

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, December 2, 2020

Hearing Room 302

8:00 AM
1:00-00000

Chapter

#0.00 All hearings on this calendar will be conducted remotely, using ZoomGov video and audio.

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**Video/audio web address: <https://cacb.zoomgov.com/j/1600674409>
Meeting ID: 160 067 4409
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Telephone Password: 76176048**

Docket 0

Tentative Ruling:

- NONE LISTED -

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9:30 AM

1:19-10781 Daniel Correa

Chapter 13

#1.00 Motion for relief from stay

DEUTSCHE BANK NATIONAL TRUST COMPANY

fr. 6/24/20; 7/22/20, 8/27/20; 10/7/20

Docket 36

Tentative Ruling:

This hearing was continued from 10/07/20 so that the parties could finalize an APO to resolve this matter. Nothing has been filed since the last hearing. What is the status of this Motion? This hearing was continued from 7/22/20 so that the parties could finalize an APO to resolve this matter. Nothing has been filed since the last hearing. What is the status of this Motion?

APPEARANCE REQUIRED.

6-24-20 TENTATIVE BELOW

Ch. 13 Petition Date: 04/02/2019

Plan confirmed 07/22/2019

Service: Proper. Opposition filed 6/11/2020

Property: 8101 Etiwanda Ave, Reseda, CA 91335

Property Value: \$490,000 (per debtor's schedules)

Amount Owed: \$369,282.52

Equity Cushion: 24.6%

Equity: \$120,717.48

Post-Petition Delinquency: \$7,167.74 (3 payments of \$1,922.58 plus \$1,400 post-petition advances)

Movant alleges that the last partial payment received was on or about 10/15/2019. Movant requests relief under 11 U.S.C. 362(d)(1) with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); 3(a) (Movant permitted to engage in loss mitigation activities); and 7 (relief from 4001(a)(3) relief from stay).

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CONT... Daniel Correa

Chapter 13

Debtor opposes the motion because the property is necessary for effective reorganization. Debtor wishes to enter an APO to catch up on post-petition arrears. Is Movant amenable to an APO?

Party Information

Debtor(s):

Daniel Correa

Represented By
Elena Steers

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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9:30 AM

1:19-12260 Irene Elizabeth Franklin

Chapter 13

#2.00 Motion for relief from stay

NATIONSTAR HECM ACQUISITION TRUST
2018-1

fr. 8/19/20; 10/7/20

Docket 29

Tentative Ruling:

This hearing was continued from 10/07/20 so that the parties could finalize an APO to resolve this matter. Nothing has been filed since the last hearing. What is the status of this Motion?

Appearance Required.

Ch. 13 Petition Date: 09/09/19

Plan confirmed: 12/09/19

Service: Proper. No opposition filed.

Property: 22656 Miranda Street, Woodland Hills, CA 91367

Property Value: \$668,400 (per residential appraisal) \$500,000 (per debtor's schedules)

Amount Owed: \$459,422.18 (including \$1,836.95, \$453.79 MIP, \$190 costs, \$20 advances)

Equity Cushion: 8.12%

Equity: \$40,577.82

Post-Petition Delinquency: \$3,123 (1 payment of \$2,092.00 + \$1,031.00 attorneys' fees)

Movant alleges that interest in the property is not adequately protected and that post-petition mortgage payments due on the note secured by a deed of trust have not been made.

Movant requests relief under 11 U.S.C. 362(d)(1), with specific relief

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CONT... Irene Elizabeth Franklin Chapter 13

requested in paragraphs 2 (proceed under non-bankruptcy law); 3 (Movant permitted to engage in loss mitigation activities); and 7 (waiver of the 4001(a) (3) stay).

Debtor argues there will be prejudice if Movant is granted relief and seeks to enter an APO for the delinquent amount. There appears to be sufficient equity to protect Movant's claim and a small delinquency. Have the parties discussed whether this delinquency can be cured via APO?

TELEPHONIC APPEARANCE REQUIRED.

Party Information

Debtor(s):

Irene Elizabeth Franklin

Represented By
Hasmik Jasmine Papian

Movant(s):

Nationstar HECM Acquisition Trust

Represented By
Sean C Ferry

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:12-10231 Owner Management Service, LLC

Chapter 7

#3.00 Motion for relief from stay

THE BARME FAMILY TRUST,
CAROL S. BARME AS TRUSTEE

Docket 2487

Tentative Ruling:

Ch. 11 Petition Date: 01/09/2012
Chapter 7 Conversion Date: 3/14/2012
Service: Proper. No opposition filed.
Property: 5255 Coldwater Canyon Avenue, Unit 32B, Sherman Oak, CA 91401
Property Value: \$590,000.00 (per Movant's Declarations)
Amount Owed: \$427,797.39 (\$360,674.14 to the Movant and \$67,123.25 to County of Los Angeles)
Equity Cushion: 27%
Equity: \$162,202.61
Post-Petition Delinquency: \$360,674.14.

Movant requests relief under 11 U.S.C. 362(d)(1), with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); and 6 (waiver of the 4001(a)(3) stay). Movant is the holder of the 1st Trust Deed secured by the Property based upon a loan in the original amount of \$210,000.00. On January 29, 2010, without the Movant's knowledge, a grant deed was recorded purporting to transfer all title and interest from the Borrower to the Debtor. The Debtor did not assert any interest in the Property in any of its verified schedules (Dkt. No. 32) or its verified amended schedules (Dkt. Nos. 188, 189, and 221). Further the Debtor ceased making payments on the loan since August 2015. Movant alleges that cause exists because no payments have been made on this property for over five years and because the Debtor is not the borrower subject to the loan agreement.

While there is substantial equity in the property, the Debtor has not been making payments on the loan and has not made tax payments. Also the

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1:18-11124 Ernesto Bernabe Bustamante, Jr. and Lucia Tabunda

Chapter 13

#4.00 Motion for relief from stay

LAKEVIEW LOAN SERVICING, LLC

fr. 9/24/20, 10/28/20

Docket 50

*** VACATED *** REASON: Vacated Pursuant to APO.

Tentative Ruling:

VACATED PURSUANT TO APO.
No Appearace Required.

Party Information

Debtor(s):

Ernesto Bernabe Bustamante Jr.

Represented By
Jeffrey N Wishman

Joint Debtor(s):

Lucia Tabunda Bustamante

Represented By
Jeffrey N Wishman

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:18-12042 Vrej Anbarsoun and Anahid Anbarsoun

Chapter 13

#5.00 Motion for relief from stay

JPMORGAN CHASE BANK

Docket 81

Tentative Ruling:

Ch. 13 Petition Date: 08/13/18

Plan confirmed: 03/11/19

Service: Proper. No opposition filed.

Property: 2017 Subaru Crosstrek (VIN Number JF2GPABC4HH242893)

Property Value: \$668,400 (per residential appraisal) \$500,000 (per debtor's schedules)

Amount Owed: \$0.00

Equity Cushion:

Equity: \$0.00

Post-Petition Delinquency: \$ 0.00

Movant requests relief under 11 U.S.C. 362(d)(1), with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); and 7 (waiver of the 4001(a)(3) stay). Movant alleges that the lease has matured and the Debtor voluntarily surrendered the Property.

The Court finds cause exists for lifting the Automatic Stay.

Disposition: GRANT relief under 11 U.S.C. 362(d)(1), with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); and 7 (waiver of the 4001(a)(3) stay).

Movant to lodge order with the Court within 7 days.

NO APPARANCE REQUIRED.

Party Information

Debtor(s):

Vrej Anbarsoun

Represented By

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CONT... Vrej Anbarsoun and Anahid Anbarsoun

Chapter 13

David A Tilem
Donna R Dishbak

Joint Debtor(s):

Anahid Anbarsoun

Represented By
David A Tilem
Donna R Dishbak

Movant(s):

JPMorgan Chase Bank, N.A.

Represented By
Joseph C Delmotte

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:18-12843 Francisco Romero

Chapter 13

#6.00 Motion for relief from stay

HOMEBRIDGE FINANCIAL SERVICES, INC.

Docket 61

Tentative Ruling:

Ch. 13 Petition Date: 11/21/18

Plan confirmed: 03/11/19

Service: Proper. No opposition filed.

Property: 13219 Bromwich Street, Los Angeles, CA 91331

Property Value: \$526,169.00 (per debtor's schedules)

Amount Owed: \$446,142.01 (per Movant's papers)

Equity Cushion: 15%

Equity: \$80,026.99

Post-Petition Delinquency: \$41,862.38 (4 payments of \$2,606.35, 5 Payments of \$2,604.26, 8 payments of \$2,622.39, less \$2,563.44 in suspense account).

Movant requests relief under 11 U.S.C. 362(d)(1), with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); 6 (co-debtor stay); and 7 (waiver of the 4001(a)(3) stay). Movant alleges that cause exists for lifting the stay because the Debtor has failed to make post-petition mortgage payments. The last payment received by the movant occurred on 9/11/2019.

There is still some equity in the property; however, the lack of post-petition payments is rapidly increasing and the equity cushion is diminishing. Is the Movant amendable to entering into an APO?

TELEPHONIC APPEARANCE REQUIRED.

Party Information

Debtor(s):

Francisco Romero

Represented By

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CONT... Francisco Romero

Kevin T Simon

Chapter 13

Movant(s):

HomeBridge Financial Services, Inc.

Represented By
Darlene C Vigil

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:19-12727 Tacarra Sheana Carthan

Chapter 7

#7.00 Motion for relief from stay

CARMEN BARTON AND
ANTHONY CARTHAN

Docket 28

Tentative Ruling:

Petition Date: 10/29/19

Reopened 5/06/2020 (Ch.7)

Service: Proper.

Movant: Nicholas Garcia

Relief Sought to: Pursue Pending Litigation Commence Litigation

Pursue Insurance Other

Litigation Information

Case Name: Camren Barton & Anthony Carthan v. Tacarra Carthan (Dkt. No. 20STCV42159)

Court/Agency: Superior Court of the State of California, County of Los Angeles

Date Filed: 11/4/2020

Trial Start Date: NA

Action Description: False Light, Intentional Infliction of Emotional Distress, Malicious Prosecution, and Abuse of Civil Process.

