amount of approximately \$43,000, and the Trustee's Judgment Lien, recorded on June 21, 2016.

Under Nevada law, the Property is currently being held by the Nye County Treasurer until such time as the Property is redeemed by payment of the outstanding taxes owing on the Property.

On November 23, 2016, the Trustee filed a Motion to Use Property of the Estate to Preserve Estate's Interest in 1247 North School Lane, Amargosa Valley, Nevada (the "Motion"). Service was proper and no opposition has been filed.

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CONT... HN Engineering, Inc.

Chapter 7

DISCUSSION

A DIP or trustee may use, sell or lease property of the estate "other than in the ordinary course of business" only after notice and a hearing. 11 USC § 363(b)(1). Here, the Trustee gave notice to creditors and all parties in interest of his intended use. Specifically, the Trustee seeks this Court's authority to pay the Nye County Treasurer the delinquent taxes, penalties, interest and costs owed on the Property for the purpose of preserving the bankruptcy estate's interest in the Property. The Trustee asserts that he is currently holding \$315,329.65 on behalf of the Debtor's estate with which he can pay the Nye County Treasurer. Here, the Trustee has provided a reasonable business justification for the payment of the taxes.

TENTATIVE RULING

The Court is inclined to GRANT the Motion.

APPEARANCES WAIVED. Movant to lodge order within 7 days.

Party Information

Debtor(s):

HN Engineering, Inc.

Represented By
Martha A Warriner

Movant(s):

Todd A. Frealy (TR)

Represented By
Robert P Goe
Rew R Goodenow

Trustee(s):

Todd A. Frealy (TR)

Represented By
Robert P Goe
Rew R Goodenow

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6:13-16964 Narinder Sangha

Chapter 7

Adv#: 6:13-01171 Schrader v. Sangha

#17.00 CONT Status Conference RE: Adversary case 6:13-ap-01171. Complaint by Charles Edward Schrader against Narinder Sangha . willful and malicious injury

From: 7/8/15, 11/4/15, 3/2/16

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Narinder Sangha

Represented By
Deepalie M Joshi

Defendant(s):

Narinder Sangha

Represented By
Denise M Tessier
Deepalie M Joshi

Plaintiff(s):

Charles Edward Schrader

Pro Se

Trustee(s):

Karl T Anderson (TR)

Pro Se

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6:15-16613 Kenneth Edward Peardon

Chapter 7

Adv#: 6:16-01019 Frealy, (TR) v. Peardon et al

#18.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01019. Complaint by Todd A Frealy, (TR) against Lisa Suzanne Peardon, Kasey Corinne Van Lant. (Charge To Estate). (with Exhibits 1, 2, 3, 4, 5 and 6) (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other)),(91 (Declaratory judgment)) (Gross, Irving)

From: 3/23/16, 5/11/16, 7/20/16, 9/28/16

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kenneth Edward Peardon

Represented By
Javier H Castillo

Defendant(s):

Kasey Corinne Van Lant

Represented By
Stephen A Madoni

Lisa Suzanne Peardon

Represented By
Stephen A Madoni

Plaintiff(s):

Todd A Frealy, (TR)

Represented By
Irving M Gross
Lindsey L Smith
Anthony A Friedman

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CONT... Kenneth Edward Peardon

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Trustee(s):

Todd A. Frealy (TR)

Represented By

Lindsey L Smith

Levene Neale Bender Yoo & Brill LLP

Irving M Gross

Anthony A Friedman

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6:15-20888 Walter Ray Henderson

Chapter 7

Adv#: 6:16-01029 Lowell v. Henderson, MD

#19.00 Motion to Dismiss Adversary Proceeding and Notice to Creditors of Right to Intervene/Substitute re 11 USC 727

Also #20

EH__

Docket 22

Tentative Ruling:

12/14/2016

The Plaintiff has provided evidence that the instant adversary complaint against the Debtor Defendant has been settled and that the amount due to Plaintiff under the terms of the settlement agreement has been paid. Additionally, the Court finds that Plaintiff has provided creditors with sufficient notice of their opportunity to intervene and assume the § 727 claims brought by Plaintiff. It appearing that no opposition or request to intervene has been filed, the Court is inclined to GRANT Plaintiff's request to dismiss the case.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Walter Ray Henderson

Represented By
Alec L Harshey

Defendant(s):

Walter Ray Henderson MD

Represented By
Alec L Harshey

Joint Debtor(s):

Anne Budell Henderson

Represented By

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CONT... Walter Ray Henderson

Chapter 7

Alec L Harshey

Movant(s):

Lauretta Lowell

Represented By
Sandra Tyson
Ian I Herzog

Plaintiff(s):

Lauretta Lowell

Represented By
Sandra Tyson
Ian I Herzog

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
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6:15-20888 Walter Ray Henderson

Chapter 7

Adv#: 6:16-01029 Lowell v. Henderson, MD

#20.00 CONT Status Conference RE: Adversary case 6:16-ap-01029. Complaint by Laurretta Lowell against Walter Ray Henderson MD. (d),(e)) ,(65 (Dischargeability - other))

From: 5/4/16, 9/7/16, 10/19/16

Also #19

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Walter Ray Henderson

Represented By
Alec L Harshey

Defendant(s):

Walter Ray Henderson MD

Represented By
Alec L Harshey

Joint Debtor(s):

Anne Budell Henderson

Represented By
Alec L Harshey

Plaintiff(s):

Laurretta Lowell

Represented By
Sandra Tyson
Ian I Herzog

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CONT... Walter Ray Henderson

Chapter 7

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
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6:16-11344 Jessica Alvarez

Chapter 7

Adv#: 6:16-01133 B.L., a minor, by and through her guardian ad lite v. Case-Alvarez et al

#21.00 CONT Status Conference RE: [1] Adversary case 6:16-ap-01133. Complaint by B.L., a minor, by and through her guardian ad litem, Melvin Friedland against Shannon Case-Alvarez , Jessica Alvarez . (d),(e)) ,(68 (Dischargeability - 523(a) (6), willful and malicious injury))

From: 7/20/16, 9/28/16, 10/19/16

EH__

Docket 1

Tentative Ruling:

12/14/2016

This hearing is being continued to January 4, 2017, to coincide with the hearing on Plaintiff's Motion for Default Judgment.

