United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 301 Calendar

Wednesday, November 10, 2021 **Hearing Room 301**

11:00 AM
6:21-10164 Thalia Lisbeth Estrada **Chapter 7**

#1.00 Notice of Trustee's Final Report and Applications for Compensation

EH__

[Tele. appr. Lynda Bui, chapter 7 trustee]

Docket 26

Tentative Ruling:

11/10/2021

Service: Proper
Opposition: None

The application for compensation of the Trustee has been set for hearing on the notice required by LBR 2016-1. Pursuant to the Trustee's Final Report, the Court is inclined to APPROVE the following administrative expenses:

Trustee Fees: $ 1,286.70

APPEARANCES WAIVED. If written or oral opposition is presented at the hearing, the hearing may be continued. Trustee to lodge order within 7 days.

Party Information

Debtor(s):

Thalia Lisbeth Estrada — Represented By Neil R Hedtke

Trustee(s):

Lynda T. Bui (TR) — Pro Se

11:00 AM
6:21-10853 Sotero Chandler Elias Ramas, III and Harvy Yojany Ortiz **Chapter 7**

#2.00 CONT. Chapter 7 Trustee's Notice of Motion and Motion Objecting to Debtors' Exemption Claim Under California Code of Civil Procedure § 704.730; Declaration of Todd A. Frealy in Support
(Motion filed 6/17/21)

(Status Conference)

From: 7/21/21, 9/15/21

EH__

Docket 33
***** VACATED *** REASON: CONTINUED TO 1/19/22 BY ORDER ENTERED 11/8/21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sotero Chandler Elias Ramas III — Represented By Walter Scott

Joint Debtor(s):

Harvy Yojany Ortiz Campo — Represented By Walter Scott

Movant(s):

Todd A. Frealy (TR) — Represented By Anna Landa

Trustee(s):

Todd A. Frealy (TR) — Represented By Anna Landa

11:00 AM
6:21-13855 Christopher Steven Acosta and Monique Marie Acosta **Chapter 7**

#3.00 U.S. Trustee's Motion for extension of time to file a complaint objecting to discharge & extension of dismissal deadline
(Motion filed 10/18/21)

EH__

Docket 15

Tentative Ruling:

11/10/2021

BACKGROUND

On July 15, 2021, Christopher & Monique ("Debtors") filed a Chapter 7 voluntary petition. The meeting of creditors was originally set for August 17, 2021. The meeting of creditors has been continued on three occasions.

On October 18, 2021, UST filed a motion for extension of time to file a complaint objecting to discharge or a motion to dismiss the case. The basis for UST's motion is that Debtors have not yet fully complied with UST's requests for financial information. On October 19, 2021, UST filed a stipulation with Debtors whereby Debtors stipulated to the relief requested in the instant motion.

DISCUSSION

FED. R. BANKR. P. Rule 1017(e)(1) states:

> Except as otherwise provided in § 704(b)(2), a motion to dismiss a case for abuse under § 707(b) or (c) may be filed only within 60 days after the first date set for the meeting of creditors under § 341(a), unless, on request filed before the time has expired, the court for cause extends the time for filing the motion to dismiss.

FED. R. BANKR. P. Rule 4004(a) states:

> In a chapter 7 case, a complaint, or a motion under § 727(a)(8) or (9) of the Code, objecting to the debtor's discharge shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). In a chapter 11 case, the complaint shall be filed no later than the first date set for the hearing on confirmation. In a chapter 13 case, a motion objecting to the debtor's discharge under § 1328(f) shall be filed no later than 60 days after the first date set for the meeting of creditors under § 341(a). At least 28 days' notice of the time so fixed shall be given to the United States trustee and all creditors as provided in Rule 2002(f) and (k) and to the trustee and the trustee's attorney.

And FED. R. BANKR. P. Rule 4004(b) states:

> (1) On motion of any party in interest, after notice and hearing, the court may for cause extend the time to object to discharge. Except as provided in subdivision (b)(2), the motion shall be filed before the time has expired.
>
> (2) A motion to extent the time to object to discharge may be filed after the time for objection has expired and before discharge is granted if (A) the objection is based on facts that, if learned after the discharge, would provide a basis for revocation under § 727(d) of the Code, and (B) the movant did not have knowledge of those facts in time to permit an objection. The motion shall be filed promptly after the movant

11:00 AM
CONT... **Christopher Steven Acosta and Monique Marie Acosta** **Chapter 7**
discovers the facts on which the objection is based.

