

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

Thursday, December 3, 2020

Hearing Room 301

1:00 PM

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

Chapter 11

#1.00 Confirmation hearing re debtor's first amended chapter 11 plan

Order appr stip to cont ent 11/17/20

Docket 131

***** VACATED *** REASON: Order approving stip entered 11/17/20.
Hearing continued to 2/11/21 at 1:00 PM.**

Tentative Ruling:

- NONE LISTED -

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

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1:00 PM

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

Chapter 11

#2.00 Status conference re: chapter 11 case

fr. 11/21/19; 4/9/20; 7/9/20, 7/16/20; 9/10/20; 10/15/20

Stip to cont filed 11/16/20

Docket 1

***** VACATED *** REASON: Order approving stip entered 11/17/20.
Hearing continued to 2/11/21 at 1:00 PM.**

Tentative Ruling:

- NONE LISTED -

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

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1:19-11902 John Christian Lukes

Chapter 11

#3.00 Hearing on debtor's disclosure statement describing chapter 11 plan

Docket 146

***** VACATED *** REASON: Voluntary dismissal of disclosure statement
filed 11/19/20. [Dkt.182]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

John Christian Lukes

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

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1:19-11902 John Christian Lukes

Chapter 11

#4.00 Status conference re: chapter 11 case

fr. 9/19/19; 2/6/20; 4/30/20; 10/08/20;

Docket 1

Tentative Ruling:

The debtor has not filed his monthly operating report for October 2020.

Given that debtor has withdrawn his chapter 11 plan and proposed related disclosure statement, and he now intends to sell the sole real property of the bankruptcy estate, i.e., a residential rental property located in Altadena, when does debtor expect to file an application to employ a real estate broker and to file an amended chapter 11 plan and disclosure statement?

Party Information

Debtor(s):

John Christian Lukes

Represented By
Matthew D Resnik

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1:19-12810 Blanca Mohd

Chapter 11

#5.00 Order to show cause why this case should not be dismissed
or converted to one under chapter 7

fr. 08/27/20; 9/17/20; 11/12/20

Docket 75

Tentative Ruling:

Because the debtor timely filed a chapter 11 plan and related proposed disclosure statement, based on the continued deadline for her to do so, the Court will discharge the Order to Show Cause.

Appearances on December 3, 2020 are excused.

Party Information

Debtor(s):

Blanca Mohd

Represented By
Dana M Douglas

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1:19-12810 Blanca Mohd

Chapter 11

#6.00 Status conference re: chapter 11 case

fr. 12/19/20; 12/26/19; 6/18/20; 07/23/2020; 8/27/20; 9/17/20;
11/12/20

Docket 1

Tentative Ruling:

The Court will set a hearing on the adequacy of the debtor's proposed disclosure statement [doc. 117] at **1:00 p.m. on January 21, 2021**. The debtor must timely file and serve notice of the hearing and the deadline to file a response no later than 14 days prior thereto, and the ability to request a copy of the debtor's chapter 11 plan and proposed related disclosure statement from debtor's counsel, on all creditors and the United States Trustee.

The Court also will continue this status conference to the same time and date.

The debtor must submit the order setting the hearing on the disclosure statement, and the deadline to file and serve on the debtor and her counsel any response thereto, within seven (7) days.

Appearances on December 3, 2020 are excused.

Party Information

Debtor(s):

Blanca Mohd

Represented By
Dana M Douglas

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1:16-13469 Children Are Our Future, Inc.

Chapter 7

#7.00 Motion of chapter 7 trustee for an order approving the sale of certain assets of the debtor's estate free and clear of liens, claims, interests, and encumbrances pursuant to 11 U.S.C. §§ 105 and 363 and related relief

Docket 36

Tentative Ruling:

Grant.

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

Party Information

Debtor(s):

Children Are Our Future, Inc.