Grounds

Bad Faith Claim is Insured Claim Against 3rd Parties

Nondischargeable Mandatory Abstention Non-BK Claims Best

Resolved in Non-BK Forum Other:

Movant requests relief under 11 U.S.C. 362(d)(1), with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); 3 (retroactive stay); 7 (order binding and effective on any future bankruptcy case, no matter who the debtor maybe, without further notice).

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CONT... Tacarra Sheana Carthan

Chapter 7

Debtor opposes this motion because it will prejudice her to prosecute this case in a non-bankruptcy forum. Additionally, this case was filed after the bankruptcy was commenced.

An act taken in violation of the automatic stay is void, not merely voidable, is well-established law in the Ninth Circuit. *Gruntz v. County of Los Angeles* (In re Gruntz), 202 F.3d 1074, 1082 (9th Cir. 2000); see also *Far Out Productions, Inc. v. Oskar et al.*, 247 F.3d 986, 995 (9th Cir. 2001). Further, “judicial proceedings in violation of the automatic stay are void.” In re Gruntz at 1074 (quoting *Phoenix Bond & Indemnity Co. v. Shamblin* (In re Shamblin), 890 F.2d 123, 125 (9th Cir. 1989)). An action that violates the stay is still void despite a party’s lack of knowledge of the pending bankruptcy. See e.g., *40235 Washington Street Corporation v. Lusardi* (In re Lusardi), 329 F.3d 1076 (9th Cir. 2003) (the Ninth Circuit deemed a county tax sale on real property void even though neither the county nor the purchaser had knowledge of the bankruptcy case).

Commencing a lawsuit is an action in which the automatic stay seeks to prohibit, whether plaintiffs were aware of the bankruptcy or not. Any argument that the Court should retroactively grant relief runs afoul with the Supreme Court’s holding in *Roman Catholic Archdiocese of San Juan, Puerto Rico v. Acevedo Feliciano*, 2020 WL 871715, (U.S. Feb. 24, 2020).

Disposition: DENY Movant’s motion for relief. Once the current issues are resolved, the case can be closed and this lawsuit can be pursued.

Appearance Required.

Party Information

Debtor(s):

Tacarra Sheana Carthan

Represented By
Daniel King

Movant(s):

Anthony Carthan

Pro Se

Carmen Barton

Pro Se

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CONT... Tacarra Sheana Carthan

Chapter 7

Trustee(s):

Amy L Goldman (TR)

Pro Se

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1:19-13009 Edward V. Marquez and Elva Marquez

Chapter 13

#8.00 Motion for relief from stay

CITIBANK N.A.

Docket 55

Tentative Ruling:

Ch. 13 Petition Date: 12/03/19
Plan confirmed: 03/12/2020
Service: Proper. Opposition filed on 11/20/2020 (Dkt. No. 60)
Property: 13760 Almetz St., Los Angeles CA 91342
Property Value: \$617,400.00 (per debtor's schedules)
Amount Owed: \$607,074.14 (\$576,618.14 to the Movant and \$30,456.00. to junior lien holder).
Equity Cushion: 1.7%
Equity: \$10,326.00
Post-Petition Delinquency: \$16,546.38 (2 Payments of \$2,351.17, 6 payments of \$2,351.17, less suspense account \$2,262.98)

Movant requests relief under 11 U.S.C. 362(d)(1), with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); 3 (right to enter into forbearance agreement, loan modification, or refinance agreement); and 7 (waiver of the 4001(a)(3) stay). Movant alleges that cause exists for lifting the stay because the Debtor has failed to make post-petition payments. The last payment received by the Movant was on 03/04/2020.

Debtor opposes the motion because the Debtor allegedly is experiencing financial hardship as a result of COVID-19. Further, the Debtor has communicated to the Movant that he wishes to enter into an APO. Are parties amendable to entering into an APO?

TELEPHONIC APPEARANCE REQUIRED.

Party Information

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CONT... Edward V. Marquez and Elva Marquez

Chapter 13

Debtor(s):

Edward V. Marquez

Represented By
Joshua L Sternberg

Joint Debtor(s):

Elva Marquez

Represented By
Joshua L Sternberg

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:20-10495 Edgar Hairapetyan

Chapter 13

#9.00 Motion for relief from stay

USB LEASING LT

Docket 35

Tentative Ruling:

Ch. 13 Petition Date: 02/28/2020

Plan Not Confirmed.

Service: Proper. No opposition filed.

Property: 2020 Porsche Macan (VIN Number WP1AA2ALLB01134)

Property Value: \$0.00 (per debtor's schedules) (Leased vehicle ex-wife drives and makes payments)

Amount Owed: \$72,258.16

Equity Cushion: 0

Equity: \$0.00

Post-Petition Delinquency: \$4,824.90 (5 payment of 964.98)

Movant requests relief under 11 U.S.C. 362(d)(1), with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); 5 (relief from Co-debtor stay); and 6 (waiver of the 4001(a)(3) stay). Movant alleges that the fair market value of the Property is declining and payments are not being made to Movant sufficient to protect Movant's interest against that decline. The last payment was received on 03/11/2020.

The Court finds cause exists for lifting the Automatic Stay.

Disposition: GRANT relief under 11 U.S.C. 362(d)(1), with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); 5 (relief from Co-debtor stay); and 6 (waiver of the 4001(a)(3) stay).

NO APPEARANCE REQUIRED.

Movant to lodge an order with the Court within 7 days.

Party Information

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CONT... Edgar Hairapetyan

Chapter 13

Debtor(s):

Edgar Hairapetyan

Represented By
Elena Steers

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:20-11063 Joby John Harte

Chapter 7

#10.00 Motion for relief from stay

JPMORGAN CHASE BANK

Docket 55

Tentative Ruling:

Ch. 13 Petition Date: 06/15/2020

Plan Not Confirmed.

Service: Proper. No opposition filed.

Property: Jaguar I-Pace (VIN Number SADHD2S16K1F68749)

Property Value: \$0.00 (per debtor's schedules) (Leased)

Amount Owed: \$60,970.40

Equity Cushion: 0

Equity: \$0.00

Post-Petition Delinquency: \$3,564.92 (4 payment of 891.23)

Movant requests relief under 11 U.S.C. 362(d)(1), with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); and 6 (waiver of the 4001(a)(3) stay). Movant alleges that cause exists for lifting the stay because the Debtor has failed to make payments due under the lease agreement. The last payment was received on March 2, 2020.

The Court finds cause exists for lifting the Automatic Stay.

Disposition: GRANT relief under 11 U.S.C. 362(d)(1), with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); and 6 (waiver of the 4001(a)(3) stay).

NO TELEPHONIC APPEARANCE REQUIRED.

Movant to lodge order with the Court within 7 days.

Party Information

Debtor(s):

Joby John Harte

Represented By

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CONT... Joby John Harte

Chapter 7

Henry Glowa

Movant(s):

JPMorgan Chase Bank, N.A.

Represented By
Joseph C Delmotte

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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1:20-11701 Dawn Tintari Schillinger

Chapter 7

#11.00 Motion for relief from stay

FORD MOTOR CREDIT CO LLC

Docket 9

Tentative Ruling:

Ch. 13 Petition Date: 9/23/2020

Plan Not Confirmed.

Service: Proper. No opposition filed.

Property: 2016 Ford T150 (VIN Number 1FYE1ZM8GK40635)

Property Value: \$17,000.00 (per debtor's schedules) (Leased)

Amount Owed: \$18,487.16

Equity Cushion: 0

Equity: \$0.00

Post-Petition Delinquency: \$486.95 (Appears to be one post-petition payment behind, total prepetition and post-petition arrears \$1,996.50)

Movant requests relief under 11 U.S.C. 362(d)(1), with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); and 6 (waiver of the 4001(a)(3) stay). Movant alleges that cause exists for lifting the stay because there is no equity in the property and the Debtor intends to surrender the Vehicle.

The Court finds cause exists for lifting the Automatic Stay.

Disposition: GRANT relief under 11 U.S.C. 362(d)(1), with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); and 6 (waiver of the 4001(a)(3) stay).

NO TELEPHONIC APPEARANCE REQUIRED.

Movant to lodge order with the Court within 7 days.

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CONT... Dawn Tintari Schillinger

Chapter 7

Debtor(s):

Dawn Tintari Schillinger

Represented By
David S Hagen

Movant(s):

Ford Motor Credit Company LLC

Represented By
Sheryl K Ith

Trustee(s):

David Seror (TR)

Pro Se

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1:20-11733 Amy Brachetti

Chapter 7

#12.00 Motion for relief from stay

NISSAN-INFINITI LT

Docket 9

Tentative Ruling:

Ch. 13 Petition Date: 09/25/2020

Plan Not Confirmed.

Service: Proper. No opposition filed.

Property: 2019 Infiniti Q50 (VIN Number JN1EV7AP0KM543360)

Property Value: \$0.00 (per debtor's schedules) (Leased)

Amount Owed: \$34,519.09

Equity Cushion: 0

Equity: \$0.00

Post-Petition Delinquency: \$0

Movant requests relief under 11 U.S.C. 362(d)(1), with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); and 6 (waiver of the 4001(a)(3) stay). Movant alleges that cause exists for lifting the stay because the Debtor has failed to make payments due under the lease agreement, the Debtor has no equity in the leased vehicle, and there is no proof of insurance.

The missed payments all occurred prepetition; however, additional payments have come due since the filing of the motion so there is the possibility that these payments have been missed. Cause exists for granting relief because the Debtor has not provided the Movant with proof of insurance. Additionally, the Property does not appear to be necessary for an effective reorganization because the Debtor has no equity in the Property.

Disposition: GRANT relief under 11 U.S.C. 362(d)(1), with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); and 6 (waiver of the 4001(a)(3) stay).

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CONT... Amy Brachetti

Chapter 7

NO TELEPHONIC APPEARANCE REQUIRED.
Movant to lodge order with the Court within 7 days.

