

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Wallace, Presiding
Courtroom 225 Calendar**

Tuesday, November 08, 2016

Hearing Room 225

9:00 AM

6:15-21987 Catherine Boyson-Brown

Chapter 7

#1.00

Cooksey, Toolen, Gage, Duffy & Woog - movant attorney

Motion for Relief from Stay

Santander Consumer USA Inc. vs DEBTOR
(Motion filed 10/6/16)

RE: 2013 CHEVROLET CAMARO, VIN 2G1FB1E30D9143810

Docket 29

Tentative Ruling:

APPEARANCES NOT REQUIRED.

The motion is granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) 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.

The order is binding and effective despite conversion of this bankruptcy case to a case under any other chapter of Title 11 of the U.S. Code.

MOVANT TO LODGE ORDER VIA LOU WITHIN 7 DAYS.

Party Information

Debtor(s):

Catherine Boyson-Brown

Pro Se

Trustee(s):

**United States Bankruptcy Court
Central District of California
Riverside
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Tuesday, November 08, 2016

Hearing Room 225

9:00 AM

CONT... Catherine Boyson-Brown
Robert Whitmore (TR)

Pro Se

Chapter 7

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Wallace, Presiding
Courtroom 225 Calendar**

Tuesday, November 08, 2016

Hearing Room 225

9:00 AM

6:16-14662 Floyd D. Behrman and Kathleen Elizabeth Mallory

Chapter 7

#2.00

Zieve, Brodnax & Steele, LLP - movnt attorney

Motion for Relief from Stay

Broker Solutions Inc vs. DEBTORS'
(Motion filed 9/27/16)

RE: 443 E Mead St San Jacintio CA 92583

Docket 20

Tentative Ruling:

APPEARANCES REQUIRED.

The motion is granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) to permit movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the subject property in accordance with applicable law, *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.

Also, grant the following relief:

- Box 3. Movant, or its agents, may, at its option, offer, provide and enter into a potential forbearance agreement, loan modification, refinance agreement or other loan workout or loss mitigation agreement. Movant, through its servicing agent, may contact the Debtor by telephone or written correspondence to offer such an agreement.

MOVANT TO LODGE ORDER VIA LOU WITHIN 7 DAYS.

Party Information

**United States Bankruptcy Court
Central District of California
Riverside
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Courtroom 225 Calendar**

Tuesday, November 08, 2016

Hearing Room 225

9:00 AM

CONT... Floyd D. Behrman and Kathleen Elizabeth Mallory

Chapter 7

Debtor(s):

Floyd D. Behrman

Represented By
Nicholas M Wajda

Joint Debtor(s):

Kathleen Elizabeth Mallory

Represented By
Nicholas M Wajda

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Wallace, Presiding
Courtroom 225 Calendar**

Tuesday, November 08, 2016

Hearing Room 225

9:00 AM

6:16-14859 Desert Springs Financial LLC

Chapter 11

#3.00

The Bankruptcy Law Firm. P.C. - movant attorney

Motion for Relief from Stay

Yun Hei Shin, individually and Ramon Palm Lanes Inc. vs. DEBTOR
(Motion filed 9/30/16)

Re: ACTION IN NON-BANKRUPTCY FORUM RE: Superior Court case number
INC 10003583

Docket 194

Tentative Ruling:

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Desert Springs Financial LLC

Represented By
M Wayne Tucker

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Wallace, Presiding
Courtroom 225 Calendar**

Tuesday, November 08, 2016

Hearing Room 225

9:00 AM

6:16-14859 Desert Springs Financial LLC

Chapter 11

#4.00

Todd Turoci- movant attorney

Motion for Relief from Stay

Mitchell Altman vs. DEBTOR
((Motion filed 10/17/16)

re: Real property Vacant Land

Docket 230

Tentative Ruling:

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Desert Springs Financial LLC

Represented By
M Wayne Tucker

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Wallace, Presiding
Courtroom 225 Calendar**

Tuesday, November 08, 2016

Hearing Room 225

9:00 AM

6:16-16252 Michael John Ordoqui and Deborah Christine Ordoqui

Chapter 7

#5.00

Wright, finlay & Zak, LLP - movant attorney

Motion for Relief from Stay

Central Mortgage Company vs. DEBTORS
(Motion filed 9/29/16)

Re: 38080 Fairbrook Drive, Murrieta CA 92563

EH_____

Docket 13

Tentative Ruling:

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Michael John Ordoqui

Represented By
Karen E Lockhart

Joint Debtor(s):

Deborah Christine Ordoqui

Represented By
Karen E Lockhart

Trustee(s):

Todd A. Frealy (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Wallace, Presiding
Courtroom 225 Calendar**

Tuesday, November 08, 2016

Hearing Room 225

9:00 AM

6:16-16762 Paul James Birch

Chapter 7

#6.00

Buckley Madole, P.C. - movant attorney

Motion for Relief from Stay

Toyota Motor Credit vs. DEBTOR
(Motion filed 10/6/16)

RE: 2010 TOYOTA PRIUS VIN JTDMN3DU8A0074213

Docket 9

Tentative Ruling:

APPEARANCES NOT REQUIRED.

The motion is granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) 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):

Paul James Birch

Represented By
James P Doan

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Wallace, Presiding
Courtroom 225 Calendar**

Tuesday, November 08, 2016

Hearing Room 225

9:00 AM

6:16-16810 Golnaz Shirdel

Chapter 7

#7.00

Tiffany & Bosco - movant attorney

Motion for Relief from Stay

Bank of America , N. A. vs. DEBTOR
(Motion filed 9/27/16)

Re: 2008 Mercedes B -S Class

Docket 16

Tentative Ruling:

APPEARANCES NOT REQUIRED.

The motion is granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) 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):

Golnaz Shirdel

Represented By
Arash Shirdel

Trustee(s):

Charles W Daff (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Wallace, Presiding
Courtroom 225 Calendar**

Tuesday, November 08, 2016

Hearing Room 225

9:00 AM

6:16-17164 Shelia Brooks and Darsha' Allen Brooks

Chapter 7

#8.00

Barry Lee O'Connor & Associates - movant attorney

Motion for Relief from Stay

Zhu Bing vs. DEBTORS
(Motion filed 10/17/16)

Re: 13450 Golden Sand Avenue Victorville CA 92392

Docket 23

Tentative Ruling:

APPEARANCES REQUIRED.

Party Information

Debtor(s):

Shelia Brooks

Pro Se

Joint Debtor(s):

Darsha' Allen Brooks

Pro Se

Trustee(s):

Lynda T. Bui (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Wallace, Presiding
Courtroom 225 Calendar**

Tuesday, November 08, 2016

Hearing Room 225

9:00 AM

6:16-18219 Phyllis Ann York

Chapter 7

#9.00

Cooksey, Toolen, Gage, Duffy & Woog - movant attorney

Motion for Relief from Stay

Cab West, LLC vs. DEBTOR
(Motion filed 10/3/16)

RE: 2014 FORD ESCAPE, VIN 1FMCU0J99EUE53804

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):

Phyllis Ann York

Represented By
D Justin Harelik

Trustee(s):

Karl T Anderson (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Wallace, Presiding
Courtroom 225 Calendar**

Tuesday, November 08, 2016

Hearing Room 225

9:00 AM

6:16-18300 Sylvia A Alvarado

Chapter 7

#10.00

Jeffer Mangels Butler & Mitchell LLP - movant attorney

Motion for Relief from Stay

Duke Partners II, LLC vs. DEBTOR
(Motion filed 10/7/16)

RE: 9725 Beech Avenue, Fontana, CA 92335

Docket 13

Tentative Ruling:

APPEARANCES REQUIRED.

The motion is granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(4) to permit movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the subject property in accordance with applicable law, *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.

Grant annulment.

Also, grant the following extraordinary relief:

- Box 9. Relief from the stay is granted under 11 U.S.C. § 362(d)(4): If recorded in compliance with applicable state laws governing notices of interests or liens in real property, the order is binding in any other case under this title purporting to affect the Property filed not later than 2 years after the date of the entry of the order by the court, except that a debtor in a subsequent case under this title may move for relief from the order based upon changed circumstances or for good cause shown,

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Wallace, Presiding
Courtroom 225 Calendar**

Tuesday, November 08, 2016

Hearing Room 225

9:00 AM

CONT... **Sylvia A Alvarado**
after notice and hearing.

Chapter 7

- Box 10. The order is binding and effective in any bankruptcy case commenced by or against any debtor who claims any interest in the Property for a period of 180 days from the hearing of this Motion upon recording of a copy of this order or giving appropriate notice of its entry in compliance with applicable nonbankruptcy law.

