

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Geraldine Mund, Presiding
Courtroom 302 Calendar**

Tuesday, June 6, 2023

Hearing Room 302

10:00 AM

1:00-00000

Chapter

#0.00 The 10:00 am calendar will be conducted remotely, using ZoomGov video and audio.

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Judge Mund seeks to maintain a courtroom in which all persons are treated with dignity and respect, irrespective of their gender identity, expression or preference. To that end, individuals are invited to identify their preferred pronouns (he, she, they, etc.) and their preferred honorific (Mr., Miss, Ms., Mrs., Mx, M, etc.) in their screen name, or by advising the judge or courtroom deputy.

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Docket 0

Tentative Ruling:

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
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Tuesday, June 6, 2023

Hearing Room 303

10:00 AM

1:20-11952 Michael A Di Bacco

Chapter 7

Adv#: 1:21-01010 Kline v. Di Bacco

#1.00 Plaintiff's Motion in Limine to Preclude Defendants Newly-Disclosed Expert and Other Witnesses From Testifying

Docket 126

Tentative Ruling:

The thrust of this motion is that the Defendant has been non-cooperative throughout this adversary proceeding and that means that the Plaintiff is unable to do proper trial preparation. [Court comment: *The entire history is set forth below – some from the motion and some from the docket.*] The very late disclosure of the witnesses violated the Plaintiff's right to due process. Beyond that, there is now a new "alleged" expert that the Defendant plans to use at trial, but was never previously disclosed. Also, the Rule 7026 Initial Disclosures were never made.

The list of witnesses was provided on March 9, 2023 and included 12 people. As to the experts, the initial list was on May 23, 2022, but Pam Jennings was added on July 6, 2022. The motion contends that on March 23, 2023 the Defendant sent his witness list, but that same day he filed a new witness list that included 2 more people. The witness list keeps changing, so the Plaintiff does not know who will be the real witnesses.

The Federal Rules of Bankruptcy Procedure provide sanctions when the other party fails to make disclosure required by Rule 7026 or when a party fails to follow an order to provide discovery or willfully, repeatedly, and persistently disobeys court orders. The test for a dispositive sanction is laid out in *Connecticut Gen. Life Ins. Co. v. New Images of Beverly Hills*, 482 F.3d 1091, 1096 (citing *Jorgensen v. Cassidy*, 320 F.3d 906, 912 (9th Cir. 2003):

A terminating sanction, whether default judgment against a defendant or dismissal of a plaintiff's action, is very severe. We review discovery sanctions for abuse of discretion. Only "willfulness, bad faith, and fault" justify terminating sanctions.

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Michael A Di Bacco

Chapter 7

We have constructed a five-part test, with three subparts to the fifth part, to determine whether a case-dispositive sanction under Rule 37(b)(2) is just: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its dockets; (3) the risk of prejudice to the party seeking sanctions; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions." The sub-parts of the fifth factor are whether the court has considered lesser sanctions, whether it tried them, and whether it warned the recalcitrant party about the possibility of case-dispositive sanctions. This "test" is not mechanical. It provides the district court with a way to think about what to do, not a set of conditions precedent for sanctions or a script that the district court must follow. . . .

By way of showing that the Defendant has been uncooperative throughout, Plaintiff states that in August 2021 the Court granted his motion to compel production of documents (dkt. 35) and that in January 2023 Judge Kaufman set an OSC re: striking the Defendant's answer for failure to prosecute (dkt. 81).

Opposition of Defendant

The Defendant begins with the identities of the witnesses on his various lists and the dates that they were produced. He notes that he had contacted the Plaintiff to agree that depositions could be done by notice. And then he limits some of the witnesses by noting that he will not be calling four designated experts and one other witness.

Exclusion of the witnesses is a harsh remedy. Things that some courts have used as guidelines are (1) the explanation, if any, for the failure to disclose; (2) prejudice to the opposing party; (3) the potential for curing the breach by granting a continuance; and (4) the importance of the testimony" citing *Barett v. Atlantic Richfield Co.*, 95 F.3d 375, 380 (5th Cir.1996) and *Sierra Club Lone Star Chapter v. Cedar Point Oil Co., Inc.*, 73 F.3d 546, 572

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(5th Cir. 1996); cert. denied, 519 U.S. 811 (1996).