Represented By
Thomas B Ure

Trustee(s):

Diane C Weil (TR)

Pro Se

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1:18-10417 Deborah Lois Adri

Chapter 7

#8.00 Motion of Fredman Lieberman Pearl LLP for an order authorizing withdrawal of counsel

Docket 379

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):

Deborah Lois Adri

Represented By
Nina Z Javan
Daniel J Weintraub
James R Selth

Trustee(s):

Elissa Miller (TR)

Represented By
Cathy Ta
Larry W Gabriel
Claire K Wu

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1:18-12932 Martha Beltran

Chapter 7

#9.00 Trustee's motion to extend deadline for chapter 7 trustee to object to debtor's exemptions

Docket 48

***** VACATED *** REASON: Withdrawal of motion filed 11/17/20
[Dkt.50]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Martha Beltran

Represented By
M. Wayne Tucker

Trustee(s):

Nancy J Zamora (TR)

Represented By
Larry D Simons

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1:19-11482 Kimball West Small

Chapter 7

#10.00 Motion for order authorizing trustee to continue operating real property

Docket 82

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):

Kimball West Small

Represented By
Varand Gourjian

Trustee(s):

Nancy J Zamora (TR)

Represented By
David Seror
Jessica L Bagdanov
Tamar Terzian

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1:20-10621 Jasmin DeVillar

Chapter 11

#11.00 Debtor's motion re objection to claim number 17 by
California Dept. of Tax and Fee Administration

Docket 63

Tentative Ruling:

Objection overruled.

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

Party Information

Debtor(s):

Jasmin DeVillar

Represented By
Nancy Korompis

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1:20-10910 Thomas A Perez

Chapter 7

#12.00 Debtor's motion for declaratory relief re: Court's Order of 8/25/20 incorporating tentative ruling of 8/13/20, and motion for chapter 7 discharge, or, in the alternative for dismissal of case with or without prejudice

fr. 11/5/20

Docket 69

Tentative Ruling:

See calendar no. 14.

Party Information

Debtor(s):

Thomas A Perez

Represented By
Stephen Parry

Trustee(s):

Nancy J Zamora (TR)

Represented By
Toan B Chung

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1:20-10910 Thomas A Perez

Chapter 7

#13.00 Application by Nancy Hoffmeier Zamora, Chapter 7 Trustee, for approval to employ Rodeo Realty, Inc. as Real Estate Broker

fr. 08/06/20 (stip); 8/13/20; 10/15/20; 11/5/20

Docket 15

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas A Perez

Represented By
Stephen Parry

Trustee(s):

Nancy J Zamora (TR)

Represented By
Toan B Chung

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1:20-10910 Thomas A Perez

Chapter 7

**#14.00 Chapter 7 Trustee's Motion Objecting to Debtor's
Claimed Homestead Exemption**

fr. 11/5/20

Docket 78

Tentative Ruling:

Overrule.

I. BACKGROUND

On May 14, 2020, Thomas A. Perez ("Debtor") filed a voluntary chapter 7 petition. Nancy J. Zamora was appointed the chapter 7 trustee (the "Trustee").

A. Debtor's Bankruptcy Planning

By early 2019, Debtor was "getting constant, threatening phone calls from various collection agencies." According to Debtor, after exploring the option of getting a reverse mortgage, and being informed that he could not qualify, Debtor decided to seek another solution. Declaration of Thomas A. Perez ("Perez Declaration") [doc. 45], ¶¶ 2-5; *see also* [doc. 70], Exhibit C, ¶¶ 2-5.

Debtor met with a group called "Legal Experts" to discuss what to do. *Id.*, ¶¶ 4-9. According to Debtor, someone at Legal Experts said that he did not "qualify for bankruptcy" because of the equity in Debtor's house. Then, another individual at Legal Experts, *i.e.*, "Moshe," asked Debtor if he knew a "reliable person of confidence" who could help Debtor and his wife "with some paperwork that would make the BK possible." *Id.*, ¶¶ 9-11. Debtor thought of his sister, Maria Perez. *Id.*, ¶ 10.

Debtor allegedly informed Moshe that Ms. Perez had helped Debtor and his spouse financially throughout the years, but that there was no formal agreement of repayment between the two. *Id.*, ¶ 11. Debtor asserts that, at that time, Moshe advised Debtor to create a third mortgage against the Property in favor of Ms. Perez, and to wait one year before filing a bankruptcy case. *Id.*, ¶ 12. Debtor and his spouse then executed a

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promissory note and a deed of trust against their home, for the benefit of Ms. Perez. *Id.*, ¶ 13.

