

**United States Bankruptcy Court
Central District of California
Northern Division
Judge Peter Carroll, Presiding
Courtroom 201 Calendar**

Wednesday, October 05, 2016

Hearing Room 201

10:00 AM

9:13-11112 Melissa DeMarco

Chapter 11

#1.00 Hearing

RE: [258] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 5396 Calarosa Ranch Road, Camarillo, California 93012 with proof of service. (McDermott, Christopher)

FR. 7-20-16, 8-17-16, 9-7-16

Docket 258

Tentative Ruling:

None.

Final Ruling. This motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d) (2). The debtor filed an untimely opposition to the motion on July 7, 2016 alleging that movant is not a secured creditor with an interest in the subject property because Movant's deed of trust allegedly was not recorded in Ventura County, CA. Debtor's opposition does not dispute movant's assertion that debtor has failed to make 8 post-confirmation note installment payments and 8 arrearage cure payments required under the confirmed chapter 11 plan. The failure of parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the motion. LBR 9013-1(h). *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court is granting the relief requested by the moving party and for which a *prima facie* case has been established, an actual hearing is not necessary. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Their defaults are entered and the matter will be resolved without oral argument. LBR 9013-1(j)(3). **No appearance is necessary.**

First, the court notes that "[s]tay litigation is limited to issues of the lack of adequate protection, the debtor's equity in the property, and the necessity of the property to an effective reorganization." *In re Johnson*, 756 F.2d 738, 740 (9th Cir. 1985), cert. denied, 474 U.S. 828, 106 S.Ct. 88, 88

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L.Ed.2d 72 (1985). "Hearings on relief from the automatic stay are thus handled in a summary fashion." Id. (emphasis added). "The validity of the claim or contract underlying the claim is not litigated during the hearing." Id. The court is "simply determin[ing] whether the creditor has a colorable claim to the property of the estate." In re Luz Intern, Ltd., 219 B.R. 837, 842 (citing In re Johnson, 756 F.2d at 740) (emphasis added); see also In re Edwards, 454 B.R. 100, 104-105 (9th Cir. BAP 2011). Here, movant has attached a note and deed of trust executed by debtor dated September 28, 2005 in favor of movant, which relates to the subject property. Exhibit 1 of Movant's reply shows that Movant's deed of trust against the subject property was re-recorded in Ventura County on March 2, 2012. Furthermore, the court takes judicial notice of debtor's Third Amended Chapter 11 Plan of Reorganization, as Modified, filed on September 3, 2014 (Dkt. 211; "Plan"), in which debtor identifies movant as a secured creditor with an interest in the subject property entitled to monthly arrearage plan payments in the amount of \$2,899.16. The court confirmed the Plan on October 22, 2014. "Once a bankruptcy plan is confirmed, it is binding on all parties [including the debtor] and all questions that could have been raised pertaining to the plan are entitled to res judicata effect." Trulis v. Barton, 107 F.3d 685, 691 (9th Cir. 1995). Accordingly, movant has demonstrated a colorable claim to the subject property.

The motion is granted pursuant to 11 U.S.C. § 362 (d)(1) to permit the movant, its successors, transferees and assigns, to enforce its remedies to foreclose upon and obtain possession of the property in accordance with applicable law. Movant may not pursue any deficiency claim against the debtor or property of the estate except by filing a proof of claim pursuant to 11 U.S.C. § 501. Movant is secured by a deed of trust encumbering the debtor's residence. The confirmed chapter 11 plan requires that the post-petition note installments and arrearage cure payments be paid directly to the movant. The court takes judicial notice of Debtor's Post-Confirmation Status Report dated July 12, 2016, which shows the last payment on account of Movant's Claim # 14 on October 7, 2015. Debtor does not dispute the alleged post-petition default under the confirmed plan. This is cause to terminate the automatic stay.

The 14-day period specified in FRBP 4001(a)(3) is waived. This order

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shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

The movant shall submit an appropriate order.

Party Information

Debtor(s):

Melissa DeMarco

Represented By
Louis J Esbin
Jay M Spillane
Richard A Marcus

Movant(s):

MUFG Union Bank, N.A, fka Union

Represented By
Christopher M McDermott
Matthew R. Clark
Greg P Campbell

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9:13-12516 Daniel M Brucker

Chapter 11

#2.00 HearingRE: [334] Application for Compensation NOTICE OF HEARING ON APPLICATION FOR PAYMENT OF INTERIM OR FINAL FEES AND/OR EXPENSES UNDER 11 U.S.C. § 331 OR § 330; APPLICATION FOR PAYMENT FINAL FEES AND EXPENSES for Andrew S Mansfield, Debtor's Attorney, Period: 10/10/2013 to 8/3/2016, Fee: \$133,355.75, Expenses: \$20,965.26.

Docket 334

Tentative Ruling:

None.