Deny request for extraordinary relief under Box 11.

MOVANT TO LODGE ORDER VIA LOU WITHIN 7 DAYS.

Party Information

Debtor(s):

Sylvia A Alvarado	Pro Se
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Trustee(s):

Arturo Cisneros (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Wallace, Presiding
Courtroom 225 Calendar**

Tuesday, November 08, 2016

Hearing Room 225

9:00 AM

6:16-18890 Lois Rodriguez

Chapter 7

#11.00

Barry Lee O'Connor Esq. - movant attorney

Motion for Relief from Stay

Lili Weng vs. DEBTOR
(Motion filed 10/17/16)

Re: 68270 Durango Road Cathedral City CA 92234

Docket 7

***** VACATED *** REASON: Case Dismissed 10/24/16 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lois Rodriguez

Pro Se

Trustee(s):

Larry D Simons (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Wallace, Presiding
Courtroom 225 Calendar**

Tuesday, November 08, 2016

Hearing Room 225

2:00 PM

6:14-21007 Amber I Lao

Chapter 7

#1.00

Hrg. on United Sttes Trustee's Motion filed 9/27/16 for an Order Appointing Chapter 7 Trustee

EH_____

Docket 26

Tentative Ruling:

APPEARANCES REQUIRED.

Grant the UST's request for judicial notice. Grant the motion to appoint a Chapter 7 Trustee.

UNITED STATES TRUSTEE TO LODGE ORDER VIA LOU WITHIN 7 DAYS.

Party Information

Debtor(s):

Amber I Lao

Represented By
William J Howell

Trustee(s):

Howard B Grobstein (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Wallace, Presiding
Courtroom 225 Calendar**

Tuesday, November 08, 2016

Hearing Room 225

2:00 PM

6:15-19850 Steven R. Rojas

Chapter 11

#2.00

Hrg. on Debtor's Motion filed 9/6/16 for Order Authorizing Debtor to Incur Unsecured and Subordinated Debt

(Cont. from 9/27/16)

Docket 131

***** VACATED *** REASON: Withdrawal of motion filed 10/24/16**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Steven R. Rojas

Represented By
Franklin C Adams
Thomas J Eastmond
Lewis Brisbois Bisgaard & Smith LLP

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Wallace, Presiding
Courtroom 225 Calendar**

Tuesday, November 08, 2016

Hearing Room 225

2:00 PM

6:16-13067 Joan Margaret Garcia

Chapter 7

#3.00

Hrg. on Debtor's Motion filed 10/6/16 to Reopen Chapter 7 Case to bring motion to avoid lien under 11 U.S.C. §522(f) (Real Property) and amend schedules

Docket 23

Tentative Ruling:

APPEARANCES NOT REQUIRED.

Grant the motion and reopen the case for 120 days.

COURT TO PREPARE ORDER.

Party Information

Debtor(s):

Joan Margaret Garcia

Pro Se

Trustee(s):

Steven M Speier (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Wallace, Presiding
Courtroom 225 Calendar**

Tuesday, November 08, 2016

Hearing Room 225

2:00 PM

6:16-14859 Desert Springs Financial LLC

Chapter 11

#4.00

Hrg. on Debtor's Motion filed 10/14/16 (1) Authorizing Refinance and Sale of Estate Property Free and clear of Liens, Claims, Encumbrances and Interests subject to current leaseholders' interest under 11 U.S.C. §363 and §364; (2) Authorizing payment of brokers' commission, closing costs, and real property taxes; (3) Finding that buyer is good faith purchaser under 11 U.S.C. §363(m); (4) Finding that lienholders are adequately protected under 11 U.S.C. §361; (5) Finding that escrows may close as beneficial to this chapter 11 proceeding; and (6) Granting such other relief as in just and proper

Docket 222

Tentative Ruling:

APPEARANCES REQUIRED.

