

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, August 19, 2021

Hearing Room 301

10:30 AM

1:00-00000

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for this calendar will be conducted via Zoom and not via Court Call. All parties participating in these hearings may connect from the zoom link listed below. This service is free of charge. You may participate using a computer or telephone.

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Docket 0

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Chapter

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
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10:30 AM

1:18-10385 Jorge Alberto Romero II

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

David Keith Gottlieb, Chapter 7 Trustee

Marshack hayes LLP, Attorneys for Chapter 7 Trustee

Hahn Fife & Company, LLP, Accountants for Chapter 7 Trustee

Docket 114

Tentative Ruling:

David Gottlieb, chapter 7 trustee – approve fees of \$28,750.00 and reimbursement of expenses of \$118.10, on a final basis.

Marshack Hays LLP ("Marshack"), counsel to chapter 7 trustee – approve fees of \$39,398.00 and reimbursement of expenses of \$2,345.11, pursuant to 11 U.S.C. § 330, on a final basis.

Hahn Fife & Company, LLP ("Hahn"), accountant to chapter 7 trustee – approve fees of \$1,799.00 and reimbursement of expenses of \$253.50, pursuant to 11 U.S.C. § 330, on a final basis.

The chapter 7 trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

Party Information

Debtor(s):

Jorge Alberto Romero II

Represented By
Stella A Havkin

Trustee(s):

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CONT... Jorge Alberto Romero II
David Keith Gottlieb (TR)

Represented By
D Edward Hays
Laila Masud

Chapter 7

**United States Bankruptcy Court
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Thursday, August 19, 2021

Hearing Room 301

10:30 AM

1:18-11243 Jeff Davani and Nadia Davani

Chapter 7

#2.00 Trustee's Final Report and Applications for Compensation

David Keith Gottlieb, Chapter 7 Trustee

Marshack Hays, LLP, Attorneys for Chapter 7 Trustee

Menchaca & company, LLP, Accountants for Chapter 7 Trustee

Docket 133

Tentative Ruling:

David K. Gottlieb, chapter 7 trustee – approve fees of \$46,205.41 and reimbursement of expenses of \$137.60, on a final basis.

Marshack Hays LLP, counsel to chapter 7 trustee – approve fees of \$44,454.00 and reimbursement of expenses of \$2,318.59, pursuant to 11 U.S.C. § 330, on a final basis.

Menchaca & Company, LLP, accountant to chapter 7 trustee – approve fees of \$3,500.00, pursuant to 11 U.S.C. § 330, on a final basis.

The chapter 7 trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

Party Information

Debtor(s):

Jeff Davani

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

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CONT... Jeff Davani and Nadia Davani

Chapter 7

Joint Debtor(s):

Nadia Davani

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Trustee(s):

David Keith Gottlieb (TR)

Represented By

D Edward Hays

Laila Masud

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1:18-11729 Richard Philip Dages

Chapter 7

#3.00 Trustee's Final Report and Applications for Compensation

Diane C. Weil, Chapter 7 Trustee

Docket 236

Tentative Ruling:

Diane C. Weil, chapter 7 trustee – approve fees of \$2,302.16 and reimbursement of expenses of \$151.39.

The chapter 7 trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the chapter 7 trustee will be so notified.

Party Information

Debtor(s):

Richard Philip Dages

Represented By
Jeffrey J Hagen

Trustee(s):

Diane C Weil (TR)

Pro Se

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1:19-11556 Debra Eileen Owings

Chapter 7

#4.00 Trustee's Final Report and Applications for Compensation

Nancy Zamora, Chapter 7 Trustee

Dinsmore & Shohl, LLP, Attorneys for Chapter 7 Trustee

Grobstein Teeple, LLP, Accountants for Chapter 7 Trustee

Docket 40

Tentative Ruling:

Nancy J. Zamora, chapter 7 trustee – approve fees of \$5,856.19 and reimbursement of expenses of \$860.10, on a final basis.

Dinsmore & Shohl, LLP, counsel to chapter 7 trustee – approve fees of \$13,319.00 and reimbursement of expenses of \$39.45, pursuant to 11 U.S.C. § 330, on a final basis.