Here, Debtors' delay in providing the requested information constitutes sufficient cause to extend the deadlines. *See* COLLIER ON BANKRUPTCY ¶ 4004.03[2] (16th ed. 2013) ("A debtor's delays in responding to discovery may be sufficient cause. Obviously, a delay in the meeting of creditors to a date close to or after the deadline may constitute such cause.") (*citing In re McCormack*, 244 B.R. 203 (Bankr. D. Conn. 2000)).

Moreover, Debtors have explicitly consented to the relief requested.

TENTATIVE RULING

The Court is inclined to GRANT the motion, extending the deadlines to file a motion to dismiss the case and a complaint objecting to discharge until November 22, 2021.

APPEARANCES WAIVED. Movant to lodge order within seven days. If oral or written opposition is presented at the hearing, the hearing may be continued.

Party Information

Debtor(s):

Christopher Steven Acosta — Represented By
Donald E Iwuchuku

Joint Debtor(s):

Monique Marie Acosta — Represented By
Donald E Iwuchuku

Trustee(s):

Karl T Anderson (TR) — Pro Se

11:00 AM
6:20-13525 Dimlux, LLC **Chapter 7**

#4.00 Application for employment as attorney for Debtor Dimlux, LLC
(Motion filed 9/14/21)
(Duplicate motion filed 10/8/21)

Also #5, 6

EH__

[Tele. appr. Everett Green, rep. U.S. Trustee]

[Tele. appr. Larry Simons, chapter 7 trustee]

[Tele. appr. Nancy Zamora, rep, Larry Simons, chapter 7 Trustee]

Docket 153

Tentative Ruling:

11/10/2021

BACKGROUND

On May 19, 2021, Dimlux, LLC ("Debtor") filed a Chapter 11 voluntary petition. On August 25, 2020, UST filed a motion to dismiss or convert the Chapter 11 case. The motion was unopposed, and the case was converted to Chapter 7 on September 29, 2020. On February 16, 2021, the Court approved the employment of Zamora & Hoffmeier, APC as Chapter 7 Trustee's counsel.

On May 4, 2021, Trustee filed a motion to approve compromise with Mansour Barghi. The compromise, *inter alia*, required the cooperation by Mr. Barghi regarding the sale of certain real property located at 4880 Winnetka Ave., Woodland Hills, CA 91364 (the "Property"). The compromise was ultimately approved by Court order entered August 18, 2021.

On July 23, 2021, Trustee filed a motion to sell the Property to DaCadez

Development, LLC for $1,280,000. The sale motion was granted pursuant to order entered August 24, 2021.

On September 14, 2021, Donald Beury ("Beury") filed an application seeking: (1) approval of his employment in this bankruptcy case and in Debtor's previous bankruptcy case; and (2) seeking approval of $20,000 in fees. On September 24, 2021, the Chapter 7 Trustee filed opposition stating that Beury failed to meet a variety of technical requirements and otherwise did not provide any services that benefited the bankruptcy estate. On September 27, 2021, UST filed an opposition arguing that Beury failed to comply with the local rules and did not meet the "exceptional circumstances" standard necessary for retroactive employment. Beury subsequently filed a reply as well as a variety of documents that attempted to remedy the technical deficiencies in his employment application.

On October 20, 2021, the Chapter 7 trustee filed an application for interim fees in the amount of $47,364.02.

On October 20, 2021, Zamora & Hoffmeier, APC, filed an application for interim fees, seeking an aggregate of $73,615.16 in fees and expenses. On October 27, 2021, UST filed an objection, arguing that the fee application: (1) included a variety of billing entries for tasks that appeared to constitute Trustee services; and (2) the fee application included billable entries for correcting mistakes.

DISCUSSION

As a preliminary matter, the Court the notice of hearing for the fee applications does not appear to have been served on all creditors as required by FED. R. BANKR. P. Rule 2002(a)(6). Specifically, it appears that the only interested parties who received notice of the hearing are those parties that were on the NEF notice list.

1. CHAPTER 7 TRUSTEE'S FEE APPLICATION

The Court notes that the fee application of the Chapter 7 Trustee is not supported by any admissible evidence.

Substantively, the Court notes that the Chapter 7 Trustee appears to have properly

calculated the statutory commission under 11 U.S.C. § 326(a) and that the Chapter 7 Trustee may request interim compensation under 11 U.S.C. § 331.