Some of the witnesses are on both witness lists and should therefore be allowed to be called by either party. As to other witnesses, the Defendant agrees that their depositions can be scheduled through a notice procedure. He also complied with the Court's prior orders.

Timeline (created by the Court)

2/4/21 – Complaint filed

4/24/21 – Plaintiff propounded a request to produce, a request for admissions, and interrogatories.

5/25/21 – Responses to discovery due. Never responded and no documents were produced.

8/4/21 – Plaintiff filed motion to compel production of documents.

8/23/21 – Defendant filed late opposition to motion to compel

8/25/21 – Hearing on motion to compel, granted. Production required and was accomplished.

5/6/22 – Plaintiff filed expert witness list (dkt. 54)

5/7/22 – Plaintiff filed amended expert witness list (dkt. 55)

5/23/22 – Defendant served his list of expert witnesses (dkt. 60)

7/6/22 – Defendant filed an amended list of expert witnesses (dkt. 67)

9/21/22 – Defendant failed to appear at pre-trial conference.

9/22/22 – Plaintiff sent a letter about the requirements for a pre-trial stipulation. No response.

11/29/22 – Plaintiff sent a draft pre-trial stipulation and a letter about requirements. No response.

1/11/23 – Pretrial conference. Court issued OSC why defendant's answer should not be stricken and a default entered (dkt. 81)

2/22/23 – Hearing on OSC. Defendant ordered to pay plaintiff \$400. (dkt. 101)
Paid (dkt. 106)

2/22/23 – Scheduling Order given at pre-trial. (dkt. 104) – Pretrial conf. continued to 3/22/23; Stipulation of uncontested facts to be filed by 3/13/23; Witness lists and summary of testimony filed by 3/13/23; list of exhibits filed by 3/13/23.

3/9/23 – Defendant served his witness list (dkt. 107)

3/9/23 – *Plaintiff states that Defendant filed a new witness list, adding two*

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Chapter 7

more witnesses. [IS THIS DKT. 107? OTHERWISE, THIS IS NOT ON THE DOCKET.]

3/12/23 – Plaintiff filed his witness list; included expert witnesses (dkt. 108)

3/12/23 – Plaintiff filed his list of exhibits (dkt. 109)

3/13/23 – Defendant filed his list of exhibits and noted plaintiff's objections (dkt. 110)

3/13/23 – Joint pretrial stipulation of undisputed facts filed (dkt. 111)

3/15/23 – Defendant's objections to plaintiff's trial exhibit list filed (dkt. 113)

3/19/23 – A second joint pre-trial stipulation is filed (dkt/115)

5/11/23 – Defendant sends letter to Plaintiff that he can take the deposition of Pam Jennings on notice.

5/23/23 – Defendant sends letter to Plaintiff that he can depose all witnesses on notice

Analysis and Ruling

I am somewhat confused as to exactly what the plaintiff is asserting. Judge Kaufman sanctioned the defendant for his failure to participate in discovery and he paid that sanction. At the pretrial conference (held the same day as the OSC that led to the sanctions), Judge Kaufman set dates for the filing of final witness lists, expert witness lists, and lists of exhibits as well as of a joint pretrial statement of undisputed facts. Both sides did this in a timely fashion.

Mr. Di Bacco has been sanctioned for past behavior and I will not reopen the OSC.

It appears that Mr. Lally feels that he was prejudiced by the addition of witnesses to the prior lists, but this was within Judge Kaufman's order. Not only that, but this was done in March 2023 and as of June 6, the trial date has not been set. If Mr. Lally requires additional time to depose the experts, he only needs to ask. Mr. Di Bacco agrees to setting the depositions by notice, so any delays should be vitiated or, at least, not the fault of Mr. Di Bacco.

Deny the motion in limine. Both sides are to work together to create a deposition schedule and we will set this and then set a trial date. I will need a trial estimate.