Final Ruling. This fee application has been set for hearing on the notice required by LBR 9013-1(d)(2) and other applicable rules. The failure of the debtor and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court is granting the relief requested by the moving party and for which a *prima facie* case has been established, an actual hearing is not necessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592, 602 (9th Cir. 2006). Their defaults are entered and the matter will be resolved without oral argument. LBR 9013-1(j)(3). **No appearance is necessary.**

Mansfield Cheney, PC. Mansfield Cheney, PC, counsel for the debtor ("Applicant"), has filed its application for a final allowance of fees and expenses in this case. Applicant has itemized \$133,355.75 in fees and \$20,965.26 in expenses, for a total of \$154,321.01. No creditor or other party in interest, including the United States trustee, has filed an objection to the application.

The court approved Applicant's employment on November 19, 2013, effective October 10, 2013. Applicant rendered a total of 390.50 hours of services to the estate billed at a blended hourly rate of \$341.50. Applicant's services cover the period from October 10, 2013 through August 3, 2016.

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Section 330(a)(1)(A) & (B) permit approval of “reasonable compensation for actual, necessary services rendered by . . . [a] professional person, or . . . any para-professional person” and “reimbursement for actual, necessary expenses.” 11 U.S.C. § 330(a)(1)(A) & (B). In the present case, Applicant was employed to assist in the administration of the estate. The fee application satisfies the requirements of LBR 2016-1(c) and demonstrates that (1) Applicant rendered actual services to the estate that were necessary to the administration of, or beneficial at the time at which the services were rendered toward the completion of, the case, and the compensation sought for such services is reasonable; and (2) the expenses incurred on behalf of the estate for which reimbursement is sought were actual and necessary.

Accordingly, the court allows as final fees the sum of \$133,355.75. The court further allows as final expenses the sum of \$20,965.26.

Applicant shall submit an appropriate order.

Party Information

Debtor(s):

Daniel M Brucker

Represented By
Andrew S Mansfield
Ellen M. Cheney

Movant(s):

Daniel M Brucker

Represented By
Andrew S Mansfield
Ellen M. Cheney

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9:14-10494 Tito Albarran Hernandez

Chapter 11

#3.00 HearingRE: [103] Application for Compensation and Notice Thereof for Eric Bensamochan, Debtor's Attorney, Period: 3/1/2014 to 9/2/2016, Fee: \$30,993.75, Expenses: \$1,283.

Docket 103

Tentative Ruling:

None.

Final Ruling. This fee application has been set for hearing on the notice required by LBR 9013-1(d)(2) and other applicable rules. The failure of the debtor and all other parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court is granting the relief requested by the moving party and for which a *prima facie* case has been established, an actual hearing is not necessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592, 602 (9th Cir. 2006). Their defaults are entered and the matter will be resolved without oral argument. LBR 9013-1(j)(3). **No appearance is necessary.**

The Bensamochan Law Firm, Inc. The Bensamochan Law Firm, Inc., counsel for the debtor (“Applicant”), has filed its application for a final allowance of fees and expenses in this case. Applicant has itemized \$30,993.75 in fees and \$1,283.00 in expenses, for a total of \$32,276.75. No creditor or other party in interest, including the United States trustee, has filed an objection to the application.

The court approved Applicant's employment on April 15, 2014, effective March 13, 2014. Applicant rendered a total of 82.60 hours of services to the estate billed at an hourly rate of \$375.00. Applicant's services cover the period from March 13, 2014 through September 2, 2016.

Section 330(a)(1)(A) & (B) permit approval of “reasonable

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compensation for actual, necessary services rendered by . . . [a] professional person, or . . . any para-professional person” and “reimbursement for actual, necessary expenses.” 11 U.S.C. § 330(a)(1)(A) & (B). In the present case, Applicant was employed to assist in the administration of the estate. The fee application satisfies the requirements of LBR 2016-1(c) and demonstrates that (1) Applicant rendered actual services to the estate that were necessary to the administration of, or beneficial at the time at which the services were rendered toward the completion of, the case, and the compensation sought for such services is reasonable; and (2) the expenses incurred on behalf of the estate for which reimbursement is sought were actual and necessary.

Accordingly, the court allows as final fees the sum of \$30,993.75. The court further allows as final expenses the sum of \$1,283.00.

Applicant shall submit an appropriate order.

Party Information

Debtor(s):

Tito Albarran Hernandez

Represented By
Eric Bensamochan

Movant(s):

Tito Albarran Hernandez

Represented By
Eric Bensamochan

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9:15-12421 7980 Balcom LLC

Chapter 11

#4.00 Hearing
RE: [72] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 7980 Bacolm Canyon Road, Moorpark, CA 93021 with Proof of Service. (McCartney, Erin) **WARNING:** Item subsequently amended by docket entry #74 Modified on 6/3/2016 (Chackel, Danielle).

FR. 7-20-16

FR. 9-14-16

Docket 72

Tentative Ruling:

None.