Party Information

Debtor(s):

Amy Brachetti

Represented By
Anita Khachikyan

Movant(s):

Nissan-Infiniti LT, as serviced by

Represented By
Kirsten Martinez

Trustee(s):

Amy L Goldman (TR)

Pro Se

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1:20-11787 Nuttamon Hasdin

Chapter 7

#13.00 Motion for relief from stay

HONDA LEASE TRUST

Docket 12

Tentative Ruling:

Ch. 13 Petition Date: 10/06/2020
Plan Not Confirmed.
Service: Proper. No opposition filed.
Property: 2019 Honda Fit (VIN # 3HGGK5H80KM722439)
Property Value: \$17,897.73 (per debtor's schedules)
Amount Owed: \$18,781.72
Equity Cushion: 0
Equity: \$0.00
Post-Petition Delinquency: \$0

Movant requests relief under 11 U.S.C. 362(d)(1), with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); and 6 (waiver of the 4001(a)(3) stay). Movant alleges that cause exists for lifting the stay because the lease was rejected per the Debtor's Statement of Intentions and the Movant has since regained the Property.

The Court finds that cause exists for lifting the stay.

Disposition: GRANT relief under 11 U.S.C. 362(d)(1), with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); and 6 (waiver of the 4001(a)(3) stay).

NO APPEARANCE REQUIRED

Movant to lodge order with the Court within 7 days.

Party Information

Debtor(s):

Nuttamon Hasdin

Pro Se

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CONT... Nuttamon Hasdin

Chapter 7

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, December 2, 2020

Hearing Room 302

10:00 AM

1:20-11880 Farima Jafarzadeh Hirschi and Que Hirschi

Chapter 13

#14.00 Motion for relief from stay

FINANCIAL SERVICES VEHICLE TRUST

Docket 21

Tentative Ruling:

Ch. 13 Petition Date: 10/21/2020

Plan Not Confirmed.

Service: Proper. Opposition filed on 11/15 (Dkt. No. 26)

Property: 2018 BMW X3 xDrive30i Sport Utility 4D (VIN # 5UXTR9C5XJLC7541)

Property Value: \$0.00 (per debtor's schedules) (Lease)

Amount Owed: \$38,403.07

Equity Cushion: 0

Equity: \$0.00

Post-Petition Delinquency: \$0

Movant requests relief under 11 U.S.C. 362(d)(1), with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); and 6 (waiver of the 4001(a)(3) stay). Movant alleges that cause exists for lifting the stay because the lease was rejected per the Debtor's Statement of Intentions and the Movant has since regained the Property.

The Court finds that cause exists for lifting the stay.

Disposition: GRANT relief under 11 U.S.C. 362(d)(1), with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); and 6 (waiver of the 4001(a)(3) stay). Movant asserts cause exists that the fair market value of the Property is declining and payments are not being made to Movant sufficient to protect Movant's interest against that decline.

Debtor opposes the motion on several grounds. First, the Debtor asserts that the Movant does not have standing. The lease agreement was between the Debtor and BMW Financial Services NA, LLC, and the Movant has not shown

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CONT... **Farima Jafarzadeh Hirschi and Que Hirschi** **Chapter 13**

why it may seek relief. The Second rationale for opposing relief from stay is that the Debtor does not believe there is a basis for relief.

Movant's sole basis for seeking relief is because the Property is a depreciating asset and the Debtor missed payments; however, the missed payments occurred prepetition. The Movant has not sufficiently demonstrated that cause exists for lifting the automatic stay.

Disposition: DENY Movant's motion.

APPEARANCE REQUIREDCh. 13 Petition Date: 10/21/2020

Plan Not Confirmed.

Service: Proper. Opposition filed on 11/15 (Dkt. No. 26)

Property: 2018 BMW X3 xDrive30i Sport Utility 4D (VIN # 5UXTR9C5XJLC75410)

Property Value: \$0.00 (per debtor's schedules) (Lease)

Amount Owed: \$38,403.07

Equity Cushion: 0

Equity: \$0.00

Post-Petition Delinquency: \$0

Movant requests relief under 11 U.S.C. 362(d)(1), with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); and 6 (waiver of the 4001(a)(3) stay). Movant alleges that cause exists for lifting the stay because the lease was rejected per the Debtor's Statement of Intentions and the Movant has since regained the Property.

The Court finds that cause exists for lifting the stay.

Disposition: GRANT relief under 11 U.S.C. 362(d)(1), with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); and 6 (waiver of the 4001(a)(3) stay). Movant asserts cause exists that the fair market value of the Property is declining and payments are not being made to Movant sufficient to protect Movant's interest against that decline.

Debtor opposes the motion on several grounds. First, the Debtor asserts that the Movant does not have standing. The lease agreement was between the

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CONT... **Farima Jafarzadeh Hirschi and Que Hirschi** Chapter 13

Debtor and BMW Financial Services NA, LLC, and the Movant has not shown why it may seek relief. The Second rationale for opposing relief from stay is that the Debtor does not believe there is a basis for relief.

Movant's sole basis for seeking relief is because the Property is a depreciating asset and the Debtor missed payments; however, the missed payments occurred prepetition. The Movant has not sufficiently demonstrated that cause exists for lifting the automatic stay.

Disposition: DENY Movant's motion.

APPEARANCE REQUIRED

Party Information

Debtor(s):

Farima Jafarzadeh Hirschi

Represented By
Jeffrey J Hagen

Joint Debtor(s):

Que Hirschi

Represented By
Jeffrey J Hagen

Movant(s):

Financial Services Vehicle Trust

Represented By
Marjorie M Johnson

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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10:00 AM

1:20-11971 Corwyn Andre Lewis

Chapter 13

#15.00 Motion for relief from stay

PS FUNDING, INC.

Docket 11

Tentative Ruling:

Ch. 13 Petition Date: 11/02/2020
Case Dismissed on 11/20/2020
Service: Proper. No Opposition filed
Property: 9436 Foster Road, Bellflower, CA 90706
Property Value: \$500,000.00 (per debtor's schedules)
Amount Owed: \$636,508.16 (\$506,508.16 to Movant and \$130,000.00 to junior lien holder).
Equity Cushion: 0%
Equity: \$0.00
Post-Petition Delinquency: \$0

Movant requests relief under 11 U.S.C. 362(d)(1) with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); 3 (right to enter into forbearance agreement, refinance agreement, or loan modification); 6 (Co-debtor stay); 7 (relief from 4001(a)(3) relief from stay); and 9 (relief binding on any other cause purporting to affect the Property for 2 years). Movant alleges that cause exists because there is no equity cushion and because this case was filed in bad faith.

On or about November 26, 2018, PS Funding and Borrower entered into that certain Loan Agreement (the "Loan Agreement") whereby Darius Rutledge ("Borrower") agreed to borrow, and PS Funding agreed to make the Loan to Borrower for the purposes of acquiring the Property with the intent to resell during the term of the loan.

On July 7, 2020, Borrower filed a voluntary petition for relief under chapter 13 to thwart the sale of the property, commencing Case No. 2:20-bk-16104-WB.

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CONT... Corwyn Andre Lewis

Chapter 13

From July 30, 2020, to August 10, 2020, the Borrower filed a series of motions to dismiss the First Bankruptcy Case and withdrawals of same. Two days after the First Bankruptcy Case was dismissed, on August 12, 2020, Borrower filed a second voluntary chapter 13 case, commencing Case No. 2:20-bk-17322-WB. On September 15, 2020, Lender moved for relief from stay under sections 362(d)(1) and 362(d)(2).²³ On October 2, 2020, four days prior to the hearing on Lender's stay relief motion, Borrower requested a voluntary dismissal of the Second Bankruptcy Case.²⁴ On October 5, 2020, the Court dismissed the Second Bankruptcy Case with a 180-day bar to refiling.

On October 13, 2020, Jaliyah Rutledge filed a voluntary chapter 13 bankruptcy, commencing Case No. 6:20-bk-16809-WJ. Also on October 13, 2020, via grant deed, Borrower transferred an interest in the Property to Ms. Rutledge. Also on October 13, 2020, the date of the continued Trustee's Sale, Lender received a facsimile message containing notice of the Third Bankruptcy Case as well as the First Grant Deed, apparently purporting to further stay the Trustee's Sale.²⁸ On October 28, 2020, the Court dismissed Ms. Rutledge's bankruptcy case due to her failure to file case commencement documents.

Via grant deed dated October 30, 2020, the Borrower transferred an interest in the Property to Debtor (the "Second Grant Deed").³⁴ The Second Grant Deed does not appear to have been recorded. The Debtor filed this bankruptcy case on November 2, 2020, and it was dismissed on 11/20/2020.

Even though the case has been dismissed, the Movant continues to seek in rem relief as to the Property.

The Court finds cause exists for granting in rem relief.

Disposition: Deny relief under 11 U.S.C. 362(d)(1) with specific relief requested in paragraphs 2 (proceed under non-bankruptcy law); 3 (right to enter into forbearance agreement, refinance agreement, or loan modification); 6 (Co-debtor stay); 7 (relief from 4001(a)(3) relief from stay) as moot. GRANT relief under 11 U.S.C. 362(d)(1) (9) (relief binding on any other cause purporting to affect the Property for 2 years).

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CONT... Corwyn Andre Lewis

Chapter 13

No Appearance Required.
Movant to lodge an order with the Court within 7 days.

Party Information

Debtor(s):

Corwyn Andre Lewis

Pro Se

Movant(s):

PS Funding, Inc., master servicing

Represented By
Eric S Pezold
Andrew Still

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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10:30 AM

1:12-10231 Owner Management Service, LLC

Chapter 7

#16.00 Eighth Interim Application of Brutzkus Gubner,
Counsel for the Chapter 7 Trustee, for
Compensation of Fees and Expenses

Period: 11/1/2019 to 10/31/2020,
Fee: \$158,297.85, Expenses: \$2,655.90.

Docket 2490

***** VACATED *** REASON: Notice filed Reset to 12/9/20 at 10:30 am, per
moving requested (eg)**

Tentative Ruling:

VACATED: Moved to December 9, 2020 at 10:30am
No appearance required.

Party Information

Debtor(s):

Owner Management Service, LLC Pro Se

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Michael W Davis
David Seror
David Seror (TR)
Steven T Gubner
Reagan E Boyce
Jessica L Bagdanov
Reed Bernet
Talin Keshishian
Jorge A Gaitan
Robyn B Sokol
Jessica Wellington

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1:12-10231 Owner Management Service, LLC

Chapter 7

#17.00 Seventh Application for Interim Compensation
by David Seror, Chapter 7 Trustee;

Period: 3/21/2012 to 11/11/2020,
Fee: \$125,000.00, Expenses: \$400.93.