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CONT... Michael A Di Bacco

Chapter 7

Debtor(s):

Michael A Di Bacco

Represented By
Leon Nazaretian

Defendant(s):

Michael A Di Bacco

Pro Se

Plaintiff(s):

Michael Kline

Represented By
David B Lally

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
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1:20-11952 Michael A Di Bacco

Chapter 7

Adv#: 1:21-01010 Kline v. Di Bacco

#1.01 Status Conference re: Pretrial conference re: complaint to determine dischargeability of debt pursuant to 11 U.S.C. Sections 523(a)(2)(A), (4) and (6), and to deny the discharge pursuant to 11 U.S.C. 727(a),(2),(3), (4) and (5)

fr. 3/24/21; 4/21/21, 6/2/21; 1/12/22; 3/23/22(stip); 5/25/22(stip); 7/6/22(stip); 8/17/22(stip); 9/21/22; 1/11/23; 2/22/23 - Transferred from Judge Kaufman 3/22/23, 4/4/23 (stip), 5/16/23

Docket 1

Tentative Ruling:

There is a motion in limine set for hearing on 6/6, so I am continuing this as a pretrial conference to 6/6/23 at 10:00 a.m.

Please note that an order in a different adversary proceeding was mistakenly entered on this adversary docket. The docket now accurately reflects that this was an error, but a BNC notice went out of the dismissal. Although it contains a copy of the order in the other case, please be sure that everyone is aware that this adversary proceeding is NOT dismissed.

This case has both §523 and §727 causes of action. Should the trial be bifurcated?

There are notes that some of the proposed exhibits will be objected to. How do you want me to handle those objections? Before trial? At trial? When the exhibit it offered into evidence?

I remember reading that Mr. Lally stated that he would be filing a second motion in limine. If so, when will that be filed? What is the substance?

Let's set the deposition schedule and the trial date(s).

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CONT... Michael A Di Bacco

Chapter 7

Debtor(s):

Michael A Di Bacco

Represented By
Leon Nazaretian

Defendant(s):

Michael A Di Bacco

Represented By
Laleh Ensafi

Plaintiff(s):

Michael Kline

Represented By
David Brian Lally

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
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1:13-10386 Shirley Foose McClure

Chapter 7

#2.00 Motion For Allowance And Payment Of Administrative Expenses Pursuant by Shirley McClure To 11. U.S.C. Section 503(b)1(A)

fr. 10/11/22, 11/15/22; 1/10/23; 1/31/23; 3/14/23

Docket 2143

Tentative Ruling:

Nothing new has been filed. I had previously ruled on a portion of this claim, continuing the rest (dkt. 2329, 2330). The portion ruled on is currently on appeal at the district court. As to the remaining portion, Ms. McClure is not well and there are a variety of appeals pending on other issues. There is simply no rush to determine the balance of this administrative claim. No distribution will take place for months and (unfortunately) even years.

I will continue this as a holding date to some future date when there are other McClure matters set on calendar. When Ms. McClure is able to provide the information that I noted in the memorandum of opinion (dkt. 2329), this will actually be heard and determined.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi Sun Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Trustee(s):

John P. Reitman

Represented By
John P. Reitman

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Jon L. Dalberg
Rodger M. Landau

David Keith Gottlieb (TR)

Represented By
Richard A Marshack
Laila Masud
Leonard M Shulman

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Chapter 7

#3.00 First Application for Approval of Fees and Reimbursement of Expenses by Shulman Bastian Friedman & Bui LLP, Special Fee Review Counsel for the Chapter 7 Trustee

fr. 5/16/23

Docket 2344

Tentative Ruling:

The Firm of Shulman Bastian Friedman & Bui LLP was hired by the Trustee as Special Fee Review Counsel for the Chapter 7 Trustee, with the task of reviewing the fee application for Landau Law LLP as attorney for the Chapter 11 Trustee. Mr. Landau objected to the employment on the ground that Mr. Shulman sought to extort Landau Law by contacting it to seek a material discount of the Landau Law fees or Landau Law would face a very unpleasant audit process. (See dkt. 2074) The Court deferred approving the employment because the fee application was then pending in the district court and it appeared that this issue should be raised there. The Shulman firm completed its analysis and report and that was submitted to Judge Slaughter who ruled on the Landau Law fees.

