

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Mark Wallace, Presiding
Courtroom 6C Calendar**

Monday, July 19, 2021

Hearing Room 6C

9:00 AM

8:19-11065 Bridget Ann O'Neil

Chapter 13

#1.00

Motion for relief from stay [Real Property]

PHH Mortgage Corporation vs. DEBTOR
(Motion filed 6/25/2021)

[RE: 2429 West Transit Avenue, Anaheim, California 92804]

Docket 59

***** VACATED *** REASON: OFF CALENDAR - ORDER
CONTINUING HEARING TO AUGUST 30, 2021 AT 9:00 AM ENTERED
ON 7-12-21 (DOCKET NO. 64).**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bridget Ann O'Neil

Represented By

Andy C Warshaw

Richard L. Sturdevant

Movant(s):

PHH Mortgage Corporation

Represented By

Josephine E Salmon

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Courtroom 6C Calendar**

Monday, July 19, 2021

Hearing Room 6C

9:00 AM

8:19-12715 Andrea Mythanh Le

Chapter 7

#2.00

CONT'D Motion for relief from stay [Real Property]

Wells Fargo Bank, N.A. vs DEBTOR
(Motion filed 4-5-21)

[RE: 13192 Rolling Hills Lane, Victorville, California 92395]

FR: 5-10-21; 6-14-21

Docket 98

***** VACATED *** REASON: OFF CALENDAR - ORDER APPROVING
STIPULATION CONTINUING HEARING TO AUGUST 30, 2021 AT 9:00
AM ENTERED ON 7-12-21 (DOCKET NO. 137).**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Andrea Mythanh Le

Represented By
Christopher J Langley

Trustee(s):

Karen S Naylor (TR)

Represented By
Nathan F Smith
Arturo M Cisneros

**United States Bankruptcy Court
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Monday, July 19, 2021

Hearing Room 6C

9:00 AM

8:21-10026 Ardeshir Farokhirad and Fariba Farokhirad

Chapter 7

#3.00

Motion for relief from stay [Real Property]

Toyota Trust Lease Trust, as serviced by Toyota Motor Credit Corporation d/b/a
Toyota Financial Services vs DEBTORS
(Motion filed 6-25-21)

[RE: 2019 Lexus RX 350 - VIN No.: 2T2ZZMCA2KC144520]

Docket 153

***** VACATED *** REASON: OFF CALENDAR - ORDER
CONTINUING HEARING TO DECEMBER 6, 2021 AT 9:00 AM
ENTERED ON 7-13-21 (DOCKET NO. 153).**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ardeshir Farokhirad

Represented By
Anerio V Altman
Andrew Edward Smyth

Joint Debtor(s):

Fariba Farokhirad

Represented By
Anerio V Altman
Andrew Edward Smyth

Movant(s):

Toyota Lease Trust, as serviced by

Represented By
Kirsten Martinez

Trustee(s):

Thomas H Casey (TR)

Represented By
Thomas H Casey

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Mark Wallace, Presiding
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Monday, July 19, 2021

Hearing Room 6C

9:00 AM

8:21-11123 Richard Allen Dickinson

Chapter 7

#4.00

Motion for relief from stay [Personal Property]

Financial Services Vehicle Trust vs. DEBTOR
(Motion filed 6/25/2021)

[RE: 2020 BMW X3 M40i Sport Utility 4D - VIN No.: 5UXTY9C0L9B25329]

Docket 11

Tentative Ruling:

APPEARANCES NOT REQUIRED.

The motion is granted pursuant to 11 U.S.C. §§ 362(d)(1) to permit movant, its successors, transferees and assigns, to enforce its remedies to repossess or otherwise obtain possession and dispose of its collateral pursuant to applicable law, and to use the proceeds from its disposition to satisfy its claim, *unless* the debtor pays all arrearages in full on or before the hearing date on this matter. Movant may not pursue any deficiency claim against the debtor or the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501.

The 14-day stay provided by Rule 4001(a)(3) is waived.

MOVANT TO LODGE ORDER VIA LOU WITHIN 7 DAYS.

Party Information

Debtor(s):

Richard Allen Dickinson

Represented By
Kevin J Kunde

Movant(s):

Financial Services Vehicle Trust

Represented By

**United States Bankruptcy Court
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Hearing Room 6C

9:00 AM

CONT... Richard Allen Dickinson

Marjorie M Johnson

Chapter 7

Trustee(s):

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Mark Wallace, Presiding
Courtroom 6C Calendar**

Monday, July 19, 2021

Hearing Room 6C

9:00 AM

8:21-11631 Steven George Schultz

Chapter 13

#5.00

Hearing RE: Motion In Individual Case For Order Imposing A Stay Or Continuing The Automatic Stay As The Court Deems Appropriate (Motion filed 6-30-2021)

[RE: 17160 Santa Suzanne Street, Fountain Valley, CA 92708]

[Tele. appr., Sanaz S. Bereliani, repr., Debtor]

Docket 9

Tentative Ruling:

APPEARANCES REQUIRED.