Docket 2495

*** VACATED *** REASON: VACATED: Moved to December 9, 2020 at
10:30am

Tentative Ruling:

VACATED: Moved to December 9, 2020 at 10:30am
No Appearance Required.

Party Information

Debtor(s):

Owner Management Service, LLC Pro Se

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Michael W Davis
David Seror
David Seror (TR)
Steven T Gubner
Reagan E Boyce
Jessica L Bagdanov
Reed Bernet
Talin Keshishian
Jorge A Gaitan
Robyn B Sokol
Jessica Wellington

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1:12-10231 Owner Management Service, LLC

Chapter 7

#18.00 Motion for Order Authorizing Chapter 7 Trustee
to Make Interim Distributions

Docket 2496

*** VACATED *** REASON: Withdrawal filed by Trustee's attorney -
Doc. #2436. If

Tentative Ruling:

VACATED:

No Apperance required.

Party Information

Debtor(s):

Owner Management Service, LLC

Pro Se

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Michael W Davis
David Seror
David Seror (TR)
Steven T Gubner
Reagan E Boyce
Jessica L Bagdanov
Reed Bernet
Talin Keshishian
Jorge A Gaitan
Robyn B Sokol
Jessica Wellington

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1:12-10231 Owner Management Service, LLC

Chapter 7

#19.00 Eight Interim Fee Application for Allowance
and Payment of Fees and Reimbursement
of Expenses of Final Advisors and Consultants
for Trustee

Docket 2482

*** VACATED *** REASON: VACATED: Moved to December 9, 2020 at
10:30am

Tentative Ruling:

VACATED: Moved to December 9, 2020 at 10:30am
No Appearace Required

Party Information

Debtor(s):

Owner Management Service, LLC

Pro Se

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Michael W Davis
David Seror
David Seror (TR)
Steven T Gubner
Reagan E Boyce
Jessica L Bagdanov
Reed Bernet
Talin Keshishian
Jorge A Gaitan
Robyn B Sokol

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1:19-12102 Hawkeye Entertainment, LLC

Chapter 11

- #20.00** Motion of Debtor for Attorney Fees and Costs Re Trial on Contested Motion for an Order
(1) Authorizing the Assumption of Non-Residential Real Property Lease and Sublease;
(2) Determining the Debtor and Sublessor not to be in Breach or Default, thereby deeming them in Compliance with Bankruptcy Code § 365(b)(1)(a) and Excusing the Debtor from any additional Compliance with § 365(b)(1)(b) and (c) [Docket No. 21]

Docket 232

Tentative Ruling:

On July 17, 2009, Hawkeye Entertainment, LLC (the "Debtor") entered into a lease agreement ("Lease") with Pax America Development, LLC ("PAX"). Pursuant to the terms of the Lease, the Debtor was entitled to use the first four floors and the basement of a building located at 618 South Spring Street, Los Angeles, California, more commonly referred to as the Pacific Stock Exchange Building (the "Property"). The Debtor paid \$27,500 for rent per month according to the terms of the Lease.

On September 30, 2013, the Debtor filed a Chapter 11 petition, 1:13-bk-16307-MT ("Prior Bankruptcy Case"). The Debtor sought to assume the Lease. The landlord at the time was New Vision Horizon, LLC ("New Vision"), who acquired the Property through a foreclosure sale. The Property is now owned by Smart Capital, LLC ("Landlord"). The motion to assume the lease was ultimately resolved through a Settlement Agreement.

Section 22.11(q) of the 2009 Lease provides:

In the event that, at any time after the date of this Lease, either Landlord or Tenant shall institute any action or proceeding against the other relating to the provisions of this Lease or any default hereunder,

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Hawkeye Entertainment, LLC

Chapter 11

the party not prevailing in such action or proceeding shall reimburse the prevailing party for its actual attorneys' fees, and all fees, costs and expenses incurred in connection with such action or proceeding, including, without limitation, any post-judgment fees, costs or expenses incurred on any appeal or in collection of any judgment.

Similarly, Section 17 of the Settlement Agreement provides:

Attorneys' Fees. Each Party hereto shall bear its own attorneys' fees and costs incurred in connection with the Bankruptcy Proceeding, the State Court Actions and this Agreement and the exhibits entered into in connection with this Agreement. In the event that any Party files or prosecutes any action to enforce or interpret the Agreement, or any action arising out of this Agreement, the prevailing Party in any such action shall be entitled to recover from the non-prevailing Party all reasonable costs and attorneys' fees incurred therein, including, without limitation, the costs and expenses of any expert witnesses.

The First Amendment entered into in connection with the Settlement Agreement, provides, among other things, as follows:

24. Ratification. Landlord and Tenant hereby ratify and confirm all of the terms and conditions of the [2009] Lease as modified by the First Amendment.

26. Remainder Of Lease Unmodified. Except as set forth in this First Amendment, the parties agree that the [2009] Lease is unmodified and is in full force and effect.

The Debtor filed for bankruptcy under Chapter 11 of the Bankruptcy Code and filed a motion to assume the Lease ("Assumption Motion"). The Landlord opposed the Assumption Motion and the Court conducted a trial. The Court found that the Landlord failed in its' burden of proof to show the Debtor was in default of the Lease and granted the Assumption Motion.

Debtor's Counsel moves for an award of \$813,531.97 in fees and costs against the Landlord. The Landlord opposes this motion.

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California Civil Code Section 1717:

The general rule is that the prevailing party is not entitled to collect reasonable attorney's fees from the losing party. Travelers Cas. & Sur. Co. of Am. v. PG&E, 549 U.S. 443, 448 (2007). This default rule can be overcome by an applicable statute or enforceable contract. Id. State law controls an action on a contract; thus, a party to an action on a contract is entitled to an award of fees if the contract provides for an award and state law authorizes fee shifting agreements. Heritage Ford v. Baroff (In re Baroff), 105 F.3d 349, 442-3 (9th Cir. 1997).

California Civil Code section 1717 authorizes attorney's fees and costs in any action on a contract, "where the contract specifically provides that attorney's fees and costs, which are incurred to enforce that contract, shall be awarded either to one of the parties or to the prevailing party." Under California law, a tort action for fraud arising out of a contract is not an action on a contract within the meaning of section 1717. In re Baroff, 105 F.3d at 443. Section 1717 is narrowly applied. Redwood Theatres, Inc. v. Davison (In re Davison), 289 B.R. 716, 723 (B.A.P. 9th Cir. 2003) (*relying on Santisas v. Goodin*, 17 Cal. 4th 599, 615 (Cal. 1998).) Section 1717 applies only to actions that contain a contract claim. Id. at 724. In In re Davison, the court held that section 1717 was not applicable because the complaint did not contain a breach of contract claim and the only claim asserted was a nondischargeability claim based on fraud. Id.

The effect of section 1717 is to make reciprocal an otherwise unilateral contractual obligation to pay attorney's fees. Santisas v. Goodin, 17 Cal. 4th 599, 610-11, 71 Cal. Rptr. 2d 830, 951 P.2d 399 (1998). "[t]hree conditions must be met before [section 1717] applies." In re Penrod, 802 F.3d 1084, 1087 (9th Cir. 2015). First, the action generating the fees must have been an action "on a contract." Id. Second, the contract must provide that attorney's fees incurred to enforce it shall be awarded either to one of the parties or to the prevailing party. Id. And third, the party seeking fees must have prevailed in the underlying action. Id. at 1087-88.

The California Supreme Court has explained that "section 1717 applies only to actions that contain at least one contract claim," and that "[i]f an action asserts both contract and tort or other noncontract claims, section 1717 applies only to attorney fees incurred to litigate the contract claims." Santisas, 17 Cal. 4th at 615. Consistent

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with *Santisas*, the Ninth Circuit has previously held that a nondischargeability action is "on a contract" within [section 1717](#) if "the bankruptcy court needed to determine the enforceability of the . . . agreement to determine dischargeability." *In re Baroff*, [105 F.3d 439, 442 \(9th Cir. 1997\)](#).

The Ninth Circuit has held that an adversary proceeding in bankruptcy court was not "on a contract" within the meaning of [Section 1717](#) where the action neither litigated the validity of the contract nor required the bankruptcy court to consider "the state law governing contractual relationships." *In re Johnson*, 756 F.2d 738, 740 (9th Cir. 1985). More broadly, we instructed that when "federal and not state law govern[s] the substantive issues involved in the [adversary proceeding]," we may not "award[] attorney's fees pursuant to a state statute." *Id.* at 741.

First the Court has to address whether this action was "on the contract." Debtor's Counsel asserts the fees and costs in connection with trial were necessary to preserve the Debtor's rights under the Lease. Further, the Landlord's asserted defaults and opposition to the Assumption Motion, all arise directly out of the Lease. The only possible source of the Landlord's asserted rights and claims was the contract. The Landlord believes that this is not an action on the contract because this motion to assume the lease was brought pursuant to 11 U.S.C §365. A debtor is required to file a motion to assume the lease regardless of whether there is any dispute with a landlord or not.

The cases involving California Civil Code §1717 as applied to bankruptcy proceedings mostly deal with fraudulent transfer actions, and the applicability of § 1717 to motions to assume a lease under 11 U.S.C. §365 appears to be an issue of first impression. Under California law, an action is deemed to be "on a contract" when a party seeks to enforce, or avoid enforcement of, the provisions of the contract. *City of Emeryville v. Robinson*, 621 F.3d 1251, 1267 (9th Cir. 2010); *Douglas E. Barnhart, Inc. v. CMC Fabricators, Inc.*, 211 Cal. App.4th 230 (2012), 239; *Turner v. Schultz*, 175 Cal. App.4th 974, 980 (2009). In *Penrod v. Americredit Financial*, 802 F. 3d 1084 (9th Cir. 2015), a creditor sought to enforce the provisions of its contract with the Debtor when it objected to confirmation of the Debtor's Chapter 13 Plan. The plan treated the creditor's claim as only partially secured, but the creditor insisted that it was entitled to have its claim treated as fully secured. The only possible source of that asserted right was the contract. Because the creditor was seeking to enforce terms of

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the contract, the Ninth Circuit concluded that the issue was "on the contract."