Thereafter, the Court granted the employment application (dkt. 2302). Because Mr. Landau had not raised the extortion issue in the district court, I deemed it to be waived.

Shulman documents fees of \$56,612.50 and expenses of \$423.97 and states that it will voluntarily reduce the fee request by \$6,612.50 to be a total of \$50,000. Shulman notes that Judge Slaughter reduced the Landau Law request for compensation by \$236,409.10. Landau Law has appealed the employment of the Shulman firm and that is still pending.

The vast majority of the work was in reviewing and analyzing the Landau Law fee application and preparing a detailed report. The Landau Law fee application was about 300 pages long.

Opposition by Landau Law

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Shirley Foose McClure

Chapter 7

Mr. Landau asserts that Shulman Bastian breached its duty of care in that it attempted to extort Landau Law rather than attempting to resolve any fee dispute. Instead they should have requested a reduction (if appropriate) and then attempted to negotiate a settlement.

Had Shulman made a reasonable proposal including the \$200,000+ reduced by Judge Slaughter, "Landau Law likely would have agreed to the accommodation." Because Landau Law is the majority Chapter 11 administrative claimant, "more than 50% of any fee reduction by Landau Law gets re-paid back to Landau Law from the limited resources to be paid to Chapter 11 claimants." Thus Landau Law had no incentive to dispute a reasonable fee objection because its ultimate compensation would be relatively unaffected by any such objection.

Reply

No extortion occurred. When the first informal communications was sent. Shulman Bastian had already done a preliminary review of Landau Law's first fee application. This showed that Landau Law was billing for work that should have been done by the Trustee or his staff, that hourly rates for some things were too high, and that time entries did not benefit the Estate. Shulman Bastian was reaching out to avoid the expenses and burden of litigation and to save Landau Law from having its poor billing practices put on the public record.

Clearly a reduction of over \$236,000 and the lower interim payment order by Judge Slaughter benefitted the Estate.

Shulman Bastian's fee total is \$50,000, not \$100,000. The defense of the meritless appeal should not come close to an additional \$50,000.

Analysis and Ruling

While I could nit-pick a few items, they would not even come close to the voluntary \$6,000+ reduction.

As to the issue of extortion, this is simply not the case. Mr. Landau asserts that the Shulman firm would not negotiate, but that is exactly what they offered to do. He is the one who rejected the offer to talk. Beyond that, as noted in my order to employ, that objection is waived in the context of employment. I find that it is also waived as to this case.

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In my 39 years on the bench, I have employed a fee analyst only a handful of times. But, of course, Mr. Gottlieb and his counsel were new to the case so they would have had to spend a great deal of time to have done the analysis. And add to that the fact that there was a new judge (one who was not only unfamiliar with the case, but may have had little or no bankruptcy administration experience). Thus, the use of a special counsel was a wise move. Had I retained the fee application, I wonder whether the Trustee would have sought a fee analyst because of my intimate knowledge of this case and of the work that was done. So it was a sound decision to hire the Shulman Bastian firm.

As noted, I do not see any extortion in the communication. To suggest a unilateral reduction at the beginning is an appropriate strategy. And it is obvious that a careful fee analysis would be time-consuming and unpleasant. Mr. Landau now says that he might have agreed to the \$200,000+ reduction (about 16%), but that is hindsight. And without the Shulman Bastian firm doing more than a preliminary review, it would not know whether that was a reasonable figure. To ask Mr. Landau to suggest an opening figure is not extortion or a breach of any duty.

