

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

Monday, December 05, 2016

Hearing Room 6C

9:00 AM

8:14-12280 Steven Allen Frey

Chapter 13

#1.00

Motion for relief from stay [Real Property]

Orange Tree Patio Homes Association vs. DEBTOR; And CONNIE D. FREY,  
Non-Filing Co-Debtor  
(Motion filed 11/2/16)

[RE: 104 Orchard, Irvine, CA 92618]

Docket 90

\*\*\* VACATED \*\*\* REASON: CONTINUED TO JANUARY 9, 2017 AT  
9:00 A.M. PER STIPULATION AND ORDER ENTERED 11-22-16 -  
[Docket No. 94]

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

Steven Allen Frey

Represented By  
Christopher J Langley

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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**8:16-13262 Timothy Lee Hirou**

**Chapter 13**

**#2.00**

CONT'D Motion for relief from stay [Unlawful Detainer]

Heather Flaherty Trustee For The George T. Flaherty Living Trust vs. DEBTORS  
(Motion filed 9/27/16)

**[RE: 922 Goldenrod Avenue, Corona Del Mar, CA 92625]**

FR: 10-24-16

Docket 14

**Tentative Ruling:**

**APPEARANCES REQUIRED.**

The Court will grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) to permit the issue of possession to be determined by state court. The Court will further order that there be no lockout or eviction prior to January 6, 2017.

MOVANT TO LODGE ORDER VIA LOU WITHIN 7 DAYS.

<b>Party Information</b>
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**Debtor(s):**

Timothy Lee Hirou

Pro Se

**Movant(s):**

Heather Flaherty Trustee for the

Represented By  
Marc Cohen

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**8:16-14063 Guita Afzali Oloomi**

**Chapter 7**

**#3.00**

Motion for relief from stay [Personal Property]

Wells Fargo Bank, N.A. d/b/a Wells Fargo Dealer Services vs. DEBTOR  
(Motion filed 10/28/16)

**[RE: 2006 Audi A-4 - VIN No.: WAUBC48H46K001809]**

Docket 8

**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):**

Guita Afzali Oloomi

Represented By  
Brian J Soo-Hoo

**Trustee(s):**

Richard A Marshack (TR)

Pro Se

**United States Bankruptcy Court  
Central District of California  
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**Monday, December 05, 2016**

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9:00 AM

**8:16-14257 Shannon Marie Magness and Kelly Scott Johnson**

**Chapter 13**

**#4.00**

Motion for relief from stay [Unlawful Detainer]

The William G. Joiner Trust Dated 2-6-02, William G. Joiner As Trustee vs. DEBTORS  
(Motion filed 10/20/16)

**[RE: 26262 Glen Canyon Drive, Laguna Hills, California 92653]**

Docket 15

**Tentative Ruling:**

**APPEARANCES REQUIRED.**

Creditor William G. Joiner Trust u/t/a dated February 6, 2002 ("Creditor") loaned \$150,000 to Kelly Johnson in 2007 and took back a second deed of trust on the residence of Kelly Johnson and Shannon Magness aka Shannon Johnson ("collectively, "Debtors") at 26262 Glen Canyon Drive, Laguna Hills, California 92653 (the "Property"). Creditor initiated nonjudicial foreclosure proceedings in mid-2011 and acquired a trustee's deed to the Property pursuant to a foreclosure sale on or about June 9, 2015. Debtors contend the foreclosure sale was illegal and improper under California law for a variety of reasons. After acquiring title to the Property, Creditor commenced unlawful detainer proceedings against Debtors and obtained a judgment from the Orange County Superior Court on September 22, 2015 awarding Creditor possession of the Property. Debtors took an appeal from this judgment and obtained a stay pending appeal. The stay was conditioned on Debtors making what are in effect adequate protection payments to Creditor during the appeal's pendency.

Creditor contends that Debtors failed to make the payments ordered by the Orange County Superior Court. The record is clear that the Orange County Superior Court issued a new writ of possession on September 13, 2016. A minute order of such court (the "Minute Order") lifted the stay pending appeal and shows that no final lockout was to occur prior to October 15, 2016. Debtors filed a notice of appeal with respect to the Minute Order on October 6, 2016.