2. APPLICATION FOR COMPENSATION-COUNSEL FOR CHAPTER 7 TRUSTEE

Having reviewed the application for compensation filed by Zamora & Hoffmeier, the Court has some concerns regarding the requested fees. In addition to the concerns raised by UST (i.e. primarily that the application appears to include billing entries for Trustee services), the Court notes that all of the billing entries are attributable to Nancy Zamora and billed at $550/hour. This exacerbates the problem of having counsel bill for administrative or quasi-administrative tasks because the application is replete with entries that are billed at 0.1-0.3 hours and would typically have been handled by a paralegal or other individual with a lower billing rate. While the time billed for the entries appears to be generally reasonable, the billing rate has resulted in a request for compensation that exceeds a customary amount for the services performed.

3. APPLICATION FOR EMPLOYMENT/COMPENSATION-COUNSEL FOR DEBTOR

As noted by the Chapter 7 Trustee and UST, Beury's application for employment fails to meet a variety of technical problems, and it is less than clear that Beury has made a showing that any of his services were of benefit to the bankruptcy estate. Equally important, however, is the unusual procedural posture of this application – the application was filed nearly a year after the case was converted to Chapter 7, and more than a year after Beury filed any documents in this case.

UST's opposition emphasizes the high standard an applicant must meet when seeking retroactive employment. The caselaw cited by UST is further bolstered by the Supreme Court's recent ruling in *Roman Catholic Archdiocese of San Juan v. Feliciano*, 140 S. Ct. 696 (2020). *See, e.g.*, 3 COLLIER'S ON BANKRUPTCY ¶ 327.03[3] (16th ed. 2020) ("Employing similar reasoning in a context outside of professional retention, the Supreme Court in *Acevedo Feliciano* arguably eliminated the use of *nunc pro tunc* orders."). While caselaw reacting to this decision is still developing, Courts have acknowledged that the decision in *Feliciano* may have implications for the relatively common practice of seeking an employment order that authorizes employment effective as of an earlier date. *Compare In re Benitez*, 2020 WL 1272258 (Bankr. E.D. 2020) (*nunc pro tunc* employment now inappropriate, but professional

11:00 AM
CONT... Dimlux, LLC **Chapter 7**

can be compensated for services performed pre-approval); *Haigler v. High Tension Ranch, LLC*, 2021 WL 3622149 (W.D.N.C. 2021) (same); *In re Miller*, 620 B.R. 637 (Bankr. E.D. Cal. 2020) (same) *with In re Hunanyan*, 2021 WL 2389273 (Bankr. C.D. Cal. 2021) (*nunc pro tunc* employment still allowed, required showing depends on extent of delay).

Turning to *In re Atkins*, the Court notes that, at a minimum, Beury must demonstrate exceptional circumstances. 69 F.3d 970, 974 (9th Cir. 1995) ("To establish the presence of exceptional circumstances, professionals seeking retroactive approval must satisfy two requirements: they must (1) satisfactorily explain their failure to receive prior judicial approval; and (2) demonstrate that their services benefitted the bankruptcy estate in a significant matter."). Beury has not made any credible effort to satisfy either of the two requirements in *Atkins*.

Furthermore, while wholly unnecessary given the substantive and technical deficiencies with the application, the Court notes that the billing entries are, at best, questionable. For example, there are billing entries that:

1) Relate to work done on a closed bankruptcy case;
2) Relate to work done that does not appear to have any clear connection with the bankruptcy case;
3) Are extremely vague[1]
4) Are incompatible with the docket[2]

Finally, as noted by UST, it is not clear what "significant benefit," Beury's representation could have provided to the estate

TENTATIVE RULING

The Court intends to continue the hearing for proper notice to be given per FRBP 2002(a)(6). The Court is inclined to DENY the application for employment. Chapter 7 Trustee and Counsel to address the issues identified in this tentative ruling.

APPEARANCES REQUIRED.