APPEARANCES WAIVED.

Party Information

Debtor(s):

Jessica Alvarez

Represented By
Michael H Colmenares

Defendant(s):

Jessica Alvarez

Pro Se

Shannon Case-Alvarez

Pro Se

Joint Debtor(s):

Shannon B. Case-Alvarez

Represented By
Michael H Colmenares

**United States Bankruptcy Court
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CONT... Jessica Alvarez

Chapter 7

Plaintiff(s):

B.L., a minor, by and through her

Represented By
Jack H Anthony

Trustee(s):

Steven M Speier (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Wednesday, December 14, 2016

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6:16-15146 David Gonzalez

Chapter 7

Adv#: 6:16-01229 Desert Valley Hosital, Inc. v. Gonzalez

#22.00 Motion for Default Judgment

Also #23

EH__

Docket 10

Tentative Ruling:

12/14/2016

BACKGROUND

On June 8, 2016 ("Petition Date"), David Gonzalez (the "Debtor" or "Defendant") filed his petition for chapter 7 relief. The Debtor's Statement of Financial Affairs disclosed a judgments entered against him prepetition in favor of Desert Valley Hospital ("Desert Valley" or "Plaintiff").

On September 9, 2016, Desert Valley filed a complaint to determine dischargeability against the Debtor asserting claims under §§ 523(a)(4) and (a)(6) (the "Complaint" or "Adversary"). The Docket for the Adversary reflects that the summons and complaint were served on the Debtor on September 12, 2016. An answer to the Complaint was due on October 11, 2016. No responsive pleading was filed. On October 19, 2016, Desert Valley requested that the Court enter default and default was entered on the same day. The pertinent facts of the Complaint are as follows:

1. Plaintiff operates an acute care hospital in the City of Victorville;
2. Between January and August 2009, the Debtor's wife and daughter, Lupita and Lilliana Gonzalez sought and received medical care with total charges for services rendered by Plaintiff exceeding \$192,214;
3. At the time that services were provided, the Debtor was insured by Blue Cross Blue Shield ("Blue Cross")
4. Plaintiff used a Blue Cross website for providers and also spoke directly to Blue Cross representatives to confirm that the claims for service had been

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David Gonzalez

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- allowed and were being paid;
5. Because Plaintiff is an out-of-network provider, Blue Cross mailed the checks for Plaintiff's services directly to the Debtor;
 6. Plaintiff contacted Debtor numerous times to demand payment but received no response;
 7. On or about November 6, 2009, Plaintiff initiated a lawsuit in San Bernardino Superior Court, case no. CIVVS-907373 (the "First Action"), against Debtor and his wife for failure to turnover/pay the \$64,919.14 check they received from Blue Cross for services provided by Plaintiff;
 8. On September 23, 2010, Plaintiff obtained a default judgment against Debtor in the First Action;
 9. On or about June 22, 2010, Plaintiff initiated a second lawsuit in San Bernardino Superior Court, case no. CIVVS-1004175 (the "Second Action") for failure by Debtor and his wife to turnover or pay the \$79,768.82 check they received from Blue Cross for services provided by Plaintiff;
 10. On March 7, 2011, Plaintiff obtained a default judgment against Defendant in the amount of \$80,582.16;
 11. In total, the San Bernardino Superior Court awarded the Plaintiff \$144,687.96 (the "Judgments");
 12. Plaintiff examined Debtor on or about March 9, 2012;
 13. At the Debtor examination, Debtor admitted to receiving the funds from Blue Cross, depositing the funds in his personal account, and then spending the money to purchase auto parts for the purpose of starting a business;
 14. The Debtor further stated that the car parts he had purchased had since been stolen.
 15. Debtor then admitted to the wrongdoing and indicated he believed his wife would be sued for the money and that he could get away with his actions and start a new life with the money;
 16. Plaintiff has collected \$45,397.11 through wage garnishment and is still owed \$99,290.85 to satisfy its Judgments.

On November 8, 2016, Desert Valley filed the instant motion seeking entry of default judgment against the Debtor on both claims asserted in the Complaint. Service was proper and no opposition or response has been filed.

DISCUSSION

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CONT...

David Gonzalez

Chapter 7

A. Entry of Default

Federal Rule of Civil Procedure 55 states that "[w]hen a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default." Fed. R. Civ. P. 55(a). Per LBR 7055-1(b)(1), a motion for entry of default judgment shall contain the following:

1. When and against what party default was entered
2. Whether defaulting party is an infant or incompetent person –
3. Whether the defaulting party is currently on active duty –
4. Whether notice has been served on defaulting party, if required by FRCP 55(b)(2)

C. Admissions

Pursuant to FRBP 7008(b)(6), failure to deny an allegation of the Complaint where a responsive pleading is required constitutes an admission of the allegation.