Grobstein Teeple, LLP, accountant to chapter 7 trustee – approve fees of \$3,113.00 and reimbursement of expenses of \$50.48, pursuant to 11 U.S.C. § 330, on a final basis.

The chapter 7 trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

Party Information

Debtor(s):

Debra Eileen Owings

Represented By
Christopher S Reyes

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CONT... Debra Eileen Owings

Chapter 7

Trustee(s):

Nancy J Zamora (TR)

Represented By
Peter J Mastan

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1:19-11901 Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 11

#5.00 Final application by Resnik Hayes Moradi LLP, general bankruptcy counsel for the Debtors for allowance of fees and reimbursement of costs for the period July 29, 2019 Through June 15, 2021

Docket 192

Tentative Ruling:

Resnik Hayes Moradi LLP ("Applicant"), counsel to the debtor and debtor in possession – approve fees in the amount of \$51,264.00 and reimbursement of expenses in the amount of \$1,975.73, pursuant to 11 U.S.C. § 330, for the period between July 29, 2019 through June 15, 2021, on a final basis.

Applicant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by Applicant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and Applicant will be so notified.

Party Information

Debtor(s):

Melida Jimenez

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

Joint Debtor(s):

Jose Luis Jimenez Escobar

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

Movant(s):

Melida Jimenez

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

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CONT...

Melida Jimenez and Jose Luis Jimenez Escobar

Chapter 11

Jose Luis Jimenez Escobar

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

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1:19-13204 Mario Luis Chizic and Jennifer Claire Peters

Chapter 7

#6.00 Trustee's Final Report and Applications for Compensation

David Keith Gottlieb, Chapter 7 Trustee

Menchaca & Company LLP, Accountants for Chapter 7 Trustee

Docket 38

Tentative Ruling:

David K. Gottlieb, chapter 7 trustee – approve fees of \$3,250.00 and reimbursement of expenses of \$101.10, on a final basis.

Menchaca & Company, accountant to chapter 7 trustee – approve fees of \$2,932.00 and reimbursement of expenses of \$25.85, pursuant to 11 U.S.C. § 330, on a final basis.

The chapter 7 trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee or his/her professionals is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the relevant applicant(s) will be so notified.

Party Information

Debtor(s):

Mario Luis Chizic

Represented By
Jeffrey J Hagen

Joint Debtor(s):

Jennifer Claire Peters

Represented By
Jeffrey J Hagen

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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1:20-11137 Ruben Banderas Salas and Abigail Grande Banderas

Chapter 7

#7.00 Trustee's Final Report and Applications for Compensation

Nancy Zamora, Chapter 7 Trustee

Docket 18

Tentative Ruling:

Nancy J. Zamora, chapter 7 trustee – approve fees of \$350.00 and reimbursement of expenses of \$318.00.

The chapter 7 trustee must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by the chapter 7 trustee is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the chapter 7 trustee will be so notified

Party Information

Debtor(s):

Ruben Banderas Salas

Represented By
James P Doan

Joint Debtor(s):

Abigail Grande Banderas

Represented By
James P Doan

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
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1:21-10179 Alex Foxman and Michal J Morey

Chapter 11

#8.00 Application for payment of interim fees and/or expenses of
Susan K. Seflin, Subchapter V Trustee

Docket 140

Tentative Ruling:

Susan K. Seflin, chapter 11 subchapter V trustee – approve fees of \$14,092.50 for the period covering February 4, 2021 through June 30, 2021, pursuant to 11 U.S.C. § 331, on an interim basis.

With respect to, among other things, authorizing and/or mandating the estate's payment of approved fees to the attorneys and the subchapter V trustee, the Court intends to continue the hearings in this case. The Court will require that any approved fees be paid on a pro rata basis.

Note: No response has been filed. Accordingly, no court appearance by the subchapter V trustee is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and the subchapter V trustee will be so notified.