The Court will grant the Motion and continue the stay. However, if any creditor moves for reconsideration of this order within 90 days of the date of entry of this order granting the motion, this Court will hear the matter de novo without regard to the usual rules applicable to a motion for reconsideration.

DEBTOR TO LODGE ORDER VIA LOU WITHIN 7 DAYS.

Party Information

Debtor(s):

Steven George Schultz

Represented By

Sanaz Sarah Bereliani

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Santa Ana
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Monday, July 19, 2021

Hearing Room 6C

2:00 PM

8:14-11729 Richard Clark Farrell

Chapter 7

#1.00

Hearing RE: Application for Allowance and Payment of Administrative Expenses for the Period from May 31, 2016 through April 30, 2021
(Application filed 6-23-21)

**[RE: PERKINS COIE LLP - Attorneys For White Zuckerman Warsavsky
Luna & Hunt LLP]**

[Ch. 7 Administrative Expenses: \$45,700.44]

[Ch. 11 Administrative Expenses: \$10,753.28]

[Tele. appr., Sara L. Chenetz, repr., White Zuckerman]

[Tele. appr., Nanette D. Sanders, repr., Karen Sue Naylor, Trustee]

Docket 961

Tentative Ruling:

APPEARANCES REQUIRED.

The compensation is approved on a final basis as to White, Zuckerman, Warsavsky, Luna & Hunt, LLP, with:

Chapter 11 fees in the amount of \$10,753.28 and expenses in the amount of \$0.00, and

Chapter 7 fees in the amount of \$45,700.44 and expenses in the amount of \$0.00.

APPLICANT TO LODGE ORDER VIA LOU WITHIN 7 DAYS.

Party Information

Debtor(s):

Richard Clark Farrell

Represented By

**United States Bankruptcy Court
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2:00 PM

CONT... Richard Clark Farrell

Chapter 7

Michael G Spector
William M. Hulsy
Michael R Adele

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Brian R Nelson
Robert P Goe
Rafael R Garcia-Salgado

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Monday, July 19, 2021

Hearing Room 6C

2:00 PM

8:15-12278 Morgan Drexen, Inc.

Chapter 7

#2.00

Hearing RE: Chapter 7 Trustee's Motion for Order Disallowing
(Motion filed 6-17-21)

Claim No. 80-1 Spilman Thomas & Battle, PLLC \$1,688.76

Docket 617

***** VACATED *** REASON: OFF CALENDAR - NOTICE OF
WITHDRAWAL OF CHAPTER 7 TRUSTEE'S MOTION FILED 7-8-21
(DOCKET NO. 621).**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Morgan Drexen, Inc.

Represented By
Paul R Shankman

Trustee(s):

Jeffrey I Golden (TR)

Represented By
Thomas H Casey
Reem J Bello
Beth Gaschen
Steven B Sacks

**United States Bankruptcy Court
Central District of California
Santa Ana
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Monday, July 19, 2021

Hearing Room 6C

2:00 PM

8:20-11083 239 Carnation LLC, a Texas Limited Liability Compa

Chapter 11

#3.00

Hearing RE: Motion to Sell Property of the Estate Free and Clear of Liens under Section 363(f) Motion of Debtor and Debtor In Possession for Order:
(1) Authorizing Sale of Property of the Estate Free and Clear of Liens, Claims, and Interests Pursuant to 11U.S.C. §§ 363(b) and (f);
(2) Approving Overbid Procedures;
(3) Finding Successful Bidder and Overbidder are Good Faith Purchasers Pursuant to 11 U.S.C. §363(m); and
(4) Authorizing Payment of Ordinary Costs of Sale
(Motion filed 6-28-21)

[Tele. appr., Roger F. Friedman, repr., Bridge Loan Financial, Creditor]

[Tele. appr., Beth Gaschen, repr., Debtor]

[Tele. appr., Jeffrey I. Golden, repr., Debtor]

[Tele. appr., Nancy Goldenberg, repr., U.S. Trustee]

[Tele. appr., R. Gibson Pager, Jr., repr., Vanessa Ryder, Creditor]

[Tele. appr., Stephen Perkins, repr., Debtor]

[Tele. appr., Sonia Plesset Edwards, repr., Bridge Loan Financial, Creditor]

[Tele. appr., Tim Smith, repr., Debtor]

[Tele. appr., Todd Wohl, repr., Debtor]

Docket 128

Tentative Ruling:

**United States Bankruptcy Court
Central District of California
Santa Ana
Judge Mark Wallace, Presiding
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Monday, July 19, 2021

Hearing Room 6C

2:00 PM

CONT... 239 Carnation LLC, a Texas Limited Liability Compa

Chapter 11

APPEARANCES REQUIRED.

