

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

Thursday, September 9, 2021

Hearing Room 301

10:30 AM

1: -

Chapter

#0.00 You will not be permitted to be physically present in the courtroom. All appearances for this calendar will be 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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Tentative Ruling:

- NONE LISTED -

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1:18-10885 Qiuling Sun Kai

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

David Gottlieb, Chapter 7 Trustee

Marshack Hays LLP, Attorneys for Chapter 7 Trustee

Berkeley Research Group, LLC, Accountants for Chapter 7 Trustee

Docket 92

Tentative Ruling:

David K. Gottlieb, chapter 7 trustee (the "Trustee") – based on the Court's previous order for interim fees [doc. 64], the Trustee is authorized to receive \$26,677.62 in fees and \$47.64 in reimbursement of expenses, for the period of April 10, 2018 through September 30, 2018, on a final basis. In addition, the Court will approve fees in the amount of \$4,472.38 and \$105.95 in reimbursement of expenses, for the period of October 3, 2018 through December 3, 2019, on a final basis.

Marshack Hays, LLP ("Marshack"), counsel to the Trustee – based on the Court's previous order for interim fees [doc. 64], Marshack is authorized to receive 80% of \$23,804.00 in fees and \$1,085.71 in reimbursement of expenses pursuant to 11 U.S.C. § 330, for the period of between of April 2018 through October 2, 2018, on a final basis. In addition, the Court will approve the remaining 20% of approved fees in the amount of \$4,760.80, and \$4,072.00 in fees and \$230.50 in reimbursement of expenses, for the period of October 3, 2018 through December 3, 2019, on a final basis.

Berkeley Research Group, LLC, accountant to the Trustee – approve fees of \$3,865.00 and reimbursement of expenses of \$27.00, pursuant to 11 U.S.C. § 330, on a final basis.

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

Note: No response has been filed. Accordingly, no court appearance by the Trustee

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CONT... Qiuling Sun Kai

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or his 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):

Qiuling Sun Kai

Represented By
William E Windham

Trustee(s):

David Keith Gottlieb (TR)

Represented By
D Edward Hays
Laila Masud

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1:21-10809 RT Development, LLC

Chapter 11

#2.00 First interim application for compensation and reimbursement of expenses of Michael Jay Berger

Docket 71

Tentative Ruling:

Law Offices of Michael Jay Berger ("Applicant"), counsel to the debtor and debtor in possession – approve fees in the amount of \$19,149.50 and reimbursement of expenses in the amount of \$793.59, pursuant to 11 U.S.C. § 331, for the period between May 4, 2021 through July 27, 2021, on an interim basis. Applicant may collect 80% of the approved fees and 100% of the approved expenses at this time.

Applicant may apply the remaining retainer funds in the amount of \$13,220.00 to satisfy the approved fees and expenses.

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):

RT Development, LLC

Represented By
Michael Jay Berger

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1:09-26982 Tag Entertainment Corp.

Chapter 7

#2.10 Trustee's Final Report and Applications for Compensation

Diane C. Weil, Chapter 7 Trustee

Levene, Neale, Bender, Yoo & Brill LLP, Attorneys for Chapter 7 Trustee

Van Dyke & Associates, APLC, Special Litigation Counsel to Chapter 7 Trustee

Focus Advisory Services LLC, Special Consultant to Chapter 7 Trustee

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

fr. 8/5/21; 8/26/21; 9/2/21

Docket 287

Tentative Ruling:

The Court will continue the hearing on the final fee application filed by Levene, Neale, Bender, Yoo & Brill LLP ("LNBY&B") to **September 23, 2021 at 10:30 a.m.**

At the prior hearing held on September 2, 2021, the Court set an evidentiary hearing regarding the final fee application of Van Dyke & Associates, APLC at **9:30 a.m. on October 1, 2021** and continued the hearing on the chapter 7 trustee's final report and the other final fee applications, except the final fee application of LNBY&B, to that same time and date.

Appearances on September 9, 2021 are excused.

9/2/21 Tentative Ruling

Diane C. Weil, the chapter 7 trustee (the "Trustee") – approve fees of \$60,825.82 (as reduced in agreement with the United States Trustee) and reimbursement of \$1,803.31 in expenses.

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Van Dyke & Associates, APLC ("Van Dyke"), special litigation counsel to the Trustee – based on the Court's previous orders approving interim compensation and reimbursement of expenses: (A) Van Dyke is authorized to receive \$50,000.00 in fees, for the period between April 6, 2010 and December 9, 2011 [doc. 86]; (B) Van Dyke is authorized to receive \$31,734.69 in fees and \$14,205.51 for reimbursement of expenses, for the period between December 6, 2011 and February 5, 2014 [doc. 152]; and (C) Van Dyke is authorized to receive \$50,000.00 in fees and \$19,356.56 reimbursement of expenses, for the period between February 4, 2014 through August 8, 2014 [doc. 174]. At this time, the Court approves those fees, and that reimbursement of expenses, on a final basis. *See* calendar no. 3.

