

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

Thursday, December 17, 2020

Hearing Room 301

10:30 AM

1:15-12563 Reza Fateh Manesh

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

David Seror, Chapter 7 Trustee

Brutzkus Gubner, Attorneys for Chapter 7 Trustee

SLBiggs, A Division of Singer Lewak, Accountant's for Trustee

Docket 200

Tentative Ruling:

David Seror, chapter 7 trustee – approve fees of \$67,151.82 and reimbursement of expenses of \$208.50.

Brutzkus Gubner, counsel to chapter 7 trustee – approve fees of \$345,205.00 and reimbursement of expenses of \$11,080.79, pursuant to 11 U.S.C. § 330, on a final basis. The Court will not approve \$1,728.50 in fees for the reasons below.

SLBiggs, accountant to chapter 7 trustee – approve fees of \$10,240.00 and reimbursement of expenses of \$129.61, pursuant to 11 U.S.C. § 330, on a final basis.

11 U.S.C. § 330(a)(2) provides that the court may, on its own motion, award compensation that is less than the amount of the compensation that is requested.

11 U.S.C. § 330(a)(1)(A) provides that a court may award to a professional person employed under § 327 "reasonable compensation for actual, necessary services" rendered by the professional person. "In determining the amount of reasonable compensation to be awarded to the professional person, the court shall consider the nature, the extent and the value of such services, taking into account all relevant factors, including—(A) the time spent on such services; (B) the rates charged for such services; (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; [and] (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed . . .". 11 U.S.C. § 330(a) (3). Except in circumstances not relevant to this chapter 7 case, "the court shall not

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

Thursday, December 17, 2020

Hearing Room 301

10:30 AM

CONT... Reza Fateh Manesh

Chapter 7

allow compensation for—(i) unnecessary duplication of services; or (ii) services that were not—(I) reasonably likely to benefit the debtor’s estate; or (II) necessary to the administration of the case." 11 U.S.C. § 330(a)(4)(A).

11 U.S.C. § 328(b) provides that an attorney may not receive compensation for the performance of any trustee’s duties that are generally performed by a trustee without the assistance of an attorney. *In re Garcia*, 335 B.R. 717, 725 (9th Cir. B.A.P. 2005) (holding that bankruptcy court did not abuse its discretion in refusing to compensate chapter 7 trustee’s counsel for services rendered in connection with the sale of property of the estate and for preparing routine employment applications).

Local Bankruptcy Rule ("LBR") 2016-2(e)(2) provides a "nonexclusive list of services that the court deems ‘trustee services.’" This list includes, among other activities: conduct 11 U.S.C. § 341(a) examination; routine investigation regarding location and status of assets; turnover or inspection of documents; recruit and contract appraisers, brokers, and professionals; routine collection of accounts receivable; routine documentation of notice of abandonment; prepare motions to abandon or destroy books and records; routine claims review and objection; monitor litigation; answer routine creditor correspondence and phone calls; review and comment on professional fee applications; and additional routine work necessary for administration of the estate.

In *Garcia*, the BAP upheld the bankruptcy court’s refusal to approve fees for preparation of employment applications, observing that "absent a showing by applicant to the contrary, routine employment applications remain a trustee duty." *Garcia*, 335 B.R. at 726. With respect to its holding, the BAP explained "a case trustee may only employ professionals for tasks that require special expertise beyond that expected of an ordinary trustee." *Id.* at 727.

In accordance with *Garcia* and LBR 2016-2(f), the Court does not approve the fees billed by Brutzkus Gubner while general counsel to the chapter 7 trustee for the services identified below. It appears that these fees are for services that are duplicative of those that could and should have been performed by the chapter 7 trustee, as a trustee.

Category	Date	Timekeeper	Description	Time	Fee	Reason
Asset Analysis and Recovery	1/25/16	RHB	Phone call with broker for Delano property re employment application	0.10	\$40	Trustee Duty
Asset Analysis and Recovery	1/26/16	RHB	Revisions to application to employ broker	0.30	\$120	Trustee Duty

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

Thursday, December 17, 2020

Hearing Room 301

10:30 AM

CONT...