B. Default Judgment

Factors which may be considered by courts in exercising discretion as to the entry of a default judgment include: (1) the possibility of prejudice to the plaintiff; (2) the merits of plaintiff's substantive claim; (3) the sufficiency of the complaint; (4) the sum of money at stake in the action; (5) the possibility of a dispute considering material facts; (6) whether the default was due to excusable neglect; and (7) the strong policy underlying the FRCP favoring decision on the merits. *See Eitel v. McCool*, 782 F.2d 1470, 1471-72 (9th Cir. 1986).

1. Proper Service of Summons and Complaint

Desert Valley served the Debtor at his addresses as reflected on his

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bankruptcy petition and Debtor did not respond to the Complaint. Additionally, Desert Valley served Debtor with a copy of the Motion; service was proper and Debtor failed to file opposition. LBR 9013-1(h) provides that failure to timely file a response or opposition to a motion may be deemed consent to the granting of the Motion.

2. Merits of Plaintiff's claim

Upon default, the factual allegations of the complaint, except those relating to the amount of damages, will be taken as true. *TeleVideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987); "The defendant, by his default, admits the plaintiff's **well-pleaded** allegations of facts, is concluded on those facts by the judgment, and is barred from contesting on appeal the facts thus established." *Nishimatsu Construction Co., Ltd. v. Houston Nat'l Bank*, 515 F.2d 1200, 1206 (5th Cir. 1975) (emphasis added); *Danning v. Lavine*, 572 F.2d 1386, 1388 (9th Cir. 1978); *Cotton v. Massachusetts Mut. Life Ins. Co.*, 402 F.3d 1267, 1278(11th Cir. 2005) (do not have to take as true facts that are not well-pleaded or conclusions of law).

a. Embezzlement under § 523(a)(4)

Under federal law, embezzlement in the context of nondischargeability has often been defined as "the fraudulent appropriation of property by a person to whom such property has been entrusted or into whose hands it has lawfully come." *Moore v. United States*, 160 U.S. 268, 269 (1885). Embezzlement, thus, requires three elements: "(1) property rightfully in the possession of a nonowner; (2) nonowner's appropriation of the property to a use other than which [it] was entrusted; and (3) circumstances indicating fraud." *In re Littleton*, 942 F.2d 551 (9th Cir. 1991).

Here, Plaintiff has unequivocally established the requisite elements of embezzlement. The Debtor came rightfully into possession of the checks from Blue Cross in accordance with its policy of sending monies directly to the insured when they are using an out-of-network provider; the Debtor then admitted to appropriating funds intended to pay Plaintiff for its services and instead used the funds to purchase car parts for his personal benefit; and finally, the Plaintiff's actions and admissions

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indicate that he knew his actions were wrong but that he did them under the belief that he would not be held accountable for misappropriating the payments intended for Plaintiff.

Thus, Plaintiff has established that Defendant's conduct constituted embezzlement under § 523(a)(4).

b. Willful and Malicious Damage to Property under §523(a)(6)

Section 523(a)(6) provides in relevant part that a discharge under section 727 does not discharge an individual debtor from any debt for willful and malicious injury by the debtor to another entity or to the property of another entity. 11 U.S.C. § 523(a)(6).

i. Willfulness

First, for an injury to be willful, the debtor must have a subjective motive to inflict injury or must believe that injury is substantially certain to occur as a result of his or her conduct. Petralia v. Jercich (In re Jercich), 238 F.3d 1202, 1208 (9th Cir. 2001). In other words, the debtor must have acted with "actual knowledge that harm to the creditor was substantially certain" to result. In re Su, 290 F.3d at 1146; Ditto v. McCurdy, 510 F.3d 1070, 1078 n. 8 (9th Cir. 2007).

On these facts, the Court finds that Defendant acted willfully to harm the interests of Plaintiff because he knew that the checks received from Blue Cross were intended as payment for services rendered by Plaintiff. However, despite that knowledge he took actions to deprive Plaintiff of the checks and instead used the funds for his own purposes.

Thus, Plaintiff has established that Defendant's actions were willful.

ii. Malice

In addition to the willfulness requirement, a claim under § 523(a)(6) requires that the injury be caused with malice. See Su at 1146-47. A 'malicious' injury involves

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(1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse. Id. (internal citations omitted).

Here, Plaintiff has sufficiently established malicious injury. The evidence presented demonstrates that the Debtor committed a wrongful act when he knowingly deprived Plaintiff of the checks from Blue Cross that were meant as payment for Plaintiff's services and instead used the checks for his own purposes. Further, the Debtor's testimony at the examination demonstrates that he intentionally absconded with the funds meant for Plaintiff in order to begin a car parts business. Finally, the Debtor knew his actions would cause injury to Plaintiff but proceeded with his wrongful acts anyways. The Debtor has not offered any just cause or excuse for his actions and the Court perceives none.

Based on the foregoing, the Court finds that Plaintiff has established that Defendant's debt is nondischargeable because it is a debt for willful and malicious injury by the Defendant to Plaintiff. 11 U.S.C. § 523(a)(6).

In sum, as indicated by the above analysis, the Trustee has demonstrated that he is entitled to judgment on both of the above claims, on the merits.

3. The possibility of a dispute considering material facts

Defendant was properly served with the summons and complaint. Defendant has failed to respond or to otherwise provide evidence to support any dispute as to material facts. Additionally, here, the Plaintiff has provided declaratory evidence and judicially noticeable documents (which this court deems admitted), which support the Plaintiff's factual assertions. Therefore, no dispute of material facts exists to preclude granting default judgment.