Based on the consensual reduction of fees sought, as set forth in the Stipulation between Van Dyke and the United States Trustee, the Court will approve additional fees in the amount of \$382,423.06, for the period between April 6, 2010 through the end of this case, on a final basis. *See* calendar no. 3.

Focus Advisory Services, LLC ("Focus"), special consultant to the Trustee – based on the Court's previous orders approving interim compensation: (A) Focus is authorized to receive \$20,822.00 as a contingency fee, based on 20% for the first \$250,000.00 in gross receipts, 15% for the next \$250,000.00 in gross receipts and 10% for any further gross receipts [doc. 130]; and (B) Focus is authorized to receive \$17,504.00 as a contingency fee [doc. 164]. At this time, the Court approves those fees on a final basis. The Court also will approve an additional contingency fee in the amount of \$95,276.71, on a final basis.

Hahn Fife & Company, accountant to the Trustee – approve fees of \$16,626.50 and \$1,314.30 for reimbursement of expenses, on a final basis.

The Court will continue the hearing on the final fee application filed by Levene, Neale, Bender, Yoo & Brill LLP to **September 9, 2021 at 10:30 a.m.**

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

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Debtor(s):

Tag Entertainment Corp.

Represented By
Jonathan David Leventhal

Trustee(s):

Diane C Weil (TR)

Represented By
Lawrence A Diamant
Diane Weil
Edward M Wolkowitz
Anthony A Friedman
Lindsey L Smith
James A Bush
Richard S Van Dyke

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1:20-10678 John Michael Smith, Jr and Rebecca Phelps Smith

Chapter 11

#3.00 Status conference re chapter 11 case

fr. 7/16/20; 11/5/20; 1/21/21; 4/22/21; 6/17/21; 7/22/21; 8/5/21

Docket 36

Tentative Ruling:

Pursuant to 11 U.S.C. §§ 105(a) and 1112(b)(1), and based on the debtors' consent to conversion of this case, as set forth in their latest status report [doc. 166], the Court will convert this case to a case under chapter 7.

In converting this case, the Court is **not** making any determinations regarding the debtors' eligibility to be debtors in a chapter 7 case.

The Court will prepare the Order.

Party Information

Debtor(s):

John Michael Smith Jr

Represented By
Louis J Esbin

Joint Debtor(s):

Rebecca Phelps Smith

Represented By
Louis J Esbin

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:21-10878 Scott Carl St. Peter

Chapter 11

#4.00 Order to show cause why this bankruptcy case should not be dismissed or converted pursuant to 11 U.S.C. § 1112(B)(4)(i)

Docket 59

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Scott Carl St. Peter

Represented By
Lionel E Giron

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1:21-10878 Scott Carl St. Peter

Chapter 11

#5.00 Status conference re chapter 11 case

fr. 7/22/21; 8/19/21

Docket 1

Tentative Ruling:

The parties should address the following:

Deadline to file proof of claim ("Bar Date"): **November 15, 2021.**

Deadline to mail notice of Bar Date: **September 15, 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 15, 2021.**

Continued chapter 11 case status conference to be held at **1:00 p.m. on January 13, 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 documents.

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.

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Debtor(s):

Scott Carl St. Peter

Represented By
Lionel E Giron

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1:17-10673 Hermann Muennichow

Chapter 7

#6.00 Trustee's application for authority to employ Coldwell Banker Residential Brokerage and Help-U-Sell Inland Valley as real estate broker

fr. 7/15/21; 8/26/21

Docket 106

Tentative Ruling:

The Court will approve the application based on the finding that the subject real property is community property.

I. BACKGROUND

On March 16, 2017, Hermann Muennichow ("Debtor") filed a voluntary chapter 7 petition. David Seror was appointed the chapter 7 trustee (the "Trustee").

On July 28, 2017, the Trustee filed a complaint against Ms. Muennichow, asserting claims for actual and constructive fraudulent transfer (the "Adversary Proceeding") [1:17-ap-01069-VK]. The Trustee sought to recover, among other things, real property located at 38685 Calle de Lobo, Murrieta, California 92562 (the "Property"). In August and September 2019, the Court held trial. On September 6, 2019, after trial, the Court issued an oral ruling (the "Oral Ruling") [1:17-ap-01069-VK, doc. 116]. Through the Oral Ruling, the Court held that Ms. Muennichow and/or Debtor did not transfer the Property with intent to hinder, delay or defraud Debtor's creditors.

On June 10, 2021, the Trustee filed an application to employ a broker to market the Property (the "Application") [doc. 106]. In the Application, the Trustee contends that, through the Oral Ruling, the Court held that the Property is community property and, as a result, property of the estate. On June 15, 2021, Ms. Muennichow filed an opposition to the Application (the "Opposition") [doc. 108], arguing that: (A) the Oral Ruling did not contain any findings regarding the characterization of the Property; (B) *res judicata* bars the Trustee from asserting that the Property is community property; and (C) contending that, in light of the stipulation between Debtor and Ms. Muennichow and the resulting quitclaim deed, the Property is Ms. Muennichow's sole

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and separate property.