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**CONT... Shannon Marie Magness and Kelly Scott Johnson**

**Chapter 13**

Debtors commenced this chapter 13 case by filing a bankruptcy petition on October 14, 2016.

On or about October 20, 2016, Creditor filed this motion for relief from stay with respect to the Property seeking relief for cause under 11 U.S.C. § 362(d)(1) (the "Motion"). The Debtors filed an opposition to the Motion.

Creditor's and Debtors' requests for judicial notice are granted.

Debtors' bankruptcy filing automatically stays "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate . . ." 11 U.S.C. § 362(a)(3). However, an act to obtain property which is not property of the estate is not stayed by section 362(a)(3). Accordingly, one of the inquiries here is whether Debtors have any protectable legal, equitable or possessory interest in the Property. *Eden Place, LLC v Perl (In re Perl)*, 811 F.3d 1120, 1127 (9th Cir. 2016). In *Eden Place*, the United States Court of Appeals for the Ninth Circuit determined that under California Code of Civil Procedure section 415.46, no occupant of premises retains any possessory interest of any kind following service of a writ of possession. *Id.* at 1129. Although Debtors have taken an appeal to the California Court of Appeal with respect to the Minute Order that granted the writ of possession, there is no evidence Debtors have obtained a stay pending appeal, and therefore this Court has every reason to believe that the writ of possession with respect to the Property that was issued on September 13, 2016 is "live" and fully effectual.

Ordinarily, *Eden Place* would fully dispose of the issues and require of its own force the granting of the Motion, but there is an additional complicating factor here, namely, the apparent pendency of the Debtors' state court appeal challenging the validity of the nonjudicial foreclosure by which Creditor gained title to the Property. Assuming without deciding that Debtors have some kind of legally protectable interest in the Property by virtue of such appeal (this is obviously a stretch, but the Court wishes to address all issues), the Court must then ask whether an independent ground for lifting the stay is to permit adjudication and determination of such appeal.

"Cause" to lift the stay to permit state court litigation to move forward is determined

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CONT... **Shannon Marie Magness and Kelly Scott Johnson**

**Chapter 13**

on a case by case basis. *LaPierre v. Advanced Medical Spa, Inc. (In re Advanced Medical Spa, Inc.)*, BAP No. EC-16-1087- KuMaJu (B.A.P. 9th Cir., Nov. 28, 2016) (unpublished but cited for persuasive value). Consideration of the so-called *Curtis* factors is appropriate in this context to determine whether cause exists. *Kronemyer v. Am. Contractors Indemn. Co. (In re Kronemyer)*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009). Many of the 12 *Curtis* factors are inapplicable here, but the Court determines it is likely the California Court of Appeal will definitely determine Debtors' rights, if any, to the Property (whether the relief will result in a partial or complete resolution of the issues); litigation in such forum would not appear to prejudice either Debtors or Creditor; the proceedings in state court have progressed to the appellate stage (i.e., even beyond the trial stage); and it would seem to be equally in the interests of both Creditor and the Debtors to have Debtors' rights to the Property finally decided, such that the "balance of the hurt" is equal. Consequently, the application of the *Curtis* factors supports the granting of the Motion.

Finally, this Court will not entertain any collateral attack against a writ of possession issued by the Orange County Superior Court nor can it function as an appellate court with respect to that court. These issues are best left to state court determination, and the parties, both the Creditor and the Debtors, should be freed from the injunctive provisions of section 362 to prosecute that litigation. *Ho v. Bank of Am. N.A. (In re Ho)*, BAP No. CC-10-1363-MkPaD, 2011 Bankr. LEXIS 4316 (B.A.P. 9th Cir., Aug. 9, 2011) (unpublished but cited for persuasive value).

The Motion is granted pursuant to 11 U.S.C. § 362(d)(1). However, the Court will not waive the 14-day stay. Creditor's requests for relief under numbered paragraphs 3, 7 and 11 of the Motion on page 5 thereof are denied.