Party Information

Debtor(s):

Alex Foxman

Represented By
Stella A Havkin

Joint Debtor(s):

Michal J Morey

Represented By
Stella A Havkin

Movant(s):

Susan K Seflin (TR)

Pro Se

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CONT... Alex Foxman and Michal J Morey

Chapter 11

Trustee(s):

Susan K Seflin (TR)

Pro Se

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1:21-10179 Alex Foxman and Michal J Morey

Chapter 11

#9.00 Application for payment of Interim fees an/or expenses for
Havkin & Shrago Attorneys at Law, Debtor's Attorney

fr. 8/5/21

Docket 145

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alex Foxman

Represented By
Stella A Havkin

Joint Debtor(s):

Michal J Morey

Represented By
Stella A Havkin

Movant(s):

Havkin & Shrago Attorneys at Law

Represented By
Stella A Havkin

Trustee(s):

Susan K Seflin (TR)

Pro Se

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1:21-10179 Alex Foxman and Michal J Morey

Chapter 11

#10.00 Application for payment of interim fees and or expenses for
Quantum Law Group, LLP, Special litigation counsel for debtor

fr. 8/5/21

Docket 148

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Alex Foxman

Represented By
Stella A Havkin

Joint Debtor(s):

Michal J Morey

Represented By
Stella A Havkin

Movant(s):

Quantum Law Group

Pro Se

Trustee(s):

Susan K Seflin (TR)

Pro Se

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1:21-10503 BAIC

Chapter 11

#11.00 Order to show cause re: dismissal

Docket 76

Tentative Ruling:

Given that the debtor and debtor in possession filed an application to employ general bankruptcy counsel [doc. 76] by the deadline of August 12, 2021, the Court will discharge its order to show cause.

Appearances for August 19, 2021 are excused.

Party Information

Debtor(s):

BAIC

Represented By
Michael E Plotkin

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1:21-10878 Scott Carl St. Peter

Chapter 11

#12.00 U.S. Trustee Motion to dismiss or convert case Under 11 U.S.C. § 1112(b)
fr. 7/8/21

Docket 19

***** VACATED *** REASON: Motion withdrawn 8/17/21 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Scott Carl St. Peter

Represented By
Lionel E Giron

Movant(s):

United States Trustee (SV)

Represented By
Katherine Bunker

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1:21-10878 Scott Carl St. Peter

Chapter 11

#13.00 Status conference hearing re chapter 11 case

fr. 7/22/21

Docket 1

Tentative Ruling:

The parties should address the following:

What steps has the debtor and debtor in possession taken to employ an accountant?

How much is required to be paid monthly to lease the debtor's residential real property located at 590 N. Daisy Avenue, Pasadena CA 91107?

How much is debtor required to pay monthly to lease his new business location? Did the debtor provide a security deposit to that landlord? If so, how much is that security deposit?

Deadline to file proof of claim ("Bar Date"): **November 1, 2021.**

Deadline to mail notice of Bar Date: **August 30, 2021.**

The debtor must use the mandatory court-approved form Notice of Bar Date for Filing Proofs of Claim in a Chapter 11 Case, F 3003-1.NOTICE.BARDATE.

Deadline for debtor and/or debtor in possession to file proposed plan and related disclosure statement: **December 1, 2021.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on December 16, 2022.**

The debtor in possession or any appointed chapter 11 trustee must file a status report, addressing the debtor's progress to confirming a chapter 11 plan, to be served on the debtor's 20 largest unsecured creditors, all secured creditors, and the United States Trustee, no later than **14 days** before the continued status conference. The status report must be supported by evidence in the form of declarations and supporting

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CONT... **Scott Carl St. Peter**
documents.

Chapter 11

The Court will prepare the order setting the deadlines for the debtor and/or debtor in possession to file a proposed plan and related disclosure statement.

The debtor must lodge the Order Setting Bar Date for Filing Proofs of Claim, using mandatory court-approved form F 3003-1.ORDER.BARDATE, within seven (7) days.

Party Information

Debtor(s):

Scott Carl St. Peter

Represented By
Lionel E Giron

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1:20-11138 1465V Donhill Drive, LLC

Chapter 11

#14.00 Motion by 5AIF Sycamore 2, LLC to reinstate dismissed chapter 11 bankruptcy case

Docket 144

Tentative Ruling:

On June 29, 2020, 1465V Donhill Drive, LLC ("Debtor") filed a voluntary chapter 11 petition. On January 14, 2021, Debtor filed a motion to approve a stipulation with secured creditor 5AIF Sycamore 2, LLC ("Sycamore") granting Sycamore relief from the automatic stay and agreeing to other terms (the "Stipulation") [doc. 101]. In the Stipulation, the parties provided that they "submit to the jurisdiction of the Bankruptcy Court and the courts of Los Angeles, California, whether state or federal." Stipulation, ¶ 17(f). On February 17, 2021, the Court entered an order approving the Stipulation (the "Order Approving Stipulation") [doc. 113].