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In support of the Opposition, Ms. Muennichow provided a stipulation dated September 29, 2016 and signed by Debtor, Ms. Muennichow and Ms. Muennichow's attorney (the "Stipulation"). Declaration of Gary Kurtz ("Kurtz Declaration"), ¶ 4, Exhibit B. In relevant part, the Stipulation states—

The parties own [the Property]. *It is undisputed that this residence is community property.* [Ms. Muennichow] has exclusive use and possession of this residence and pays all encumbrances thereon. [Ms. Muennichow] is seeking a refinance of said residence. The refinance is not a cash out refinance. Furthermore, the refinance will not cause any amounts to be added to the loan principal except the cost of the refinance. [Debtor] shall upon presentation execute a Quitclaim Deed so as to permit [Ms. Muennichow] to effectuate the refinance. *Notwithstanding the language in the Quitclaim Deed, [Debtor's] community property rights in this asset shall be preserved.*

Id. (emphases added). Ms. Muennichow also provided a quitclaim deed, notarized the same day as the Stipulation, showing a transfer of the Property from Debtor and Ms. Muennichow, "Husband and Wife as Community Property," to Ms. Muennichow, "as her sole and separate property" (the "Quitclaim Deed"). Kurtz Declaration, ¶ 7, Exhibit C. On July 12, 2021, Ms. Muennichow filed another response to the Application [doc. 118] and submitted her declaration testimony from the trial held in the Adversary Proceeding (the "Muennichow Trial Declaration").

On July 15, 2021, the Court held a hearing on the Application. At that time, the Court issued a tentative ruling (the "Tentative Ruling"). In the Tentative Ruling, the Court stated that claim preclusion does not bar litigation of the issue before the Court, namely, whether the Property is community property. After oral argument by the parties, the Court continued the hearing for the parties to file briefs presenting law and any additional evidence regarding whether the Property qualifies as community property.

On July 29, 2021, the Trustee filed a supplemental brief (the "Trustee's Brief") [doc. 122]. In the Trustee's Brief, the Trustee asserts that: (A) Ms. Muennichow is

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judicially estopped from arguing that the Property is her separate property; (B) through the Oral Ruling, the Court decided that the Property is community property, and the law of the case doctrine prevents the Court from revisiting the issue; and (C) clear and convincing evidence exists to rebut the form of title presumption in the Quitclaim Deed.

On August 13, 2021, Ms. Muennichow filed a supplemental brief (the "Muennichow Brief") [doc. 123]. In the Muennichow Brief, Ms. Muennichow argues that: (A) pursuant to California Evidence Code § 662, the Quitclaim Deed establishes that the Property is Ms. Muennichow's separate property; (B) claim preclusion bars the Trustee from asserting the Property is community property; and (C) the evidence does not prove that the Property is community property. Neither Ms. Muennichow nor the Trustee presented any additional evidence in support of their arguments.

II. ANALYSIS

A. Claim Preclusion and Law of the Case

In the Muennichow Brief, Ms. Muennichow asserts that claim preclusion prevents the Trustee from arguing that the Property is community property. In the Tentative Ruling, the Court addressed Ms. Muennichow's arguments regarding claim preclusion, noting that claim preclusion did not apply to the issue before the Court. The Court will adopt and incorporate the analysis from the Tentative Ruling as its final ruling.

In the Trustee's Brief, the Trustee contends that, through the Oral Ruling, the Court decided that a transfer did not occur. As a result, the Trustee argues that the law of the case doctrine and the doctrine of issue preclusion prevent the Court from adjudicating the issue of whether the Property is community property.

However, the Court did not hold that a transfer did not occur. The Trustee references the following excerpts from the Oral Ruling—

Regarding the Murrieta transfer, the Court finds the Debtor did not transfer the Murrieta property to Ms. Muennichow or his – you know, with actual intent to hinder, delay, or defraud any creditor of the

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Debtor. . . . The Court finds credible Ms. Muennichow's testimony that the quitclaim deed was executed so the Debtor and Ms. Muennichow could refinance the Murrieta property and not to shield the property from the Debtor's creditors, most of whom could simply collect from Ms. Muennichow. The Court also finds credible that the Debtor and Ms. Muennichow intended to retain the community property characterization of the Murrieta property.

...

The Court just doesn't see [cases cited by the Trustee] as comparable to the situation here where -- where there was no really -- there was not really an effective transfer to the extent there even was a transfer, and creditors could -- you know, were as capable of reaching the assets once they'd been transferred just as they were otherwise, and a lot of them were allegedly creditors of Ms. Muennichow too because she was a Defendant in litigation that they brought.

Oral Ruling, pp. 43-44, 47.