This matter comes before the Court on a sale and refinancing motion (the "Motion") brought by debtor and debtor in possession Desert Springs Financial LLC ("Debtor"). The Motion requests entry of an order authorizing Debtor to (1) sell real property located at 68031 Ramon Road, Cathedral City, California 92234 (APN 680-190-033) (the "Towers") out of the ordinary course of business and free and clear of liens, encumbrances etc. (but subject to the leasehold interest of tenant 111 Smoke Shop) pursuant to 11 U.S.C. § 363(b), and (2) simultaneously enter into and close a refinancing transaction with respect to real property located at 68051 Ramon Road, Cathedral City, California 92234 (APN 680-190-034) ("Bowling") free and clear of liens, encumbrances etc. (but subject to the leasehold interest of tenant Ramon Palm Lane, Inc.) pursuant to 11 U.S.C. § 364(d). Additionally, the Motion asks the Court to determine that the buyer of Towers is a good faith purchaser within the meaning of 11 U.S.C. § 363(m), to find that lienholders are adequately protected under 11 U.S.C. § 361 and find that escrows may close as beneficial to this chapter 11 proceeding.

Towers is a 17,776 square foot, two story commercial building suitable for office and retail uses. The proposed buyer is GK Real Estate Group, LLC ("Buyer"), which proposes to purchase Towers for \$2,290,000. No seller-carryback financing is envisioned. Bowling is a 25,000 square foot commercial building currently being

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Wallace, Presiding
Courtroom 225 Calendar**

Tuesday, November 08, 2016

Hearing Room 225

2:00 PM

CONT... Desert Springs Financial LLC

Chapter 11

used and operated by tenant Ramon Palm Lane, Inc. ("RPL") as a bowling alley under a long-term, 15-year lease expiring September 30, 2023. Debtor proposes to enter into a refinancing transaction with lender Socotra Capital (based in Sacramento, California) whereby Socotra Capital will loan Debtor \$2,575,000 (the "Refinancing Loan") in exchange for a first position deed of trust on Bowling securing a promissory note with a 36-month term. The Refinancing Loan will bear interest at 10.5 percent per annum, with an origination fee of 2.75 points and \$2,050 in fees. Payments are interest only during the 3-year loan term.

Debtor proposes to use the sales proceeds and refinancing proceeds to pay off in full all liens against Towers and a portion of certain liens against Bowling and to create a fund that will enable it to meet ongoing expenses and provide the financial wherewithal to proceed toward confirmation of a plan of reorganization. Importantly, the largest single creditor in this case, Pacific Premier Bank (the "Bank") (owed over \$2.5 million), joins in the motion and supports the sale and refinancing transactions, provided it is paid in full from sales and refinancing proceeds.

The second largest creditor group, RPL and Angie Shin (collectively, "RPL/Shin"), opposes the Motion on a variety of grounds discussed below. Angie Shin is a holder of a 25 percent membership interest in Debtor.

The United States Trustee filed an objection to a sale motion brought earlier by the Debtor. That prior motion was withdrawn, and the United States Trustee has not renewed its objection to the Motion that is now before the Court.

The Sale of Towers

11 U.S.C. § 363(b) generally permits a chapter 11 debtor to sell estate property outside of the ordinary course of business after notice and a hearing. However, a sale cannot be approved by the bankruptcy court unless all entities having an interest in the property and making a request to the court are adequately protected with respect to such interest. 11 U.S.C. § 363(e). A sale of estate property free and clear of a lien is permitted if applicable non-bankruptcy law permits a sale free and clear of a lien, the entity holding the lien consents to the sale, or the sales price "is greater than the aggregate value of all liens on such property" or the lien is in bona fide dispute. 11 U.S.C. § 363(f)(1)-(4).

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Wallace, Presiding
Courtroom 225 Calendar**

Tuesday, November 08, 2016

Hearing Room 225

2:00 PM

CONT... Desert Springs Financial LLC

Chapter 11

Sales pursuant to section 363(b) must be supported by a valid business justification. *In re Hunt*, No. CV 12-08439 MMM, 2014 U.S. Dist. LEXIS 189464, at *59 (C.D. Cal., July 25, 2014); *240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996) (citing *In re Lionel Corp.*, 722 F.2d 1063, 1070 (2d Cir. 1983)). Specifically, the trustee or debtor in possession (and, ultimately, the bankruptcy court) must assure that the estate receives optimal value as to the asset to be sold. *Fridman v. Anderson (In re Fridman)*, BAP No. CC-15-1151-FKiKu, 2016 Bankr. LEXIS 2608, at *18 (B.A.P. 9th Cir., July 15, 2016) (unpublished but cited for persuasive value). The sale must also be in good faith, meaning that the sale is at fair value and that there is no collusion between buyer and seller or any attempt to take advantage of other potential purchasers. *240 N. Brand Partners, Ltd., supra*, 200 B.R. at 659. These requirements are designed to protect creditors' interests in estate assets. *In re Kellogg-Taxe*, No.: 2:12-bk-51208-RN, 2014 Bankr. LEXIS 1033, at *17 (Bankr. C.D. Cal., March 17, 2014) (Neiter, J.)