Allow fees in the amount of \$50,000. Costs of \$423.97. However, because of the pending appeal of the employment of Shulman Bastian, no payment will be allowed until that is resolved. I also would like to hear from the Trustee as to whether this should be drafted as a contingent order to be triggered by a final ruling on the appeal. It does not seem like a good idea to have the appeal time running on this order when there is no assurance that the Shulman Bastian Employment Order will be affirmed. But, perhaps, it is best to make this a final order so that any appeal can go to the same district judge.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By

Andrew Goodman

Yi Sun Kim

Robert M Scholnick

James R Felton

Faye C Rasch

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Chapter 7

Faye C Rasch
Lisa Nelson
Michael G Spector

Trustee(s):

John P. Reitman

Represented By
John P. Reitman
Jon L. Dalberg
Rodger M. Landau

David Keith Gottlieb (TR)

Represented By
Richard A Marshack
Laila Masud
Leonard M Shulman
Steven T Gubner
BG Law
D Edward Hays
Shulman Bastian Friedman & Bui LLP

**United States Bankruptcy Court
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1:13-10386 Shirley Foose McClure

Chapter 7

#4.00 Chapter 7 Trustee, David Keith Gottlieb's First Interim Application for Compensation and Reimbursement of Expenses
Period: 5/25/2022 to 5/15/2023, Fee: \$29,551.35, Expenses: \$67.77

Docket 2388

Tentative Ruling:

For the one year period, the Trustee requests the statutory amount of \$29,551.35 in fees and \$67.77 in expenses. His time summary for the period totals \$153,000+ and he has over \$1.6 million in cash in the estate.

Landau Law opposition – The amount of liquid assets that the Trustee is dealing with total about \$500,000. Mr. Gottlieb is incurring professional fees so that there will be nothing left for the estate. To continue to administer them and not just close this case is a breach of his fiduciary duty.

The Trustee spent about \$100,000 in attorney and accountant fees to review the \$300,000 settlement that had already been negotiated and would be approved by the Court. This was a waste of money given the amount involved.

Objecting to the Landau Law fees made no sense because Landau Law holds the majority of the chapter 11 administrative claims and will continue to do so. [I AM NOT SURE THAT I UNDERSTAND THIS ARGUMENT. MR. LANDAU, PLEASE EXPLAIN IT IN MORE DETAIL.]

Trustee Reply – The Trustee has been performing his duties and is working to move this case toward closure. He has been overseeing the professionals. His work has resulted in the abandonment of Otsego and of Hewitt and the Tidus Settlement has been finalized.

Mr. Landau has not pointed out any instance where the Trustee breached his fiduciary duty. He only asserts that decisions made by the Trustee in his business judgment are a breach of his fiduciary duty.

Beyond that, Mr. Landau has filed frivolous pleadings, which interfere with the Trustee's work and cause additional administrative fees.

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The Trustee is entitled to a percent of the \$300,000 Tidus settlement as part of his fees.

The administrative claims review by Shulman Bastian resulted in a reduction of the Landau Law fees in the amount of about \$240,000.

At present, Landau Law is the largest chapter 11 administrative creditor, but Ms. McClure and her son seek amounts that would make them the largest administrative creditors. The reduction in the Landau Law fees will result in all administrative creditors receiving a greater percent of their claim.

Analysis and Proposed Ruling

Mr. Landau raises some interesting issues, but his firm is not innocent in the very things that he objects to. He is correct that the Tidus Settlement (originally at \$100,000 and now at \$300,000) was not enough to make it worth pursuing given the certainty that Ms. McClure would strongly object and would appeal. But Ms. McClure had raised issues as to the value and the settlement amount was largely based on an analysis that I did of the likely minimum award. The value might have been much greater and it needed an independent person to review this. Mr. Reitman had undervalued it at \$100,000 (although I placed a minimum \$300,000 estimate on it and he and his counsel were aware of this) and – according to Ms. McClure – Mr. Reichman did not take into consideration evidence that she had that would show a much higher value. But even using the \$300,000 figure, it would have been wise for Mr. Reitman to have abandoned it to Ms. McClure once it was clear to him that the settlement amount would not be sufficiently substantial to make it worth pursuing. But the real failing was in appealing his attempt to settle it for only \$100,000 rather than abandoning it at that point.

And all during this time, Mr. Reichman and his counsel were running up administrative expenses. I believe that Landau Law sought its fees for the appeal, etc. as to the Tidus settlement. I do not know whether Mr. Landau removed some or all of that from the fee application before Judge Slaughter. It is hard to accept that Landau Law should not be penalized for the very action that Mr. Landau seeks to penalize Mr. Gottlieb and his counsel.