CREDITOR TO LODGE ORDER VIA LOU WITHIN 7 DAYS.

<b>Party Information</b>
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**Debtor(s):**

Shannon Marie Magness

Pro Se

**Joint Debtor(s):**

Kelly Scott Johnson

Pro Se

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**CONT... Shannon Marie Magness and Kelly Scott Johnson**

**Chapter 13**

**Trustee(s):**

Amrane (SA) Cohen (TR)

Pro Se

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**6:16-20446 BioData Medical Laboratories, Inc.**

**Chapter 11**

**#5.00**

Hrg. on Debtor's Emergency motion for Authorization to Pay Prepetition Payroll and Related Relief

Docket 5

**Tentative Ruling:**

**APPEARANCES REQUIRED.**

<b>Party Information</b>
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**Debtor(s):**

BioData Medical Laboratories, Inc.

Represented By  
Robert M Yaspan

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**Hearing Room 6C**

2:00 PM

**8:11-21062 Regina Marconi**

**Chapter 7**

**#1.00**

Hearing RE: Motion To Hold Creditor I.Q. Data International, Inc. In Contempt  
For Violation Of Discharge Injunction  
(Motion filed 9/29/16)

Docket 22

**Tentative Ruling:**

**APPEARANCES REQUIRED.**

<b>Party Information</b>
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**Debtor(s):**

Regina Marconi

Represented By  
William Radcliffe  
Chris Dutkiewicz

**Trustee(s):**

Thomas H Casey (TR)

Pro Se

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**Monday, December 05, 2016**

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2:00 PM

**8:12-23047 Jeffrey Sumner Childs**

**Chapter 7**

**#2.00**

CONT'D Hearing RE: Motion To Approve Sean Tucker And Leslie Tucker As Qualified Bidders And As Entitled To Credit Bid (Motion filed 7/26/16) (OST Entered 7-27-16) (Motion set per Order Entered 10/19/16 - Docket No. 522)

FR: 11-14-16

Docket 474

**Tentative Ruling:**

**APPEARANCES REQUIRED.**

The chapter 7 trustee proposes to settle pending litigation between the estate and creditor C.B. Nanda and Nanda-related entities through a sale to Mr. Nanda of the estates claims and causes of action against Mr. Nanda. The Court granted the sale motion by order entered on or about June 30, 2016 and approved the sale pursuant to proposed overbid procedures. Creditors Sean and Leslie Tucker (the "Tuckers") filed a motion on or about July 26, 2016 (the "Motion") asking the Court to determine that they are qualified to present overbids at the sale and to credit bid the amount of their secured claim(s) in the case. The chapter 7 trustee filed an opposition to the Motion on August 3, 2016.

The Court has strongly encouraged mediation in this case, but all efforts at mediation have failed. The Court wishes to make it clear that it does not assign any blame whatsoever to any party in this case relating to the failed mediation efforts.

The Tuckers allege that they are secured creditors holding a claim in an amount not less than \$3,535,222.96.

Much earlier in this case – more than three years ago -- the Tuckers entered into a Stipulation for Subordination of Secured Creditor Claim, Docket No. 123, filed September 17, 2013 (the "Subordination Stipulation"), whereby the Tuckers agreed to subordinate their claims "to all statutory, reasonable and necessary, Court-approved

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**CONT... Jeffrey Sumner Childs**

**Chapter 7**

fees and expenses of the Trustee and his professionals and agents relating to or arising from the administration, collection, preservation and liquidation of Estate property, including all reasonable and necessary, fees and expenses relating to or arising from investigation, liquidation . . . plus placer, lode and millsite claims in Kern and San Bernardino Counties in California . . ." (the "Claim Subordination"). The Court has not been presented with a quantification of the amount of the Claim Subordination that is in place at this point in time, but has the sense that the amount easily exceeds \$300,000 and may be considerably higher.