B. Debtor's Schedules and Statements

On May 14, 2020, Debtor filed his original schedules of assets and liabilities with his chapter 7 petition. [FN1]. In his schedule A/B, Debtor identified a joint tenancy interest in real property located at 9251 Woodley Avenue, North Hills, CA 91343 (the "Property"). Debtor valued the Property at \$625,000. In his schedule C, Debtor claimed a \$27,497 exemption in the Property under California Code of Civil Procedure ("CCP") § 703.140(b)(5).

In his schedule D, Debtor identified the following encumbrances against the Property: (A) a first priority deed of trust in favor of PHH Mortgage Services ("PHH") in the amount of \$343,758; (B) a second priority deed of trust in favor of PHH in the amount of \$53,745; and (C) a third priority deed of trust in favor of Maria Rita Perez, Debtor's sister, in the amount of \$200,000 (the "Perez DOT"). In schedule D, Debtor noted that the debt underlying the Perez DOT was incurred in May 2019.

C. The § 341(a) Meeting and Amended Schedules

On June 19, 2020, Debtor attended a § 341(a) meeting of creditors (the "Meeting of Creditors"). During the Meeting of Creditors, the Trustee asked Debtor questions about the Perez DOT and requested copies of pertinent documents. Supplemental Declaration of Trustee [doc. 93], ¶ 2, Exhibit 1. Specifically, the Trustee asked Debtor to provide additional information regarding when Ms. Perez funded the underlying loan, why Debtor recorded the Perez DOT when he did and whether Debtor made any payments to Ms. Perez. *Id.* The Trustee also informed Debtor that a realtor planned to visit and assess the Property. *Id.* [FN2].

On the same day as the Meeting of Creditors, the Trustee filed a Notice of Assets [doc. 11]. [FN3]. On June 26, 2020, the Trustee filed an application to employ a real estate broker (the "Broker Application") [doc. 15].

According to Debtor, after the Meeting of Creditors, Debtor recognized he was in "trouble" over the Perez DOT. Perez Declaration [doc. 45], ¶ 16; *see also* [doc. 70], Exhibit C, ¶ 16. As a result, after the Meeting of Creditors, Debtor again consulted

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Legal Experts for advice. Supplemental Declaration of Thomas Perez (the "Supplemental Declaration") [doc. 94], ¶ 6. According to Debtor, Legal Experts told Debtor to hire another attorney. *Id.*

On June 30, 2020, Debtor hired his current bankruptcy counsel, Stephen Parry. Supplemental Declaration, ¶ 7; Substitution of Attorney [doc. 17]. According to Debtor, at that time, Mr. Parry advised Debtor to call Ms. Perez and ask her to reconvey the Perez DOT immediately. Supplemental Declaration, ¶ 7. That evening, Debtor called his sister to relay this information to her. *Id.*, ¶ 8. At that time, Ms. Perez stated she would unwind the Perez DOT as soon as possible. *Id.*, ¶¶ 8-9.

On June 30, 2020, Debtor also filed amended schedules, including an amended schedule A/B and an amended schedule C [doc. 18]. In his amended schedule C, Debtor claimed a homestead exemption, under CCP § 704.950, in the amount of \$175,000.

In his amended schedule A/B, Debtor set forth a liquidation analysis regarding the Property. Using a value of \$599,000.00, which Debtor attributed to the Trustee's proposed real estate broker, and after deducting costs of sale and amounts payable regarding the first and second deeds of trust, Debtor's liquidation analysis stated:

Debtor (age 65) has corrected and amended his Schedule C and claimed his Homestead Exemption pursuant to CCP 704.950, such that the claim Homestead Exemption amount is \$175,000. Accordingly, there are no net proceeds available to the Bankruptcy Estate from a forced sale of [the Property].

In the amended schedule A/B, Debtor further noted:

Debtor's sister has a Third Trust Deed lien on this property which constitutes an avoidable preference, having been recorded less than 1 year prior to the filing of this case. Accordingly, said lien was not included in the Chapter 7 liquidation analysis.

D. Emails Between Debtor's Counsel and the Trustee

On July 2, 2020, Mr. Parry sent an email to the Trustee: (A) stating that he had substituted into the case; (B) noting that amended schedules had been filed to address

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mistakes in Debtor's original schedules; (C) asking if the Trustee needed additional documents from Debtor; (D) inquiring if the Trustee agreed to abandon the Property; and (E) agreeing to pay the Trustee's incurred fees and costs. Declaration of Barry Sisselman [doc. 69], ¶ 5, Exhibit D. On the same day, Ms. Perez called the escrow company to begin the process of reconveying the Perez DOT. Supplemental Declaration, ¶ 9. That day, the Trustee responded to Mr. Parry's email, stating, in relevant part—

Further, as the amended schedules note, the third deed of trust is a preferential transfer that I can avoid and preserve for the benefit of the Estate.