While the very nature of this §365 motion to assume the lease is premised on the fact that there is a valid lease – contract – to assume, the premise of the Landlord's objections to the motion to assume and to the two motions to use the Property for religious purposes and for virtual events stem from the terms of the Lease (estoppel certificate, subordination agreement, unlawful use of Property, etc.). The ultimate issue that the Court had to decide at trial was whether the Debtor was in default of the Lease which required the Court to ultimately consider the terms of the Lease. The Contract and its terms were central in every aspect of the Lease Assumption Motion and the two motions to use Property. A motion to assume could turn on issues other than a breach of the lease where the breach is found to have occurred, but that was not the case here. Accordingly, the first element of "on the contract" has been satisfied as to those specific motions.

The second issue is whether the contract provides that the attorney's fees incurred to enforce it shall be awarded either to one of the parties or to the prevailing party. The Landlord argues that there is no contractual basis for fees because (1) the settlement agreement is inapplicable and (2) the Lease is not applicable because the Assumption Motion is not "any action or proceeding against" the Landlord. This requires the Court to interpret the two provisions articulated previously. The Lease provides in relevant part: "In the event that, at any time after the date of this Lease, either Landlord or Tenant shall institute any action or proceeding against the other relating to the provisions of this Lease or any default hereunder...". Further, the settlement agreement provides in relevant part:

In the event that any Party files or prosecutes any action to enforce or interpret the Agreement, or any action arising out of this Agreement, the prevailing Party in any such action shall be entitled to recover from the non-prevailing Party all reasonable costs and attorneys' fees incurred therein, including, without limitation, the costs and expenses of any expert witnesses.

The issue in these motions really focused on the Lease and the enforcement of the terms therein. The Settlement Agreement was not directly at issue; however, as how the terms of the Lease were amended by the Settlement Agreement were not at issue. The question of "**any action or proceeding against the other**" will ultimately

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determine whether this element has been satisfied.

The basic goal of contract interpretation is to give effect to the parties' mutual intent at the time of contracting. Cal. Civ. Code § 1636; Bank of the West v. Superior Court 2 Cal.4th 1254, 1264 (1992). California recognizes the objective theory of contracts (Berman v. Bromberg 56 Cal.App.4th 936, 948 (1997), under which "[i]t is the objective intent, as evidenced by the words of the contract, rather than the subjective intent of one of the parties, that controls interpretation." Titan Group, Inc. v. Sonoma Valley County Sanitation Dist. 164 Cal. App. 3d 1122, 1127 (1985). The parties' undisclosed intent or understanding is irrelevant to contract law. Berman, 56 Cal.App.4th at p. 948. When a contract is reduced to writing, the parties' intention is determined from the writing alone, if possible. Civ. Code, § 1639. The words of a contract are to be understood in their ordinary and popular sense." Cal. Civ. Code § 1644; see also Lloyd's Underwriters v. Craig & Rush, Inc. 26 Cal.App.4th 1194, 1197–1198 (1994) ("We interpret the intent and scope of the agreement by focusing on the usual and ordinary meaning of the language used and the circumstances under which the agreement was made").

The Landlord here wants the Court to interpret this phrase to mean that the Debtor or Landlord needed to commence a lawsuit against the other. None of these terms are defined and the language is broad – "any" action or proceeding. The Landlord instituted this chain of events by serving a notice of default for alleged breaches under the Lease. The Debtor filed this bankruptcy to protect the Lease and moved to assume the Lease. The commencement of an action against the Debtor, triggering necessary litigation, satisfies "any action or proceeding against the other." If this phrase was intended to be limited to court proceedings, then the phrase would have either been prefaced by the term "legal" or read "on a specific lawsuit or litigation." To reach the interpretation that the Landlord wants the Court to reach, the Court would need to rewrite the Lease. Had the Debtor filed bankruptcy for reasons other than the Landlord commencing default proceedings, (e.g., cash flow troubles) then the Lease would not have provided a basis for an award of attorney fees. The language of the Lease provides a basis for an award against the Landlord.

The final element requires the Debtor to be the prevailing party. The determination of "prevailing party" for the purpose of reciprocal attorney's fees in California is guided by the California Supreme Court's decision in Hsu v. Abbata, 9

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Cal. 4th 863, 39 Cal. Rptr. 2d 824, 891 P.2d 804 (Cal. 1995):

. . . we hold that in deciding whether there is a "party prevailing on the contract," the trial court is to compare the relief awarded on the contract claim or claims with the parties' demands on those same claims and their litigation objectives as disclosed by the pleadings, trial briefs, opening statements, and similar sources. The prevailing party determination is to be made only upon final resolution of the contract claims and only by "a comparison of the extent to which each party has succeeded and failed to succeed in its contentions."

"[T]he party prevailing on the contract shall be the party who recovered a greater relief in the action on the contract." Cal. Civ. Code § 1717(b)(2).

Here the Court found that the Landlord failed to meet its burden in proving that the Debtor was in default and granted the Debtor's motion to assume the lease. Even though the Court did not enter an order at the time stating the Debtor was the prevailing party, there simply is no other way to categorize the prevailing party other than who prevailed on the question of whether the lease was violated. The Court's ruling is currently on appeal. While there is some basis to defer ruling on this matter until the appeal is finalized, it is not mandatory. See Lasic v. Moreno, 2007 WL 4180655, at *1 (E.D. Cal. 2007) ("The Court may defer its ruling on attorney's fees when an appeal on the merits is pending."). Any delay in ruling would be discretionary, and the parties have not provided sufficient information on what effect this will have on the reorganization and progress of the case. This will be discussed further at the hearing.

The Landlord's next opposition states that the fees associated with proceedings other than the Assumption Motion were untimely filed pursuant to LBR 7054-1(g)(1) which provides a 14-day deadline for filing. The motions for which fees are sought are integrally related to the ultimate issues of the Assumption Motion – 1) breach of the Lease and 2) adequate assurance. The Court can waive the application of any LBR in the interest of justice. See LBR 1001-1(d). The Landlord raises no reason why this 14 day deadline matters or how a slight delay after the trial is prejudicial. Accordingly, the Court waives the 14-day requirement of LBR 7054-1(g)(1).

The last argument raised by the Landlord is that the fees and costs are unreasonable because many of the fees were incurred on matters other than the

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CONT... Hawkeye Entertainment, LLC

Chapter 11

Assumption Motion. The Court agrees in part with the Landlord's position. The two motions to use the Property and the motion for SBA funding, for example, do not appear to be actions on the contract, and were brought for reasons other than the notice of default. The cost and fees associated with administering the bankruptcy estate and other motions that the Landlord did not oppose will be denied in large part because there were no prevailing parties in these unopposed motions or in the Debtor's bankruptcy case. The fee award must be reduced by at least \$87,057.00 for fees that were incurred for administering the bankruptcy estate. The allowable fees and the hourly rates are reasonable in all other respects.

Additionally, CCP 1032 does not bar recover because allowable costs under CCP 1032 includes attorney fees when authorized by contract, statute, or law. See CCP 1033(a)(10). As previously articulated, the Lease provides for recovery some of the attorney fees incurred by the Debtor here.

For the reasons previously articulated, the Court is inclined to GRANT Debtor's Counsel's motion in part but will reduce the fees and costs. The remaining issues of whether to wait for the appeal and which fees should not be considered must still be discussed at the hearing.

Apperance Required.

Party Information

Debtor(s):

Hawkeye Entertainment, LLC

Represented By
Sandford L. Frey

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, December 2, 2020

Hearing Room 302

11:00 AM

1:09-20447 Law Offices of Masry & Vititoe

Chapter 11

#21.00 Post confirmation Status Conference

fr. 12/14/09, 1/11/10, 3/29/10, 6/30/10, 8/30/10, 8/31/10,
9/29/10, 11/10/10, 11/17/10, 1/31/11, 2/4/11, 2/10/11,
3/1/11, 3/29/11, 11/3/11, 11/17/11, 5/10/12, 8/30/12,
11/15/12, 3/7/13, 5/23/13, 6/27/13, 8/1/13, 9/12/13,
12/12/13, 11/13/14, 11/5/15, 6/2/16; 4/27/17, 4/26/17.
9/12/18, 10/23/19

Docket 1

*** VACATED *** REASON: Continued to February 3, 2021 at 11:00am.

Tentative Ruling:

Continued to February 3, 2021 at 11:00am
No Appearance Required.

Party Information

Debtor(s):

Law Offices of Masry & Vititoe

Represented By
Leslie A Cohen

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, December 2, 2020

Hearing Room 302

11:00 AM

1:16-11985 Samuel James Esworthy

Chapter 11

#22.00 Post Confirmation status conference

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

Docket 1

Tentative Ruling:

Per the Status Report filed on 6/16/20, the Debtor anticipates that the only remaining matter left is a motion for final decree. No motion for final decree has been filed. What is the status of this case?r. 3/4/20

This matter was continued from 3/4/20. As of 6/16/20, Nothing has been filed since the 2/26/20 Status Report. Debtor anticipates the only matter left is a Motion for Final Decree. Why has this not been filed yet?

What is the status of this case?
APPEARANCE REQUIRED

Party Information

Debtor(s):

Samuel James Esworthy

Represented By
M. Jonathan Hayes

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, December 2, 2020

Hearing Room 302

11:00 AM

1:16-12791 Menco Pacific, Inc.

Chapter 11

#23.00 Post-Confirmation Status Conference

fr. 10/25/17, 12/13/17, 3/21/18; 3/28/18, 6/6/18; 11/7/18;
12/18/18, 2/20/19; 6/6/19/ 7/16/19; 8/8/19, 10/2/19; 12/11/19,
3/11/20, 8/27/20

Docket 0

Tentative Ruling:

ZOOMGOV APPEARANCE REQUIRED.

Party Information

Debtor(s):

Menco Pacific, Inc.

Represented By
Jeffrey S Shinbrot

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, December 2, 2020

Hearing Room 302

11:00 AM

1:16-13295 K&A Global Management Company, a California corpor

Chapter 11

#24.00 Post-Confirmation Status Conference

fr. 1/12/17, 8/16/17, 11/1/17, 10/25/17, 12/13/17,
3/21/18, 1/30/19, 2/6/19, 11/6/19, 2/5/20, 5/6/20; 7/22/20; 10/7/20

Docket 16

***** VACATED *** REASON: VACATED: A motion for final decree was approved by the Court on 11/19/2020.**

Tentative Ruling:

VACATED: A motion for final decree was approved by the Court on 11/19/2020. NO APPEARANCE REQUIRED.

