

**United States Bankruptcy Court  
Central District of California  
Los Angeles  
Judge Ernest Robles, Presiding  
Courtroom 1568 Calendar**

**Tuesday, February 1, 2022**

**Hearing Room 1568**

10:00 AM

**2:21-19157 1604 Sunset Plaza, LLC**

**Chapter 11**

- #1.00** HearingRE: [17] Application to Employ Arent Fox LLP as General Bankruptcy and Restructuring Counsel -- Application for an Order Authorizing the Employment of Arent Fox LLP as General Bankruptcy and Restructuring Counsel for the Debtor and Debtor-in-Possession, Effective as of December 9, 2021; Declarations of M. Douglas Flahaut and Annette Rubin in Support Thereof, with Proof of Service

Docket 17

**Tentative Ruling:**

1/31/2022

**Note: Telephonic Appearances Only. The Courtroom is undergoing renovation and will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing. The cost for persons representing themselves has been waived.**

For the reasons set forth below, the Debtor is authorized to employ Arent Fox as its general bankruptcy counsel.

**Pleadings Filed and Reviewed:**

- 1) Application for an Order Authorizing the Employment of Arent Fox LLP as General Bankruptcy and Restructuring Counsel for the Debtor and Debtor-in-Possession, Effective as of December 9, 2021 [Doc. No. 17] (the "Employment Application")
- 2) Notice of Opposition and Request for a Hearing [filed by Preferred] [Doc. No. 20] (the "Opposition")
- 3) Reply of Arent Fox LLP to Preferred Bank's Opposition to Arent Fox's Employment Application [Doc. No. 26]
  - a) Supplemental Declaration of Annette Rubin in Support of Application for an Order Authorizing the Employment of Arent Fox LLP as General Bankruptcy and Restructuring Counsel for the Debtor and Debtor-in-Possession, Effective as of December 9, 2021 [Doc. No. 21]
  - b) Supplemental Declaration of M. Douglas Flahaut in Support of Application for

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an Order Authorizing the Employment of Arent Fox LLP as General Bankruptcy and Restructuring Counsel for the Debtor and Debtor-in-Possession, Effective as of December 9, 2021 [Doc. No. 25]

- 4) Supplemental Opposition to Debtor's Motion to Employ General Bankruptcy and Restructuring Counsel, Arent Fox LLP [mistakenly filed in Case No. 2:21-bk-19229 as Doc. No. 102]

## **I. Facts and Summary of Pleadings**

### **A. Background**

On December 9, 2021 (the "Petition Date"), 1604 Sunset Plaza, LLC (the "Debtor") filed a voluntary Chapter 11 petition. The sole member of the Debtor is the Stuart and Annette Rubin Family Trust Under Agreement Dated November 3, 2003 (the "Rubin Trust").

On December 10, 2021, the Debtor filed a *Complaint for Injunctive Relief* [Adv. Doc. No. 1, Case No. 2:21-ap-01245-#§] (the "Complaint") against Preferred Bank ("Preferred") and Lenders Foreclosure Services ("Lenders," and together with Preferred, the "Defendants"). The Complaint sought preliminary and permanent injunctions preventing Defendants from foreclosing upon residential property located at 4347 Marina Drive, Santa Barbara, CA (the "Marina Property").

On December 13, 2021, the Debtor filed an emergency motion (the "Emergency Motion") for issuance of a preliminary injunction staying the December 15, 2021 foreclosure sale of the Marina Property. The Court conducted a hearing on the Emergency Motion on December 14, 2021. On that same date, the Court issued a Memorandum of Decision [Doc. No. 16, Adv. No. 2:21-ap-01245-ER] and accompanying order [Doc. No. 17, Adv. No. 2:21-ap-01245-ER] denying the Emergency Motion. The Court found that the Debtor had failed to show that it would be able to expeditiously sell the Marina Property outside of bankruptcy because multiple obstacles stood in the way of a prompt sale. On January 18, 2022, the Debtor voluntarily dismissed the Complaint.

On December 14, 2021 at 11:19 p.m.—approximately six hours after the Court issued the Memorandum of Decision and Order denying the Emergency Motion—DLJJ & Associates, LLC (the "DLJJ") filed a voluntary Chapter 11 petition (Case No. 2:21-bk-19229-ER). Annette Rubin ("Annette") is the sole member and manager of the Debtor. In its schedules, DLJJ claimed to hold a 10% ownership interest in the Marina Property, based upon a Grant Deed recorded by Annette on December 13, 2021 at 10:30 a.m. (the "Dec. 2021 Grant Deed"), which purported to transfer a 10%

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interest in the Marina Property from Annette to DLJJ.

On January 12, 2022, upon the motion of Preferred, the Court found that DLJJ had sought bankruptcy protection in bad faith, and dismissed DLJJ's case with a 180-day bar against re-filing. *See* Doc. Nos. 74–75, Case No. 2:21-BK-19229-ER.