In this case, the sale of Towers and the refinancing of Bowling are joined at the hip in the sense that the proposed transaction requires a simultaneous closing with the express proviso that neither transaction can close unless both close. Because of this feature, the sale cannot be considered in isolation from the refinancing in evaluating the sale's propriety under the rules and requirements discussed above. Therefore, the Court will consider these transactions taken together in terms of the amount of capital being raised and the uses to which such capital is proposed to be put.

The sale will generate proceeds net of commissions and closing costs of about \$2,106,800 (i.e., 92 percent of the gross sales price). The refinancing transaction will generate net proceeds of about \$2,502,168 (netting out the origination fee and other expenses). These amounts tally to \$4,608,968, which is more than sufficient to pay the Bank's claim of \$2,678,505.37 and the RPL/Shin claim – using for this purpose RPL/Shin's own figures for the total amount they are owed – of \$1,607,159.10. Subtracting these amounts, there is a remaining balance of \$323,303.53, which can be used to pay in full the judgment lien of J&K Drywall (approximately \$21,655.09 as of November 11, 2016) and provide a cash reserve for the estate. In short, the sale and refinancing transactions when closed will provide sufficient cash to pay off in full the two largest secured creditors in this case and enable the Debtor to move forward in

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Wallace, Presiding
Courtroom 225 Calendar**

Tuesday, November 08, 2016

Hearing Room 225

2:00 PM

CONT... Desert Springs Financial LLC

Chapter 11

proposing and quite possibly confirming a plan of reorganization. Importantly, by paying off the RPL/Shin creditors in full, Debtor will again become entitled to collect current rent of almost \$50,000 per month under Debtor's lease with RPL (such rents had previously been subject to setoff, but setoff ceases to be available if the underlying obligation is fully paid).

The Declarations of Murray Altman and Mike Radlovic (Debtor's real estate agent) in support of the Motion establish that the sale of Towers is for the highest and best value that can reasonably be expected, that the refinancing through Socotra Capital is the best that can be obtained (with no lender being found who will provide better terms), that the sale and refinancing transactions are at arm's length with no collusion involved. The Declaration of Janette DeLap establishes that the sale and refinancing transactions are indeed joined at the hip such that the escrows will close simultaneously, with neither closing before the other.

The adequate protection requirement of section 363(e) is being satisfied beyond peradventure with respect to creditors Bank and RPL/Shin because their claims are being paid in full out of the sales and refinancing proceeds. This is the best form of adequate protection that can possibly be obtained. To the extent RPL/Shin argue that their interests as lessee are not adequately protected because of an alleged intention of Buyer to use or lease Towers for a marijuana dispensary use, such argument is addressed below.

The sale of Towers is not being made free and clear of the Bank's lien because the Bank will be paid in full and will release its lien after receiving full payment. Section 363(f) does not apply in this situation. The lien ceases to exist after it has been satisfied in full, and therefore there is no lien to sell property free and clear of in this type of situation. Even if section 363(f) did apply, the Court would nonetheless find its provisions satisfied because the Bank has consented to the sale through its joinder in the Motion and, alternatively, applicable nonbankruptcy law would permit a sale of property free and clear of a lien that is fully satisfied prior to the conveyance of title to the buyer.

The RPL/Shin parties' lien is subject to a bona fide dispute within the meaning of section 363(f)(4). Debtor contends the RPL/Shin lien amount is \$1,284,138.94 as of November 8, 2016; RPL/Shin assert the correct lien amount is \$1,607,159.10. The

**United States Bankruptcy Court
Central District of California
Riverside
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Tuesday, November 08, 2016

Hearing Room 225

2:00 PM

CONT... Desert Springs Financial LLC

Chapter 11

calculation of the precise amount owed depends upon the correct calculation of post-judgment interest, amounts recouped by RPL/Shin through setoff (which interacts with the calculation of post-judgment interest because RPL/Shin is not entitled to post-judgment interest on amounts already recouped) and other factors such as costs and attorneys' fees. These are very complicated calculations and suffice it to say that there is an objective basis for a factual dispute (namely, complex mathematical calculations) as to the validity of that portion of the debt exceeding \$1,284,138.94. *In re Dewey Ranch Hockey, LLC*, 406 B.R. 30 (Bankr. D. Ariz. 2009). Accordingly, the Court will order that RPL/Shin be paid \$1,284,138.94 from escrow and that funds of \$323,020.16 (i.e., the difference between RPL/Shin's number and Debtor's number) shall be held in an escrow account pending this Court's determination of the precise amount owed. In short, the Towers will be sold free and clear of RPL/Shin's reduced (alleged) lien amount of \$323,020.16 (the balance of the lien having been reduced by payment through escrow), but that amount is in a bona fide dispute. RPL/Shin remains adequately protected through the funds held in escrow and through its setoff rights.