Debtor and debtor in possession 239 Carnation LLC ("Debtor") moves for entry of an order approving a sale of estate property free and clear of liens (the "Motion") pursuant to 11 U.S.C. § 363. The Motion proposes a sales transaction in which Debtor's principal asset, a high-end residence in Corona del Mar (the "Property"), is to be auctioned off at a reserved minimum sales price of \$16.5 million free and clear of liens against the Property. Creditor Vanessa Ryder ("Ms. Ryder") holds a lien against the Property in the range of \$400,000 to \$500,000 and opposes the Motion on the ground that the Property cannot be sold free and clear of her lien under 11 U.S.C. § 363(f)(5) for the reasons argued in her opposition (and also that none of the other provisions of section 363(f) permitting a sale free and clear of liens is applicable).

The precise issue before the Court is whether section 363(f)(5) permits a sale of the Property free and clear of Ms. Ryder's lien.

Section 363(f)(5) provides that "[t]he trustee may sell property . . . free and clear of any interest in such property of an entity other than the estate, only if . . . (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest."

The parties do not dispute that Ms. Ryder is an "entity" under the Bankruptcy Code's strange jargon in 11 U.S.C. § 101(15) or that the lien she holds is an "interest" in estate property. Instead, the parties' dispute centers on whether Ms. Ryder "could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest." The Debtor argues that she could be so compelled -- in a nonjudicial foreclosure proceeding conducted by Bridge Loan Financial, Inc. that, depending upon the sales price in the foreclosure, would either wipe out her lien for no consideration or eliminate it for monetary consideration less than the full lien amount.

As a preliminary matter, the Court determines that a nonjudicial foreclosure proceeding qualifies as a "legal or equitable proceeding" within the meaning of the statute. Although it might seem on first impression that a nonjudicial foreclosure can never be a "legal or equitable proceeding" by definition, it is undeniable that nonjudicial foreclosures in California are authorized by California law and for that

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CONT... 239 Carnation LLC, a Texas Limited Liability Compa Chapter 11

reason and in that sense constitute a "legal or equitable proceeding." This view of the law appears to be accepted by the United States District Court for the Central District of California. *In re Hassen Imports Partnership*, 502 B.R. 851(C.D. Cal. 2013). In that case, it would have been unnecessary for the District Court to have considered the issue whether a money satisfaction of the City of West Covina's covenants had occurred if a nonjudicial foreclosure did not qualify as a legal or equitable proceeding in the first place.

The term "money satisfaction" might be thought to be limited to a situation where the full amount of a lien is satisfied with money and where lesser payments would not constitute a "satisfaction." However, the United States Bankruptcy Appellate Panel of the Ninth Circuit rightly points out in *Clear Channel Outdoor, Inc. v. Knupper (In re PW, LLC)*, 391 B.R. 25, 43 (B.A.P. 9th Cir. 2008) that "[i]f full payment were required, § 363(f)(5) would merely mirror § 363(f)(3) and render it superfluous." Thus, to prevent § 363(f)(5) from being redundant of § 363(f)(3), § 363(f)(5) must necessarily apply to situations where a junior lienholder has its lien satisfied with an amount of money less than the full amount of the lien.

The District Court determined in *Hassen Imports* that the word "satisfaction" in the context of § 363(f)(5) means "giving something of value in exchange for terminating an outstanding obligation." *In re Hassen Imports Partnership*, 502 B.R. at 860. This led the District Court in that case to conclude that § 363(f)(5) did not apply to a sale free and clear of West Covina's covenants because West Covina was not provided with any kind of money or other value in exchange for the termination of its covenants.

Theoretically, *Hassen Imports* can be read as holding that if no money is given in exchange for terminating an outstanding obligation, then § 363(f)(5) by its terms (referring as it does to a "money satisfaction") can never apply. (The Court notes here that it is bound by *Hassen Imports*, that being a decision of a higher court, namely, the District Court). Such an interpretation as applied to liens securing an obligation to pay money would lead to truly anomalous and strange results. Under this interpretation, property of the estate securing a partially out-of-the-money lien could be sold free and clear of such lien under § 363(f)(5), but estate property securing a wholly out-of-the-money lien could not be sold free and clear. A wholly underwater lienholder would have greater rights to block a free-and-clear section 363 sale than a

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CONT... 239 Carnation LLC, a Texas Limited Liability Compa
partially underwater lienholder.