On May 20, 2021, the U.S. Trustee filed a motion to dismiss Debtor's bankruptcy case [doc. 125]. On June 21, 2021, the Court entered an order dismissing Debtor's bankruptcy case (the "Dismissal Order") [doc. 135]. On July 19, 2021, after dismissal of its case, Debtor filed a complaint in state court against Sycamore and other defendants, initiating case no. 21SMCV01219 (the "State Court Action"). On July 30, 2021, Sycamore filed a motion to vacate the Dismissal Order and reinstate Debtor's bankruptcy case (the "Motion") [doc. 144]. In the Motion, Sycamore requests reinstatement of Debtor's bankruptcy case for Sycamore to: (A) request interpretation and enforcement of the Order Approving Stipulation; and (B) remove the State Court Action to this Court.

Federal Rule of Civil Procedure ("Rule") 60(b) sets forth grounds for relief from a final order. In the Motion, Sycamore does not discuss any applicable grounds, under Rule 60(b) warranting relief from the Dismissal Order. Sycamore also does not discuss the impact of reinstatement of Debtor's chapter 11 case. For instance, if Debtor cannot reorganize, and the Court reinstates Debtor's bankruptcy case, the Court may convert the case to a chapter 7 case. If Sycamore seeks to have Debtor's bankruptcy case "reinstated," Sycamore must file and serve a motion under Rule 60(b) and discuss these issues.

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CONT... 1465V Donhill Drive, LLC

Chapter 11

Alternatively, if Sycamore merely requests interpretation of the Stipulation and/or the Order Approving Stipulation, Sycamore may file a motion requesting such relief without reinstating Debtor's chapter 11 case. In connection with any such motion, Sycamore must discuss why this Court has subject matter jurisdiction [*see, e.g., In re Ray*, 624 F.3d 1124, 1136 (9th Cir. 2010)] and, if the Court has subject matter jurisdiction, why the Court should not abstain for the parties to resolve this dispute in state court (to which the parties consented in the Stipulation).

At this time, in light of the above, the Court will deny the Motion.

The Court will prepare the Order.

Party Information

Debtor(s):

1465V Donhill Drive, LLC

Represented By
M. Jonathan Hayes

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1:21-11098 John Carmen Esposito

Chapter 7

#14.10 Chapter 7 Trustee's motion for order requiring debtor to immediately turn over 1973 Porsche 911 vehicle

Docket 27

Tentative Ruling:

Grant.

Movant must submit the order within seven (7) days.

Party Information

Debtor(s):

John Carmen Esposito

Pro Se

Movant(s):

Amy L Goldman (TR)

Represented By
Anthony A Friedman

Trustee(s):

Amy L Goldman (TR)

Represented By
Anthony A Friedman

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1:20-11006 Lev Investments, LLC

Chapter 11

#15.00 Motion for order disallowing claim no. 15 of GA & TV, Inc.

Docket 379

Tentative Ruling:

The Court will continue this hearing to **2:00 p.m. on August 26, 2021.**

Appearances on August 19, 2021 are excused.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh
Richard P Steelman Jr

Movant(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh
Richard P Steelman Jr

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

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1:20-11006 Lev Investments, LLC

Chapter 11

#16.00 Motion for order disallowing claim no. 16 of Coachella Luxury RV Park, LLC

Docket 380

Tentative Ruling:

Grant.

I. BACKGROUND

On June 1, 2020, Lev Investments, LLC ("Debtor") filed a voluntary chapter 11, subchapter V petition. On August 10, 2020, Coachella Vineyard Luxury RV Park, LLC ("RV Park") filed proof of claim no. 16 (the "POC"), asserting an unsecured claim for \$3,500,000 against the estate. To the POC, RV Park attached a state court complaint against Debtor, Dmitri Lioudkovski and Real Property Trustee, Inc (the "State Court Complaint"). In the State Court Complaint, RV Park alleged—

RV Park owns real property located in Coachella, California (the "Coachella Property"), which is being developed as a luxury RV park. On July 31, 2018, Debtor made a loan to RV Park in the principal amount of \$2,000,000 (the "RV Loan"). On August 7, 2018, a first-position deed of trust was recorded against the RV Property, securing the RV Loan (the "RV DOT"). On June 17, 2019, Debtor declared the RV DOT to be in default.