It was necessary for Mr. Gottlieb, as the new trustee, to have a professional review the assertions in the Tidus case and report whether the \$300,000 settlement was worth pursuing or whether the Tidus case was

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worth substantially more or less than that amount. So I find no fault in the Trustee's review.

Unfortunately, there is still a new appeal of the settlement pending (this time by Ms. McClure – USDC 2:23-cv-02257). I don't see how the Trustee can now withdraw from the appeal of the \$300,000 settlement and close the case. The money has been spent and there is a \$300,000 asset there to be collected. While it may not provide extra money for the creditors of the estate, it does fill a hole that would have to be filled by other assets.

However, if Mr. Landau, Mr. Reitman, Mr. Gottlieb, and his counsel wish to abandon the Tidus case to Ms. McClure and reduce their fees as to the handling of the Tidus case – and if that is possible at this point in time – I will certainly consider it.

See my comments on the Shulman Bastian fee application as to the necessity to hire a firm to analyze the Landau Law fees. In Judge Slaughter's order, he reduced the Landau Law fees, so it appears that the objection(s) were well taken. It is the Trustee's duty to object, even if there is no ultimate benefit to the estate. As noted above, I do not follow Mr. Landau's argument concerning the benefit or detriment of the objection.

I need to discuss the amount of hold-back of chapter 7 administrative claims with the Trustee. The district court allowed an 80% holdback as to the Landau Law fees. This is fully appropriate in that they are for chapter 11 work and are subordinated to chapter 7 administrative claims. But at this point, I am concerned even about the advisability of paying more than 20% to chapter 7 administrative claims.

Also, since the Tidus Settlement is one appeal, I don't think that the Trustee should include thta in his calculation of his fees.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi Sun Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch

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Chapter 7

Lisa Nelson
Michael G Spector

Movant(s):

David Keith Gottlieb (TR)

Represented By
Richard A Marshack
Laila Masud
Leonard M Shulman
Steven T Gubner
BG Law
D Edward Hays
Shulman Bastian Friedman & Bui LLP

Trustee(s):

John P. Reitman

Represented By
John P. Reitman
Jon L. Dalberg
Rodger M. Landau

David Keith Gottlieb (TR)

Represented By
Richard A Marshack
Laila Masud
Leonard M Shulman
Steven T Gubner
BG Law
D Edward Hays
Shulman Bastian Friedman & Bui LLP

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Chapter 7

#5.00 First Interim Application for Allowance of Fees and Costs filed by Marshack Hays LLP as General Counsel for Trustee
Period: 5/2/2022 to 4/30/2023, Fee: \$199,221.00, Expenses: \$2,809.87.

Docket 2389

Tentative Ruling:

Marshack Hays. LLP is general counsel to the chapter 7 trustee. They seek \$199,221 in fees and \$2,809.87 in expenses for one year of work. The work that they have been doing is as follows:

Reitman v. Jason McClure is an adversary proceeding started by the prior trustee as to the ownership of the debtor's home, in which Jason McClure (her son) holds a 50% interest. Mr. Reitman and Mr. Gottlieb have both been trying to settle it since its inception.

Tidus Settlement – after review was complete, they filed a statement of position on behalf of the Trustee. The settlement was approved and is now on appeal both as to the settlement and the court's refusal to abandon it. The appeal in the district court has been stayed due to Ms. McClure's state of health.

Landau Law Fee Application – Mr. Gottlieb and Ms. McClure both filed objections to the Landau Law final fee application and the district court granted in part and denied in part.

Landau Law's Second Motion to Withdraw the Reference (as to all matters). Ms. McClure and Mr. Gottlieb both opposed. Judge Slaughter denied this motion.

Marshack Hays employment – Landau Law objected. The employment was allowed.

Shulman employment – Trustee filed a motion to employ Shulman as special counsel. Landau Law objected. The Court granted employment. Landau Law appealed. Trustee's counsel is opposing the appeal.