**B. Summary of Papers Filed in Connection with the Debtor's Motion to Employ Arent Fox LLP as its General Bankruptcy Counsel**

The Debtor moves to employ Arent Fox LLP ("Arent Fox") as its general bankruptcy counsel, effective as of the Petition Date. *See* Doc. No. 17 (the "Employment Application"). Preferred opposes the Employment Application. Initially, Preferred asserted that the Debtor had failed to adequately disclose the relationship between the Debtor and CRG Investment Management LLC ("CRG"), the entity that funded Arent Fox's \$100,000 retainer. After Preferred filed its opposition, Annette filed a supplemental declaration setting forth additional information with respect to the relationship between the Debtor and CRG. Annette's declaration provides in relevant part:

CRG is a California limited liability company in the business of providing property management services to real estate owners and investors. It has in the past provided such services for the Debtor and its affiliates.

CRG is owned and controlled by my son, Jonah Rubin. Neither my husband Stuart Rubin nor I own any interest in CRG, nor do we hold any position of control or authority in CRG. Moreover, CRG has not and does not hold any equity interest in the Debtor.

The Debtor does not owe CRG any money as of the Petition Date and, as described in the [Employment Application], the retainer funds provided by CRG was booked by the Debtor as a contribution to existing equity, as opposed to a loan which the Debtor would be obligated to repay. To that end, it is my understanding and belief that CRG does not hold and will not assert any claims against Arent Fox LLP or the Debtor for the return of some or all of such funds.

Lastly, to my knowledge there are no agreements for CRG or the Debtor to replenish the retainer held by Arent Fox LLP and Arent Fox LLP will seek to be paid any additional amounts only after appropriate fee application(s) and only from estate assets, if any.

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Supplemental Annette Decl. at ¶¶ 5–8.

M. Douglas Flahaut, the attorney at Arent Fox with primary responsibility for the engagement, also filed a supplemental declaration in support of the Employment Application (the "Supplemental Flahaut Decl."). The Supplemental Flahaut Decl. states that Arent Fox ran a conflicts check with respect to the following parties:

- 1) Mirman, Bubman, & Nahmias, LLP (counsel for creditor Preferred Bank)
- 2) Jeff Bazylar & Associates (accountant for the Debtor)
- 3) Scott Eisner (accountant for the Debtor)
- 4) Krost, Certified Public Accountants (Mr. Eisner's firm)
- 5) Jonah Rubin (owner of CRG and son of Stuart and Annette Rubin)
- 6) Michael Chekian (proposed bankruptcy counsel for Debtor affiliate DLJJ & Associates, LLC)

Flahaut Decl. at Ex. 1.

According to the Supplemental Flahaut Decl., the conflicts check revealed that Mirman, Bubman, & Nahmias, LLP ("Mirman Bubman") (counsel for creditor Preferred Bank) was previously a client of Arent Fox. Aside from Mirman Bubman, the conflicts check did not identify a connection between any of the other parties and Arent Fox.

On Friday, January 28, 2022 at 5:59 p.m., Preferred filed a supplemental opposition to the Employment Application (the "Supplemental Opposition"). The Supplemental Opposition was mistakenly filed in DLJJ's now-dismissed case, rather than in the Debtor's case. In the Supplemental Opposition, Preferred relies upon Annette's testimony at the § 341(a) meeting in support of its opposition to the Employment Application. Preferred asserts that as relevant to the Employment Application, Annette's testimony on the Debtor's behalf at the § 341(a) meeting was deficient because:

- 1) Annette was "uncertain as to whether the \$100,000 [retainer] paid [by CRG] was either a 'gift' or a 'contribution to equity,'" Supplemental Opposition at 2;
- 2) Annette refused to provide contact information for Jonah Rubin, the owner of CRG and the son of Stuart and Annette Rubin, *id.* at 2; and
- 3) Annette "refused to answer questions as to whether her 22-year old son [Jonah Rubin] is financially independent, where the \$100,000 retainer funds might have come from and who might have originated the request upon CRG

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to fund the retainer in the first place," *id.* at 3.

Preferred further states that it attempted to contact Jonah Rubin directly, but was unable to do so because the information on the California Secretary of State's website for CRG was outdated.

## **II. Findings of Fact and Conclusions of Law**

As a threshold matter, the Court must address multiple procedural irregularities with respect to the Supplemental Opposition. First, because the Supplemental Opposition was filed in the wrong bankruptcy case, the Debtor and other interested parties did not receive notice thereof. Second, the Supplemental Opposition pertains to a hearing set for Tuesday, February 1, 2022 at 10:00 a.m., but was not filed until Friday, January 28, 2022 at 5:59 p.m., which means that even if the Debtor somehow found out about the Supplemental Opposition, it would not have been afforded a meaningful opportunity to respond thereto. Finally, under the Local Bankruptcy Rules, Preferred was not authorized to file the Supplemental Opposition, and Preferred failed to obtain the Court's leave to file the Supplemental Opposition.