The Trustee highlights a portion of the first sentence of this excerpt as support for his argument that the Court held a transfer did not occur. However, the Court did not merely state that "Debtor did not transfer the [Property] to Ms. Muennichow." Instead, the Court held that "Debtor did not transfer the [Property] to Ms. Muennichow... *with actual intent to hinder, delay, or defraud any creditor of Debtor....*" (Emphasis added). Thus, the Court decided whether Debtor and Ms. Muennichow acted with the requisite intent, not whether a transfer occurred.

The remainder of the excerpt also does not establish that a transfer did not occur. In the second paragraph quoted by the Trustee, the Court stated that "there was not really an effective transfer *to the extent there even was a transfer....*" (Emphasis added). By including the italicized language, the Court left open the issue of whether a transfer occurred. As a result, the Oral Ruling is neither law of the case nor preclusive to the current issue before the Court.

B. Judicial Estoppel

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According to the Supreme Court of the United States—

Where a party assumes a certain position in a legal proceeding, and succeeds in maintaining that position, he may not thereafter, simply because his interests have changed, assume a contrary position, especially if it be to the prejudice of the party who has acquiesced in the position formerly taken by him. This rule, known as judicial estoppel, generally prevents a party from prevailing in one phase of a case on an argument and then relying on a contradictory argument to prevail in another phase.

New Hampshire v. Maine, 532 U.S. 742, 749-50, 121 S.Ct. 1808, 1814, 148 L.Ed.2d 968 (2001) (internal quotations omitted). Courts consider the following factors when applying the doctrine of judicial estoppel:

First, a party's later position must be clearly inconsistent with its earlier position. Second, courts regularly inquire whether the party has succeeded in persuading a court to accept that party's earlier position, so that judicial acceptance of an inconsistent position in a later proceeding would create the perception that either the first or the second court was misled. Absent success in a prior proceeding, a party's later inconsistent position introduces no risk of inconsistent court determinations, and thus poses little threat to judicial integrity. A third consideration is whether the party seeking to assert an inconsistent position would derive an unfair advantage or impose an unfair detriment on the opposing party if not estopped.

New Hampshire, 523 U.S. at 750-51 (internal quotations omitted).

Here, as discussed above, the Court did not previously decide the characterization of the Property. As such, any inconsistent statements made by Ms. Muennichow did not persuade the Court to adopt her position regarding the nature of the Property as part of the Oral Ruling. Because the Court did not adjudicate the issue in connection with the Adversary Proceeding, there is no risk to judicial integrity in addressing the issue now. The Court will not apply the doctrine of judicial estoppel.

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C. Whether the Property is Community Property

Recently, the Supreme Court of California addressed "whether the form of title presumption set forth in Evidence Code section 662 applies to the characterization of property in disputes between a married couple and a bankruptcy trustee when it conflicts with the community property presumption set forth in Family Code section 760." *In re Brace*, 9 Cal.5th 903, 911 (2020). In deciding this issue, the court offered a detailed analysis of the state of California's community property presumptions and transmutation laws. *Id.*, at 914-38.

In *Brace*, a married couple acquired real properties with community funds and took title to each property as joint tenants. *Id.*, at 913. Subsequently, the husband filed a chapter 7 petition; the wife did not join in the petition. *Id.* The chapter 7 trustee sought a determination that, in accordance with California Family Code § 760, the real properties were community property. *Id.* On the other hand, the couple argued that the form of title presumption, under California Evidence Code § 662, applied and, as a result, the real properties were held by the couple as joint tenants. *Id.*, at 913-14. The bankruptcy court held that the community property presumption trumped the form of title presumption. *Id.* After appeal of this decision to the Ninth Circuit Court of Appeals, the Court of Appeals referred the issue of conflicting presumptions to the Supreme Court of California. *Id.*, at 911.

The Supreme Court of California held that "the community property presumption in Family Code section 760 applies... to a dispute between one or both spouses and a bankruptcy trustee, and that Evidence Code section 662 does not apply when it conflicts with the Family Code section 760 presumption." *Id.*, at 935. In reaching this decision, the court noted—

Importantly, our decision today does not prevent an innocent or estranged spouse from protecting his or her interests in separate property. For purposes other than dissolution, a spouse can prove separate ownership in jointly titled property and rebut the Family Code section 760 community property presumption by tracing. A spouse can convert jointly held property acquired with community funds into separate property through a written transmutation agreement. A spouse can hold his or her earnings in an account outside of the other spouse's

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control in order to protect those earnings from liability for the other spouse's pre-marital debts. And couples can opt out of this system altogether through pre-marital agreements.

Id., 934.