Id. To this email, Mr. Parry responded, on July 2, 2020, that he expected "to have the preferential lien voluntarily released, by the recording of a Full Reconveyance, within the next week to 10 days." *Id.*

On July 3, 2020, Debtor's counsel sent another email to the Trustee, stating, in relevant part—

We expect that Mr. Perez's sister will be meeting with a title company today to execute a Declaration of Lost Original Note for the filing of a Full Reconveyance of the 3rd Trust Deed Lien. The title company will record the document and will be requested to provide a Certified Copy [of] the Reconveyance. We will provide that to you as soon as we receive it. She is not fighting the fact that it constitutes an avoidable preference.

Id. The record before the Court does not reflect a response to this email by the Trustee.

On July 3, 2020 and July 6, 2020, Ms. Perez visited the escrow company and the title company, respectively, to continue the reconveyance process. Supplemental Declaration, ¶ 9. On July 8, 2020, Ms. Perez completed the reconveyance by signing and notarizing the reconveyance deed. *Id.* However, according to Debtor, because the County Recorder is closed to the public on account of the pandemic, the recording of the reconveyance deed was delayed until July 15, 2020. *Id.*

E. Other Pertinent Filings

On July 6, 2020, three days after Debtor's counsel informed the Trustee that Ms. Perez

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would voluntarily reconvey the Perez DOT, the Trustee filed an adversary proceeding against Ms. Perez, requesting avoidance of the Perez DOT as a preferential transfer and a fraudulent transfer (the "Perez Complaint") [1:20-ap-01067-VK]. On July 7, 2020, the Trustee filed an application to employ counsel to represent the Trustee in this adversary proceeding (the "Litigation Application") [doc. 23].

On July 11, 2020, Debtor filed a motion to convert this case to a chapter 13 case (the "Motion to Convert") [doc. 25]. On August 6, 2020, Debtor filed another set of amended schedules A/B, C, D, E/F, G, I and J [doc. 44]. In this amended schedule A/B, Debtor asserted that, on July 8, 2020, the Perez DOT had been voluntarily released by a full reconveyance.

On August 13, 2020, the Court held a hearing on the Motion to Convert. At that time, the Court issued a ruling denying the Motion to Convert (the "Conversion Ruling") [doc. 52]. In the Conversion Ruling, the Court held that, because "Debtor fabricated a deed of trust in favor of his sister to prevent liquidation of the Property by a chapter 7 trustee," "Debtor engaged in the type of bad faith conduct that warrants denial of his request to convert this case." Conversion Ruling, p. 5. In relevant part, the Court also stated—

Nevertheless, because Ms. Perez voluntarily reconveyed her deed of trust, obviating the need for legal action by the Trustee, the Court questions whether there are sufficient grounds to deny Debtor his homestead exemption. To facilitate a resolution to the dispute over Debtor's homestead exemption, the Court will order Debtor and the Trustee to attend mediation in an attempt to resolve this issue without expending significant estate resources.

Conversion Ruling, p. 5. Subsequently, the parties attended mediation; according to the mediator's certificate [doc. 68], the parties did not reach a resolution regarding Debtor's entitlement to a homestead exemption.

F. The Pending Motion and Objection

On October 12, 2020, Debtor filed a motion for declaratory relief or, in the alternative, a motion for dismissal of Debtor's case (the "Declaratory Relief Motion") [doc. 69]. In the Declaratory Relief Motion, Debtor asserts that, based on the Conversion Ruling, the Trustee cannot object to Debtor's claim of a homestead exemption under 11 U.S.C. §

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522(g). Debtor also asserts that the Perez DOT was voluntarily reconveyed without the need for action by the Trustee. In the alternative, Debtor requests dismissal of this case and/or the filing of a no asset report by the Trustee.