Reza Fateh Manesh

Chapter 7

Asset Analysis and Recovery	1/29/16	RHB	Analysis of broker employment and memo re R. Burstein re same	0.20	\$80	Trustee Duty
Asset Analysis and Recovery	1/29/16	RHB	Email broker regarding employment application	0.10	\$40	Trustee Duty
Asset Analysis and Recovery	2/3/16	RHB	Analysis of issues regarding prior engagement of Broker by Hossein and update employment application	0.30	\$120	Trustee Duty
Asset Analysis and Recovery	2/8/16	RHB	Correspond with broker re status of Delano property and employment application	0.30	\$120	Trustee Duty
Asst Analysis and Recovery	2/24/16	RHB	Conversation with broker regarding status of motion to employ and prospects for sale of property	0.20	\$80	Trustee Duty
Asset Analysis and Recovery	3/7/16	RHB	Review order approving employment of broker	0.10	\$40	Trustee Duty
Fee/Employment Application	12/18/15	RHB	Revisions to application to employ broker to sell Delano property	0.30	\$120	Trustee Duty
Fee/Employment Application	1/26/16	RDB	Review and reply with comment to R. Bernet memo re application to employ re Delano property	0.30	\$187.50	Trustee Duty
Fee/Employment Application	1/29/16	RDB	Review and reply to R. Bernet memo on application to employ M. Pearlman, review M. Pearlman response	0.30	\$187.50	Trustee Duty
Fee/Employment Application	2/9/16	RDB	Review and reply to R. Bernet memo to M. Pearlman re marketing status, application to employ broker	0.20	\$125	Trustee Duty
Fee/Employment Application	2/22/16	RDB	Review broker inquiry on status of employment application and marketing, prepare memo to R. Bernet re same, review and reply to R. Bernet comments, review and reply to M. Tzeng memo on preparation of non-opposition papers and order re employment application	0.30	\$187.50	Trustee Duty
Fee/Employment Application	2/22/16	MTZ	Prepare Order approving employment of real estate brokers	0.40	\$96	Trustee Duty
Fee/Employment Application	2/22/16	MTZ	Prepare declaration of non-opposition re employment of re brokers	0.40	\$96	Trustee Duty
Fee/Employment Application	2/24/16	RDB	Review and reply to multiple R.Bernet, M. Tzeng and M. Pearlman memos on status of application to employ M. Pearlman	0.20	\$125	Trustee Duty

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

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

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

Thursday, December 17, 2020

Hearing Room 301

10:30 AM

CONT... Reza Fateh Manesh

Chapter 7

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):

Reza Fateh Manesh

Represented By
Lee W Harwell

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Reed Bernet
Jessica L Bagdanov
Steven T Gubner

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

Thursday, December 17, 2020

Hearing Room 301

10:30 AM

1:18-10611 Marvin A Medina Medina

Chapter 7

#2.00 Trustee's Final Report and Applications for Compensation

Diane C. Weil, Chapter 7 Trustee

Docket 48

Tentative Ruling:

Pursuant to 11 U.S.C. § 726(a)(3), the chapter 7 trustee may distribute property of the estate "in payment of any allowed unsecured claim proof of which is tardily filed."

In light of the surplus over the amount required to pay timely filed allowed unsecured claims, what are the chapter 7 trustee's intentions regarding payment of the nonpriority unsecured claim asserted by Modern Finance Company [doc. 51]?

Party Information

Debtor(s):

Marvin A Medina Medina

Represented By
Sergio A White

Trustee(s):

Diane C Weil (TR)

Pro Se

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

Thursday, December 17, 2020

Hearing Room 301

10:30 AM

1:20-11006 Lev Investments, LLC

Chapter 11

#3.00 First Interim Application Of Levene, Neale, Bender, Yoo & Brill L.L.P. for approval of fees and reimbursement of expenses
Period: 6/1/2020 to 11/20/2020, Fee: \$218,002.00, Expenses: \$8,434.20.