The Refinancing of Bowling

11 U.S.C. § 364 permits the bankruptcy court to authorize the debtor in possession to obtain secured credit financing with respect to estate property after notice and a hearing, provided certain requirements are met. The debtor in possession must show that it is unable to obtain such credit otherwise and that there is adequate protection with respect to holders of liens that are junior to or *pari passu* with the senior lien being placed on the property through the refinancing. 11 U.S.C. § 364(d).

In order to prevail on a motion to obtain financing on a senior secured basis that primes pre-existing liens, a debtor has the burden of showing that (1) the debtor is unable to otherwise obtain the credit, and (2) the debtor provides adequate protection to the creditor whose lien is being primed. 3 Collier on Bankruptcy ¶ 364.05.

As discussed below, the RPL/Shin parties, whose lien is being primed, are provided with more than adequate protection in this transaction, and all other secured creditors are being paid in full. The considerations discussed above also show that the refinancing with Socotra Capital is a reasonable exercise of business judgment: the refinancing, in conjunction with the sale, will enable Debtor to fully pay the two

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Wallace, Presiding
Courtroom 225 Calendar**

Tuesday, November 08, 2016

Hearing Room 225

2:00 PM

CONT... Desert Springs Financial LLC

Chapter 11

largest secured creditors in the case, will free up the rent due under the lease with RPL from setoff and will set the stage for filing and confirming a plan of reorganization. The Murray Altman declaration shows that no alternative financing is available on any other basis. The refinancing is in the best interests of the estate because it will facilitate the full payment of the estate's largest creditors and move the case toward plan proposal and confirmation.

Objections of the RPL/Shin Parties

The RPL/Shin parties have filed a 243-page opposition to the Motion (the "Opposition") making numerous arguments supporting their view that the Court should deny the motion. The Court considers and rules upon these objections as discussed below.

The first argument is that the RPL/Shin parties will not release their judgment lien on Towers. This ignores the important point that sufficient proceeds will exist from the sale and refinancing transactions to pay the Bank and the RPL/Shin parties in full – even using the number that RPL/Shin say they are owed – and that the Motion in fact provides that they will be paid in full. RPL/Shin cite the Court to no authority that they can retain their lien even after they have been paid every cent they are owed. This argument is devoid of merit.

Second, the RPL/Shin parties argue that there is no authority in the Bankruptcy Code for combining a sale motion with a refinancing motion. The Bankruptcy Code allows sale motions and the Bankruptcy Code allows financing motions. The Court sees no reason why these motions cannot be combined into a single motion provided the requirements for a sale are satisfied and the requirements for a refinancing are satisfied, and the RPL/Shin parties cite the Court to no authority that this is somehow improper.

Third, the RPL/Shin parties contend that the transactions can go forward only if there is a single escrow—again citing no authority for the proposition. However, the Court determines it is entirely proper and permissible and indeed desirable to have two separate escrows for two separate transactions. As discussed earlier, there is no risk that one transaction will close before the other.

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Wallace, Presiding
Courtroom 225 Calendar**

Tuesday, November 08, 2016

Hearing Room 225

2:00 PM

CONT... Desert Springs Financial LLC

Chapter 11

Fourth, the argument is made that the Motion understates how much the RPL/Shin parties are owed. Although that is true, the Court's arithmetic regarding the total amount of cash being raised through the sale and refinancing uses RPL/Shin's own claim amount number and, using that number, demonstrates that sufficient proceeds will be generated to pay RPL/Shin in full. (The Court hastens to point out that its use of the RPL/Shin number by no means establishes that they are actually owed this amount).