Regarding transmutation, "[f]or property acquired on or after January 1, 1985, a 'transmutation of real or personal property is not valid unless made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected.'" *Id.*, at 935 (quoting Cal. Fam. Code § 852(a)). "Transmutation requirements are not satisfied by just *any* writing." *Id.* (emphasis in *Brace*) (internal quotation omitted). "The adversely affected party must make an express declaration in an instrument that contains language which expressly states that the characterization or ownership of the property is being changed." *Id.*

Although *Brace* dealt with a married couple acquiring title from a third party, and, as a result, parts of the decision are inapplicable to this case, the same presumptions and transmutation laws apply to this case. Here, the parties dispute the characterization of the Property before and after execution of the Quitclaim Deed. As such, the Court must answer two questions: (1) whether the Property was community property prior to execution of the Quitclaim Deed; and (2) if so, whether the Quitclaim Deed transmuted the Property from community property to Ms. Muennichow's separate property.

As to the first question, Ms. Muennichow's own evidence establishes that the Property was community property prior to execution of the Quitclaim Deed. First, the Quitclaim Deed itself provided that, prior to execution of the Quitclaim Deed, the Property was held by Debtor and Ms. Muennichow "as Community Property." Kurtz Declaration, ¶ 7, Exhibit C. In addition, through the Stipulation, Debtor and Ms. Muennichow agreed that "it is undisputed that [the Property] is community property." Kurtz Declaration, ¶ 4, Exhibit B.

In the Muennichow Brief, Ms. Muennichow contends that Debtor breached fiduciary duties owed to Ms. Muennichow by hiding a community property investment from Ms. Muennichow. According to Ms. Muennichow, Debtor settled the breach of

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fiduciary claim by paying Ms. Muennichow money, which the couple used to purchase the Property. Ms. Muennichow argues that the settlement money qualified as her separate property and, consequently, she purchased the Property as her separate property.

Ms. Muennichow's argument is undermined by her own testimony. In the Muennichow Trial Declaration, Ms. Muennichow stated, in relevant part—

We settled the breach of fiduciary duty by [Debtor] putting the entire amount of the settlement under my control. I did not take advantage of the situation to spend money for myself and exclude [Debtor], but, rather, I spen[t] all of that money as if it were still community property.

[Debtor] and I always maintained separate bank accounts. We did not have any sort of agreement regarding those bank accounts being separate property, so they were always community property no matter whose name was on the account.

At the insistence of [Debtor] (as part of our agreement)... the settlement proceeds were put under my control, *as I had already indicated my intent to use the money for community purposes* and not allow it to be diverted by [Debtor]. That money went into the [Property], which... *I made sure was titled as [a] community property asset.*

Muennichow Trial Declaration, ¶¶ 18-20 (emphases added). In light of Ms. Muennichow's own testimony, Debtor and Ms. Muennichow settled any breach of fiduciary claim with an agreement to use the settlement money "for community purposes" and to purchase the Property as a "community property asset." Thus, even if Ms. Muennichow had a breach of fiduciary duty claim which, if proven, may entitle Ms. Muennichow to a settlement qualifying as her separate property, Ms. Muennichow's testimony reflects a settlement through which the parties agreed to purchase the Property as community property.

Ms. Muennichow has not provided any other evidence that she used her separate property to purchase the Property. As such, Ms. Muennichow did not rebut the

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presumption, under California Family Code § 760 and *Brace*, that the Property was purchased as community property.

Having established that, prior to execution of the Quitclaim Deed, the Property was community property, the next issue is whether the Quitclaim Deed operated as a valid transmutation of the Property to Ms. Muennichow's separate property. On this point, the facts in *Brace* are not analogous. In *Brace*, the court held that, where a married couple acquires property from a third party, the third party's grant of title to the couple, as joint tenants, does not qualify as the type of express declaration of intent required to change the characterization of property. *Brace*, 9 Cal.5th at 936-37. Here, the Quitclaim Deed was not executed by a third party; Debtor and Ms. Muennichow executed the Quitclaim Deed. As to such interspousal transfers, the Supreme Court of California explicitly stated that it was not deciding the impact of deeds where one or both spouses were the grantors. *Id.*, at 936.

In any event, this Court need not decide whether the Quitclaim Deed, standing alone, would qualify as a valid transmutation under California law. The record demonstrates that Debtor and Ms. Muennichow executed the Quitclaim Deed in accordance with and as part of the Stipulation. Kurtz Declaration, ¶ 4, Exhibit B. Through the Stipulation, Debtor and Ms. Muennichow expressly stated that "[n]otwithstanding the language in the Quitclaim Deed, [Debtor's] community property rights in [the Property] shall be preserved." *Id.*

The Court cannot ignore the context provided by the Stipulation, without which the parties would not have executed the Quitclaim Deed at all. In fact, in the Muennichow Trial Declaration, Ms. Muennichow acknowledged that Debtor and Ms. Muennichow signed the Stipulation to "retain [their] community property interests as if [the Quitclaim Deed, among other documents] never existed." Muennichow Trial Declaration, ¶ 39. In light of the clear and unambiguous language in the Stipulation, which was signed and executed concurrently with the Quitclaim Deed, the Quitclaim Deed did not serve to transmute the Property from community property to separate property.