Docket 259

Tentative Ruling:

Levene, Neale, Bender, Yoo & Brill LLP (“LNBYB”), counsel to debtor – approve fees of \$205,669.50 and reimbursement of expenses of \$8,434.20 for the period covering June 1, 2020 through November 20, 2020, pursuant to 11 U.S.C. § 331, on an interim basis. The Court will allow LNBYB to apply the remaining pre-petition retainer balance in the amount of \$37,547.64. For the reasons set forth below, the Court will not approve \$134.50 in fees.

Secretarial/clerical work is noncompensable under 11 U.S.C. § 330. *See In re Schneider*, 2008 WL 4447092, *11 (Bankr. N.D. Cal. Sept. 26, 2008) (court disallowed billing for services including: monitoring and reviewing the docket; electronically distributing documents; preparing services packages, serving pleadings, updating service lists and preparing proofs of service; and e-filing and uploading pleadings); *In re Ness*, 2007 WL 1302611, *1 (Bankr. E.D. Cal. April 27, 2007) (data entry noncompensable as secretarial in nature); *In re Dimas*, 357 B.R. 563, 577 (Bankr. N.D. Cal. 2006) (“Services that are clerical in nature are not properly chargeable to the bankruptcy estate. They are not in the nature of professional services and must be absorbed by the applicant’s firm as an overhead expense. Fees for services that are purely clerical, ministerial, or administrative should be disallowed.”).

Accordingly, the Court will disallow the following fees as noncompensable secretarial work:

Category	Date	Timekeeper	Description	Time	Fee
Case Administration	6/2/20	SR	Obtain certified copy of petition	0.1	\$25.00
Case Administration	6/2/20	SR	Record certified petition with LA County recorder’s office	0.2	\$50.00
Case Administration	10/29/20	JYO	Filed notice of stay in Coachella lawsuit against debtor	0.1	\$59.50

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

Thursday, December 17, 2020

Hearing Room 301

10:30 AM

CONT... Lev Investments, LLC

Chapter 11

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

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

Party Information

Debtor(s):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Trustee(s):

Caroline Renee Djang

Pro Se

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

Thursday, December 17, 2020

Hearing Room 301

10:30 AM

1:20-11006 Lev Investments, LLC

Chapter 11

#4.00 First Interim Application of Caroline R. Djang, Subchapter V Trustee, for approval of compensation and reimbursement of expenses

Docket 261

Tentative Ruling:

Caroline R. Djang, Subchapter V trustee – approve fees of \$18,551.00 and reimbursement of expenses of \$221.98 for the period covering June 3, 2020 through November 24, 2020, pursuant to 11 U.S.C. § 331, on an interim basis. Because the Subchapter V trustee included blocked-out entries in her interim fee application, the Court will not approve \$555.50 in fees, as set forth below.

Category	Date	Timekeeper	Description	Time	Fee	Reason
Total Asset Disposition	7/27/20	CRD	Blocked out	0.50	\$505.00	No description
Total Asset Disposition	7/27/20	CRD	Blocked out	0.20	\$101.00	No description
Contested matters/ adversary	7/24/20	CRD	Blocked out	0.40	\$202.00	No description

The chapter 11 Subchapter V trustee must submit the order within seven (7) days.

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):

Lev Investments, LLC

Represented By
David B Golubchik
Juliet Y Oh

Trustee(s):

Caroline Renee Djang

Pro Se

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

Thursday, December 17, 2020

Hearing Room 301

1:00 PM

1:17-12969 Roger Ronald Steinbeck and Stannis Veronica Steinbeck

Chapter 11

#5.00 Post confirmation status conference

fr. 9/12/19; 10/3/19; 04/16/20;

Docket 1

Tentative Ruling:

Continue to **1:00 p.m. on April 22, 2021**. On or before **April 8, 2021**, the reorganized debtors must file an updated status report explaining what progress has been made toward consummation of the confirmed plan of reorganization. The report must be served on the United States trustee and the 20 largest unsecured creditors. The status report must comply with the provisions of Local Bankruptcy Rule 3020-1(b) **and be supported by evidence**.

Appearances on December 17, 2020 are excused.