On October 15, 2020, the Trustee filed an objection to Debtor's claim of a homestead objection (the "Objection") [doc. 78] and an opposition to the Declaratory Relief Motion [doc. 77]. On October 19, 2020, Debtor filed a reply to the opposition [doc. 80] and an opposition to the Objection [doc. 81]. On October 20, 2020, the Trustee filed an evidentiary objection to Exhibit E, attached to the Declaratory Relief Motion [doc. 84]. On October 28, 2020, the Trustee filed a reply to Debtor's opposition [doc. 88].

II. ANALYSIS

A. Declaratory Relief

Debtor contends that he is entitled to declaratory relief based on the Court's Conversion Ruling. However, the Conversion Ruling did not establish that Debtor is entitled to a homestead exemption under 11 U.S.C. § 522(g). In the Conversion Ruling, the Court merely stated that it "*questions* whether there are sufficient grounds to deny Debtor his homestead exemption." Conversion Ruling, p. 5 (emphasis added). The Court did not hold that Debtor is entitled to a homestead exemption, or conduct an analysis under the relevant legal standards.

As discussed below, even if the legal action was unnecessary to avoid the Perez DOT, section 522(g) bars claims of exemptions even where a trustee "recovers" property *without formal legal action*. Thus, the Court will deny Debtor's request for declaratory relief and, in the context of the Trustee's objection to the claimed exemption, address Debtor's arguments regarding his entitlement to a homestead exemption.

B. Request to Dismiss and/or for the Trustee to File a No Asset Report

Debtor has not provided any legal support regarding his requests to dismiss this case or compel the Trustee to file a no asset report. Pursuant to 11 U.S.C. § 707(a), "[t]he Court may dismiss a case under this chapter only after notice and a hearing and *only for cause...*" (emphasis added). Under 11 U.S.C. § 305(a)(1), "[t]he court, after notice and a hearing, may dismiss a case under this title, or may suspend all proceedings in a case under this title, at any time if... the interests of creditors and the debtor would be better

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served by such dismissal or suspension."

Debtor has not articulated why dismissal of this case is in the best interest of creditors. At this time, while the Trustee is investigating Debtor's assets, dismissal of this case is premature.

C. Entitlement to Homestead Exemption

Pursuant to 11 U.S.C. § 522(g)—

Notwithstanding sections 550 and 551 of this title, the debtor may exempt under subsection (b) of this section property that the trustee *recovers* under section 510(c)(2), 542, 543, 550, 551, or 553 of this title, to the extent that the debtor could have exempted such property under subsection (b) of this section if such property had not been transferred, if—

(1)(A) such transfer was not a voluntary transfer of such property by the debtor;
and

(B) the debtor did not conceal such property; or

(2) the debtor could have avoided such transfer under subsection (f)(1)(B) of this section.

11 U.S.C. § 522(g) (emphasis added).

A debtor's claim to an exemption under § 522(g) is disallowed where: (A) "a debtor voluntarily transfers property in a manner that triggers the trustee's avoidance powers *or* the debtor knowingly conceals a prepetition transfer or an interest in property;" *and* (B) "such property is returned to the estate as a result of the trustee's actions directed toward either the debtor or the transferee...." *In re Glass*, 164 B.R. 759, 764-65 (B.A.P. 9th Cir. 1994), *aff'd*, 60 F.3d 565 (9th Cir. 1995).

Here, there is no dispute that Debtor voluntarily made the subject transfer, i.e., executed the Perez DOT. Although the parties dispute whether Debtor concealed the transfer, a showing that Debtor voluntarily made the subject transfer is sufficient to satisfy the first

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prong of the test set forth in *Glass*. As such, the outcome hinges on the second prong of the test: whether the Trustee's actions resulted in recovering equity in the Property.

In *Glass*, prepetition, the debtor had quitclaimed his interest in real property to his son; the debtor did not identify the real property in his schedules and statements. *Glass*, 164 B.R. at 760. At a meeting of creditors, a creditor informed the chapter 7 trustee about the prepetition transfer. *Id.* In response, the debtor filed amended schedules and claimed a homestead exemption in the property. *Id.* The chapter 7 trustee objected under § 522(g). *Id.*, at 760-61.