Chapter 11

The statute uses the word "could" --- "such entity could be compelled." "Could" is defined in *Webster's Ninth New Collegiate Dictionary* as a past conditional. An example given in the Dictionary is "we would go if we could." The statute places no express limitation on the conditional aspect of "could be compelled," so one possible interpretation is that irrespective of whether Ms. Ryder's lien is in the money, she "could be compelled" to accept a money satisfaction of her interest in a nonjudicial foreclosure proceeding held by Bridge Loan Financial, Inc. – because that is simply the way nonjudicial foreclosure sales work. Thus, the "could be compelled" conditional refers to a process rather than to the specific manner in which a particular lien is treated under that process. As an example, consider the statement "Litigant A could be compelled to comply with Court Discovery Order X." This statement can be true as a general proposition addressing how discovery orders work even though A has not given any indication of any intention of disobeying Court Order X. This is the meaning the Court determines should be given to 11 U.S.C. § 363(f)(5).

This Court therefore concludes that estate property can be sold free and clear of Ms. Ryder's lien even if such lien is completely out of the money and no money satisfaction of such interest would occur in a nonjudicial foreclosure.

For these reasons, the Court overrules Ms. Ryder's limited opposition to the Motion and grants the Motion.

Party Information

Debtor(s):

239 Carnation LLC, a Texas Limited

Represented By
Jeffrey I Golden
Beth Gaschen

**United States Bankruptcy Court
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Santa Ana
Judge Mark Wallace, Presiding
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Hearing Room 6C

2:00 PM

8:20-11083 239 Carnation LLC, a Texas Limited Liability Compa

Chapter 11

#3.10

CONT'D STATUS CONFERENCE Hearing RE: (1) Status Of Chapter 11 Case;
And (2) Requiring Report On Status Of Chapter 11 Case
(Petition filed 3/31/2020)

FR: 6-3-20; 8-26-20; 11-18-20; 3-17-21; 4-28-21; 7-14-21

[Tele. appr., Roger F. Friedman, repr., Bridge Loan Financial, Creditor]

[Tele. appr., Beth Gaschen, repr., Debtor]

[Tele. appr., Jeffrey I. Golden, repr., Debtor]

[Tele. appr., Nancy Goldenberg, repr., U.S. Trustee]

[Tele. appr., R. Gibson Pager, Jr., repr., Vanessa Ryder, Creditor]

[Tele. appr., Stephen Perkins, repr., Debtor]

**[Tele. appr., Sonia Plesset Edwards, repr., Bridge Loan Financial,
Creditor]**

[Tele. appr., Tim Smith, repr., Debtor]

[Tele. appr., Todd Wohl, repr., Debtor]

Docket 15

Tentative Ruling:

APPEARANCES REQUIRED.

**United States Bankruptcy Court
Central District of California
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2:00 PM

CONT... 239 Carnation LLC, a Texas Limited Liability Compa Chapter 11

The Court will inquire into whether we have overbidders for the property auction.

Next status conference: October 27, 2021 at 9:00 a.m. An updated status report is due October 13, 2021.

COURT TO PREPARE ORDER.

Party Information

Debtor(s):

239 Carnation LLC, a Texas Limited

Represented By
Jeffrey I Golden
Beth Gaschen

**United States Bankruptcy Court
Central District of California
Santa Ana
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Monday, July 19, 2021

Hearing Room 6C

2:00 PM

8:18-11759 Chester Davenport

Chapter 7

Adv#: 8:18-01155 Naylor v. Sun et al

#4.00

CONT'D Hearing RE: Examination of Judgment Debtor Bianca Sun
(Application filed 11-13-20)
(Set per order entered 11-25-20)

FR: 4-7-21; 6-14-21

Docket 235

***** VACATED *** REASON: OFF CALENDAR - EXAMINATION OF
JUDGMENT DEBTOR HAS BEEN WITHDRAWN.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Chester Davenport

Represented By
Michael Jay Berger

Defendant(s):

Bianca Sun

Represented By
Donald W Sieveke

Yan Yu Sun

Represented By
Donald W Sieveke

Movant(s):

Karen S Naylor (TR)

Represented By
Thomas H Casey
Stuart A Katz

Plaintiff(s):

Karen Sue Naylor

Represented By
Thomas H Casey
Kerry A. Moynihan

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CONT... Chester Davenport

Chapter 7

Trustee(s):

Karen S Naylor (TR)

Represented By
Thomas H Casey
Stuart A Katz