The Notice of Default declared the amount due on the RV Loan was \$2,450,244.2, based on a principal balance of \$2,300,000. The payoff amount included the original \$2,000,000 principal amount, but also a \$300,000 extension of the security interest in the RV Property that was pledged in connection with the guaranty of a loan on a different property. However, Debtor never funded the \$300,000 loan and, as such, the asserted amount of the default was excessive.

On September 19, 2019, Debtor recorded a Notice of Sale, scheduling a sale for October 15, 2019. RV Park demanded that Debtor reduce the

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Lev Investments, LLC

Chapter 11

payoff demand. In response, Debtor provided an updated payoff statement showing a "Courtesy Credit" of \$336,300 (representing the \$300,000 loan plus interest thereon). On October 10, 2019, Debtor's payoff demand expired.

RV Park continued to dispute the amount demanded by Debtor. As a result, RV Park filed a complaint in state court and sought a restraining order and preliminary injunction. At a hearing on the preliminary injunction, the state court agreed that the "Courtesy Credit" should be removed, but denied RV Park's request for a preliminary injunction. The state court specifically stated that the foreclosure sale would have to be for the reduced sum reflecting the \$336,300 "Courtesy Credit."

On November 6, 2019, the temporary restraining order expired. Under Cal. Civ. Code § 2924g(d), there is an automatic seven day stay after expiration of a temporary restraining order on foreclosure sales. As such, the earliest Debtor could foreclose was on November 13, 2019. However, on November 12, 2019, RV Park was informed that Debtor conducted the foreclosure sale on November 7, 2019. Furthermore, in violation of the state court's order, the Trustee's Deed Upon Sale indicates that the foreclosure proceeded based on an unpaid debt of \$2,570,949.36. At the foreclosure, Debtor credit bid \$2,500,000, which is more than the state court determined was owed on the loan.

State Court Complaint, pp. 2-5. On these allegations, RV Park asserts claims for quiet title, cancellation of instruments, wrongful foreclosure, slander of title and declaratory relief against Debtor. In its prayer for relief, RV Park requests \$100,000 in incidental damages and \$5,000,000 in compensatory damages.

On September 4, 2020, RV Park filed a voluntary chapter 11 petition as a Single Asset Real Estate case [1:20-bk-11615-VK]. On December 23, 2020, Debtor filed a motion for relief from the automatic stay in RV Park's case to proceed with foreclosure of the Coachella Property [1:20-bk-11615-VK, doc. 43]. On January 25, 2021, the Court granted Debtor's request for relief from the automatic stay [1:20-bk-11615-VK, doc. 57]. On January 27, 2021, RV Park requested dismissal of its bankruptcy case [1:20-bk-11615-VK, doc. 58]. On February 22, 2021, the Court entered an order dismissing

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CONT... Lev Investments, LLC

Chapter 11

RV Park's bankruptcy case [1:20-bk-11615-VK, doc. 64].

On July 19, 2021, Debtor filed a motion to disallow RV Park's claim against the estate (the "Motion") [doc. 380]. In a declaration in support of the Motion, Debtor's principal states that, in May 2020, after learning about the seven-day injunction set forth in California Civil Code ("CCC") § 2924g(d), Debtor rescinded the foreclosure sale. Declaration of Dmitri Lioudkouski, ¶ 10. Debtor also asserts that, during the pendency of its bankruptcy case, RV Park did not take any action to market or refinance the Coachella Property. As such, Debtor argues that RV Park has failed to provide any facts or evidence to show damages sustained as a result of the (rescinded) foreclosure.

On August 5, 2021, RV Park filed an opposition to the Motion (the "Opposition") [doc. 402]. In the Opposition, RV Park asserts that RV Park had an investor ready to refinance the Coachella Property, but lost the business opportunity because of Debtor's wrongful foreclosure. RV Park contends that it would have received profits from development and/or sale of the Coachella Property in excess of \$3,500,000, based on RV Park's contention that, at the time, the Coachella Property was worth \$6.5 million.

