

**United States Bankruptcy Court
Central District of California
Los Angeles
Deborah Saltzman, Presiding
Courtroom 1639 Calendar**

Wednesday, December 20, 2023

Hearing Room 1639

10:00 AM

2: - ZOOM INFORMATION

Chapter

#0.00 All hearings on this calendar will offer remote connection, using ZoomGov video and audio.

Parties in interest may connect to the video and audio feeds, free of charge, using the connection information provided below.

Observers/members of the public may connect to the audio feed only.

Parties in interest may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device (such as an iPhone or Android phone), and may opt to participate by audio only using a telephone (standard telephone charges may apply). Observers/members of the public may participate using a telephone.

Neither a Zoom nor a ZoomGov account is necessary to participate and no preregistration is required. The audio portion of each hearing will be recorded electronically by the Court and constitutes its official record.

Video/audio web address: <https://cacb.zoomgov.com/j/1617746014>

ZoomGov meeting number: 161 774 6014

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Docket 0

Tentative Ruling:

- NONE LISTED -

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2:23-17417 Behnam Rafalian

Chapter 11

#1.00 Hearing RE: [20] Motion for the appointment of a trustee and to convert case fr. 12-21-23

Docket 20

Tentative Ruling:

The court has the following rulings on the debtor's evidentiary objections to the Leichter declaration:

All objections are overruled except for Nos. 66 (FRE 602 - speculative) and 67 (FRE 401 - irrelevant). The court observes that much of the declaration contains argument, and while the court won't rule that the statements are inadmissible, the court gives little weight to these statements and notes that declarations full of argument generally aren't helpful evidence in support of requested relief.

Service of the motion is deficient. The motion doesn't include the court's mandatory form proof of service, and the certificate of service doesn't include the information required in the mandatory form. No creditors are served with the motion (the court recognizes that a limited list of creditors was on file when the motion was filed because the schedules weren't yet filed, but the motion wasn't even served on the limited list). The reply makes some astonishing arguments that service isn't important here to the parties that weren't served, either because those parties are insiders or because they are otherwise not concerned with whether a trustee is appointed or the case is converted. The movant doesn't get to decide any of this. We have service requirements so that interested parties, defined by statute and applicable rules, have notice and an opportunity to be heard. Indeed, the statutory provisions forming the basis for this motion -- sections 1104 and 1112 -- both specifically state that relief is to be granted "after notice and a hearing." Based on service, the motion is deficient and could be denied or continued.

But substantial arguments are raised in opposition to the motion, and the court's order setting the chapter 11 status conference (also set for today) references that conversion and appointment of a trustee are available options to the court, so it may be more appropriate to consider the merits of the

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Chapter 11

motion. Parties wishing to file papers in response to the motion may request to do so at the hearing.

Let's focus first on whether there is cause to convert (or dismiss) under section 1112(b). The court is going to deny the motion to strike and consider the reply. Even with everything raised in the motion and reply, there is scant evidence to establish cause. None of the enumerated "cause" examples are here or even argued in support of the motion. Prepetition conduct isn't typically enough to establish bad faith as a basis to convert or dismiss.

Next, the court looks at appointment of a trustee under section 1104 -- an extraordinary remedy under the case law. The court applies a preponderance of the evidence standard notwithstanding some out of circuit case law applying a clear and convincing standard. Prepetition conduct appears in more cases here than in cases applying section 1112, but postpetition conduct is still critical, and when we are early in a case, it is difficult to see that cause exists for appointment of a trustee at this stage. There isn't a record of a lack of transparency in this case -- the transfers and relationships with other entities are disclosed -- and the costs of appointing a trustee are a real concern.

Party Information

Debtor(s):

Behnam Rafalian

Represented By
Sandford L. Frey
Robyn B Sokol

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2:23-17417 Behnam Rafalian

Chapter 11

#2.00 Hearing RE: [31] Motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: State Court Orders to Show Cause .
fr. 12-21-23

Docket 31

Tentative Ruling:

Continue for proper service.

Under LBR 4001-1(c), a motion for relief from stay must be served on "[t]he debtor and debtor's attorney (if any)." LBR 4001-1(c)(1)(C)(i). Based on the proof of service attached to the Motion, the Debtor was not served the Motion. Instead, Debtor's counsel was served the Motion. Counsel for the Movant is mistaken in arguing that service on the Debtor is proper when only counsel for the Debtor is served.

The court does not excuse the service requirements of LBR 4001-1(c) unless the impacted party appears and waives service. In fact, in hearings on motions for relief from the automatic stay where the debtor's counsel is served but the debtor isn't served, the court posts a tentative ruling continuing the hearing to the court's earliest available date that allows for service with adequate notice and stating that no appearances will be taken unless counsel needs to request a later hearing date.

Additionally, the Motion was not served on the Debtor's 20 largest unsecured creditors. Under FRBP 4001(a)(1), a relief from stay motion must be served on "any committee . . . appointed pursuant to § 1102 of the Code . . . and [if] no committee of unsecured creditors has been appointed pursuant to § 1102, on the creditors included on the list filed pursuant to Rule 1007(d). Fed. R. Bankr. P. 4001(a)(1). Here, the proof of service indicates that no creditors were served the Motion. The full list of the 20 largest unsecured creditors wasn't available when the Motion was filed and served (although the list did contain 16 creditors at that time), but now that the schedules have been filed, the Motion should also be served on the 20 largest unsecured creditors.