4. Whether the default was due to excusable neglect

Defendant was properly served with summons and complaint. Defendants failed to respond. Furthermore, Defendant had the opportunity to file opposition to

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the instant Motion and failed to do so. Finally, Defendant has not filed a motion to set aside the entry of default, nor responded with any written objection. Thus, the Court finds that the default was not due to excusable neglect and may be granted.

5. The strong policy underlying the FRCP favoring decision on the merits

Although default judgments are ordinarily disfavored, termination of a case before hearing the merits is allowed when a defendant fails to defend an action under Fed. R. Civ. P. 55. Here, the Debtor's apparent lack of interest in defending his suit militates in favor of default judgment being entered.

TENTATIVE RULING

Plaintiff, having demonstrated that it is entitled to a default judgment, as set forth above, the Court finds that judgment in the amount of \$99,290.85 is appropriate. The Motion is GRANTED in its entirety and judgment is entered against the Debtor. The judgment is nondischargeable under both §§ 523(a)(4) and 523(a)(6).

APPEARANCES WAIVED. Movant to lodge an order granting the motion and a judgment within 7 days.

Party Information

Debtor(s):

David Gonzalez

Represented By
Sunita N Sood

Defendant(s):

David Gonzalez

Pro Se

Movant(s):

Desert Valley Hosital, Inc.

Represented By

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CONT... David Gonzalez

Chapter 7

Ryan D ODea
Ryan D ODea

Plaintiff(s):

Desert Valley Hosital, Inc.

Represented By
Ryan D ODea

Trustee(s):

Todd A. Frealy (TR)

Pro Se

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2:00 PM

6:16-15146 David Gonzalez

Chapter 7

Adv#: 6:16-01229 Desert Valley Hosital, Inc. v. Gonzalez

#23.00 CONT Status Conference Re: Complaint by Desert Valley Hosital, Inc. against David Gonzalez. fraud as fiduciary, embezzlement, larceny, 68 - Dischargeability - 523(a)(6), willful and malicious injury

From: 11/16/16

Also #22

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Gonzalez

Represented By
Sunita N Sood

Defendant(s):

David Gonzalez

Pro Se

Plaintiff(s):

Desert Valley Hosital, Inc.

Represented By
Ryan D ODea

Trustee(s):

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court
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2:00 PM

6:16-16834 Kristi Lea Trimble

Chapter 7

Adv#: 6:16-01252 Trimble v. UNITED STATES OF AMERICA, IRS

#24.00 Status Conference RE: [1] Adversary case 6:16-ap-01252. Complaint by Kristi Lea Trimble against UNITED STATES OF AMERICA, IRS. (Charge To Estate). Nature of Suit: (66 (Dischargeability - 523(a)(1),(14),(14A) priority tax claims)) (Boice, Bruce)

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kristi Lea Trimble

Represented By
Bruce A Boice

Defendant(s):

UNITED STATES OF AMERICA,

Pro Se

Plaintiff(s):

Kristi Lea Trimble

Represented By
Bruce A Boice

Trustee(s):

Steven M Speier (TR)

Pro Se

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6:13-30133 Nabeel Slaieh

Chapter 7

Adv#: 6:16-01224 Simons (TR) v. Slaieh et al

#25.00 CONT Motion to Dismiss Adversary Proceeding

From: 11/9/16

EH__

Docket 7

***** VACATED *** REASON: CONTINUED TO 2/8/17 AT 2:00 P.M. -
ORDER APPROVING STIPULATED AGREEMENT FILED 11/28/16**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nabeel Slaieh

Represented By
George A Saba

Defendant(s):

Joanne Fraleigh

Represented By
George A Saba

Nabeel Naiem Slaieh

Represented By
George A Saba

Movant(s):

Joanne Fraleigh

Represented By
George A Saba

Plaintiff(s):

Larry D. Simons (TR)

Represented By
David Wood
Matthew Grimshaw

**United States Bankruptcy Court
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CONT... Nabeel Slaieh

Chapter 7

Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood
Matthew Grimshaw

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6:13-30133 Nabeel Slaieh

Chapter 7

Adv#: 6:14-01081 Albrecht v. Slaieh

#26.00 CONT Status Conference RE: [1] Adversary case 6:14-ap-01081. Complaint by W.E. Jon Albrecht against Nabeel Slaieh. willful and malicious injury))

From: 10/19/16

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nabeel Slaieh

Represented By
George A Saba

Defendant(s):

Nabeel Slaieh

Represented By
Stephen B Mashney
Bruce A Boice
George A Saba

Plaintiff(s):

W E Jon Albrecht

Represented By
William L Miltner
Robert C Harvey

Trustee(s):

Larry D Simons (TR)

Represented By
D Edward Hays
David Wood
Matthew Grimshaw

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6:13-27610 Baleine LP

Chapter 7

Adv#: 6:15-01314 Simons v. The Law Office of Don C. Burns et al

#27.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01314. Complaint by Larry D. Simons against The Law Office of Don C. Burns, Don C. Burns. (Charge To Estate \$350). (with Adversary Coversheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

From: 12/30/15, 2/10/16, 5/11/16, 6/8/16, 6/22/16, 10/19/16

EH__

Docket 1

***** VACATED *** REASON: CONTINUED TO 2/15/17 AT 2:00 PM**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Baleine LP

Represented By
Summer M Shaw

Defendant(s):

Don C. Burns

Pro Se

The Law Office of Don C. Burns

Pro Se

Plaintiff(s):