As support, RV Park provides a declaration from Abraham Gottlieb, who is the manager of RV Park (the "Gottlieb Declaration"). In the Gottlieb Declaration, Mr. Gottlieb states that, in November 2019, he had "an investor that was willing to refinance the [real property] and provide funds for the development of the RV park." Gottlieb Declaration, ¶ 4. Mr. Gottlieb further contends that, with the investment funds, "RV [Park] was going to payoff [Debtor] to prevent the foreclosure or buy the [real property] at the foreclosure sale," but was unable to because of the "early foreclosure" by Debtor. *Id.*

In support of his contention that the Coachella Property was worth \$6.5 million, Mr. Gottlieb references a "broker's opinion of the value of" the Coachella Property. Gottlieb Declaration, ¶ 5. The referenced opinion of value is a Lender/Purchaser Disclosure Statement (the "Disclosure Statement") attached to an October 2019 declaration from Mr. Gottlieb submitted in connection with a state court proceeding (the "Prior Declaration"). Prior Declaration, Exhibit N.

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To the Prior Declaration, RV Park also attached a joint venture agreement (the "JVA"). Prior Declaration, Exhibit 2. The JVA is dated November 15, 2019 and signed by a representative of Global Finance GFM DOO, a representative of Global Finanz America, Inc (together, the "Global Finance Parties") and the president of RV Park. *Id.* Through the JVA, the parties to the JVA agreed that the Global Finance Parties would invest \$200 million to improve, over a period of seven years, the real property owned by RV Park. *Id.* The JVA is silent as to whether any of the funds would be used to pay off liens against the real property.

On August 12, 2021, Debtor filed a reply to the Opposition (the "Reply") [doc. 405]. In the Reply, Debtor challenges RV Park's evidence in support of the Opposition.

II. ANALYSIS

11 U.S.C. § 502(a) provides that a proof of claim is deemed allowed, unless a party in interest objects. Fed. R. Bankr. P. 3001(f) provides that a proof of claim executed and filed in accordance with the rules constitutes *prima facie* evidence of the validity and amount of the claim. *See also* Local Bankruptcy Rule 3007-1(c) ("an objection to claim must be supported by admissible evidence sufficient to overcome the evidentiary effect of a properly documented proof of claim").

"To defeat the claim, the objector must come forward with sufficient evidence and show facts tending to defeat the claim by probative force equal to that of the allegations of the proofs of claim themselves." *Lundell v. Anchor Const. Specialists, Inc.*, 223 F.3d 1035, 1039 (9th Cir. 2000) (internal citation omitted). "If the objector produces sufficient evidence to negate one or more of the sworn facts in the proof of claim, the burden reverts to the claimant to prove the validity of the claim by a preponderance of the evidence. The ultimate burden of persuasion remains at all times upon the claimant." *Id.* (internal citations omitted). "If the creditor does not provide information or is unable to support its claim, then that in itself may raise an evidentiary basis to object to the unsupported aspects of the claim, or even a basis for evidentiary sanctions, thereby coming within Section 502(b)'s grounds to disallow the claim." *In re Heath*, 331 B.R. 424, 437 (B.A.P. 9th Cir. 2005).

Here, RV Park bases its claim on a wrongful foreclosure theory. Specifically, RV Park contends that Debtor's premature foreclosure, in violation of CCC § 2924g(d),

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resulted in the Global Finance Parties rescinding the JVA, which RV Park contends would have generated profits in excess of \$3.5 million.

In the Motion, Debtor does not dispute the violation of CCC § 2924g(d). However, based on Debtor's evidence that it rescinded the wrongful foreclosure sale, Debtor contends the POC does not establish a claim for damages. The State Court Complaint, attached in support of the POC, is silent as to Debtor's subsequent rescission of the wrongful foreclosure sale. Instead, in the State Court Complaint, RV Park alleged it incurred incidental damages "from the cloud on title" in the amount of \$100,000, and damages in excess of \$5 million based on anticipated profits from developing the Coachella Property. However, given that: (A) Debtor rescinded the foreclosure, with title reverting back to RV Park; (B) RV Park subsequently failed to enter into any agreements to develop or sell the Coachella Property; and (C) RV Park was unable to reorganize during the pendency of its bankruptcy case, the Motion successfully shifted the burden of proof to RV Park to prove the validity of its claim. The Opposition does not provide sufficient evidence to meet this burden.