Party Information

Debtor(s):

Roger Ronald Steinbeck

Represented By
Michael R Totaro

Joint Debtor(s):

Stannis Veronica Steinbeck

Represented By
Michael R Totaro

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

Thursday, December 17, 2020

Hearing Room 301

1:00 PM

1:19-11648 Maryam Sheik

Chapter 11

#6.00 Hearing on adequacy of debtor's disclosure statement describing chapter 11 plan of reorganization

fr. 10/8/20; 11/5/20(stip)

voluntary dismissal filed on 12/10/20 doc #150

Docket 108

***** VACATED *** REASON: Voluntary dismissal on 12/10/20 [docs. 149, 150].**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Maryam Sheik

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

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

Thursday, December 17, 2020

Hearing Room 301

1:00 PM

1:19-11648 Maryam Sheik

Chapter 11

#7.00 Status conference re: chapter 11 case

fr. 8/29/19/ 1/23/20; 3/26/20; 8/13/20; 10/8/20; 11/5/20(stip)

Docket 1

Tentative Ruling:

The Court will continue this chapter 11 case status conference to **1:00 p.m. on February 4, 2021.**

The debtor in possession or any appointed chapter 11 trustee must file a status report regarding the debtor's progress toward 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.

Appearances on December 17, 2020 are excused.

Party Information

Debtor(s):

Maryam Sheik

Represented By
Matthew D Resnik

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

Thursday, December 17, 2020

Hearing Room 301

1:00 PM

1:20-11471 Mayallpostan LLC

Chapter 7

#8.00 Mayallpostan LLC's Motion to Dismiss Involuntary
Bankruptcy Petition; Request for Fees and Costs in
an Amount of No Less Than \$7250.00

fr. 11/19/20

Docket 14

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mayallpostan LLC

Represented By
Carley Lee

Movant(s):

Mayallpostan LLC

Represented By
Carley Lee

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

Thursday, December 17, 2020

Hearing Room 301

1:00 PM

1:20-11471 Mayallpostan LLC

Chapter 7

#9.00 Order to show cause re: dismissal with a 180-day bar,
annulment of the automatic stay, and disgorgement

fr. 9/10/20; 10/22/20; 11/19/20

Docket 3

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mayallpostan LLC

Pro Se

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

Thursday, December 17, 2020

Hearing Room 301

1:00 PM

1:20-11471 Mayallpostan LLC

Chapter 7

#10.00 Status conference re: chapter 11 case
fr. 10/22/20; 11/19/20

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Mayallpostan LLC

Pro Se

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

Thursday, December 17, 2020

Hearing Room 301

1:00 PM

1:20-11541 Lauren Monique Johnson

Chapter 7

#11.00 U.S. Trustee's Motion to Dismiss Case Pursuant to 11 U.S.C. § 707(b)(3)(B)

Docket 8

***** VACATED *** REASON: Motion withdrawn 12/4/20 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lauren Monique Johnson

Represented By
Steven A Alpert

Trustee(s):

Diane C Weil (TR)

Pro Se

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

Thursday, December 17, 2020

Hearing Room 301

1:00 PM

1:20-11986 Erika Monzon

Chapter 7

#12.00 U.S. Trustee's Motion to (1) Dismiss Case Pursuant to 11 U.S.C. §§ 707(a) and 727(a)(8); and (2) Refund Compensation Pursuant to 11 U.S.C. § 329

Stipulation for dismissal filed 11/24/20

Docket 11

***** VACATED *** REASON: Order approving stipution to entered
11/24/20 [Dkt.16]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Erika Monzon

Represented By
Karine Karadjian

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

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

Thursday, December 17, 2020

Hearing Room 301

1:30 PM

1:11-11603 Kevan Harry Gilman

Chapter 7

#13.00 Motion to direct administration and re-investigation or, in alternative,
replace trustee

Docket 761

***** VACATED *** REASON: Hearing set in error.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Kevan Harry Gilman

Represented By
Mark E Ellis

Trustee(s):

Amy L Goldman (TR)

Pro Se

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

Thursday, December 17, 2020

Hearing Room 301

1:30 PM

1:20-10320 5019 Partners, LLC

Chapter 11

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

Docket 98

Tentative Ruling:

Pursuant to 11 U.S.C. §§ 105(a) and 1112(b)(1), based on this case not having been filed in good faith, and the debtor lacking the necessary privity to modify claims secured by deeds of trust which encumber the debtor's residential real property (as discussed in the Order to Show Cause and calendar no. 15), the Court will dismiss this case.