Larry D. Simons

Represented By
Carmela Pagay

Trustee(s):

Larry D Simons (TR)

Represented By
Carmela Pagay
Todd A Frealy

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CONT... Baleine LP

Chapter 7

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6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

Adv#: 6:15-01304 Cisneros v. Kajan Mather & Barish, a professional corporation

#28.00 CONT Motion of Mather Kuwada, Mather Law Corporation, Law Offices of Kenneth M. Barish, Steven R. Mather, and Kenneth M. Barish for Summary Judgment Or, In The Alternative, Summary Adjudication of the Issues

From: 11/9/16

Also #29

EH__

Docket 90

Tentative Ruling:

12/14/2016

The hearing on the Motion for Summary Judgment is CONTINUED to January 11, 2017, at 2:00 p.m. The parties received electronic notice of the continuance from the Court and confirmed notice of the continued hearing.

APPEARANCES WAIVED.

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

Defendant(s):

LAW OFFICE OF KENNETH M.

Pro Se

Steven R. Mather

Pro Se

Kenneth M. Barish

Pro Se

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CONT... Douglas J Roger, MD, Inc., A Professional Corporat Chapter 7

Kajan Mather & Barish, a
Represented By
Michael S Kogan

MATHER KUWADA, a limited
Represented By
Michael S Kogan

MATHER LAW CORPORATION,
Represented By
Michael S Kogan

Movant(s):

Kajan Mather & Barish, a
Represented By
Michael S Kogan

Plaintiff(s):

A. Cisneros
Represented By
D Edward Hays
Chad V Haes
Franklin R Fraley Jr
Sue-Ann L Tran
Jasmine W Wetherell

Trustee(s):

Arturo Cisneros (TR)
Represented By
Chad V Haes
D Edward Hays
Franklin R Fraley Jr

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6:13-27344 Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

Adv#: 6:15-01304 Cisneros v. Kajan Mather & Barish, a professional corporation

#29.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01304. Complaint by A. Cisneros against Kajan Mather & Barish, a professional corporation, MATHER KUWADA, a limited liability partnership, MATHER LAW CORPORATION, a California corporation, LAW OFFICE OF KENNETH M. BARISH, Steven R. Mather, Kenneth M. Barish. (Charge To Estate \$350). for Avoidance, Recovery, and Preservation of Preferential and Fraudulent Transfers with Adversary Proceeding Cover Sheet) Nature of Suit: (12 (Recovery of money/property - 547 preference)),(13 (Recovery of money/property - 548 fraudulent transfer)),(14 (Recovery of money/property - other))

From: 12/30/15, 1/13/16, 3/30/16, 4/6/16, 5/4/16, 5/25/16, 9/28/16, 11/2/16, 11/9/16

Also #28

EH__

Docket 1

Tentative Ruling:

12/14/2016

The instant Status Conference is CONTINUED to January 11, 2017, at 2:00 p.m., to be heard in conjunction with Defendants' Motion for Summary Judgment

APPEARANCES WAIVED.

Party Information

Debtor(s):

Douglas J Roger, MD, Inc., A

Represented By
Summer M Shaw
Michael S Kogan
George Hanover

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CONT... Douglas J Roger, MD, Inc., A Professional Corporat

Chapter 7

Defendant(s):

LAW OFFICE OF KENNETH M.	Pro Se
Steven R. Mather	Pro Se
Kenneth M. Barish	Pro Se
Kajan Mather & Barish, a	Represented By Michael S Kogan
MATHER KUWADA, a limited	Represented By Michael S Kogan
MATHER LAW CORPORATION,	Represented By Michael S Kogan

Plaintiff(s):

A. Cisneros	Represented By D Edward Hays Chad V Haes Franklin R Fraley Jr Sue-Ann L Tran Jasmine W Wetherell
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Trustee(s):

Arturo Cisneros (TR)	Represented By Chad V Haes D Edward Hays Franklin R Fraley Jr
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Hearing Room 303

2:00 PM

6:13-29922 Nancy Ann Howell

Chapter 7

Adv#: 6:14-01070 Law Office of Andrew S. Bisom et al v. Howell

#30.00 Motion to Reconsider, Vacate, Set-Aside and/or Correct the Court Order of November 14, 2016 Denying as Moot Defendant's Motion to Reconsider the Court Order of September 15, 2016 Granting Plaintiffs' Motion for Continuance

Also #31 - #33

EH__

Docket 147

Tentative Ruling:

12/14/2016

BACKGROUND

On December 12, 2013, Nancy Ann Howell (the "Debtor") filed her petition for chapter 7 relief. The Debtor received her discharge on April 1, 2014, and the case was closed on April 9, 2014. Prior to the case closing, on March 14, 2014, the Law Office of Andrew S. Bisom and the Eisenberg Law Firm ("Plaintiffs"), filed a suit against the Debtor for determination of dischargeability of debt under §§ 523(a)(2) and 523(a)(6) (the "Complaint").

On October 22, 2015, Plaintiffs filed a motion for summary judgment (the "MSJ") (Docket No. 69). The MSJ has been continued numerous times for various reasons. Most recently, on or about September 14, 2016, Plaintiffs filed a Motion for Order Continuing the Hearing on the MSJ for 90 days to "allow for completion of [the Debtor's] appeal of the State Court Judgment." On September 15, 2016, the Court entered an order granting the Plaintiffs' request for a continuance on the MSJ hearing, and continuing the MSJ hearing to December 14, 2016. On September 28, 2016, the Debtor filed a motion for reconsideration of the December 14, 2016", order continuing the hearing (the "First Reconsideration Motion"). The Court denied the Debtor's First Reconsideration Motion on November 14, 2016.