By continuing the hearing on the Application and setting briefing deadlines, the Court provided Ms. Muennichow an opportunity to provide additional evidence. Ms. Muennichow did not. For the reasons discussed above, the evidence before the Court

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establishes that the Property is community property.

III. CONCLUSION

The Court will approve the Application.

The Trustee must submit an order within seven (7) days.

Party Information

Debtor(s):

Hermann Muennichow

Represented By
Stuart R Simone
Nicholas A West

Movant(s):

David Seror (TR)

Represented By
Richard Burstein
Jessica L Bagdanov

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Jessica L Bagdanov

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1:18-12660 Mohsen Loghmani

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- #7.00 Trustee's Motion to: (1) Approve compromise under FRBP 9019 with Tessie Cleveland Community Service; and (2) Approve sale of estate's interest in state court claims; (a) Outside the ordinary course of business; (b) Free and clear of liens, claims, and interests under 11 U.S.C. section 363(f); (c) For good faith determination under 11 U.S.C. section 363(m); and (d) for waiver of 14 day stay

Docket 152

Tentative Ruling:

I. BACKGROUND

On October 26, 2009, Tessie Cleveland Community Services Corp. ("Tessie") filed a complaint against Mohsen Loghmani ("Debtor") and other defendants, initiating case no. TC023641 (the "State Court Action"). Declaration of David K. Gottlieb ("Gottlieb Declaration") [doc. 152], ¶ 7, Exhibit 2. Through the State Court Action, Tessie obtained a final judgment in the amount of \$1,958,229.87 (the "Judgment"). *Id.* Calculated with interest, the Judgment is currently valued over \$3.5 million. *Id.*

On September 23, 2014, Tessie filed another complaint against Debtor and Debtor's son, Ciavash Loghmani ("Matt"), among other defendants, initiating case no. BC558489 (the "Fraudulent Transfer Action"). *See* Proof of Claim 5-1. According to Matt, through the Fraudulent Transfer Action, Tessie alleges that Debtor fraudulent transferred two real properties and a BMW to Matt.

On August 1, 2016, Debtor and his spouse filed a joint chapter 7 petition. [FN1]. David K. Gottlieb was appointed the chapter 7 trustee (the "Trustee").

On December 4, 2017, Trustee filed a notice of assets, setting a claims bar date of March 9, 2018 (the "Bar Date"). On December 6, 2017, the Franchise Tax Board timely filed a proof of claim asserting a priority claim in the amount of \$20,798.51, as amended on August 8, 2018. On February 7, 2018, American Express Bank, FSB, timely filed a proof of claim for \$5,885.42. On March 9, 2018, Tessie timely filed three proofs of claim totaling \$3,005,250.32.

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On April 15, 2021, the court entered an order [doc. 149] approving the sale of Debtor's interest in Huntley-Broadlawn, LLC ("Huntley"), an entity that owned and operated a preschool. As such, the bankruptcy estate is holding \$209,909.11 (the "Funds") to distribute to creditors. Gottlieb Declaration, ¶ 20.

On August 19, 2021, the Trustee filed a motion for approval of a compromise between the estate and Tessie and sale of certain litigation claims held by the estate to Tessie (the "Motion") [doc. 152]. To the Motion, the Trustee attached the proposed agreement between the estate (the "Estate") and Tessie (the "Agreement"), which provides, in relevant part—

- Allowance of Tessie's Claims and Liens: Tessie's claim[s] shall be allowed in the amount of \$3.5 million. Tessie shall have a lien on all assets of the [E]state including recoveries from avoidance actions, excluding Funds currently held by the Estate.
- Subordination of Tessie's Claims: Unless outbid, Tessie subordinates all of its secured and unsecured claims in favor of all allowed administrative claims and the two unsecured claims timely filed by the Claims Bar Date. As noted above, Tessie does not have lien on the Funds. Rather, Tessie has agreed that for purposes of distribution pursuant to 11 U.S.C. § 510(c)(1) its claims shall be subordinated to the extent necessary to pay the specified claims. Except as specifically described, Tessie will retain the balance of its liens against all other assets including the Estate's Claims. Trustee will make distributions of estate property with all of Tessie's Claims being paid pursuant to the priority set forth in 11 U.S.C. § 726(a)(2)(C) and only after payment of the allowed administrative claims and the unsecured claims of the FTB, and American Express Bank, FSB, to the extent those claims are allowed; and
- Assignment of Estate's Claims to Tessie: In consideration for the subordination, Trustee will sell and assign all of the Estate's Claims to Tessie subject to overbid. The assigned Claims include all claims for relief and causes of actions in which the Estate has any legal or equitable interest including all causes of action under Chapter 5 of Title 11 of the United

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States Code and all defensive appellate rights held by the Estate ("Purchased Assets"). The Purchased Assets include all avoidance actions and all of the Estate's claims against Tessie including any ability to avoid Tessie's liens or to challenge Tessie's judgments and claims and are being sold as-is, where-is, and without any representations or warranties including the ability of Tessie to prosecute or recover on any such Claims.