The Court will prepare the order.

Party Information

Debtor(s):

5019 Partners, LLC

Represented By
Dana M Douglas

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

Thursday, December 17, 2020

Hearing Room 301

1:30 PM

1:20-10320 5019 Partners, LLC

Chapter 11

#15.00 Motion to determine value of real property; to stay
post petition payments

fr. 11/19/20

Docket 76

Tentative Ruling:

Deny.

I. BACKGROUND

A. The Deed of Trust and the Genesta Property

On April 6, 2006, America's Wholesale Lender made a \$1 million loan (the "Loan") to Delia Webster [doc. 76, Exh. A, Deed of Trust, p. 6–7]. The Loan is secured by a deed of trust which encumbers residential real property located at 5019 Genesta Avenue, Encino, CA 91316 (the "Genesta Property"). *Id.*

On April 17, 2006, Delia Webster recorded a grant deed in the Los Angeles County Recorder's Office, transferring her interest in the Genesta Property to 5019 Partners, LLC ("Debtor") for less than \$100.00 [1:08-bk-13370-GM, doc. 33, Exh. 7, Grant Deed].

On July 1, 2010, the deed of trust encumbering the Genesta Property was transferred via an assignment deed of trust and mortgage to the Bank of New York Mellon FKA the Bank of New York, as Trustee for the Certificateholders CWALT, Inc., Alternative Loan Trust 2006-OA9 Mortgage E Pass-Through Certificates, Series 2006-OA9 ("BNYM") [doc. 76, Exh. A, p. 23].

B. The First Chapter 11 Case

On May 22, 2008, Debtor filed a voluntary chapter 11 petition, initiating case no. 1:08-bk-13370-GM (the "First Case"). In its schedule A, Debtor identified an interest in the Genesta Property. First Case, doc. 11. In its schedule B, Debtor listed no cash, accounts

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

Thursday, December 17, 2020

Hearing Room 301

1:30 PM

CONT... 5019 Partners, LLC

Chapter 11

or personal property. *Id.* In its schedule D, Debtor represented that the Genesta Property was encumbered by a deed of trust for the benefit of Countrywide, securing a claim in the amount of \$1.5 million. *Id.* In its Statement of Financial Affairs, Debtor identified two equity holders, Gary Pitts and Tyler Murphy, and represented that it had no income. *Id.*

On August 5, 2010, pursuant to 11 U.S.C. §§ 362(d)(1), (d)(2) and (d)(4), the Court entered an order granting relief from the automatic stay against the Genesta Property. *Id.*, doc. 87. The Court determined that Debtor's petition was part of a scheme to delay, hinder and defraud creditors based on: (1) the transfer of all or part ownership of, or other interest, in the Genesta Property without consent of the secured creditor or court approval; and (2) multiple bankruptcy filings affecting that property. *Id.*

On January 14, 2013, the Court entered an order granting Debtor's motion for voluntary dismissal of its chapter 11 case. *Id.*, doc. 148. On November 15, 2012, the First Case was closed. *Id.*, doc. 152.

C. The Second Chapter 11 Case

On December 4, 2019, Debtor filed a voluntary chapter 11 petition, initiating case no. 1:19-bk-13011-VK (the "Second Case"). In its schedule A/B, Debtor identified an interest in the Genesta Property and listed no cash, accounts or personal property. Second Case, doc. 1. In its schedule D, Debtor represented that the Genesta Property was encumbered by: (1) a deed of trust for the benefit of BNYM, securing a claim in the amount of \$1 million; and (2) a judicial lien, securing the claim of Koll/Per Calabasas, LLC in the amount of \$21,736.11. *Id.* In its schedule E/F, Debtor lists only two nonpriority unsecured creditors, one of which has a disputed claim, in the aggregated amount of \$13,500.00. *Id.* In its Statement of Financial Affairs, Debtor identified two equity holders, Gary Pitts and Tyler Murphy. *Id.*, doc. 8.