Three days after the chapter 7 trustee filed the objection to the claimed exemption, the debtor's son reconveyed the property to the debtor. *Id.*, at 761. In light of the reconveyance, the bankruptcy court ruled that the debtor was entitled to a homestead exemption because the chapter 7 trustee did not direct any action, formal or informal, against the son to achieve reconveyance of the property to the estate. *Id.*

The Bankruptcy Appellate Panel of the Ninth Circuit (the "BAP") disagreed. The BAP held that "it is not apparent from the word 'recovers' that a formal adversary proceeding against the transferee is needed for a court to deny a debtor's claim of exemption." *Glass*, 164 B.R. at 763. Specifically, the BAP stated—

In the bankruptcy context, a trustee may "recover" fraudulently transferred property in several ways: by initiating a formal adversary proceeding, by obtaining a judgment in his or her favor in that adversary action, or merely by using the threat of the avoidance powers to convince a debtor or third party transferee to return the property to the estate. Thus, it would appear that the word "recovers" does not necessarily require that the trustee regain possession of the property through a formal legal action.

Id. Under this definition of "recovers," the BAP determined that the chapter 7 trustee had recovered the property into the estate—

We further conclude that the Trustee's actions toward the Debtor directly, and the Debtor's son indirectly, were instrumental in the return of the property to the estate. Three days after the Trustee filed his Objection, the Debtor's son reconveyed the property to the Debtor by quitclaim deed.

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Since the Debtor and the transferee are father and son and the transfer occurred on the heels of the Objection, the only reasonable inference to be drawn is that the Trustee's promise of legal action had a coercive effect on father and son, directly resulting in the return of the property to the estate.

Without the Trustee's intervention and discussions with the Debtor as to why the property should be reconveyed to the estate, there would be no residence in which the Debtor could claim an exemption.

Id., at 765. The Ninth Circuit Court of Appeals affirmed the BAP's decision; in relevant part, the Court of Appeals noted that the trustee taken "some action" to recover the subject property—

In this case, following the debtor's failure to properly disclose the property transfer there was not only a "suggestion" by the trustee, but also a filed objection that contained the threat of use of avoidance powers. The trustee is correct that even under *Snyder*, relied upon by both the bankruptcy court and Glass, he should prevail.

...

Although the *Snyder* court indicated it would evaluate whether or not a trustee expended "a significant amount of effort" in a case such as this, *id.* at 154, there is arguably not a lot of difference between filing a complaint and filing an objection threatening to file a complaint. *Snyder* also states that "[t]he language of § 522(g) requires that the trustee, or a creditor acting in a similar capacity, *have taken some action* which has resulted in the recovery of the property." *Id.* (emphasis added). The filing of the objection containing the threat to use avoidance powers which resulted in the reconveyance of the property to the estate was "some action."

In re Glass, 60 F.3d 565, 569 (9th Cir. 1995) (citing *In re Snyder*, 108 B.R. 150, 154 (Bankr. N.D. Ohio 1989)).

At least one court has held that, even where a trustee acts, there should be some relation between the action taken by the trustee and the recovery into the estate. *See In re Leach*, 595 B.R. 841 (Bankr. D. Idaho 2018). In *Leach*, the debtors did not accurately identify

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a vehicle in their schedules; although they remained on title, the debtors also indicated they had given the vehicle to their daughter. *Id.*, at 843. During a § 341(a) meeting of creditors, the mistake came to light. *Id.* After the meeting of creditors, the debtors did not amend their schedules to correct the mistake in their schedules. *Id.*

Two months after the discovery of the error, the chapter 7 trustee sent a demand letter to the debtors, requesting turnover of the vehicle. *Id.* Shortly thereafter, the debtors amended their schedules to correct the description of the vehicle and claim a \$7,000 exemption in the vehicle. *Id.* The trustee then objected to the exemption, arguing the debtors were not entitled to an exemption under § 522(g). *Id.* After holding that the debtors voluntarily transferred the vehicle to their daughter, thus satisfying the first prong of the *Glass* test, the bankruptcy court decided the trustee did not recover the vehicle for purposes of § 522(g). *Id.*, at 844-47. In relevant part, the court stated—

In this case, Trustee knew that Debtors were the title owners of the Vehicle as of June 28, 2018, and Debtors were similarly aware of their mistake at that time. Trustee waited nearly two months, but when no effort was made to correct the schedules, he wrote a formal demand letter to Debtors informing them of the Vehicle's inclusion in their bankruptcy estate and demanding turnover, and sought their daughter's name and address so Trustee's auctioneer could pick the car up. Under *Glass*, this is very close to constituting a "recovery" under § 522(g).