On November 28, 2016, the Debtor filed her Motion to Reconsider, Vacate, Set Aside and/or Correct the Court Order of November 14, 2016 Granting Plaintiffs'

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CONT... Nancy Ann Howell

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Motion for Continuance (the "Second Reconsideration Motion"). The primary basis for the Debtor's Second Reconsideration Motion is that she was denied her opportunity to raise objections to the form of the order denying the First Reconsideration Motion.

On November 4, 2016, a Notice of Lodgment of the Proposed Order on the First Reconsideration Motion was filed with the Court and served on the Debtor (Docket No. 140) (the "Proposed Order"). On November 14, 2016, the Court entered its Order Denying the First Reconsideration Motion (Docket No. 143). Also on November 14, 2016, the Debtor filed her Objection to the Proposed Order (Docket No. 144) (the "Objection").

DISCUSSION

The Debtor has correctly pointed out that due to the November 11, 2016, holiday, the Debtor's objections to the form of the order were timely filed. Notwithstanding this fact, the Court finds that the November 14, 2016, order denying the First Reconsideration Motion is complete, clear, accurate and inoffensive.

TENTATIVE RULING

For the reasons stated in the Opposition, and otherwise finding Debtor's arguments lacking merit, the Motion is DENIED.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Nancy Ann Howell

Pro Se

Defendant(s):

Nancy Ann Howell

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 303 Calendar**

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CONT... Nancy Ann Howell

Chapter 7

Movant(s):

Nancy Ann Howell

Pro Se

Plaintiff(s):

Eisenberg Law Firm, APC

Represented By
Andrew S Bisom

Law Office of Andrew S. Bisom

Represented By
Andrew S Bisom

Trustee(s):

Steven M Speier (TR)

Pro Se

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6:13-29922 Nancy Ann Howell

Chapter 7

Adv#: 6:14-01070 Law Office of Andrew S. Bisom et al v. Howell

#31.00 CONT Motion For Summary Judgment

From: 12/2/15, 2/17/16, 3/2/16, 3/16/16, 4/27/16, 9/21/16

Also #30 - #33

EH__

Docket 62

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nancy Ann Howell Pro Se

Defendant(s):

Nancy Ann Howell Pro Se

Movant(s):

Law Office of Andrew S. Bisom Represented By
Andrew S Bisom

Plaintiff(s):

Eisenberg Law Firm, APC Represented By
Andrew S Bisom

Law Office of Andrew S. Bisom Represented By
Andrew S Bisom

Trustee(s):

Steven M Speier (TR) Pro Se

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6:13-29922 Nancy Ann Howell

Chapter 7

Adv#: 6:14-01070 Law Office of Andrew S. Bisom et al v. Howell

#32.00 Motion to set Trial Date

Also #30 - #33

EH__

Docket 148

Tentative Ruling:

12/14/2016

BACKGROUND

On December 12, 2013, Nancy Ann Howell (the "Debtor") filed her petition for chapter 7 relief. The Debtor received her discharge on April 1, 2014, and the case was closed on April 9, 2014. Prior to the case closing, on March 14, 2014, the Law Office of Andrew S. Bisom and the Eisenberg Law Firm ("Plaintiffs"), filed a suit against the Debtor for determination of dischargeability of debt under §§ 523(a)(2) and 523(a)(6) (the "Complaint"). The Complaint alleges that Plaintiffs initiated a state court action ("State Court Action") and obtained a state court judgment (the "Judgment") against Defendant for fraud, which is non-dischargeable under 11 U.S.C. §§ 523(a)(2)(A) and (a)(6).

On October 22, 2015, Plaintiffs filed a motion for summary judgment (the "MSJ") (Docket No. 69). The MSJ has been continued numerous times for various reasons. Most recently, on or about September 14, 2016, Plaintiffs filed a Motion for Order Continuing the Hearing on the MSJ for 90 days to "allow for completion of [the Debtor's] appeal of the State Court Judgment." On September 15, 2016, the Court entered an order granting the Plaintiffs' request for a continuance on the MSJ hearing, and continuing the MSJ hearing to December 14, 2016. On September 28, 2016, the Debtor filed a motion for reconsideration of the December 14, 2016", order continuing the hearing (the "First Reconsideration Motion"). The Court denied the Debtor's First Reconsideration Motion on November 14, 2016. On the record at the November 2, 2016, hearing on the First Reconsideration Motion, the Court indicated on the record

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that it was inclined to continue the MSJ hearing, or deny the motion and permit refile until such time as the appeals as to the underlying State Court Judgment entered against the Debtor have been completed.

On November 28, 2016, the Debtor filed a Motion to Set Trial Date (the "Motion").

DISCUSSION

Trial courts are given broad discretion in managing their docket, and a court's determination of timeliness is reviewed for abuse of discretion. *United States v. Oregon*, 745 F.2d 550, 552 (9th Cir.1984). *Rodriguez Sarmiento v. Rodriguez Sarmiento*, 100 F. App'x 645, 647 (9th Cir. 2004).

The Debtor requests that the Court set a 2-5 day trial beginning on January 2, 2017 at 2:00 a.m. [sic]. [FN:1: The Court notes that January 2, 2017, is a federal holiday and unavailable as a trial date]. In support, the Debtor has provided a declaration to support her need to relocate to the East Coast where her child receives medical treatments. The Debtor asserts that up to this point she has expended funds staying in hotels and does not have the funds to get the medical treatment that her child requires without relocating. Debtor further asserts that she feels she is being "held hostage" by the Court continuing her matter pending resolution of her appeals.