On January 24, 2020, the Court entered an order dismissing the Second Case based on Debtor's failure to file a case status conference report and monthly operating reports on a timely basis, in violation of the Court's previously issued order. *Id.*, docs. 19, 20. On June 23, 2020, the Second Case was closed. *Id.*, doc. 26.

D. The Third Chapter 11 Case

On February 11, 2020, Debtor filed a voluntary chapter 11 petition, initiating the

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

Thursday, December 17, 2020

Hearing Room 301

1:30 PM

CONT... 5019 Partners, LLC

Chapter 11

pending bankruptcy case. In its schedule A/B, Debtor listed an interest in the Genesta Property and \$900 in cash [doc. 1]. Debtor valued its interest in the Genesta Property at \$800,000.00, based on an appraisal conducted on October 15, 2020 [doc. 76, Exh. B, Appraisal].

In its amended schedule D, Debtor states that the Genesta Property is encumbered by: (1) a deed of trust for the benefit of BNYM, securing a claim in the principal amount of \$1 million; (2) a deed of trust for the benefit of BAC Home Loan Servicing, securing a claim in the amount of \$350,000.00; and (3) a judicial lien, securing the claim of Koll/Per Calabasas, LLC in the amount of \$21,736.11 [doc. 75]. In its schedule E/F, Debtor lists only two nonpriority unsecured creditors, one of which has a disputed claim, in the aggregated amount of \$13,500.00 [doc. 1].

Regarding filed proofs of claim, the Internal Revenue Service has filed a proof of claim in the amount of \$4,400.00 [Proof of Claim 1-1]. The California Franchise Tax Board has filed a proof of claim, asserting a secured claim in the amount of \$5,467.17 and an unsecured claim in the amount of \$18,023.14.

In April 2020, BNYM filed proof of claim 2-1 in the amount of \$1,859,629.46 [doc. 76, Exh. A, p. 3]. Based on the proof of claim, as of the date this case was filed: (1) the interest due is \$495,255.69; (2) the escrow deficiency for funds advanced is \$212,216.03; (3) the total prepetition arrearage is \$853,618.46; and (4) since March 2009, no payments have been made on the Loan.

In its Statement of Financial Affairs, Gary Pitts and Tyler Murphy are identified as Debtor's sole equity holders. *Id.*

Based on its monthly operating reports for the months of May 2020 through October 2020, Debtor is not generating any income [docs. 55, 56, 57, 58, 66, 74, 95]. In its October 2020 monthly operating report, Debtor lists only \$134.38 in cash [doc. 95]. As reflected in Debtor's monthly operating reports from February 2020 through November 2020, during this case, Debtor has not made any payments to BNYM [docs. 30, 50, 55, 56, 57, 58, 66, 74, 95, 108].

On October 19, 2020, Debtor filed a *Motion to Determine Secured Value of Real Property; to Stay Post Petition Payments* (the "Motion to Value") [doc. 76]. In the Motion to Value, Debtor's principal, Tyler Murphy, states that Debtor filed for

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

Thursday, December 17, 2020

Hearing Room 301

1:30 PM

CONT... 5019 Partners, LLC

Chapter 11

bankruptcy "to reorganize and manage secured claims on the residential property at 5019 Genesta Avenue in Encino (the "REAL PROPERTY"). Debtor 5019 succeeded to the REAL PROPERTY in April 2006, settlement of a business transaction between 5019 and the prior owner who is the original borrower on the mortgage on the REAL PROPERTY." Declaration of Tyler Murphy, ¶ 2–3, doc. 76 (formatting and errors in original).