However, the Vehicle was voluntarily returned to the Debtors shortly after July 8, 2018, not due to any action by Trustee, but because their daughter purchased a new car and no longer needed it, as demonstrated by the text messages in evidence. Moreover, as explained above, the transfer at issue was a transfer of possession only, and Debtors' daughter voluntarily returned possession of the Vehicle to them. Thus, both legal title and possession rested with Debtors by the time Trustee wrote the demand letter. Additionally, under the broad definition of estate property under § 541(a), the Vehicle was already included in Debtors' bankruptcy estate, as they legally owned it by virtue of the certificate of title. The original transfer of possession to Debtors' daughter did not confer legal title to her under Idaho law. As such, the only "recovery" Trustee's demand letter brought about was Debtors' act of formally correcting the model year of the Vehicle on their schedules. ...

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While it would not require a particularly expansive reading of *Glass* to conclude that the facts presented here constitute a recovery for the purposes of § 522(g), the Court is nevertheless mindful of the well-established standard that exemption statutes are to be liberally construed in favor of debtors. As such, the Court interprets "recovers" within the meaning of § 522(g) to not include this instance, where Trustee's actions did not result in the transferred interest being returned to the estate, and in fact occurred subsequent thereto.

Id., at 845-46 (internal citations omitted). [FN4].

Here, the record does not reflect that the Trustee took the type of action contemplated by the *Glass* decisions. In the BAP's *Glass* decision, the BAP held that the "only reasonable inference to be drawn is that the Trustee's promise of legal action had a coercive effect" on the debtor and the transferee, which "directly result[ed] in the return of the property of the estate." *Glass*, 164 B.R. at 765 (emphasis added). Similarly, the Court of Appeals highlighted that "there was not only a 'suggestion' by the trustee, but... a filed objection that contained the threat of *use of avoidance powers*." *Glass*, 60 F.3d at 569 (emphasis added). In both decisions, the relevant threat was a threat of legal action that was instrumental to return of property of the estate. The *Leach* court, relying in part on the liberal construction afforded to exemption statutes, further stressed the importance of causation; there, even where the chapter 7 trustee wrote a formal demand letter, the court held that the transferee voluntarily reconveyed the property for reasons unrelated to the trustee's letter and, as a result, the trustee did not "recover" the property for purposes of § 522(g).

The timeline in this case indicates that the Trustee's threats were not instrumental in the reconveyance of the Perez DOT. The Trustee references the following as actions that led to the recovery of equity in the Property: (A) stating her intent to take action against Ms. Perez at the Meeting of Creditors; (B) filing the Notice of Assets; (C) requesting a certified copy of Debtor's petition; (D) filing the Broker Application; (E) retaining counsel on June 29, 2020; (F) filing a complaint against Ms. Perez; and (G) filing the Litigation Application.

First, some of these actions do not qualify as the type of threat within the scope of § 522(g). For instance, despite the Trustee's assertion, the transcript from the Meeting of

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Creditors shows that the Trustee did not threaten use of her avoidance powers (or any other legal action). Instead, the Trustee merely asked Debtor questions about the Perez DOT.

Likewise, neither the Notice of Assets nor the Broker Application included any mention of the Perez DOT. In addition, the Trustee does not contend that Debtor, Debtor's counsel or Ms. Perez had any knowledge that the Trustee retained counsel on June 29, 2020 or, if so, for what purpose. The Trustee also does not indicate that her request for a certified copy of Debtor's petition included the type of threat contemplated by the *Glass* decisions.

Although the Litigation Application and the Perez Complaint qualify as threats to use (or, in the case of the Perez Complaint, the actual use of) the Trustee's avoidance powers, the record does not demonstrate that these actions resulted in the reconveyance of the Perez DOT. Instead, *prior to* the filing of the Litigation Application and the Perez Complaint, Debtor and Ms. Perez began the process of reconveying the Perez DOT.

In fact, the record before the Court reflects that the first mention of avoidance of the Perez DOT was made by *Debtor* on June 30, 2020, when Debtor filed his amended schedule A/B [doc. 18]. According to Debtor, on the same day, Debtor's new counsel advised Debtor to unwind the transfer to Ms. Perez immediately. As such, Debtor voluntarily acted before the Trustee communicated an intent to avoid the Perez DOT.