In the Opposition, RV Park attempts to support its claim for damages by referencing the JVA and arguing that Debtor's premature foreclosure prevented the Global Finance Parties from performing under the JVA. However, the JVA does not demonstrate that RV Park suffered damages from the wrongful foreclosure. First, the JVA is dated November 15, 2019. The seven-day stay under CCC § 2924g(d) expired on November 13, 2019, i.e., prior to execution of the JVA. As such, even if Debtor had complied with CCC § 2924g(d), Debtor could have foreclosed on the subject property before RV Park and the Global Finance Parties executed the JVA.

Even if the Court ignores this causation issue, the JVA is silent as to whether the Global Finance Parties' investment would be used to pay off the liens against the Coachella Property, such as Debtor's defaulted deed of trust. The JVA also does not establish that the Global Finance Parties would purchase the Coachella Property; instead, through the JVA, the Global Finance Parties would invest \$200 million towards improvement of the Coachella Property, such as by building a hotel, luxury RV parking facilities and a 100-unit apartment building. These terms do not indicate that the Global Finance Parties would have, for example, overbid Debtor at a foreclosure sale. Further, as noted by Debtor, the schedule attached to the JVA reflects monthly installment payments of \$2 million. Even if the first month's full \$2

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million payment would be used towards payoff of the debt owed to Debtor, the debt would not be paid in full, and Debtor would still be able to proceed with foreclosure.

In addition, Mr. Gottlieb does not contend that the Global Finance Parties decided to back out of the JVA because of the foreclosure; instead, Mr. Gottlieb merely testifies that "RV [Park] was unable to [pay off Debtor] because of the early foreclosure by [Debtor]." Gottlieb Declaration, ¶ 4. As such, the evidence does not demonstrate that the foreclosure interfered with execution of the JVA.

The Prior Declaration also does not serve to meet RV Park's burden of proof. With respect to the testimony regarding Debtor's excessive payoff demand, Mr. Gottlieb testified that the demand prevented RV Park from finding investors willing to provide financing. However, once again, there is no evidence that, but for Debtor's excessive demand, an investor would have refinanced the subject property. At most, the testimony is speculation by Mr. Gottlieb.

Finally, Mr. Gottlieb testifies that, in 2018, the Coachella Property was worth \$6.5 million. Notwithstanding the fact that Mr. Gottlieb is not the proper party to authenticate the Lender Disclosure Statement, the Lender Disclosure Statement does not qualify as competent evidence of the value of the Coachella Property. The Lender Disclosure Statement does not identify the loan broker or set forth the loan broker's qualifications to estimate the value of the Coachella Property. In addition, the Lender Disclosure Statement provides that "[a]n estimate of fair market value is to be determined by an independent appraisal," and that the broker must provide "objective data upon which the broker's estimate is based." Neither the Lender Disclosure Statement nor any other evidence provided by RV Park contains any such objective data or an independent appraisal by a qualified appraiser. [FN1]. As such, the Lender Disclosure Statement does not prove the value of the subject property.

In light of the above, RV Park has not met its burden of proving the validity of its claim. Consequently, the Court will disallow RV Park's claim against the estate.

III. CONCLUSION

The Court will grant the Motion.

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Debtor must submit an order within seven (7) days.

FOOTNOTES

1. Moreover, the foreclosure occurred in November 2019. Even if the Lender Disclosure Statement proved the value of the property, the statement, dated in 2018, does not relate to the relevant time period.

Party Information

Debtor(s):

Lev Investments, LLC

Represented By

David B Golubchik

Juliet Y Oh

Richard P Steelman Jr

Movant(s):

Lev Investments, LLC

Represented By

David B Golubchik

Juliet Y Oh

Richard P Steelman Jr

Trustee(s):

Caroline Renee Djang (TR)

Pro Se

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#17.00 Confirmation hearing re chapter 11 subchapter V plan

Docket 16

*** VACATED *** REASON: Case converted to chapter 7 on 6/2/21. [Dkt. 30]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michael Chulak

Represented By
Michael R Totaro

Trustee(s):

Andrew W. Levin (TR)

Pro Se