The right to credit bid is not absolute, and a bankruptcy court may limit a creditor's right to credit bid for "cause." *In re Phila. Newspapers, LLC*, 599 F.3d 298, 315-16 (3d Cir. 2010); *In re Aeropostale*, 555 B.R. 369, 414-15 (Bankr. S.D. N.Y. 2016); *In re Fisker*, 510 B.R. 55, 59-60 (Bankr. D. Del. 2014). The term "cause" is not defined by the Bankruptcy Code, and it is left to the court to determine whether cause exists on a case-by- case basis. "Cause" is intended to be a flexible concept enabling a court to fashion an appropriate remedy on a case-by-case basis. *In re Aeropostale, Inc.*, *supra*, 555 B.R. at 414-15.

Here, cause exists to limit the Tuckers' right to credit bid by reason of the Subordination Stipulation. The Subordination Stipulation is essentially a secured creditor carve-out. Not uncommonly, panel trustees who are faced with administering an administratively insolvent case will elect to file a no-asset report and allow abandonment of over-encumbered assets to the debtor as a viable alternative to expending time and resources in a hopelessly insolvent case. In many instances, this is perfectly acceptable to the secured creditors who are happy to pursue their remedies outside of bankruptcy. In other instances, however, a secured creditor will determine that it is in its interest to have the trustee proceed with case administration to one degree or another. To induce the trustee to proceed in this manner, the secured creditor will offer a "carve-out" whereby the secured creditor subordinates its claim to the trustee's fees and the fees of the trustee's professionals. That is precisely what occurred in this case – as evidenced by the Subordination Stipulation.

The Tuckers now propose to sidestep their subordination obligation set forth in the Subordination Stipulation and to credit bid as if they had never subordinated their claim. Were the Court to permit this to the full extent proposed by the Tuckers in the Motion, it would not only be enormously unfair to the trustee, depriving the trustee of

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the benefit of the bargain in the Subordination Stipulation, it would also (if permitted to stand) have a tremendous chilling effect on carve-outs in other cases. The Court deems these considerations to constitute "cause" to limit the Tuckers' credit bid.

For these reasons, the Court will permit the Tuckers to credit bid but only after they have first paid to the trustee, in cash in immediately available U.S. dollars, an amount equal to the yet-to-be-determined Claim Subordination amount. For this purpose, the Court will utilize the fee application hearing set for December 19, 2016 at 2:00 p.m. to establish the Claim Subordination amount. Any party in interest has leave of the Court to file a supplemental pleading with respect to this matter on or before December 12, 2016.

A hearing on the sale itself will be calendared by the Court at the earliest opportunity after the matter of the Claim Subordination amount comes to rest.

In accordance with the foregoing, the Motion is granted in part and is denied in part.

CHAPTER 7 TRUSTEE TO LODGE ORDER VIA LOU WITHIN 7 DAYS.

<b>Party Information</b>
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**Debtor(s):**

Jeffrey Sumner Childs

Pro Se

**Trustee(s):**

Jeffrey I Golden (TR)

Represented By  
Ashley M McDow  
Jeffrey I Golden (TR)  
Michael T Delaney

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**8:12-23047 Jeffrey Sumner Childs**

**Chapter 7**

**#3.00**

CONT'D STATUS CONFERENCE RE: Hearing RE: Motion To Approve Sean Tucker And Leslie Tucker As Qualified Bidders And As Entitled To Credit Bid (Motion filed 7/26/16) (OST Entered 7-27-16) (S/C set at hearing held 8/8/16)

FR: 8-8-16; 10-19-16; 11-14-16

Docket 474

**Tentative Ruling:**

**APPEARANCES REQUIRED.**

The status conference will go forward and the request for a continuance is denied.

**Party Information**

**Debtor(s):**

Jeffrey Sumner Childs

Pro Se

**Movant(s):**

Sean P. Tucker

Represented By  
Roger F Friedman  
Leonard M Shulman  
James Stang

Leslie A. Tucker

Represented By  
Roger F Friedman  
James Stang

**Trustee(s):**

Jeffrey I Golden (TR)

Represented By  
Ashley M McDow  
Jeffrey I Golden (TR)  
Michael T Delaney

**United States Bankruptcy Court  
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**8:14-11729 Richard Clark Farrell**

**Chapter 7**

**#4.00**

Hearing RE: Motion Of Chapter 7 Trustee For An Order Authorizing:  
1. Employment Of Art Resource Group As Artwork Broker;  
2. Sale Of Artwork; And,  
3. Payment Of Commission And Other Costs Of Sale  
(Motion filed 11/10/16)

Docket 645

**Tentative Ruling:**

**APPEARANCES REQUIRED.**

Grant the motion.