Party Information

11:00 AM
CONT... Dimlux, LLC **Chapter 7**

Debtor(s):

Dimlux, LLC — Represented By
Donald Beury - SUSPENDED -
John E Bouzane

Trustee(s):

Larry D Simons (TR) — Represented By
Nancy H Zamora

11:00 AM
6:20-13525 Dimlux, LLC **Chapter 7**

#5.00 Application for Compensation Chapter 7 Trustee's First Interim Fee Application for the Period September 29, 2020 to October 15, 2021 with proof of service for Larry D Simons (TR), Trustee Chapter 7, Period: 9/29/2020 to 10/15/2021, Fee: $47364.02, Expenses: $0.00.
(Application filed 10/20/21)

Also #4, 6

EH__

[Tele. appr. Larry Simons, chapter 7 trustee]

[Tele. appr. Nancy Zamora, rep, Larry Simons, chapter 7 Trustee]

Docket 169

Tentative Ruling:

11/10/2021

BACKGROUND

On May 19, 2021, Dimlux, LLC ("Debtor") filed a Chapter 11 voluntary petition. On August 25, 2020, UST filed a motion to dismiss or convert the Chapter 11 case. The motion was unopposed, and the case was converted to Chapter 7 on September 29, 2020. On February 16, 2021, the Court approved the employment of Zamora & Hoffmeier, APC as Chapter 7 Trustee's counsel.

On May 4, 2021, Trustee filed a motion to approve compromise with Mansour Barghi. The compromise, *inter alia*, required the cooperation by Mr. Barghi regarding the sale of certain real property located at 4880 Winnetka Ave., Woodland Hills, CA 91364 (the "Property"). The compromise was ultimately approved by Court order entered August 18, 2021.

On July 23, 2021, Trustee filed a motion to sell the Property to DaCadez

Development, LLC for $1,280,000. The sale motion was granted pursuant to order entered August 24, 2021.

On September 14, 2021, Donald Beury ("Beury") filed an application seeking: (1) approval of his employment in this bankruptcy case and in Debtor's previous bankruptcy case; and (2) seeking approval of $20,000 in fees. On September 24, 2021, the Chapter 7 Trustee filed opposition stating that Beury failed to meet a variety of technical requirements and otherwise did not provide any services that benefited the bankruptcy estate. On September 27, 2021, UST filed an opposition arguing that Beury failed to comply with the local rules and did not meet the "exceptional circumstances" standard necessary for retroactive employment. Beury subsequently filed a reply as well as a variety of documents that attempted to remedy the technical deficiencies in his employment application.

On October 20, 2021, the Chapter 7 trustee filed an application for interim fees in the amount of $47,364.02.

On October 20, 2021, Zamora & Hoffmeier, APC, filed an application for interim fees, seeking an aggregate of $73,615.16 in fees and expenses. On October 27, 2021, UST filed an objection, arguing that the fee application: (1) included a variety of billing entries for tasks that appeared to constitute Trustee services; and (2) the fee application included billable entries for correcting mistakes.

DISCUSSION

As a preliminary matter, the Court the notice of hearing for the fee applications does not appear to have been served on all creditors as required by FED. R. BANKR. P. Rule 2002(a)(6). Specifically, it appears that the only interested parties who received notice of the hearing are those parties that were on the NEF notice list.

1. CHAPTER 7 TRUSTEE'S FEE APPLICATION

The Court notes that the fee application of the Chapter 7 Trustee is not supported by any admissible evidence.

Substantively, the Court notes that the Chapter 7 Trustee appears to have properly

calculated the statutory commission under 11 U.S.C. § 326(a) and that the Chapter 7 Trustee may request interim compensation under 11 U.S.C. § 331.

2. APPLICATION FOR COMPENSATION-COUNSEL FOR CHAPTER 7 TRUSTEE

Having reviewed the application for compensation filed by Zamora & Hoffmeier, the Court has some concerns regarding the requested fees. In addition to the concerns raised by UST (i.e. primarily that the application appears to include billing entries for Trustee services), the Court notes that all of the billing entries are attributable to Nancy Zamora and billed at $550/hour. This exacerbates the problem of having counsel bill for administrative or quasi-administrative tasks because the application is replete with entries that are billed at 0.1-0.3 hours and would typically have been handled by a paralegal or other individual with a lower billing rate. While the time billed for the entries appears to be generally reasonable, the billing rate has resulted in a request for compensation that exceeds a customary amount for the services performed.

3. APPLICATION FOR EMPLOYMENT/COMPENSATION-COUNSEL FOR DEBTOR

As noted by the Chapter 7 Trustee and UST, Beury's application for employment fails to meet a variety of technical problems, and it is less than clear that Beury has made a showing that any of his services were of benefit to the bankruptcy estate. Equally important, however, is the unusual procedural posture of this application – the application was filed nearly a year after the case was converted to Chapter 7, and more than a year after Beury filed any documents in this case.