- Overbids. The sale of the Purchased Assets is subject to overbid. Trustee seeks approval of the compromise set forth in the Agreement pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure and approval of the sale of the Claims pursuant to 11 U.S.C. § 363(b).

Gottlieb Declaration, ¶ 6.

On August 26, 2021, after the Trustee filed the Motion, two additional claimants filed claims against the Estate: (A) Mohammad Hossein Loghmani ("Mohammad"), Debtor's brother, asserted a claim for \$340,000; and (B) Mahtab Azghadi ("Mahtab"), Debtor's sister-in-law, asserted a claim for \$65,000. Concurrently with the filing of these proofs of claim, Matt (Debtor's son) filed an opposition to the Motion (the "Opposition") [doc. 157]. In the Opposition, Matt contends that, prepetition, he loaned Debtor a total of \$22,496 and paid Debtor \$5,200 for a car. According to Matt, in February 2012, Debtor conveyed two real properties to satisfy the \$22,496 loan. Matt also asserts that, from 2011 through 2020, Huntley paid him \$356,000 in wages.

According to Matt, through the Fraudulent Transfer Action, Tessie is attempting to recover the transfer of the properties, the car and the wages as fraudulent transfers and, as a result, Matt is a creditor of the Estate by operation of 11 U.S.C. § 502(h). Matt argues that the Agreement is not in the best interest of Mohammad, Mahtab or Matt, as creditors of the Estate. On September 2 and 3, 2021, the Trustee and Tessie filed replies to the Opposition [docs. 159, 160].

II. ANALYSIS

A. Standing

In the Opposition, Matt contends he has standing under 11 U.S.C. § 502(h), which

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provides—

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A claim arising from the recovery of property under section 522, 550, or 553 of this title shall be determined, and shall be allowed under subsection (a), (b), or (c) of this section, or disallowed under subsection (d) or (e) of this section, the same as if such claim had arisen before the date of the filing of the petition.

(Emphasis added). According to Matt, if Tessie obtains a judgment against Matt in the Fraudulent Transfer Action, Matt will have a claim against the Estate.

However, the plain language of § 502(h) creates a claim for transferees of property recovered under certain sections of the Bankruptcy Code. The record before the Court is devoid of any indication that, through the Fraudulent Transfer Action, Tessie will be recovering fraudulent transfers under the Bankruptcy Code and/or on behalf of all creditors of the Estate. Rather, it appears Tessie will be prosecuting the Fraudulent Transfer Action under state law and to recover transfers for its own benefit. As such, any recovery by Tessie will not be under the statutes referenced by § 502(h). Matt has not set forth an alternative basis for standing to oppose the Motion. Nevertheless, as discussed below, even if Matt has standing, approval of the Agreement is in the best interest of creditors.

B. Approval of the Compromise

Federal Rule of Bankruptcy Procedure 9019(a) provides the following: "On motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement." In deciding whether to approve a compromise, courts must determine whether it is fair and equitable, and whether it is reasonable under the particular circumstances of the case. *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986).

Although "[t]he law favors compromise and not litigation for its own sake," the law requires "more than a mere good faith negotiation of a settlement by the trustee in order for the bankruptcy court to affirm a compromise agreement." *Id.* "[A]s long as the bankruptcy court amply considered the various factors that determined the reasonableness of the compromise, the court's decision must be affirmed." *Id.* In

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determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider:

(a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Id. (citations omitted). It is the movant's burden to establish that the settlement is reasonable and should be approved. *Id.* Courts have recognized that the court should not substitute its own judgment for that of the trustee, but rather should ensure that the trustee has exercised proper business judgment and the settlement "falls above the lowest possible point in the range of reasonableness." *In re Rake*, 363 B.R. 146, 152 (Bankr. D. Idaho 2007) (internal quotation omitted).

Here, as set forth in detail by the Trustee, Tessie and Trustee dispute whether the Estate or Tessie is the proper party in interest to pursue certain avoidance claims, including claims asserted by Tessie in the Fraudulent Transfer Action. As such, prior to prosecuting such avoidance claims on behalf of the Estate, the Trustee would have to file a motion to substitute the Estate in place of Tessie in the Fraudulent Transfer Action. The dispute would involve complex law on standing and statutes of limitation which a court would have to resolve before either party could succeed with the litigation. It is unclear if the Trustee would be successful.

Moreover, even if the Trustee established that the Estate is the proper party in interest, the Trustee would have to expend significant Estate resources to prosecute the avoidance claims and, if successful, attempt to recover the property into the Estate. The administrative fees and costs would greatly diminish any recovery by the Trustee. Assuming the Trustee recovered unliquidated real or personal property, the Trustee would then incur additional fees and costs liquidating the properties for distribution to creditors. These facts establish that the first three factors in the *A & C Properties* test weigh in favor of approving the Agreement. Matt does not offer any evidence or argument challenging these factors.