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CONT... Behnam Rafalian

Chapter 11

The earliest available hearing date for the motion is January 25, 2024 at 11:30 p.m. Counsel may request a later hearing date if necessary.

Party Information

Debtor(s):

Behnam Rafalian

Represented By
Sandford L. Frey
Robyn B Sokol

Movant(s):

Michael L. Magasinn as the

Represented By
Kevin J Leichter
Andrew Ethan Hewitt

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2:23-17417 Behnam Rafalian

Chapter 11

#3.00 Hearing RE: [38] Motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Appeal Continue to Prosecute.
fr. 12-21-23

Docket 38

Tentative Ruling:

Please focus on the Curtis factors as they relate to pursuit of the appeal (rather than the broader dispute among the parties).

Party Information

Debtor(s):

| | |
|-----------------|------------------|
| Behnam Rafalian | Represented By |
| | Sandford L. Frey |
| | Robyn B Sokol |

Movant(s):

| | |
|-----------------|------------------|
| Behnam Rafalian | Represented By |
| | Sandford L. Frey |
| | Sandford L. Frey |
| | Robyn B Sokol |
| | Robyn B Sokol |

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2:23-17417 Behnam Rafalian

Chapter 11

**#4.00 Status Hearing RE: [1] Chapter 11 Voluntary Petition Individual.
fr. 12-21-23**

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Behnam Rafalian

Represented By
Sandford L. Frey

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2:23-16953 Freedom 26, LLC

Chapter 11

#5.00 CONT'D Hearing RE: [29] Motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: Two Properties - 11900, 11914-11932 Santa Monica Boulevard, Los Angeles, California 90025 and also 1516-1518 Brockton Avenue, Los Angeles, California 90025 .
fr. 12-7-23

Docket 29

Tentative Ruling:

The court makes the following rulings on the evidentiary objections to the Segura Declaration:

1. Sustain (FRE 401, irrelevant and 701/702, legal conclusion/argument)
2. Overrule
3. Sustain (FRE 802, hearsay)
4. Overrule
5. Sustain (FRE 602/802 - lack of personal knowledge/hearsay)
6. Overrule
7. Sustain (FRE 602/701-702/802 - lack of personal knowledge, legal argument, hearsay)

On the merits, the court sees a stronger argument to excuse turnover under section 543(d)(1) than to grant relief from the automatic stay here. How would the movant and debtor proceed if this were the court's ruling?

Party Information

Debtor(s):

Freedom 26, LLC

Represented By

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CONT... Freedom 26, LLC

Chapter 11

Raymond H. Aver

Movant(s):

Winhall 5, LLC

Represented By

Michael W. Knapp

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2:23-16953 Freedom 26, LLC

Chapter 11

#6.00 CONT'D Status Hearing RE: [1] Chapter 11 Voluntary Petition Non-Individual.
LLC
fr. 11-30-23, 12-21-23

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Freedom 26, LLC

Represented By
Raymond H. Aver

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2:23-16953 Freedom 26, LLC

Chapter 11

Adv#: 2:23-01456 Winhall 5 LLC et al v. Freedom 26, LLC et al

#7.00 Status Hearing RE: [1] Adversary case 2:23-ap-01456. Notice of Removal by Winhall 5 LLC, Michael L. Magasinn as Trustee of the Shamsam Irrevocable Trust.
fr. 12-14-23

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

| | |
|-----------------|-----------------------------------|
| Freedom 26, LLC | Represented By Raymond H. Aver |
|-----------------|-----------------------------------|

Defendant(s):

| | |
|-----------------------------|--------|
| Freedom 26, LLC | Pro Se |
| SALAR INVESTMENTS LLC | Pro Se |
| Behnam Rafalian | Pro Se |
| Behrooz Rafalian | Pro Se |
| Ebrahim Rafalian | Pro Se |
| Salar Family Investment LLC | Pro Se |
| ER & GR LLC | Pro Se |
| Malibu LLC | Pro Se |

Plaintiff(s):

| | |
|-----------------------------------|------------------------------------|
| Winhall 5 LLC | Represented By Kevin J Leichter |
| Michael L. Magasinn as Trustee of | Represented By |

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Chapter 11

Andrew Ethan Hewitt
Kevin J Leichter

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2:23-16953 Freedom 26, LLC

Chapter 11

Adv#: 2:23-01457 Michael L. Magasinn as Trustee of the Shamsam Irre v. Rafalian et al

**#8.00 Status Hearing RE: [1] Adversary case 2:23-ap-01457. Notice of Removal by Michael L. Magasinn as Trustee of the Shamsam Irrevocable Trust.
fr. 12-14-23**

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

| | |
|-----------------|-----------------------------------|
| Freedom 26, LLC | Represented By Raymond H. Aver |
|-----------------|-----------------------------------|

Defendant(s):

| | |
|-----------------------|--------|
| Behnam Rafalian | Pro Se |
| Roya Akhavan | Pro Se |
| Behrooz Rafalian | Pro Se |
| Ebrahim Rafalian | Pro Se |
| ER & GR LLC | Pro Se |
| Freedom 26, LLC | Pro Se |
| SALAR INVESTMENTS LLC | Pro Se |
| Winhall 5 LLC | Pro Se |
| Malibu LLC | Pro Se |

Plaintiff(s):

| | |
|-----------------------------------|---|
| Michael L. Magasinn as Trustee of | Represented By Andrew Ethan Hewitt Kevin J Leichter |
|-----------------------------------|---|