UST's opposition emphasizes the high standard an applicant must meet when seeking retroactive employment. The caselaw cited by UST is further bolstered by the Supreme Court's recent ruling in *Roman Catholic Archdiocese of San Juan v. Feliciano*, 140 S. Ct. 696 (2020). *See, e.g.*, 3 COLLIER'S ON BANKRUPTCY ¶ 327.03[3] (16th ed. 2020) ("Employing similar reasoning in a context outside of professional retention, the Supreme Court in *Acevedo Feliciano* arguably eliminated the use of *nunc pro tunc* orders."). While caselaw reacting to this decision is still developing, Courts have acknowledged that the decision in *Feliciano* may have implications for the relatively common practice of seeking an employment order that authorizes employment effective as of an earlier date. *Compare In re Benitez*, 2020 WL 1272258 (Bankr. E.D. 2020) (*nunc pro tunc* employment now inappropriate, but professional

11:00 AM
CONT... Dimlux, LLC **Chapter 7**

can be compensated for services performed pre-approval); *Haigler v. High Tension Ranch, LLC*, 2021 WL 3622149 (W.D.N.C. 2021) (same); *In re Miller*, 620 B.R. 637 (Bankr. E.D. Cal. 2020) (same) *with In re Hunanyan*, 2021 WL 2389273 (Bankr. C.D. Cal. 2021) (*nunc pro tunc* employment still allowed, required showing depends on extent of delay).

Turning to *In re Atkins*, the Court notes that, at a minimum, Beury must demonstrate exceptional circumstances. 69 F.3d 970, 974 (9th Cir. 1995) ("To establish the presence of exceptional circumstances, professionals seeking retroactive approval must satisfy two requirements: they must (1) satisfactorily explain their failure to receive prior judicial approval; and (2) demonstrate that their services benefitted the bankruptcy estate in a significant matter."). Beury has not made any credible effort to satisfy either of the two requirements in *Atkins*.

Furthermore, while wholly unnecessary given the substantive and technical deficiencies with the application, the Court notes that the billing entries are, at best, questionable. For example, there are billing entries that:

1) Relate to work done on a closed bankruptcy case;
2) Relate to work done that does not appear to have any clear connection with the bankruptcy case;
3) Are extremely vague[1]
4) Are incompatible with the docket[2]

Finally, as noted by UST, it is not clear what "significant benefit," Beury's representation could have provided to the estate

TENTATIVE RULING

The Court intends to continue the hearing for proper notice to be given per FRBP 2002(a)(6). The Court is inclined to DENY the application for employment. Chapter 7 Trustee and Counsel to address the issues identified in this tentative ruling.

APPEARANCES REQUIRED.

Party Information

11:00 AM
CONT... Dimlux, LLC **Chapter 7**

Debtor(s):

Dimlux, LLC — Represented By
Donald Beury - SUSPENDED -
John E Bouzane

Trustee(s):

Larry D Simons (TR) — Represented By
Nancy H Zamora

11:00 AM
6:20-13525 Dimlux, LLC **Chapter 7**

#6.00 Application for Compensation --First Interim Fee Application of Zamora & Hoffmeier, Trustee's Counsel, for Approval of Compensation and Reimbursement of Expenses; Declarations of Nancy Hoffmeier Zamora and Chapter 7 Trustee, with proof of service-- for Zamora & Hoffmeier, APC, Trustee's Attorney, Period: 1/9/2021 to 10/19/2021, Fee: $71,720.00, Expenses: $1,895.16. , Zamora & Hoffmeier, APC

Also #4, 5

EH__

[Tele. appr. Larry Simons, chapter 7 trustee]

[Tele. appr. Nancy Zamora, rep, Larry Simons, chapter 7 Trustee]

Docket 171

Tentative Ruling:

11/10/2021

BACKGROUND

On May 19, 2021, Dimlux, LLC ("Debtor") filed a Chapter 11 voluntary petition. On August 25, 2020, UST filed a motion to dismiss or convert the Chapter 11 case. The motion was unopposed, and the case was converted to Chapter 7 on September 29, 2020. On February 16, 2021, the Court approved the employment of Zamora & Hoffmeier, APC as Chapter 7 Trustee's counsel.