Fifth, the Motion, according to RPL/Shin, is actually a prohibited *sub rosa* plan. This Court frequently takes the position that if a chapter 11 debtor is contemplating a sale of less than all its property in order to use the sales proceeds to pay creditors or finance a plan, it is more efficient to bring on a separate sale motion than to incorporate the sale into a proposed chapter 11 plan. The problem with the latter approach is that the Court and the parties could end up expending a great deal of energy confirming a plan only to later see the plan fail because the sale that is necessary to finance the reorganization falls apart and fails to close. The advantage of the former approach (sell first, confirm plan later) is that greater certainty is promoted because by the time the parties begin the plan process they will know how much cash was generated by the sale and is available to fund the reorganization. Moreover, all the requisite due process safeguards are in place because any party in interest is free to object to the sale or financing and, if seen appropriate, can take discovery of these matters. Fed. R. Bankr. P. 9014(c).

Sixth, the RPL/Shin parties complain that the Motion is fatally defective because the purchase contract for the sale is not attached to the Motion. While it is true the purchase contract is not attached to the Motion as originally filed, a copy of it has been filed as part of a supplement. The Court determines that this is sufficient to satisfy due process concerns and other requirements.

The seventh argument in the Opposition is that the buyer of Towers intends to use the property as a marijuana dispensary, a use illegal under federal law. This contention is made based upon a discussion Ms. Shin had with unnamed local government officials on an unnamed date. The discussion relates to a lot line adjustment that supposedly would be required if Towers were turned into a marijuana dispensary. Apart from the fact that this evidence is rank hearsay of the most unreliable kind, it is contradicted by the declaration of Garnik Gevorgyan, managing member of the Buyer, explaining that

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Wallace, Presiding
Courtroom 225 Calendar**

Tuesday, November 08, 2016

Hearing Room 225

2:00 PM

CONT... Desert Springs Financial LLC

Chapter 11

(1) the Buyer intends to lease more than 50 percent of the Towers leasable space to two companies in the medical field and is considering leasing to a company specializing in treating alcohol abuse, (2) a medical marijuana dispensary would be a bad fit with these kinds of tenants, and (3) the Buyer "does not have an intention to lease space to a medical marijuana dispensary." The Court determines that Mr. Gevorgyan's declaration regarding the absence of any intent to permit marijuana dispensary use is credible, and Ms. Shin's declaration regarding this use, even if it were admissible, has little or no credibility because of its lack of detail and conclusory approach to the issue. (The Court does not mean to suggest Ms. Shin is not telling the truth. Rather, the point is the evidence she offers is lacking in probative force).

Eighth, the RPL/Shin parties suggest that the refinancing transaction should not be permitted because the refinancing terms are onerous and, in any event, the Debtor will lack the financial capacity to repay the loan when it comes due approximately three years from now. As discussed earlier, the Debtor has shown that this loan is the best Debtor was able to obtain. Perhaps the loan is expensive, but that is not surprising considering the party applying for the loan is in a bankruptcy proceeding. Speculations about the Debtor's ability to repay the loan when it comes due are entirely unripe and premature, and neither the RPL/Shin parties, nor this Court nor anyone else has a crystal ball to determine economic conditions, property values and operating profits three years from now. Conceivably, Debtor may be able to roll the loan over when it comes due, refinance it with another lender, sell Bowling and use the sale proceeds to pay the Socotra Capital loan, bring in a money partner, etc. The RPL/Shin parties have failed to rebut evidence provided through the Murray Altman Declaration that the Socotra Capital loan is the best loan Debtor is able to obtain.

Ninth, the RPL/Shin parties assert the refinancing segment of the Motion fails to meet the requirements of 11 U.S.C. § 364(d)(2)(B) because the lien being granted to Socotra Capital primes them and they lack adequate protection. This argument fails because RPL/Shin will be paid \$1,284,138.94 from escrow and the remaining balance RPL/Shin contend they are owed -- \$323,020.16 -- is being held in escrow. Further, RPL/Shin retain setoff rights against this amount. All of this equates to more than adequate protection.

The Court will clarify that RPL/Shin may bid the amount of their lien at the auction sale of Towers and that RPL/Shin need not deposit a \$460,000 cashier's check or a

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Wallace, Presiding
Courtroom 225 Calendar**

Tuesday, November 08, 2016

Hearing Room 225

2:00 PM

CONT... Desert Springs Financial LLC

Chapter 11

check in any other amount in order to qualify to make an overbid.

Remaining arguments of RPL/Shin have already been addressed above or are without merit.