Party Information

Debtor(s):

K&A Global Management

Represented By
Jeffrey S Shinbrot

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, December 2, 2020

Hearing Room 302

11:00 AM

1:18-11538 Momentum Development LLC

Chapter 7

Adv#: 1:19-01129 Weil v. The Pyramid Center, Inc.

#25.00 Pretrial Conference re: Amended Complaint to Avoid Fraudulent Transfers

fr. 1/15/20, 2/5/20, 3/4/20; 6/10/20

Docket 9

***** VACATED *** REASON: Cont'd to 2/3/21 per order #36. If**

Tentative Ruling:

Discovery cut-off (all discovery to be completed*): 10/30/20

Expert witness designation deadline (if necessary): at pretrial if not stipulated to beforehand

Case dispositive motion filing deadline (MSJ; 12(c)): Are any contemplated?

Pretrial conference: 12/2/20 at 11 am

Deadline for filing pretrial stipulation under LBR 7016-1(b)(1)(A) (14 days before pretrial conference): 11/18/20

*Completed means that all discovery under Fed. R. Civ. P. 30-36, and discovery subpoenas under Rule 45, must be initiated a sufficient period of time in advance of the cutoff date, so that it will be completed by the cut-off date, taking into account time for service, notice and response as set forth in the Federal Rules of Civil Procedure.

Meet and Confer

Counsel must promptly and in good faith meet and confer with regard to all discovery disputes in compliance with Local Rule 26

Discovery Motion Practice:

All discovery motions must be filed within 30 days of the service of an objection, answer, or response which becomes the subject of dispute or the passing of a discovery due date without response or production, and only after counsel have met and conferred and have reached an impasse with regard to the particular issue.

**United States Bankruptcy Court
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11:00 AM

CONT... Momentum Development LLC

Chapter 7

A failure to comply in this regard will result in a waiver of a party's discovery issue. Absent an order of the Court, no stipulation continuing or altering this requirement will be recognized by the Court.

PLAINTIFF TO LODGE SCHEDULING ORDER CONTAINING THESE PROVISIONS WITHIN 7 DAYS.

Party Information

Debtor(s):

Momentum Development LLC

Represented By
Michael H Raichelson

Defendant(s):

The Pyramid Center, Inc.

Represented By
Michael H Raichelson

Plaintiff(s):

Diane Weil

Represented By
David Seror
Jorge A Gaitan

Trustee(s):

Diane C Weil (TR)

Represented By
David Seror
Jorge A Gaitan

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, December 2, 2020

Hearing Room 302

11:00 AM

1:19-12434 Walter Ernesto Aleman Olmedo
Adv#: 1:20-01049 Goldman v. Aleman et al

Chapter 7

#26.00 Motion to set aside RE: Entry of Default
Pursuant to Fed. R. Bankr. P. 7055 and
9024; Fed R. Civ. P. 55(c) and 60(b)

Docket 27

***** VACATED *** REASON: Resolved per Stipulation (ECF doc. 31) - hm**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Walter Ernesto Aleman Olmedo	Represented By Navid Kohan
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Defendant(s):

Oscar Aleman	Represented By Mykhal N Ofili
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Marisol Vega Aleman	Represented By Mykhal N Ofili
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Aleman Signs, Inc.	Represented By Mykhal N Ofili
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Plaintiff(s):

Amy L Goldman	Represented By Leonard Pena
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Trustee(s):

Amy L Goldman (TR)	Represented By Leonard Pena
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, December 2, 2020

Hearing Room 302

11:00 AM

1:19-12434 Walter Ernesto Aleman Olmedo

Chapter 7

Adv#: 1:20-01049 Goldman v. Aleman et al

- #27.00** Status Conference Re: Trustee's First Amended Compliant for:
- 1 - Avoidance of Actual Fraudulent Transfer (11 U.S.C. Sec. 548(a)(1)(A));
 - 2 - Avoidance of Constructive Fraudulent Transfer Sec. 548(a)(1)(B);
 - 3 - Avoidance of Actual Fraudulent Transfer Under Applicable California Law (Cal. Civ. Code Sections 3439.04(a)(1) and 3439.07 and 11 USC Sec. 544(b));
 - 4 - Avoidance of Constructive Fraudulent Transfer Under Applicable California Law (Cal. Civ. Code Sections 3439.05 and 3439.07 and 11 USC Sec. 544(b));
 - 5 - Recovery of Avoided Transfer (11 USC Sec. 550(a)); and
 - 6 - Preservation of Avoided Transfer (11 USC Sec. 551)

fr. 7/15/20 (stip), 9/9/20

Docket 15

***** VACATED *** REASON: Continued to Feb. 3, 2021 at 11:00am**

Tentative Ruling:

Having considered the Joint Status Report filed on 11/20/20, and finding good cause, the court continues the status conference to February 3, 2021 at 11:00am.

NO APPEARANCE REQUIRED ON 12/2.

Party Information

Debtor(s):

Walter Ernesto Aleman Olmedo

Represented By
Navid Kohan

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, December 2, 2020

Hearing Room 302

11:00 AM

CONT... Walter Ernesto Aleman Olmedo

Chapter 7

Defendant(s):

Oscar Aleman	Pro Se
Marisol Vega Aleman	Pro Se
Aleman Signs, Inc.	Pro Se

Plaintiff(s):

Amy L Goldman	Represented By Leonard Pena
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Trustee(s):

Amy L Goldman (TR)	Represented By Leonard Pena
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, December 2, 2020

Hearing Room 302

11:00 AM

1:20-11063 Joby John Harte

Chapter 7

Adv#: 1:20-01081 Garcia, Jr v. Harte

#28.00 Status Conference Re: Complaint
Objecting to Dischargeability of Debt
Pursuant to Section 523(a)(6) of the
Bankruptcy Code

Docket 1

Tentative Ruling:

Defendant has been served but has not filed an answer. Defendant has failed to appear by counsel and failed to file an answer to the complaint by the October 23, 2020 deadline. The plaintiff intends to seek leave from the court during the status conference to move for default judgment.

Appearance Required.

Party Information

Debtor(s):

Joby John Harte

Represented By
Henry Glowa

Defendant(s):

Joby John Harte

Pro Se

Plaintiff(s):

Ricardo Rene Garcia Jr

Represented By
Ben J Meiselas

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, December 2, 2020

Hearing Room 302

11:00 AM

1:18-11869 Albert Lee

Chapter 7

Adv#: 1:20-01066 DAVID K. GOTTLIEB, CHAPTER 7 TRUSTEE v. Montgomery et al

#28.01 Motion to Dismiss for Failure to State a Claim
Pursuant to Federal Rule of Civil Procedure
12(b)(6)

fr. 11/18/20

Docket 15

Tentative Ruling:

On July 25, 2018, Albert Lee ("Debtor") commenced a chapter 7 bankruptcy case. David Gottlieb ("Plaintiff") was appointed as the Chapter 7 Trustee. The Debtor was married to Sun Mi Choi ("Decedent") on March 28, 2004. On August 24, 2009, the Debtor founded a corporation named Chas Group, Inc. ("Chas Group"). On June 14, 2012, the Debtor founded a corporation named Amberboa, Inc. ("Amberboa"). On August 6, 2012, the Decedent acquired title to real property commonly known as 18729 Hillsboro Rd, Porter Ranch, CA 93326 ("Hillsboro Property".) According to the Debtor's bankruptcy petition, this is the Debtor's primary residence.

The Debtor and Decedent commenced a dissolution of marriage on April 27, 2011 and entered into a Martial Settlement Agreement ("MSA") on July 31, 2014. It is unclear from the MSA who retained the interests in Chas Group, Amberboa, and the Hillsboro Property. The MSA was finalized by a Judgement of Dissolution entered in the divorce proceeding on December 16, 2014.

On November 5, 2018, the Debtor received a discharge. On February 9, 2019, the Decedent passed away and a probate was opened in the Estate of Sun Mi Choi, Los Angeles County Superior Court Case No, 19STPB01790 ("Probate Proceeding"). On March 7, 2019, the Debtor filed in the Probate Proceeding a declaration in which the Debtor disclosed interests in and connections to Chas Group and Amberboa – Debtor failed to disclose these interests in his bankruptcy case. The declaration asserts that these assets were placed under the Decedent's name in order to protect them from creditors and the divorce was a "paper divorce" – which the Plaintiff interprets to mean that this was a sham marriage. Jodi Pais Montgomery and David Berrent

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CONT... Albert Lee

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("Defendants") are the personal representatives and administrators of the probate estate of Decedent.

On July 1, 2020, the Plaintiff commenced this adversary proceeding seeking to avoid and recover fraudulent transfers, for declaratory relief, relief under Cal. Prob. Code §§ 850(a)(2)(C) and 856. The Defendants moved to dismiss the adversary proceeding under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. Plaintiff filed an opposition to this motion.

A motion to dismiss under Rule 12(b)(6) challenges the sufficiency of the allegations set forth in the complaint. "A Rule 12(b)(6) dismissal may be based on either a 'lack of a cognizable legal theory' or 'the absence of sufficient facts alleged under a cognizable legal theory.'" Johnson v. Riverside Healthcare Sys., 534 F.3d 1116, 1121 (9th Cir. 2008), *quoting* Balistreri v. Pacifica Police Dept., 901 F.2d 696, 699 (9th Cir. 1990).

In resolving a Rule 12(b)(6) motion to dismiss, the court must construe the complaint in the light most favorable to the plaintiff and accept all well-pleaded factual allegations as true. Johnson, 534 F.3d at 1122; Knox v. Davis, 260 F.3d 1009, 1012 (9th Cir. 2001). On the other hand, the court is not bound by conclusory statements, statements of law, and unwarranted inferences cast as factual allegations. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555-57 (2007); Clegg v. Cult Awareness Network, 18 F.3d 752, 754-55 (9th Cir. 1994).

"While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, a plaintiff's obligation to provide the 'grounds' of his 'entitlement to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." Twombly, 550 U.S. at 555 (citations omitted). "In practice, a complaint ... must contain either direct or inferential allegations respecting all the material elements necessary to sustain recovery under some viable legal theory." Twombly, 550 U.S. at 562, *quoting* Car Carriers, Inc. v. Ford Motor Co., 745 F.2d 1101, 1106 (7th Cir. 1984).