Debtor seeks an order valuing the Genesta Property at \$800,000.00, based on an appraisal report conducted on October 15, 2020 [doc. 76, Exh. B, Appraisal]. After valuation, Debtor proposes to bifurcate and treat the secured claims as follows:

Lienholders (order of priority)	Secured Portion of Claim	Unsecured Portion of Claim
BNYM	\$800,000.00	\$1,059,629.46
BAC Home Loan Servicing	\$0.00	\$350,000.00
Koll / Per Calabasas, LLC	\$0.00	\$21,736.11

On November 5, 2020, BNYM filed an opposition to the Motion to Value (the "Opposition") [doc. 93]. In the Opposition, BNYM asserts that Delia Webster, not Debtor, is the borrower under the deed of trust encumbering the Genesta Property. BNYM asserts that it "has not engaged in any conduct to accept the transfer or Debtor as a replacement mortgagor." *Id.*, p. 6, line 6–15. BNYM represents that it filed its proof of claim in case the Court finds that BNYM is a creditor, after the deadline to file claims passed. *Id.* BNYM argues that, because Debtor is not the original borrower, and there is no creditor-debtor relationship, Debtor cannot bifurcate BNYM's secured claim pursuant to 11 U.S.C. § 506(a), nor modify BNYM's rights as a secured creditor pursuant to 11 U.S.C. § 1123(b)(5).

On November 13, 2020, Debtor filed a reply to the Opposition (the "Reply") [doc. 94]. In the Reply, Mr. Murphy avers that:

[T]he original borrower never tendered a payment on the loan to which BNYM has succeeded. Debtor tendered the first payment after the transaction closed along with subsequent payments and, during its prior bankruptcy in 2008–2013, Debtor tendered adequate protection payments to BNYM's predecessor.

Declaration of Tyler Murphy, ¶ 2, doc. 94. On December 8, 2020, BNYM filed a supplemental opposition [doc. 103].

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

Thursday, December 17, 2020

Hearing Room 301

1:30 PM

CONT... 5019 Partners, LLC

Chapter 11

II. DISCUSSION

11 U.S.C. § 101, in pertinent part, provides:

(5) The term "claim" means—

(A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured. . . .

...

(10) The term "creditor" means—

(A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;

(B) entity that has a claim against the estate of a kind specified in section 348(d), 502(f), 502(g), 502(h), or 502(i) of this title; or

(C) entity that has a community claim.

...

(12) the term "debt" means liability on a claim.

11 U.S.C. § 1123(b)(5) provides:

(b) Subject to subsection (a) of this section, a plan may—

(5) modify the rights of holders of secured claims, other than a claim secured only by a security interest in real property that is the debtor's principal residence, or of holders of unsecured claims, or leave unaffected the rights of holders of any class of claims[.]

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

Thursday, December 17, 2020

Hearing Room 301

1:30 PM

CONT... 5019 Partners, LLC

Chapter 11

When determining whether a party is a "creditor" under the Bankruptcy Code, the terms "debt" and "claim" are interrelated. *In re Davis*, 778 F.3d 809, 812 (9th Cir. 2015) ("[T]he meanings of 'debt' and 'claim' were intended by Congress to be coextensive") (quoting *Pa. Dep't of Pub. Welfare v. Davenport*, 495 U.S. 552, 558, 110 S. Ct. 2126, 109 L. Ed. 2d 588 (1990); see also *In re Enron.*, 357 B.R. 32, 47 (S.D.N.Y. 2006) ("It is well settled that 'claim' and 'debt' are synonymous, such that whenever a 'claim' arises, a 'debt' necessarily arises as well; the only distinction between the two terms is the party to which it applies") (citing *Davenport*, 495 U.S. at 558).

In connection with evaluating the bifurcation and treatment of a secured claim in a chapter 11 case, a court may refer to case law regarding chapter 13. See *In re Lievsay*, 199 B.R. 705, 708 (B.A.P. 9th Cir. 1996). In connection with chapter 13 cases, several courts have held that, when a debtor is not the original borrower, there is no creditor-debtor relationship with the mortgagee. As noted in *In re Jones*, 98 B.R. 757, 758 (Bankr. N.D. Ohio 1989): "Because Debtor is not liable on the mortgage, there exists no debt owing to the Bank; the Bank has no claim against Debtor; and there exists no creditor-debtor relationship."