Notwithstanding these serious procedural irregularities—which provide more than sufficient grounds for the Court to strike the Supplemental Opposition—the Court will consider the Supplemental Opposition. Such consideration does not prejudice Arent Fox because nothing within the Supplemental Opposition has persuaded the Court that the Employment Application should be denied.

Section 327(a) provides that the debtor, "with the court's approval, may employ one or more attorneys ... that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title." Section 101(14) defines "disinterested person" as "a person that is not a creditor, an equity security holder, or an insider; is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and does not have an interest materially adverse to the interest of the estate or any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason."

Within the context of §327(a), a professional holds an "interest adverse to the estate" if that professional "possess[es] or assert[s] any economic interest that would tend to lessen the value of the bankrupt estate or that would create either an actual or potential dispute in which the estate is a rival claimant; or (2) ... possess[es] a

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predisposition under circumstances that render such a bias against the estate." *Tevis v. Wilke, Fleury, Hoffelt, Gould & Birney, LLP (In re Tevis)*, 347 B.R. 679, 688 (9th Cir. B.A.P. 2006).

Preferred has not precisely articulated what it is about CRG's funding of Arent Fox's retainer that disqualifies Arent Fox from serving as the Debtor's general bankruptcy counsel. There is nothing in the present record that establishes, or for that matter even suggests, that CRG's funding of the retainer will in any way compromise Arent Fox's ability to act in the best interests of the estate. Annette has testified that CRG will not assert any claims against Arent Fox or the Debtor for the return of some or all of the retainer; that CRG has not agreed to replenish the retainer; and that the Debtor intends to treat the funds as a capital contribution from the Debtor's existing equity holder, as opposed to a loan or any other type of obligation that that Debtor would be required to repay.

Preferred makes much of the fact that while being questioned at the § 341(a) meeting, Annette initially exhibited some confusion regarding whether the retainer would be treated as a gift from CRG or as a contribution from existing equity. That Annette was apparently confused does not indicate that anything improper has occurred. Annette plausibly testified that her initial statement that the retainer was a gift resulted from confusion:

**Question:** My question is the money that was paid by CRG to Arent Fox, how is that reflected on the books and records of [the Debtor], as a gift or as equity?

**Answer (by Annette):** I believe it's a contribution to equity. I may have—I may have misspoken. I—I'm having a little difficulty—technical difficulty right now hearing.

§ 341(a) Meeting Transcript at 23:20–23.

At this juncture, Preferred has offered nothing more than speculation and innuendo in support of its allegations that Arent Fox's ability to act in the best interests of the estate has been compromised by CRG's funding of the retainer. Absent particularized evidence showing that the funding of the retainer creates an actual conflict of interest, the Court declines to prevent Arent Fox from serving as the Debtor's general bankruptcy counsel. Preferred's opposition to the Employment Application is **OVERRULED**.

The Court notes that pursuant to § 328(c), it "may deny the allowance of

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compensation for services and reimbursement of expenses of a professional person employed under section 327 ... of this title if, at any time during such professional person's employment under section 327 ... of this title, such professional person is not a disinterested person, or represents or holds an interest adverse to the interest of the estate with respect to the matter on which such professional person is employed." The Court's ruling is without prejudice to Preferred's ability to present evidence calling into question Arent Fox's disinterestedness at the time Arent Fox submits a fee application.

### III. Conclusion

Based upon the foregoing, Preferred's opposition to the Employment Application is **OVERRULED**, and the Debtor is authorized to employ Arent Fox as its general bankruptcy counsel, effective as of the Petition Date. Within seven days of the hearing, the Debtor shall submit a proposed order incorporating this tentative ruling by reference.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Landon Foody or Daniel Koontz, the Judge's Law Clerks, at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

<b>Party Information</b>
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**Debtor(s):**

1604 Sunset Plaza, LLC

Represented By  
M Douglas Flahaut  
Christopher K.S. Wong

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**#2.00** Hearing

RE: [22] Notice of Motion and Motion in Individual Ch 11 Case for Order Employing Professional (LBR 2014-1): Michael Chekian, Esq. as General Bankruptcy Counsel Notice of Motion and Motion in Chapter 11 Case for Order Authorizing Debtor in Possession to Employ General Bankruptcy Counsel [11 U.S.C. § 327(a), LBR 2014-1]

Docket 22

**\*\*\* VACATED \*\*\* REASON: DISMISSED 1-12-2022**

**Tentative Ruling:**

- NONE LISTED -

**Party Information**

**Debtor(s):**

DLJJ & Associates, LLC

Represented By  
Michael F Chekian

**Trustee(s):**

Susan K Seflin (TR)

Pro Se