In Ashcroft v. Iqbal, 556 U.S. 662 (2009), the Supreme Court elaborated on the Twombly standard: To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.... A claim has facial plausibility when the plaintiff pleads factual content

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CONT... Albert Lee

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that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.... Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. Id. at 679. In light of that standard, the Supreme Court invited courts considering a motion to dismiss to use a two-pronged approach. First, "begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations." Iqbal at 679. After those pleadings are excised, all that is left to consider are the factual allegations in the "complaint to determine if they plausibly suggest an entitlement to relief." Id. Courts should assume the veracity of the well-plead factual allegations. Id. "If there are two alternative explanations, one advanced by the defendant and the other advanced by plaintiff, both of which are plausible, plaintiff's complaint survives a motion to dismiss under Rule 12(b)(6)." Starr v. Baca, 652 F.3d 1202, 1216 (9th Cir. 2011).

If the running of the statute of limitations of a claim in the complaint is clear, then the issue may be raised by a motion to dismiss or on summary judgment. Jablon v. Dean Witter & Co., 614 F.2d 677, 682 (9th Cir. 1980); see also Graham v. Taubman, 610 F.2d 821 (9th Cir. 1979).

Statute of Limitations:

Here the Decedent passed away on February 9, 2019, and the Probate Proceeding commenced then. The Plaintiff commenced this cause of action on July 1, 2020. The Defendants assert that the Plaintiff is barred from bringing these causes of action against the probate estate since the one-year statute of limitations has passed.

Section 366.2 of the California Code of Civil Procedures is a "general statute of limitations for all claims against a decedent." Wagner v. Wagner, 162 Cal.App.4th 249, 255 (2008). "The overall intent of the Legislature in enacting Code of Civil Procedure former section 353 [(now § 366.2)] was to protect decedents' estates from creditors' stale claims." Id. California Code of Civil Procedure § 366.2 (a) provides:

If a person against whom an action may be brought on a liability of the person, whether arising in contract, tort, or otherwise, and whether accrued or not accrued, dies before the expiration of the applicable limitations period, and the cause of action survives, an action may be

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Central District of California
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Albert Lee

Chapter 7

commenced within one year after the date of death, and the limitations period that would have been applicable does not apply.

"This uniform one-year statute of limitations applies to actions on all claims against the decedent which survive the decedent's death. Dobler v. Arluk Medical Center Industrial Group, Inc., 89 Cal. App. 4th 530, 535 (2001)." "This limitations period, however, is tolled by (1) the timely filing of a creditor claim; (2) the filing of a petition for payment of debts, claims or expenses from the decedent's revocable trust; or (3) a proceeding to judicially construe a "no contest" provision." Id.; CCP Section 366.2(b); see also Levine v. Levine, 102 Cal. App. 4th 1256, 1261 (2002).

Section 366.2 demonstrates a clear legislative intent to cut off litigation against a decedent's estate after one year from death, except in circumstances enumerated in subsection (b). The Legislature enacted the predecessor of section 366.2, former section 535, in 1990. Bradley v. Breen, 73 Cal. App. 4th 798, 801-02 (1999). In recommending enactment of the one-year-from-death limitations period, the 1990 California Law Revision Commission (Commission) "explained . . . that such a statute would effectuate the strong public policies of expeditious estate administration and security of title for distributees, . . . is an appropriate period to afford repose, and provides a reasonable cutoff for claims that soon would become stale. Id. At 801.

Bradley quoted from the Commission's recommendation:

(1) In estate administration, all debts are ordinarily paid. Even under the existing four-month claim period it is unusual for an unpaid creditor problem to arise. A year is usually sufficient time for all debts to come to light. Thus it is sound public policy to limit potential liability to a year; this will avoid delay and procedural complication of every probate proceeding for the rare claim that might arise more than a year after the decedent's death. (2) The one year limitation period would not apply to special classes of debts where public policy favors extended enforceability. These classes are (i) secured obligations, (ii) tax claims, and (iii) liabilities covered by insurance. The rare claim that may become a problem more than a year after the decedent's death is likely to fall into one of these classes. (3) Every jurisdiction of which

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the Commission is aware that has considered the due process problem addressed by the recommendation, including the Uniform Probate Code, has adopted the one-year statute of limitations as part of its solution. In sum, *a general limitation period longer than one year would burden all probate proceedings for little gain. The one-year limitation period is a reasonable accommodation of interests and is widely accepted.*'

The argument advanced by the Plaintiff is that CCP 366.2 only applies to actions "brought on a liability of the person" and it does not apply to actions brought to recover specific property. Here the gravamen of the Plaintiff's causes of action seek to recover property interests in Chas Group, Amberboa, and the Hillsboro Property. According to the Plaintiff, Chas Group, Amberboa, and the Hillsboro Property are still apart of the property of the bankruptcy estate. California law is clear that transfers made with actual intent to defraud are void and not voidable. Daff v. Wallace (In re Cass), 476 B.R. 602, 614 (Bankr. C.D. Cal. 2012), aff'd 2013 WL 1459, 272 (9th Cir. BAP 2013), aff'd 606 Fed. Appx 318 (9th Cir. 2015). In Cass, the Court not only stated that fraudulent transfers are void *ab initio* but cited a number of California cases that make it clear that in questions of title to property, ownership never leaves the transferor. First National Bank of Los Angeles v. Maxwell, 123 Cal. 360, 371 (1899) (title and ownership of property remains in the fraudulent grantor as fully as though no transfer had been attempted); Liuzza v. Bell, 40 Cal. App. 2nd 417, 429 (1940) ("In fraudulent transactions, for the protection of creditors it has been held that ownership and title remain in grantor.") Further, the BAP, in affirming Cass held that the transferor of property in fraud of the creditors holds only nominal or bare legal title, the transferor holds the beneficial interest and equitable interest. The Court will analyze whether CCP 366.2 is indeed applicable here.

Case law as to Section 366.2 as applied to fraudulent transfer cases is rather sparse; however, the facts and analysis in Kapila v. Belotti (In re Pearlman), 2012 Bankr. LEXIS 2858 (Bankr. M.D. FL. 2012) are similar. In Pearlman, the debtor was involved in a Ponzi scheme. A family trust was created by a third party and this trust invested in the debtor's Ponzi scheme. Over the course of several years, the trust received hundreds of thousands of dollars in profits from this Ponzi scheme and the trustee filed a fraudulent transfer action in order to recover all the profits the trust

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gained from the Ponzi scheme. During the course of the fraudulent transfer case, the last beneficiary of the trust passed away and the trustee failed to file a claim in any of the beneficiaries' probate estates within in a the one-year time frame. The defendant filed a motion to dismiss the trustee's complaint pursuant to CCP 366.2(a). The Court ultimately granted the motion to dismiss and stated in its' reasoning:

Under certain circumstances, such as lack of notice of a defendant's death, a creditor may apply to file a late claim. But, under no circumstances may a creditor file a claim later than one year after the death of a defendant, as indicated in California Code of Civil Procedure § 366.2(a). Section 366.2 was enacted to bar claims against a probate estate after one year "in order to provide closure, certainty, and protect a decedent's estate from stale claims of a creditor." The one-year limitations period also enables the expeditious administration of probate estates.

While the underlying issue in Pearlman was one of notice, the Court granted the motion to dismiss in favor of the defendants and applied CCP 366.2 in this case in spite of the defendants being merely recipients of a fraudulent transfer. Here the Plaintiff is seeking to do something similar. The difference is the property in Pearlman was liquid assets and the property being sought after here is real property and interest in companies and the Debtor had an already vested interest in these properties.

On the other hand, the California Court of Appeals in Estate of Yool, 151 Cal. App. 4th 867 (2007) appeared to back track the strict application of CCP 366.2. Yool dealt with the issue of a resulting trust, an implied trust that comes into existence by operation of law, where property is transferred to someone who pays nothing for it; and then is implied to have held the property for benefit of another person, and the Court was asked whether CCP 366.2 was applicable. The Court focused in on the phrase "liability of the person," or personal liability, and interpreted it to mean "[I] liability for which one is personally accountable and for which a wronged party can seek satisfaction out of the wrongdoer's personal assets." Id. At 875 (quoting Black's Law Dict. (8th ed 2004)). In the context of an action to decree a resulting trust or quiet title based on a resulting trust theory, the Court found that the matter adjudicated would concern whether the presumption of a resulting trust arose under the facts. Because the trustee held title, but did not own the property in question, there is no

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issue of personal liability or resort to the trustee's assets. The Court held that a resulting trust arises by operation of law and does not implicate the personal liability of the purported trustee.

The Yool Court supported this finding by providing further analysis on the legislative history of Code of Civil Procedure section 366.2, which makes it clear that the provision pertains to debts, that is, to claims resulting from the relationship between the debtor and the creditor. As the Commission emphasized, the statute of limitations set forth in Code of Civil Procedure former section 353 was "intended to apply in any action on a debt of the decedent" Code of Civil Procedure section 366.2 does not apply for another fundamental reason: At the time of Yool's death, nothing had occurred to affect the rights of the beneficiary of the resulting trust. The mere lapse of time, without repudiation, does not affect the beneficiary's rights.

On its face, the Court in Yool back peddled strict interpretations of the language in CCP 366.2 statutory language; however, the California Court of Appeals in Sefton v. Sefton, 206 Cal. App. 4th 875 (2012) appears to have limited the holding in Yool. In Sefton, the Court stated that "the [Yool] Court noted at the time of the decedent's death there was not yet a cause of action for a resulting trust and Code of Civil Procedure section 366.2 'specifically contemplates an action that may be brought against a person prior to his or her death.'" Id. at 893-94. The Plaintiff's cause of action existed well before the Decedent passed. While the ruling in Yool gives the Plaintiff some basis for crafting its argument, the ruling in Yool is not directly on point with the issue before this Court and it appears to be an outlier when it comes to Courts interpreting CCP 366.2.