Good Faith Purchaser

11 U.S.C. § 363(m) permits the Court to determine whether a buyer of estate property in an outside-the-ordinary-course-of-business transaction is a "good faith" purchaser. A "good faith" purchaser is a purchaser who buys property in good faith and for value. *Paulman v. Gateway Venture Partners Iii, L.P. (In re Filtercorp, Inc.)*, 163 F.3d 570 (9th Cir. 1998). Here, the Court sees no evidence whatsoever that there is any fraud or collusion between Buyer and Debtor (and the Court notes that not even the RPL/Shin parties allege that such fraud or collusion exists). Further, based upon the Mike Radlovic Declaration, it is clear Towers is being sold for fair market value. Moreover, an additional safeguard is that fair market value will be tested at auction. If it is obvious to the marketplace that Towers has a fair market value materially in excess of the proposed \$2,290,000 gross sales price, parties will appear who will overbid the Buyer. For these reasons, the Court will determine that Buyer is a good faith purchaser within the meaning of section 363(m) if Buyer is the highest or only bidder at the Towers auction.

The RPL/Shin "Overbid"

Debtor owns interests in four real estate parcels: Towers, Bowling and two other parcels. The RPL/Shin parties propose in their opposition to buy all four parcels for \$5 million. There are two problems with this proposal: first, Debtors are not proposing to sell all four parcels, and the RPL/Shin parties have failed to cite the Court to any authority a creditor can buy what debtor is not selling; second, although the RPL/Shin parties have provided the Court with an appraisal of the four parcels in which Debtor has an interest, the appraisal fails to take account of the above-market lease that is in place with respect to Bowling. ("We have treated this portion of the building as a retail shell based upon this information. Thus, any above-market lease for this portion of the property is treated as not being attributable to the real estate, but a separate business enterprise value. The above are extraordinary assumptions of this report and if found to be untrue could impact the concluded value." RPL/Shin

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Wallace, Presiding
Courtroom 225 Calendar**

Tuesday, November 08, 2016

Hearing Room 225

2:00 PM

CONT... Desert Springs Financial LLC

Chapter 11

Opposition to Debtor DSF's Motion, docket no. 247, Exhibit E, p84,). Accordingly, the appraisal lacks credibility. The "overbid" is rejected.

For the foregoing reasons, and with the foregoing clarifications, the Court grants the Motion.

DEBTOR TO LODGE ORDER VIA LOU WITHIN 7 DAYS.

Party Information

Debtor(s):

Desert Springs Financial LLC

Represented By
M Wayne Tucker

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Wallace, Presiding
Courtroom 225 Calendar**

Tuesday, November 08, 2016

Hearing Room 225

2:00 PM

6:16-14859 Desert Springs Financial LLC

Chapter 11

#5.00

Hrg. on Motion filed 7/14/16 of Debtor-in-Possession to employ Real Estate Broker

(Cont. from 9/13/16)

Docket 62

Tentative Ruling:

APPEARANCES REQUIRED.

Overrule the objection and grant the employment application.

DEBTOR TO LODGE ORDER VIA LOU WITHIN 7 DAYS.

Party Information

Debtor(s):

Desert Springs Financial LLC

Represented By
M Wayne Tucker

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Wallace, Presiding
Courtroom 225 Calendar**

Tuesday, November 08, 2016

Hearing Room 225

2:00 PM

6:16-18300 Sylvia A Alvarado

Chapter 7

#6.00

Hrg. on Motion by United States Trustee to Dismiss Case with a Re-Filing Bar

Docket 10

***** VACATED *** REASON: Case Dismissed 10/4/16 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sylvia A Alvarado

Pro Se

Trustee(s):

Arturo Cisneros (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Wallace, Presiding
Courtroom 225 Calendar**

Tuesday, November 08, 2016

Hearing Room 225

2:00 PM

6:16-18120 Rosaura Sapien

Chapter 7

#7.00

Hrg. on Debtor's Motion filed 10/20/16 of Spalding & Spalding for an Order Authorizing Withdrawal as Counsel for Debtor

EH_____

Docket 16

Tentative Ruling:

APPEARANCES REQUIRED.

Grant the motion.

MOVANT TO LODGE ORDER VIA LOU WITHIN 7 DAYS.

Party Information

Debtor(s):

Rosaura Sapien

Represented By
Cynthia L Spalding

Trustee(s):

Larry D Simons (TR)

Pro Se