In the instant case, an essential determination in the Complaint is the issue of fraud. The Plaintiffs have alleged that the State Court Action resulted in a Judgment of fraud as to the Debtor that would resolve the instant proceeding under a theory of issue preclusion. Based on these allegations of the Complaint, setting the case for trial or entry of summary judgment prior to resolution of the Debtor's appeals presents the risk of inconsistent judgments. The Debtor wants to relocate. Nothing in this Court's management of the case prevents the Debtor from doing so. In situations where an appeal is pending as with the instant case, courts have often determined that a stay of the case is appropriate pending resolution of appeals in other forums. *See e.g. MP3Board v. Recording Indus. Ass'n of Am., Inc.*, 2001 WL 804502, at *3 (N.D. Cal. Feb. 27, 2001).

Finally, as to service of the Motion, the Court notes that but for the fact that the Court itself was short staffed on November 23, 2016, and given the subsequent Thanksgiving holiday, the Motion was not docketed until November 28, 2016, at

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which point the Court system emailed the Motion via NEF to the Plaintiffs. Additionally, Mr. Bisom is listed as the attorney for both Plaintiffs and is registered to receive service of documents via NEF. For these reasons, the Court finds that service of the Motion was proper. Separately, the Court notes that neither party has evidenced any prejudice from the alleged "lateness" of any of the papers. Nor does the Motion present complex legal issues or voluminous amounts of evidence. For these reasons, the Court finds that service and notice were sufficient as to all parties.

TENTATIVE RULING

Based on the foregoing, the Court is inclined to DENY the Debtor's Motion but shall entertain a request by the parties for a stay of the instant proceeding.

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Nancy Ann Howell	Pro Se
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Defendant(s):

Nancy Ann Howell	Pro Se
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Movant(s):

Nancy Ann Howell	Pro Se
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Plaintiff(s):

Eisenberg Law Firm, APC	Represented By Andrew S Bisom
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Law Office of Andrew S. Bisom	Represented By Andrew S Bisom
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Trustee(s):

Steven M Speier (TR)	Pro Se
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6:13-29922 Nancy Ann Howell

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Adv#: 6:14-01070 Law Office of Andrew S. Bisom et al v. Howell

#33.00 CONT Status Conference RE: [1] Adversary case 6:14-ap-01070. Complaint by Law Office of Andrew S. Bisom, Eisenberg Law Firm, APC against Nancy Ann Howell. false pretenses, false representation, actual fraud)),(68 (Dischargeability - 523(a)(6), willful and malicious injury))

From: 5/14/14, 7/2/14, 12/10/14, 3/18/15, 4/22/15, 5/20/15, 7/22/15, 10/28/15, 12/2/15, 2/17/16, 3/2/16, 3/16/16, 4/27/16, 9/21/16

Also #30 - #32

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Nancy Ann Howell Pro Se

Defendant(s):

Nancy Ann Howell Pro Se

Plaintiff(s):

Eisenberg Law Firm, APC Represented By
Andrew S Bisom

Law Office of Andrew S. Bisom Represented By
Andrew S Bisom

Trustee(s):

Steven M Speier (TR) Pro Se

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6:13-17565 Bertrand Tenke Kengni

Chapter 7

Adv#: 6:13-01288 Romeo et al v. Kengni

#34.00 CONT Stipulation to Dismiss Adversary Proceeding Involving 523 and 727 Actions Pursuant to F.R.B.P. 7041 and F.R.C.P. 41(a)(2) Law Offices of Heidi Romeo & Associates , Heidi H Romeo

From: 2/3/16, 4/6/16, 6/29/16, 8/31/16

Also #35

EH__

Docket 78

***** VACATED *** REASON: CONTINUED TO 2/8/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bertrand Tenke Kengni

Represented By
Terrence Fantauzzi

Defendant(s):

Bertrand Tenke Kengni

Represented By
Terrence Fantauzzi
Heidi H Romeo

Movant(s):

Law Offices of Heidi Romeo &

Represented By
Heidi H Romeo

Heidi H Romeo

Represented By
Heidi H Romeo

Plaintiff(s):

Law Offices of Heidi Romeo &

Represented By

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Heidi H Romeo

Heidi H Romeo

Represented By
Heidi H Romeo

Trustee(s):

Helen R. Frazer (TR)

Pro Se

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6:13-17565 Bertrand Tenke Kengni

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Adv#: 6:13-01288 Romeo et al v. Kengni

#35.00 CONT Status Conference Re: Complaint; false pretenses, false representation, actual fraud, 68 Dischargeability - 523(a)(6), willful and malicious injury, 65 Dischargeability - other, 41 Objection / revocation of discharge - 727(c),(d),(e)

From: 10/9/13,12/11/13, 12/18/13, 3/12/14, 4/9/14, 5/21/14, 7/2/14, 10/22/14, 6/10/15, 8/26/15, 9/2/15, 11/18/15, 2/3/16, 4/6/16, 6/29/16, 8/31/16

Also # 34

EH____

Docket 1

***** VACATED *** REASON: CONTINUED TO 2/8/17 AT 2:00 P.M.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bertrand Tenke Kengni

Represented By
Terrence Fantauzzi

Defendant(s):

Bertrand Tenke Kengni

Represented By
Terrence Fantauzzi
Heidi H Romeo

Plaintiff(s):

Law Offices of Heidi Romeo &

Represented By
Heidi H Romeo

Heidi H Romeo

Represented By
Heidi H Romeo

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Trustee(s):