The Plaintiff's argument that CCP 366.2 only applies to actions "brought on a liability of the person" and it does not apply to actions brought to recover specific property runs counter to how courts have interpreted this statute and on the legislature's intent for drafting the statute in the first place. The purpose of this statute is to ensure a speedy and efficient administration of a probate estate and in order to achieve this purpose, the state imposed a statute of limitations of a year for bringing any actions against the estate. The state created some exemptions to this general rule, enumerated in CCP 366.2 (b), and Courts have been reluctant to go beyond these exemptions. It is uncontested that the exemptions to this statute of limitations are not applicable here and the solo basis for the Trustee's argument rests Yool – which the

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Court already addressed the problems with that case. Even though the Trustee in this case is seeking to recover property, and not money damages, the same concerns about quickly and efficiently administering the estate are present. The property in dispute here is a part of the probate estate and to lock it up in litigation will prevent a speedy and efficient administration of the probate estate. The Plaintiff is attempting to recover property of the probate estate and nothing suggests that liquid assets should be treated differently than non-liquid assets. Given how Courts have applied CCP 366.2, that the same policy concerns exist in the case as any other case against the probate estate, and the lack of leniency for creating exceptions to this statute of limitations, the Court finds that CCP 366.2's one year

The Plaintiff's next argument is that Bankruptcy Code Section 546 provides the Plaintiff with two years after the entry of the order for relief to commence this action. The Plaintiff believes that this prevails over the state probate statute of limitations. This argument appears to be contrary to case law and the Court is unpersuaded by this argument. See Rund v. Bank of Am. Corp. (In re EPD Inv. CO., LLC), 523 B.R. 680, 691 (9th Cir. BAP 2015) ("In cases like Phar-Mor, which involve state probate statutes, we agree that because Congress has not expressed an intention to override a state's strong and traditional interest in regulating probate matters, the Code may not control.")

The Plaintiff's argument is that all claims can be brought using Probate Code Sections 850 and 856. According to the Plaintiff, the claim underlying § 850 petitions are subjected to the same statute of limitations that would apply had an ordinary (non- § 850) civil suit being brought. Under this position, the Plaintiff would be allowed to bring an action against the probate estate at any time until final distribution. This argument is not persuasive. Similar to Dawes v. Rich, 60 Cal. App. 4th 24, 32 (1997), there is a "more directly applicable statute present." Dawes reviewed the report of the 1990 California Law Revision Commission and noted that public policy favors expeditious estate administration and ruled that a fraudulent transfer claim was time-barred. This Court believes that the CCP 366.2 statute of limitations is the more applicable statute. Additionally, the Defendants point out that the Plaintiff may have made a procedural mistake seeking relief under Probate Code § 850, this section permits any interested person to file a petition in probate requesting order – the Plaintiff commenced this adversary proceeding but have not filed a

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, December 2, 2020

Hearing Room 302

11:00 AM

CONT... Albert Lee

Chapter 7

petition in the Probate Court. Yool, 151 Cal. App. 4th at 874.

For the reasons previously stated, the Court GRANTS the Defendants motion to dismiss.

Appereance Required.

Party Information

Debtor(s):

Albert Lee

Represented By
M Teri Lim

Defendant(s):

Jodi Pais Montgomery

Represented By
Crystle Jane Lindsey
James R Selth

David Berrent

Represented By
Crystle Jane Lindsey
James R Selth

Plaintiff(s):

DAVID K. GOTTLIEB, CHAPTER

Represented By
Jivko Tchakarov

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Howard Camhi
Peter A Davidson
Byron Z Moldo

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, December 2, 2020

Hearing Room 302

11:00 AM

1:18-11869 Albert Lee

Chapter 7

Adv#: 1:20-01066 DAVID K. GOTTLIEB, CHAPTER 7 TRUSTEE v. Montgomery et al

#28.02 Status Conference Re: Complaint to
Avoid and Recover Fraudulent Transfers,
for Declaratory Relief, and for Constructive
Trust

fr. 9/2/20; 10/7/20, 11/18/20

Docket 1

Tentative Ruling:

Apperance Required.

Party Information

Debtor(s):

Albert Lee

Represented By
M Teri Lim

Defendant(s):

Jodi Pais Montgomery

Pro Se

David Berrent

Pro Se

Plaintiff(s):

DAVID K. GOTTLIEB, CHAPTER

Represented By
Jivko Tchakarov

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Howard Camhi
Peter A Davidson
Byron Z Moldo

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, December 2, 2020

Hearing Room 302

1:00 PM

1:17-11888 ALLIANCE FUNDING GROUP INC.

Chapter 7

Adv#: 1:18-01076 Seror v. Aslanjan et al

#29.00 Motion to Compel Appearance and Production of Documents re Alliance Funding Group, Inc's Custodian of Records Compel Appearance of Person Most Knowledgeable at Deposition

fr. 4/1/20, 5/6/20; 9/9/20, 10/2/20

Docket 111

***** VACATED *** REASON: VACATED PURSUANT TO STIP
DISMISSING AP.**

Tentative Ruling:

VACATED PURSUANT TO STIP DISMISSING AP.

NO APPEARANCE REQUIRED

Party Information

Debtor(s):

ALLIANCE FUNDING GROUP

Represented By
Stephen F Biegenzahn

Defendant(s):

Does 1-10, Inclusive

Pro Se

AMERICAN FUNDERS CORP.

Pro Se

Eva Askar

Pro Se

Robert Askar

Pro Se

Arthur Nagapetyan

Pro Se

Anjana S. Sura

Pro Se

Puja J. Savla

Pro Se

Neelam J. Savla

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, December 2, 2020

Hearing Room 302

1:00 PM

CONT... ALLIANCE FUNDING GROUP INC.

Chapter 7

Greg Mkrchyan	Pro Se
Mkrtchyan Investments, LP	Pro Se
Natalia Usmanova	Represented By Eamon Jafari
Alexander Usmanov	Represented By Eamon Jafari
Sonia Kellzi	Pro Se
Zaven Kellzi	Pro Se
Kellzi Family Trust	Pro Se
Allen Melikian	Pro Se
Helen Minassian	Pro Se
Hamlet Betsarghez	Pro Se
Razmik Aslanjan	Represented By Raffy M Boulgourjian

Plaintiff(s):

David Seror	Represented By Reagan E Boyce Richard Burstein
-------------	--

Trustee(s):

David Seror (TR)	Represented By Reagan E Boyce Richard Burstein Jorge A Gaitan
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, December 2, 2020

Hearing Room 302

1:00 PM

1:17-11888 ALLIANCE FUNDING GROUP INC.

Chapter 7

Adv#: 1:18-01076 Seror v. Aslanjan et al

#30.00 Motion to Compel Appearance and Production
of Documents re Firooz Payan at Depostion

fr. 4/1/20, 5/6/20; 09/09/20, 10/2/20

Docket 112

***** VACATED *** REASON: VACATED PURSUANT TO STIP
DISMISSING AP.**

Tentative Ruling:

VACATED PURSUANT TO STIP DISMISSING AP.

NO APPEARANCE REQUIRED.

Party Information

Debtor(s):

ALLIANCE FUNDING GROUP

Represented By
Stephen F Biegenzahn

Defendant(s):

Does 1-10, Inclusive

Pro Se

AMERICAN FUNDERS CORP.

Pro Se

Eva Askar

Pro Se

Robert Askar

Pro Se

Arthur Nagapetyan

Pro Se

Anjana S. Sura

Pro Se

Puja J. Savla

Pro Se

Neelam J. Savla

Pro Se

Greg Mkrchyan

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, December 2, 2020

Hearing Room 302

1:00 PM

CONT... ALLIANCE FUNDING GROUP INC. Chapter 7

Mkrtchyan Investments, LP	Pro Se
Natalia Usmanova	Represented By Eamon Jafari
Alexander Usmanov	Represented By Eamon Jafari
Sonia Kellzi	Pro Se
Zaven Kellzi	Pro Se
Kellzi Family Trust	Pro Se
Allen Melikian	Pro Se
Helen Minassian	Pro Se
Hamlet Betsarghez	Pro Se
Razmik Aslanjan	Represented By Raffy M Boulgourjian

Plaintiff(s):

David Seror	Represented By Reagan E Boyce Richard Burstein
-------------	--

Trustee(s):

David Seror (TR)	Represented By Reagan E Boyce Richard Burstein Jorge A Gaitan
------------------	--

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, December 2, 2020

Hearing Room 302

1:00 PM

1:17-11888 ALLIANCE FUNDING GROUP INC.

Chapter 7

Adv#: 1:18-01076 Seror v. Aslanjan et al

#31.00 Status Conference re: First Amended Complaint

fr. 8/29/18, 10/3/18; 10/10/2018, 2/6/19, 11/13/19,
6/10/20; 9/9/20, 10/7/20

Docket 3

***** VACATED *** REASON: VACATED PURSUANT TO STIP
DISMISSING AP.**

Tentative Ruling:

VACATED PURSUANT TO STIP DISMISSING AP.

NO APPEARANCE REQUIRED.

Party Information

Debtor(s):

ALLIANCE FUNDING GROUP

Represented By
Stephen F Biegenzahn

Defendant(s):

AMERICAN FUNDERS CORP.

Pro Se

Does 1-10, Inclusive

Pro Se

Sonia Kellzi

Pro Se

Alexander Usmanov

Represented By
Eamon Jafari

Natalia Usmanova

Represented By
Eamon Jafari

Mkrtchyan Investments, LP

Pro Se

Greg Mkrchyan

Pro Se

Neelam J. Savla

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Chief Judge Maureen Tighe, Presiding
Courtroom 302 Calendar**

Wednesday, December 2, 2020

Hearing Room 302

1:00 PM

CONT... ALLIANCE FUNDING GROUP INC.

Chapter 7

Puja J. Savla	Pro Se
Anjana S. Sura	Pro Se
Arthur Nagapetyan	Pro Se
Robert Askar	Pro Se
Eva Askar	Pro Se
Zaven Kellzi	Pro Se
Kellzi Family Trust	Pro Se
Allen Melikian	Pro Se
Helen Minassian	Pro Se
Hamlet Betsarghez	Pro Se
Razmik Aslanjan	Represented By Raffy M Boulgourjian

Plaintiff(s):

David Seror	Represented By Reagan E Boyce Richard Burstein
-------------	--

Trustee(s):

David Seror (TR)	Represented By Reagan E Boyce Richard Burstein
------------------	--