On May 4, 2021, Trustee filed a motion to approve compromise with Mansour Barghi. The compromise, *inter alia*, required the cooperation by Mr. Barghi regarding the sale of certain real property located at 4880 Winnetka Ave., Woodland Hills, CA 91364 (the "Property"). The compromise was ultimately approved by Court order entered August 18, 2021.

11:00 AM
CONT... Dimlux, LLC **Chapter 7**

On July 23, 2021, Trustee filed a motion to sell the Property to DaCadez Development, LLC for $1,280,000. The sale motion was granted pursuant to order entered August 24, 2021.

On September 14, 2021, Donald Beury ("Beury") filed an application seeking: (1) approval of his employment in this bankruptcy case and in Debtor's previous bankruptcy case; and (2) seeking approval of $20,000 in fees. On September 24, 2021, the Chapter 7 Trustee filed opposition stating that Beury failed to meet a variety of technical requirements and otherwise did not provide any services that benefited the bankruptcy estate. On September 27, 2021, UST filed an opposition arguing that Beury failed to comply with the local rules and did not meet the "exceptional circumstances" standard necessary for retroactive employment. Beury subsequently filed a reply as well as a variety of documents that attempted to remedy the technical deficiencies in his employment application.

On October 20, 2021, the Chapter 7 trustee filed an application for interim fees in the amount of $47,364.02.

On October 20, 2021, Zamora & Hoffmeier, APC, filed an application for interim fees, seeking an aggregate of $73,615.16 in fees and expenses. On October 27, 2021, UST filed an objection, arguing that the fee application: (1) included a variety of billing entries for tasks that appeared to constitute Trustee services; and (2) the fee application included billable entries for correcting mistakes.

DISCUSSION

As a preliminary matter, the Court the notice of hearing for the fee applications does not appear to have been served on all creditors as required by FED. R. BANKR. P. Rule 2002(a)(6). Specifically, it appears that the only interested parties who received notice of the hearing are those parties that were on the NEF notice list.

1. CHAPTER 7 TRUSTEE'S FEE APPLICATION

The Court notes that the fee application of the Chapter 7 Trustee is not supported by any admissible evidence.

Substantively, the Court notes that the Chapter 7 Trustee appears to have properly calculated the statutory commission under 11 U.S.C. § 326(a) and that the Chapter 7 Trustee may request interim compensation under 11 U.S.C. § 331.

2. APPLICATION FOR COMPENSATION-COUNSEL FOR CHAPTER 7 TRUSTEE

Having reviewed the application for compensation filed by Zamora & Hoffmeier, the Court has some concerns regarding the requested fees. In addition to the concerns raised by UST (i.e. primarily that the application appears to include billing entries for Trustee services), the Court notes that all of the billing entries are attributable to Nancy Zamora and billed at $550/hour. This exacerbates the problem of having counsel bill for administrative or quasi-administrative tasks because the application is replete with entries that are billed at 0.1-0.3 hours and would typically have been handled by a paralegal or other individual with a lower billing rate. While the time billed for the entries appears to be generally reasonable, the billing rate has resulted in a request for compensation that exceeds a customary amount for the services performed.

3. APPLICATION FOR EMPLOYMENT/COMPENSATION-COUNSEL FOR DEBTOR

As noted by the Chapter 7 Trustee and UST, Beury's application for employment fails to meet a variety of technical problems, and it is less than clear that Beury has made a showing that any of his services were of benefit to the bankruptcy estate. Equally important, however, is the unusual procedural posture of this application – the application was filed nearly a year after the case was converted to Chapter 7, and more than a year after Beury filed any documents in this case.

UST's opposition emphasizes the high standard an applicant must meet when seeking retroactive employment. The caselaw cited by UST is further bolstered by the Supreme Court's recent ruling in *Roman Catholic Archdiocese of San Juan v. Feliciano*, 140 S. Ct. 696 (2020). *See, e.g.*, 3 COLLIER'S ON BANKRUPTCY ¶ 327.03[3] (16th ed. 2020) ("Employing similar reasoning in a context outside of professional retention, the Supreme Court in *Acevedo Feliciano* arguably eliminated the use of *nunc pro tunc* orders."). While caselaw reacting to this decision is still developing, Courts have acknowledged that the decision in *Feliciano* may have implications for the relatively common practice of seeking an employment order that authorizes employment effective as of an earlier date. *Compare In re Benitez*, 2020 WL 1272258

11:00 AM
CONT... Dimlux, LLC **Chapter 7**

(Bankr. E.D. 2020) (*nunc pro tunc* employment now inappropriate, but professional can be compensated for services performed pre-approval); *Haigler v. High Tension Ranch, LLC*, 2021 WL 3622149 (W.D.N.C. 2021) (same); *In re Miller*, 620 B.R. 637 (Bankr. E.D. Cal. 2020) (same) *with In re Hunanyan*, 2021 WL 2389273 (Bankr. C.D. Cal. 2021) (*nunc pro tunc* employment still allowed, required showing depends on extent of delay).