Helen R. Frazer (TR)

Pro Se

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6:13-17565 Bertrand Tenke Kengni

Chapter 7

Adv#: 6:15-01223 Frazer (TR) v. Kengni et al

#36.00 Motion For Summary Judgment

Also #37

EH__

Docket 19

Tentative Ruling:

12/14/16

BACKGROUND

On April 27, 2013 ("Petition Date"), Bertrand Tenke Kengni ("Debtor") filed his petition for chapter 7 relief. Helen Frazer is the duly appointed chapter 7 trustee ("Trustee"). Among the assets of the Debtor's estate is an interest in real property located at 813 North Campus Ave in Ontario, CA (the "Property"). On July 29, 2015, the Trustee filed a complaint against the Debtor and his ex-wife, Carisa Kengni, seeking authority to sell her interest in the Property.

On October 21, 2016, the Trustee filed a motion for summary judgment ("Motion") seeking entry of judgment against Carisa Kengni, authorizing the Trustee to sell the Property. Docket No. 19 of the Docket for the Adversary Proceeding indicates that the Motion was served on Carisa Kengni by the Court via NEF. Service is proper and no opposition has been filed.

DISCUSSION

As a threshold matter, the Trustee has provided evidence to establish that when Carisa Kengni failed to obtain refinance on the Property as required by the Family Court on dissolution of her marriage with the Debtor. The terms of the Family Court Order provided that failure to obtain such financing by March 7, 2012, would result in the Property being turned over to the Debtor for him to sell the Property and pay Carisa Kengni her one-half of the equity in the Property from the sale proceeds. The Trustee has indicated that there is no dispute of fact that Carisa Kengni failed to obtain financing by March 7, 2012. Thus, prepetition, by order of the Family Court,

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the Property was subject to turnover to the Debtor. There is further no dispute that the Property became property of the estate on the Petition Date.

Section 363(h) provides as follows:

(h) Notwithstanding subsection (f) of this section, the trustee may sell both the estate's interest, under subsection (b) or (c) of this section, and the interest of any co-owner in property in which the debtor had, at the time of the commencement of the case, an undivided interest as a tenant in common, joint tenant, or tenant by the entirety, only if—

- (1) partition in kind of such property among the estate and such co-owners is impracticable;
- (2) sale of the estate's undivided interest in such property would realize significantly less for the estate than sale of such property free of the interests of such co-owners;
- (3) the benefit to the estate of a sale of such property free of the interests of co-owners outweighs the detriment, if any, to such co-owners; and
- (4) such property is not used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light, or power.

11 U.S.C. § 363(h). Here, the Property is residential as such, the Trustee has succeeded in demonstrating that partition is not practicable. *See Reed v. Reed (In re Reed)*, 940 F.2d 1317, 1321 (9th Cir.1991)("[s]ince this was a residence, partition in kind was obviously not possible"). Additionally, the Trustee has provided evidence that the Property may realize approximately \$250,000 on sale, and that the liens encumbering the Property total approximately \$183,000, which would result in net equity of approximately \$67,000 and a potential benefit to the estate of approximately \$33,500. Additionally, there is no evidence to indicate the estate's undivided interest would yield more than sale free and clear of Carisa Kengni's interest. Finally, the Trustee has asserted that the Property is not used in any of the methods outlined in provision § 363(h)(4). For these reasons, in addition to the lack of opposition which this Court deems as consent to the granting of the Motion under LBR 9013-1(h), the Court finds that the Trustee has established that no genuine issue of fact or law

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exists for trial. Summary Judgment in favor of the Trustee is thus appropriate.

TENTATIVE RULING

Based on the foregoing, the Court is inclined to grant the Motion and enter Judgment in favor of the Trustee, authorizing her to sell the Property free and clear of the co-owner, Carisa Kengni's interest.

The Court makes no ruling as to the Debtor because no relief was specifically requested as to the Debtor and because the Debtor was not served with the Motion.

APPEARANCES WAIVED. Movant to lodge an order granting the Motion for the reasons set forth in this tentative, and a proposed judgment within 7 days.

Party Information

Debtor(s):

Bertrand Tenke Kengni

Represented By
Terrence Fantauzzi

Defendant(s):

Carisa Kengni

Represented By
Kamola L Gray

Bertrand Tenke Kengni

Pro Se

Movant(s):

Helen R. Frazer (TR)

Pro Se

Helen R. Frazer (TR)

Pro Se

Plaintiff(s):

Helen R. Frazer (TR)

Pro Se

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Trustee(s):

Helen R. Frazer (TR)

Pro Se

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6:13-17565 Bertrand Tenke Kengni

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Adv#: 6:15-01223 Frazer (TR) v. Kengni et al

#37.00 CONT Status Conference RE: [1] Adversary case 6:15-ap-01223. Complaint by Helen R. Frazer (TR) against Bertrand Tenke Kengni, Carisa Kengni. (Charge To Estate - \$350.00). Nature of Suit: (31 (Approval of sale of property of estate and of a co-owner - 363(h)))

From: 10/7/15, 2/3/16, 4/6/16, 6/29/16, 8/31/16

Also #36

EH__

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bertrand Tenke Kengni

Represented By
Terrence Fantauzzi

Defendant(s):

Carisa Kengni

Represented By
Kamola L Gray

Bertrand Tenke Kengni

Pro Se

Plaintiff(s):

Helen R. Frazer (TR)

Pro Se

Trustee(s):

Helen R. Frazer (TR)

Pro Se