On July 2, 2020, *after* Debtor filed his amended schedule A/B and began the process of eliminating the Perez DOT, the Trustee emailed Mr. Parry and referenced Debtor's own schedules to note, for the first time, that the Perez DOT was subject to avoidance as a preferential transfer. The Trustee did not explicitly threaten to file a lawsuit. Nevertheless, assuming this email qualifies as a threat under *Glass*, the threat postdates Debtor's voluntary action. In addition, on July 2, 2020, the date of the Trustee's email, Mr. Parry informed the Trustee that he expected the Perez DOT to be released voluntarily within 10 days. Thus, by the time the Trustee discussed avoidance of the Perez DOT with Mr. Parry, Mr. Parry informed the Trustee the Perez DOT was being reconveyed. There was no further need for the Trustee to act.

Given the "well-established standard that exemption statutes are to be liberally construed in favor of debtors," under these facts, the Trustee's actions did not result in recovery of

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the equity in the Property. *Leach*, 595 B.R. at 846. Because the Perez DOT was in the process of being reconveyed prior to the Trustee taking "some action," as required by *Glass*, the Trustee did not "recover" the equity in the Property for purposes of § 522(g). *Glass*, 60 F.3d at 569.

III. CONCLUSION

The Court will deny the Declaratory Relief Motion and overrule the Objection.

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

FOOTNOTES

1. Debtor contends he never met or spoke with Steven Kimmel, the attorney whose name was on Debtor's bankruptcy paperwork. *Id.*, ¶ 15. Subsequently, pursuant to a stipulation between Mr. Kimmel and the U.S. Trustee, the Court required Mr. Kimmel to disgorge what Debtor had paid to him in connection with filing this case [docs. 58, 63].
2. The transcript provided by the Trustee does not include Debtor's answers. However, as relevant to the issues herein, the transcript includes the questions and comments made by the Trustee.
3. As of the September 22, 2020 claims bar date, only \$13,124.84 of unsecured claims were filed against Debtor's estate.
4. In *Glass*, the Court of Appeals stated that, notwithstanding the debtor's status as a *pro se* debtor and the liberal construction afforded exemptions, the debtor was not entitled to an exemption based on the debtor's inequitable actions. That debtor had concealed his fraudulent transfer of his residence to his son in two separate bankruptcy cases, one that the debtor filed under chapter 11 and one that he filed under chapter 7. In contrast, in *In re Adeeb*, 787 F.2d 1339 (9th Cir. 1986), where the debtor, on advice of counsel, took action prepetition to recover property that he had improperly transferred, the Court of Appeals stated it was good policy to "encourage[] debtors to reveal transfers and to attempt to recover the property previously transferred," and to afford "bankruptcy attorneys who are retained after the debtor has made some mistakes an incentive to see that those

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mistakes are corrected." *Adeeb*, 787 F.2d at 1345. In *Adeeb*, the Court of Appeals applied this policy, as well as its interpretation of the statutory language at issue, to reverse the trial court's denial of the debtor's discharge - despite affirming the trial court's holding that the debtor otherwise harbored actual intent to delay, hinder or defraud creditors. *Id.*, 1343-46.

Tentative ruling regarding the Trustee's evidentiary objections to the identified exhibit in the Declaration of Stephen Parry set forth below:

Exhibit E: sustain

Party Information

Debtor(s):

Thomas A Perez

Represented By
Stephen Parry

Trustee(s):

Nancy J Zamora (TR)

Represented By
Toan B Chung

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#15.00 Trustee's application to employ LEA Accountancy, LLP as accountant
fr. 11/12/20

Docket 85

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Thomas A Perez

Represented By
Stephen Parry

Trustee(s):

Nancy J Zamora (TR)

Represented By
Toan B Chung

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1:20-10924 Tikran Eritsyanyan

Chapter 11

#16.00 Motion for order authorizing sale of real property free and clear of any interest under 11 U.S.C. sec 363(f), subject to overbid; (2) authorizing payment of undisputed liens, costs of sale, and property taxes; (3) finding that purchaser is a good faith purchaser under 11 U.S.C. sec 363(m); and (4) waiving 14 day stay period under FRBP 6004(h)

Docket 61

Tentative Ruling:

Grant.

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

Party Information

Debtor(s):

Tikran Eritsyanyan

Represented By
Vahe Khojayan