Party Information

Debtor(s):

7980 Balcom LLC

Represented By
Chris Gautschi

Movant(s):

M & T Bank

Represented By
Brian H Tran
Leslie M Klott
Erin M McCartney

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9:15-12421 7980 Balcom LLC

Chapter 11

#5.00 Status Hearing
RE: [1] Chapter 11 Voluntary Petition Non-Individual. Chris)

FR. 1-20-16, 3-16-16, 5-4-16, 7-20-16
FR. 9-14-16

Docket 1

Tentative Ruling:

None.

Party Information

Debtor(s):

7980 Balcom LLC

Represented By
Chris Gautschi

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9:15-12421 7980 Balcom LLC

Chapter 11

#6.00 Confirmation Hearing
RE: [79] Amended Chapter 11 Plan of Reorganization . (Gautschi, Chris)
FR. 9-14-16

Docket 79

Tentative Ruling:

None.

Party Information

Debtor(s):

7980 Balcom LLC

Represented By
Chris Gautschi

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10:00 AM

9:16-11042 John Sperry Reynolds

Chapter 11

#7.00 Hearing
RE: [15] Motion for Setting Property Value Notice of Motion and Motion for Order
Determining Value of Collateral

FR. 9-7-16

Docket 15

Tentative Ruling:

None.

Party Information

Debtor(s):

John Sperry Reynolds

Represented By
Andrew S Mansfield
Ellen M. Cheney

Movant(s):

John Sperry Reynolds

Represented By
Andrew S Mansfield
Ellen M. Cheney

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9:16-11042 John Sperry Reynolds

Chapter 11

#8.00 Hearing
RE: [52] Motion for Turnover of Property

FR. 9-7-16

Docket 52

Tentative Ruling:

None.

Party Information

Debtor(s):

John Sperry Reynolds

Represented By
Andrew S Mansfield
Ellen M. Cheney

Movant(s):

John Sperry Reynolds

Represented By
Andrew S Mansfield
Ellen M. Cheney

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9:16-11042 John Sperry Reynolds

Chapter 11

#9.00 Chapter 11 Status Conference

FR. 8-10-16, 9-7-16

Docket 1

Tentative Ruling:

None.

Party Information

Debtor(s):

John Sperry Reynolds

Represented By
Andrew S Mansfield
Ellen M. Cheney

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9:16-11042 John Sperry Reynolds

Chapter 11

#10.00 HearingRE: [63] Stipulation By John Sperry Reynolds and Doug Michie, as Trustee of the Dorothy Reynolds-Cox Charitable Remainder Trust #1

Docket 63

Tentative Ruling:

None.

Party Information

Debtor(s):

John Sperry Reynolds

Represented By
Andrew S Mansfield
Ellen M. Cheney

Movant(s):

John Sperry Reynolds

Represented By
Andrew S Mansfield
Ellen M. Cheney

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9:16-11257 Eurotech Cabinets, Inc.

Chapter 11

#11.00 HearingRE: [53] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Motion for Relief from the Automatic Stay Pursuant to 11 U.S.C. Section 362 by Tyler Development Corp.. CORRECTION: Item Subsequently Modified by Docket No. 57. Modified on 8/26/2016 (Rust, Kam).

Docket 53

Tentative Ruling:

None.

Final Ruling. This motion for relief from the automatic stay has been set for hearing on the notice required by LBR 4001(c)(1) and LBR 9013-1(d) (2). On September 13, 2016, the debtor filed a notice of non-opposition to granting the relief sought in the motion. The failure of any parties in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9013-1(f) is considered as consent to the granting of the motion. LBR 9013-1(h). Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court is granting the relief requested by the moving party and for which a *prima facie* case has been established, an actual hearing is not necessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592, 602 (9th Cir. 2006). Their defaults are entered and the matter will be resolved without oral argument. LBR 9013-1(j)(3). **No appearance is necessary.**

The motion is granted pursuant to 11 U.S.C. § 362(d)(1) to permit movant, its successors, transferees and assigns, to proceed in the non-bankruptcy forum to final judgment (including any appeals) in accordance with applicable non-bankruptcy law. Cause exists for relief under 11 U.S.C. § 362(d)(1) because the claim is insured. See Ruvacalba v. Munoz (In re Munoz), 287 B.R. 546, 559 (9th Cir. BAP 2002); Patronite v. Beeney (In re Beeney), 142 B.R. 360, 363 (9th Cir. BAP 1992). Movant seeks recovery only from applicable insurance, if any, and waives any deficiency or other claim against the debtor or property of the estate. Movant shall not enforce its final judgment against the debtor or property of the estate.

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CONT... Eurotech Cabinets, Inc.

Chapter 11

The 14-day period specified in FRBP 4001(a)(3) is waived. This order shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. All other relief is denied.

The movant shall submit an appropriate order.

Party Information

Debtor(s):

Eurotech Cabinets, Inc.

Represented By
John D Faucher
Edward P Kerns

Movant(s):

Tyler Development Corp.

Represented By
David A Napper