BRG employment application – Landau Law opposed. The Trustee filed a reply. Employment was granted.

Abandoning Hewitt – The Trustee filed a motion to abandon, which

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was commented on by Landau Law and Weintraub and Selth and opposed by Ms. McClure. At first it was denied because of possible claims against Mr. Reitman. But then it was granted. Ms. McClure filed a notice of appeal and this is now stayed in the district court due to Ms. McClure's state of health.

Abandonment of Loon Lot property – granted.

Jason McClure's Administrative Claim – Still pending with various objections.

Shirley McClure's Administrative Claim - Various objections. The Court partially granted, partially denied, and partially continued it. The part that was determined is currently on appeal in the district court

Debtor Administrative Expense Appeal – this is pending in the district court.

Motion to Sever Claim on Gregory – settled by stipulation.

Motion to set Chapter 11 administrative claims bar date – pending [court: this has now been granted without objection.].

The movant seeks fees of \$199,221 and costs of \$2,809.87. The Estate has \$1.6+ million on hand.

Landau Law Opposition – Only on two issues because this is only an interim fee application.

Abandonment of Hewitt – There was no need for an emergency motion because there was no relief from stay motion pending and the secured creditor had been doing nothing. The abandonment could just have waited until the end of the case.

Because the wrong address was used, the order may have been ineffective. This may be an issue in the appeal.

Objection to Shirley McClure's Administrative Claim – Marshack missed the §1115 issue until Landau pointed it out. This required them to perform additional work, for which they should not be compensated.

Reply

The abandonment of Hewitt was reasonable and necessary. The reason for the rush was because there was a risk of foreclosure while Hewitt was still property of the estate and that would cause the estate to suffer negative tax consequences. This would also push any potential capital gains

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taxes onto the Debtor and may allow the Debtor to pursue the chapter 11 trustee for damages.

The Trustee was also concerned about potential *res judicata* impact on the Hewitt related claims as to final fees awarded to the chapter 11 administrative professionals.

The Court denied the abandonment motion in part as to the administrative claims due to the offer by Landau Law to purchase these from the Estate. This offer could not be foreseen by the Trustee.

The Trustee did not want to wait until the closing of the estate to abandon because it ignores that the creditor could have renewed its motion for relief from stay and the looming capital gains taxes.

As to §1115 on the Order, this was a typographical error and that is easily corrected under FRCP 60(a). The Trustee will be filing a motion to correct that error on the Order. [USDC 2:23-cv-01982-FWS]

As to the failure to raise §1115, the Court found that this was an issue of law on which parties could disagree. And the Trustee raised this in its supplemental briefing. When the Court entered its order granting in part and denying in part the Debtor's administrative claim, the Court did not agree with Landau Law's objection as to §1115. This was a failing argument and so there is no penalty for not raising it.

Analysis and Ruling

Mr. Landau raises some valid objections.

As to the emergency motion to abandon Hewitt: There was no way that the secured creditor could foreclose without an order for relief from the automatic stay. It had withdrawn its prior motion, so it would have to begin again. This would have triggered the Trustee acting to bring the motion to abandon. But there was no emergency at the time that the motion to abandon was originally filed.

As to the motion to abandon Hewitt: Had Hewitt remained part of the estate maybe the secured creditor would have waited quietly for several more years or put in an administrative claim for missed payments or moved for relief from stay. We will never know.

But it is within the Trustee's business discretion to determine that Hewitt should be abandoned in 2022 rather than wait. Among the issues

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would be the timing. Even if it was being automatically abandoned at the closing of the case, there is no reason to think that Ms. McClure would not have opposed that and insisted that the Trustee administer it. Whichever side I ruled against was bound to appeal and that would have delayed the closing for months or maybe years and still have cost the Estate significant attorney fees. So the Trustee had a reasonable basis for moving forward at this time. But I will reduce the fees as to the emergency filing (part of the claim for "asset disposition") by \$5,000 and approve the rest.

As to the §1115 issue, although parties could disagree, this should have been raised by the Trustee, but it waited until Mr. Landau brought it to the Court's attention. That delay required extra briefing and an extra hearing. Reduce the fees by \$3,500.