CHAPTER 7 TRUSTEE TO LODGE ORDER VIA LOU WITHIN 7 DAYS.

**Party Information**

**Debtor(s):**

Richard Clark Farrell

Represented By  
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

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8:15-11423 Leonard Newman and Chrisy Anne Newman

Chapter 7

#5.00

Hearing RE: Motion For Leave to File an Adversary Complaint After Deadline Date  
(Motion filed 10/24/16)

Docket 45

**Tentative Ruling:**

**APPEARANCES REQUIRED.**

Grant the motion. *See Beezley v. California Land Title (In re Beezley)*, 994 F.2d 1433, 1441 (9th Cir. 1993); FRBP 4007(b).

MOVANT TO LODGE ORDER VIA LOU WITHIN 7 DAYS.

**Party Information**

**Debtor(s):**

Leonard Newman

Represented By  
Darvy M Cohan

**Joint Debtor(s):**

Chrisy Anne Newman

Represented By  
Darvy M Cohan

**Trustee(s):**

Thomas H Casey (TR)

Pro Se

**United States Bankruptcy Court  
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**8:15-11639 Geoffrey Floyd Wilson and Dawn Lauren Wilson**

**Chapter 11**

**#6.00**

Hearing RE: Motion To Determine The Value Of Collateral As To The Real Property Located At 10 Tuxford Circle, Belle Vista, AR 72714  
(Motion filed 10/21/16)

Docket 124

**Tentative Ruling:**

**APPEARANCES REQUIRED.**

Grant the motion.

MOVANT TO LODGE ORDER VIA LOU WITHIN 7 DAYS.

**Party Information**

**Debtor(s):**

Geoffrey Floyd Wilson

Represented By  
Michael Jones  
Laily Boutaleb  
Sara Tidd

**Joint Debtor(s):**

Dawn Lauren Wilson

Represented By  
Michael Jones  
Laily Boutaleb  
Sara Tidd

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**8:15-11639 Geoffrey Floyd Wilson and Dawn Lauren Wilson**

**Chapter 11**

**#7.00**

Hearing RE: Motion To Determine The Value Of Collateral As To The Real Property Located At 17972 Wellbank Lane, Huntington Beach, CA 92649 (Motion filed 10/21/16)

Docket 120

**Tentative Ruling:**

**APPEARANCES REQUIRED.**

Grant the motion.

MOVANT TO LODGE ORDER VIA LOU WITHIN 7 DAYS.

**Party Information**

**Debtor(s):**

Geoffrey Floyd Wilson

Represented By  
Michael Jones  
Laily Boutaleb  
Sara Tidd

**Joint Debtor(s):**

Dawn Lauren Wilson

Represented By  
Michael Jones  
Laily Boutaleb  
Sara Tidd

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Hearing Room 6C

2:00 PM

**8:16-13358 Hooshang Noori-Alagha and Nahid Noori-Alagha**

**Chapter 7**

**#8.00**

Hearing RE: Motion For Order Extending Deadline For Filing A Motion To Dismiss Pursuant To 11 U.S.C. Section 707(b) And/Or An Adversary Complaint Pursuant To 11 U.S.C. Section 727, For The Office Of The United States Trustee  
(Motion filed 11/3/16)

Docket 53

**Tentative Ruling:**

**APPEARANCES REQUIRED.**

Grant the motion.

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

**Party Information**

**Debtor(s):**

Hooshang Noori-Alagha

Represented By  
Thomas A Fasel

**Joint Debtor(s):**

Nahid Noori-Alagha

Represented By  
Thomas A Fasel

**Trustee(s):**

Richard A Marshack (TR)

Represented By  
Robert P Goe