As a result, these courts also have held that the debtor could not modify the mortgagee's rights to payment, in accordance with the terms of the pertinent loan. See *In re Parks*, 227 B.R. 20, 21 (Bankr. W.D.N.Y. 1998) (The Bankruptcy Code "may not be used to force a mortgagee to accept installment payments . . . where, as here, the debtor and mortgagee are not in privity of contract."); *In re Kizelnik*, 190 B.R. 171, 179 (Bankr. S.D.N.Y. 1995)(rights and remedies of a secured creditor cannot "be blocked by the voluntary intervention of a new obligor . . . who undertakes no liability whatever for that indebtedness or any deficiency"); and *Perscillo v. HSBC Bank U.S.A.*, *Nat. Ass'n*, 2015 WL 417659, at *2 (W.D.N.Y. Jan. 30, 2015) ("[A] debtor has no right to restructure mortgages in bankruptcy when the debtor is not in privity with the mortgagee").

Here, BNYM and Debtor do not have a creditor-debtor relationship. A creditor is defined as an "entity that has a claim against the debtor. . . ." 11 U.S.C. § 101(10)(A). As the original borrower, Delia Webster is the party who is liable to pay BNYM's secured claim, and BNYM neither consented to Ms. Webster's transfer of her interest in the Genesta Property to Debtor, nor did BNYM (or any predecessor in interest) consent to Debtor's assumption of the Loan. Consequently, between BNYM and Debtor, there is no creditor-debtor relationship.

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

Thursday, December 17, 2020

Hearing Room 301

1:30 PM

CONT... **5019 Partners, LLC**

Chapter 11

Under California Law, an assumption of debt must be in writing, or included in the conveyance of the property. *See* Cal. Civ. Code § 1624(a)(6) ("The following contracts are invalid, unless . . . in writing . . . An agreement by a purchaser of real property to pay an indebtedness secured by a mortgage or deed of trust upon the property purchased, unless assumption of the indebtedness by the purchaser is specifically provided for in the conveyance of the property"); Cal. Civ. Code § 2922 ("A mortgage can be created, renewed, or extended, only by writing, executed with the formalities in the case of a grant of real property."). "A mere grant of the property subject to the mortgage debt is not sufficient to impose any personal liability on the grantee to pay the debt or perform any of the obligations thereof. To effect such obligation there must be a distinct assumption of the debt or of the contractual obligations thereunder." *See Snidow v. Hill*, 87 Cal. App. 2d 803, 807 (1948).

Debtor has not demonstrated that it assumed Ms. Webster's debt to BNYM or that Debtor has any personal liability to BNYM. Furthermore, BNYM has not consented to Debtor's assumption of the Loan. Likewise, Debtor's monthly operating reports and BNYM's proof of claim reveal that Debtor has not made any post-petition payments on the Loan. Given that there is no contractual relationship between Debtor and BNYM, Debtor has not properly assumed any obligation to repay the Loan, and BNYM has not consented to Debtor's assumption of the Loan, Debtor cannot modify BNYM's secured claim.

III. CONCLUSION

The Court will deny the Motion to Value.

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

Party Information

Debtor(s):

5019 Partners, LLC

Represented By
Dana M Douglas

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

Thursday, December 17, 2020

Hearing Room 301

1:30 PM

CONT... 5019 Partners, LLC

Chapter 11

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

Thursday, December 17, 2020

Hearing Room 301

1:30 PM

1:20-10320 5019 Partners, LLC

Chapter 11

#16.00 Hearing on first amended disclosure statement describing ch 11 plan
fr. 12/10/20

Docket 81

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

5019 Partners, LLC

Represented By
Dana M Douglas

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

Thursday, December 17, 2020

Hearing Room 301

1:30 PM

1:20-10320 5019 Partners, LLC

Chapter 11

#17.00 Status conference re: chapter 11 case

fr. 3/19/20; 4/2/20, 9/10/20; 9/17/20; 10/22/20; 12/10/20

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

5019 Partners, LLC

Represented By
Dana M Douglas