Turning to *In re Atkins*, the Court notes that, at a minimum, Beury must demonstrate exceptional circumstances. 69 F.3d 970, 974 (9th Cir. 1995) ("To establish the presence of exceptional circumstances, professionals seeking retroactive approval must satisfy two requirements: they must (1) satisfactorily explain their failure to receive prior judicial approval; and (2) demonstrate that their services benefitted the bankruptcy estate in a significant matter."). Beury has not made any credible effort to satisfy either of the two requirements in *Atkins*.

Furthermore, while wholly unnecessary given the substantive and technical deficiencies with the application, the Court notes that the billing entries are, at best, questionable. For example, there are billing entries that:

1) Relate to work done on a closed bankruptcy case;
2) Relate to work done that does not appear to have any clear connection with the bankruptcy case;
3) Are extremely vague[1]
4) Are incompatible with the docket[2]

Finally, as noted by UST, it is not clear what "significant benefit," Beury's representation could have provided to the estate

TENTATIVE RULING

The Court intends to continue the hearing for proper notice to be given per FRBP 2002(a)(6). The Court is inclined to DENY the application for employment. Chapter 7 Trustee and Counsel to address the issues identified in this tentative ruling.

APPEARANCES REQUIRED.

11:00 AM
CONT... **Dimlux, LLC** **Chapter 7**

Party Information

Debtor(s):

Dimlux, LLC — Represented By
Donald Beury - SUSPENDED -
John E Bouzane

Trustee(s):

Larry D Simons (TR) — Represented By
Nancy H Zamora

United States Bankruptcy Court
Central District of California
Riverside
Judge Mark Houle, Presiding
Courtroom 301 Calendar

Wednesday, November 10, 2021 **Hearing Room 301**

2:00 PM

6:18-16908 Visiting Nurse Association of the Inland Counties **Chapter 11**

Adv#: 6:21-01035 Meislik v. Hutton Foundation, Inc

#7.00 CONT. Status Conference RE: [1] Adversary case 6:21-ap-01035. Complaint by Adam Meislik against Hutton Foundation, Inc. Recovery, and Preservation of Actual Fraudulent Transfer; and (2) Avoidance, Recovery, and Preservation of Constructively Fraudulent Transfer [11 U.S.C. Sections 544(b), 548, 550, and 551; Cal. Civ. Code Sections 3439.04, 3439.05], filed by Adam Meislik, solely in his capacity as the Liquidating Trustee for the Liquidating Trust of Visiting Nurse Association (Attachments: # 1 Adversary Proceeding Cover Sheet) Nature of Suit: (14 (Recovery of money/property - other)),(13 (Recovery of money/property - 548 fraudulent transfer)) (Wood, David)

From: 5/26/21,7/7/21, 9/8/21

EH__

Docket 1

***** VACATED *** REASON: CASE DISMISSED 10/1/21**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Visiting Nurse Association of the	Represented By David M Goodrich Beth Gaschen Jennifer Vicente Ryan W Beall Steven T Gubner Jason B Komorsky

Defendant(s):

Hutton Foundation, Inc	Pro Se

Plaintiff(s):

Adam Meislik	Represented By

2:00 PM

CONT... **Visiting Nurse Association of the Inland Counties** **Chapter 11**

Richard A Marshack
David Wood

2:00 PM
6:20-17828 Christopher Edward Hutchinson **Chapter 7**
Adv#: 6:21-01015 Cotter et al v. Hutchinson et al

#8.00 CONT. Motion to Dismiss Adversary Proceeding Motion to Dismiss 2nd Amended Complaint
(Motion filed 6/28/21)

Also #9

From: 8/11/21

EH__

[Tele. appr. Baruch Cohen, rep. Defendant, Christopher Hutchinson]

[Tele. appr. Misty Perry Isaacson, rep. Plaintiffs]