This is an interim application and more adjustments may be made a the time of the final fee hearings.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By

Andrew Goodman
Yi Sun Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Trustee(s):

John P. Reitman

Represented By

John P. Reitman
Jon L. Dalberg
Rodger M. Landau

David Keith Gottlieb (TR)

Represented By

Richard A Marshack

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Laila Masud
Leonard M Shulman
Steven T Gubner
BG Law
D Edward Hays
Shulman Bastian Friedman & Bui LLP

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1:13-10386 Shirley Foose McClure

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#6.00 Application for payment of interim fees and/or expenses for Berkely Research Group LLC , Accountant

Docket 2386

Tentative Ruling:

BRG is the accountant for the chapter 7 trustee. They seek \$20,256 in fees and \$42.72 in expenses. Also \$6,720 for real estate appraisal.

I will accept the 6+% jump in hourly rates from 2022 to 2023 given the inflation rate. However, there is no reason that Mr. Manley (at \$1,050/hour) should have been used for the real estate appraisal. What were the Trustee and this firm thinking?

I had requested that the Trustee provide an historical analysis of the prices of property in the "Arts District" and that he use an appraiser to do so because the data was not available to the Court. [dkt. 2203]. It is beyond comprehension that it would require a real estate accountant at \$1,050/hour to look up this data and provide it to the Court. The request stated:

In analyzing this motion, the Court finds that it needs reliable information, which is available to an appraiser, but not to the court. Therefore, the Trustee is requested to obtain and file the historical data for sales and rentals of condominiums in the "Arts District" of Los Angeles from 2012 to the present. This is not meant to be an appraisal of the unit, but rather a chart that indicates the percent of growth or decline of sales values and of rental rates from year-to-year during this period. If the Trustee believes that average "per square foot" information would be easily obtained and beneficial, he can – but need not – also provide that. Of course the information must be from reliable sources such are generally used by appraisers or other experts. To the extent that the information is not available for the limited geographical area known as the "Arts District," please provide information for the closest geographic area that includes the "Arts District."

It was very clear that this was NOT to be an appraisal, but merely a

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compilation of data that is only available to appraisers and the like. Allow \$250 per hour for this part of the fee application – a total of \$1,600. Reduce the fees by \$5,120 and allow a total of \$21,865 fees and \$42.72 costs.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi Sun Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Trustee(s):

John P. Reitman

Represented By
John P. Reitman
Jon L. Dalberg
Rodger M. Landau

David Keith Gottlieb (TR)

Represented By
Richard A Marshack
Laila Masud
Leonard M Shulman
Steven T Gubner
BG Law
D Edward Hays
Shulman Bastian Friedman & Bui LLP

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1:18-11342 Victory Entertainment Inc

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Adv#: 1:20-01056 Ehrenberg v. HALA Enterprises, LLC et al

#7.00 Status Conference re: Trial re: Complaint 1) Avoidance and Recovery of Fraudulent Transfers; 2) Avoidance and Recovery of Preferential Transfers; 3) Preservation of Avided Transfers; 4) Declaratory Relief re: Alter Ego Liability and 5) Turnover of property.

fr. 5/3/22, 9/20/22; 9/23/22, 12/12/22; 2/10/23, 4/4/23, 5/16/23

Docket 0

Tentative Ruling:

Judge Kaufman signed the order approving compromise on 5/17. As of 6/3, no order has been lodged as to the adversary proceeding. Please do so.

Continue to 6/27/23 at 10:00 a.m. to make sure that the order is lodged.

Party Information

Debtor(s):

Victory Entertainment Inc

Represented By
George J Paukert
Lewis R Landau

Defendant(s):

HALA Enterprises, LLC

Represented By
David L Oberg
Madison B Oberg

Agassi Halajyan, an Individual

Represented By
David L Oberg
Madison B Oberg

Plaintiff(s):

Howard M Ehrenberg

Represented By
Paul A Beck

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Trustee(s):

Howard M Ehrenberg (TR)

Represented By
Elissa Miller
Paul A Beck