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The primary dispute revolves around the last factor, i.e., whether the settlement is in the paramount interest of creditors. Assuming Tessie subordinated its claim to *all* allowed, unsecured claims against the Estate, the Agreement would be in the best interest of creditors. As set forth by the Trustee, the Estate is ready to make a distribution. However, Tessie asserts a claim totaling \$3,005,250.32. The subordination of this claim will directly benefit the unsecured creditors with timely filed claims; without subordination, Tessie's substantial claim would yield a tiny percentage to these creditors.

However, the Agreement provides that Tessie will subordinate its claim only to the two unsecured claims against the Estate filed by the Bar Date. At this time, without a properly noticed and served hearing on the validity and priority of Mahtab's and Mohammad's claims, including whether the claims may be paid under 11 U.S.C. § 726(a)(2)(C) and/or Federal Rule of Bankruptcy Procedure 3002(c)(6), the Court cannot treat Mahtab's and Mohammad's claims differently from the other unsecured claims against the Estate. *See* 11 U.S.C. §§ 507, 726; *see also Czyzewski v. Jevic Holding Corp.*, 137 S.Ct. 973, 987, 197 L.Ed.2d 398 (2017) (holding that bankruptcy courts do not have the power to authorize distribution outside of the priorities and distribution scheme set forth in 11 U.S.C. §§ 507 and 726).

In light of the above, unless Tessie agrees to subordinate its claim to *all* allowed, unsecured claims against the Estate, the Court will continue this hearing to provide the parties an opportunity to object to Mahtab's and Mohammad's claims or obtain a determination that they are to be paid pursuant to 11 U.S.C. § 726(a)(3). If the Court disallows the claims, or rules that the claims are lower in priority than claims filed by the Bar Date, the Court will approve the Agreement in its current form. [FN3].

III. CONCLUSION

Unless Tessie agrees to subordinate its claims to all allowed, unsecured claims, the Court will continue this hearing to **1:30 p.m. on November 4, 2021**. No later than **September 30, 2021**, a party in interest may file objections to Mahtab's and Mohammad's claims. If objections to the claims are filed and served by September 30, 2021, the Court will hold a hearing on the at **1:30 p.m. on November 4, 2021**.

FOOTNOTES

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1. On October 19, 2018, the Court entered an order severing Debtor's and his spouse's bankruptcy case [doc. 80].
2. To the extent Matt argues that he qualifies as a creditor whose interest the Court should consider, Matt did not timely file a proof of claim against the Estate. In addition, Matt has not provided any evidence that any wages recovered by Tessie would yield a claim against *Debtor*, as opposed to Huntley, which is alleged to be Matt's employer. Finally, as discussed above, Tessie's recovery of fraudulent transfers in California state court may not result in a claim under 11 U.S.C. § 502(h) against the Estate. Matt has not otherwise established that he is a creditor of the Estate.

Party Information

Debtor(s):

Mohsen Loghmani

Pro Se

Movant(s):

David Keith Gottlieb (TR)

Represented By
Richard A Marshack
Laila Masud
D Edward Hays

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Richard A Marshack
Laila Masud
D Edward Hays

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1:19-10531 CFC California Fabrication, Inc.

Chapter 7

#8.00 Chapter 7 Trustees Motion for Order: (1) Authorizing Sale of Estates Right, Title, and Interest in Personal Property Free and Clear of Liens of the Department of the Treasury-Internal Revenue Service; (2) Approving Overbid Procedure; and (3) Waiving Rule 6004(H) Stay

Docket 59

Tentative Ruling:

Grant.

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

Party Information

Debtor(s):

CFC California Fabrication, Inc.

Represented By
David R Hagen

Movant(s):

Diane C Weil (TR)

Represented By
Carmela Pagay

Trustee(s):

Diane C Weil (TR)

Represented By
Carmela Pagay

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1:21-11166 Margarito Guerrero

Chapter 11

#9.00 Debtor's Motion for order determining value of collateral

Docket 20

Tentative Ruling:

Grant.

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

Note: No response has been filed. Accordingly, no court appearance by movant 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 movant will be so notified.

Party Information

Debtor(s):

Margarito Guerrero

Represented By
Lionel E Giron
Joanne P. Sanchez

Movant(s):

Margarito Guerrero

Represented By
Lionel E Giron
Joanne P. Sanchez

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1:21-10978 Scott Tarnol and Amanda Tarnol

Chapter 11

#10.00 Status conference re: chapter 11 subchapter V voluntary case
fr. 7/22/21

Docket 1

Tentative Ruling:

The Court will continue this status conference to **2:00 p.m. on September 23, 2021**, to take place concurrently with the hearing on the debtors' *Motion for Order Establishing Plan Confirmation Process* [doc. 38].

Appearances on September 9, 2021 are excused.

Party Information

Debtor(s):

Scott Tarnol

Represented By
Michael Jones

Joint Debtor(s):

Amanda Tarnol

Represented By
Michael Jones

Trustee(s):

Moriah Douglas Flahaut (TR)

Pro Se