Docket 30

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Edward Hutchinson — Represented By Paul Y Lee

Defendant(s):

Christopher Edward Hutchinson — Represented By Baruch C Cohen

Veronica Aurora Hutchinson — Represented By Baruch C Cohen

Joint Debtor(s):

Veronica Aurora Hutchinson — Represented By

2:00 PM
CONT... **Christopher Edward Hutchinson** **Chapter 7**

Paul Y Lee

Movant(s):

Christopher Edward Hutchinson	Represented By Baruch C Cohen
Veronica Aurora Hutchinson	Represented By Baruch C Cohen

Plaintiff(s):

Matthew Cotter	Represented By R Gibson Pagter Jr. Misty A Perry Isaacson
Courtney Cotter	Represented By R Gibson Pagter Jr. Misty A Perry Isaacson

Trustee(s):

Larry D Simons (TR)	Pro Se

2:00 PM
6:20-17828 Christopher Edward Hutchinson **Chapter 7**
Adv#: 6:21-01015 Cotter et al v. Hutchinson et al

#9.00 CONT. Status Conference RE: [1] Adversary case 6:21-ap-01015. Complaint by Matthew Cotter, Courtney Cotter against Christopher Edward Hutchinson, false pretenses, false representation, actual fraud))

Also #8

*Alias summoms issued on 3/3/21 for defendant Veronica Hutchinson
*Second amended complaint filed 6/2/21
*Third amended complaint filed 9/17/21

From: 3/31/21,5/5/21,7/28/21, 8/11/21

EH__

[Tele. appr. Baruch Cohen, rep. Defendant, Christopher Hutchinson]

[Tele. appr. Misty Perry Isaacson, rep. Plaintiffs]

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Christopher Edward Hutchinson — Represented By Paul Y Lee

Defendant(s):

Christopher Edward Hutchinson — Represented By Baruch C Cohen

Veronica Aurora Hutchinson — Represented By Baruch C Cohen

2:00 PM
CONT... Christopher Edward Hutchinson **Chapter 7**

Joint Debtor(s):

Veronica Aurora Hutchinson	Represented By Paul Y Lee

Plaintiff(s):

Matthew Cotter	Represented By R Gibson Pagter Jr. Misty A Perry Isaacson
Courtney Cotter	Represented By R Gibson Pagter Jr. Misty A Perry Isaacson

Trustee(s):

Larry D Simons (TR)	Pro Se

2:00 PM
6:20-17926 Douglas Kinion **Chapter 7**
Adv#: 6:21-01072 Canyon Lake Investments, LLC v. Kinion et al

#10.00 CONT. Status Conference re: [1] Adversary case 6:21-ap-01072. Complaint by Canyon Lake Investments, LLC against Douglas Kinion, Shawn Kinion. willful and malicious injury)

From: 7/21/21

EH ___

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Douglas Kinion — Represented By Robert K McKernan

Defendant(s):

Douglas Kinion — Represented By Robert K McKernan

Shawn Kinion — Represented By Robert K McKernan

Joint Debtor(s):

Shawn Kinion — Represented By Robert K McKernan

Plaintiff(s):

Canyon Lake Investments, LLC — Represented By Stuart G Steingraber

2:00 PM
CONT... **Douglas Kinion** **Chapter 7**
Trustee(s):

Arturo Cisneros (TR) Pro Se

2:00 PM
6:21-11005 Brent Anthony Buckner **Chapter 7**
Adv#: 6:21-01069 Skeffington et al v. Buckner

#11.00 CONT Status Conference RE: [1] Adversary case 6:21-ap-01069. Complaint by William Skeffington, Laurie Skeffington against Brent Anthony Buckner. fraud as fiduciary, embezzlement, larceny)),(68 (Dischargeability - 523(a)(6), willful and malicious injury)),(91 (Declaratory judgment)

From: 8/4/21, 8/11/21

EH__

[Tele. appr. Scott Williams, rep. Plaintiff]

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Brent Anthony Buckner — Represented By Michael R Totaro

Defendant(s):

Brent Anthony Buckner — Represented By Candice Candice Bryner

Plaintiff(s):

William Skeffington — Represented By J Scott Williams

Laurie Skeffington — Represented By J Scott Williams

Trustee(s):

Larry D Simons (TR) — Pro Se

2:00 PM
CONT... **Brent Anthony Buckner** **Chapter 7**