

**United States Bankruptcy Court
Central District of California
Los Angeles
Neil Bason, Presiding
Courtroom 1545 Calendar**

Thursday, December 1, 2022

Hearing Room 1545

8:00 AM

2:00-000000

Chapter

- #1.00** Hearings in Judge Bason's courtroom (1545) are now simultaneously (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, and (3) via ZoomGov telephone.
- You are free to choose any of these options, except that evidentiary hearings/trials must be in person in the courtroom (unless otherwise ordered). You do not need to call Chambers for advance approval or notice. ZoomGov appearances are free.

ZoomGov Instructions for all matters on today's calendar:

Meeting ID: 161 542 3694

Password: 383622

Meeting URL: <https://cacb.zoomgov.com/j/1615423694>

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Please connect at least 5 minutes before the start of your hearing, and wait with your microphone muted until your matter is called.

Chapter 13: Persons needing to contact the Chapter 13 Trustee's attorney, either prior to the hearing or during a recess, can call Kaleen Murphy, Esq. at (213) 996-4433.

Zoomgov hearing etiquette: (a) wait until the judge calls on you, so everyone is not talking at once; (b) when you first speak, state your name and, if you are an attorney, whom you represent (do not make your argument until asked to do so); (c) when you make your argument, please pause from time to time so that, for example, the judge can ask a question or anyone else can make an objection; (d) if the judge does not see that you want to speak, or forgets to call on you, please say so when other parties have finished speaking (do not send a "chat" message, which the judge might not see); and (e) please let the judge know if he mispronounces your name or uses the wrong pronoun.

Docket 0

Tentative Ruling:

**United States Bankruptcy Court
Central District of California
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Chapter

- NONE LISTED -

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2:17-23436 Charles Abraham Rodriguez

Chapter 13

#1.00 Hrg re: Motion to modify the automatic stay
for the limited purpose of ratifying a subordinate
loan and recording a subordinate deed of trust

Docket 51

***** VACATED *** REASON: Motion is granted [dkt 61]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Charles Abraham Rodriguez

Represented By
Barry E Borowitz

Movant(s):

BANK UNITED N.A.

Represented By
Diane Tran
Randall Miller
Josephine E Salmon
Joseph C Delmotte

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Thursday, December 1, 2022

Hearing Room 1545

8:30 AM

2:18-14979 Robert John Torres

Chapter 13

#2.00 Hrg re: Motion for order partially disallowing duplicate proof of claim of Chase Bank USA, N.A. [Claim #7 on court's claims register]

Docket 31

Tentative Ruling:

Grant.

Proposed order(s): Unless otherwise ordered, Movant is directed to lodge proposed order(s) on the foregoing matter(s) via LOU within 7 days after the hearing date (per LBR 9021-1(b)(1)(B)).

Appearances are not required. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

Key documents reviewed (in addition to motion papers): (no opposition on file as of the preparation of this tentative ruling).

Party Information

Debtor(s):

Robert John Torres

Represented By
Barry E Borowitz

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Los Angeles
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Thursday, December 1, 2022

Hearing Room 1545

8:30 AM

2:22-11347 Adonis Ogbeni

Chapter 13

#3.00 Hrg re: Motion for authority to
refinance real property

Docket 75

Tentative Ruling:

Continue to 1/12/22 at 8:30 a.m. to address the issues set forth below.
Appearances are not required on 12/1/22. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

Reasons for continuance: for Debtor to address the Opposition by Mark S. Adams, State Court Receiver ("Receiver") (dkt. 93) in a manner consistent with the responses of the Chapter 13 Trustee (dkt. 76), MTGLQ Investors, L.P. ("Investors") (dkt. 86), and U.S. Bank Trust National Association, as Trustee for MED Loan Trust IV ("US Bank") (dkt. 94). See Reply (dkt. 96, 97) *and see also* initial Orders erroneously granting the motion (dkt. 79, 87), subsequent Order vacating same (dkt. 88), and papers supporting the motion (dkt. 81, 82, 98).

Deadlines: The tentative ruling is to set a **deadline of 1/6/23 at noon** for Debtor to file, and serve on all parties in interest via U.S. mail, a supplement providing evidence responsive to the Receiver's opposition and a re-calculated estimated payoff statement, or alternatively a status report. The tentative ruling is that any supplemental opposition or reply may be made orally at the continued hearing.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

Party Information

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CONT... Adonis Ogbeni

Chapter 13

Debtor(s):

Adonis Ogbeni

Represented By
Anthony Obehi Egbase

Movant(s):

Adonis Ogbeni

Represented By
Anthony Obehi Egbase

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
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Thursday, December 1, 2022

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8:30 AM

2:22-12812 Sergio Alfredo Ramirez

Chapter 13

#4.00 Hrg re: Debtor's Motion to Convert Chapter 13 Case to Chapter 11
Pursuant to 11 U.S.C. Section 1307(d) and LBR 3015(q)(3)

Docket 40

Tentative Ruling:

Grant.

Proposed order(s): Unless otherwise ordered, Movant is directed to lodge proposed order(s) on the foregoing matter(s) via LOU within 7 days after the hearing date (per LBR 9021-1(b)(1)(B)).

Appearances are not required. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

Key documents reviewed (in addition to motion papers): N/A (no opposition on file as of the preparation of this tentative ruling)

Party Information

Debtor(s):

Sergio Alfredo Ramirez

Represented By
Lionel E Giron

Movant(s):

Sergio Alfredo Ramirez

Represented By
Lionel E Giron
Lionel E Giron
Lionel E Giron

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CONT... Sergio Alfredo Ramirez

Chapter 13

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 1545

8:30 AM

2:22-14881 Virginia Margaret Porchia-Thomas

Chapter 13

#5.00 Hrg re: Motion to Avoid Junior Lien on Principal Residence with
Statebridge Company, LLC, its Successors and/or Assigns

Docket 20

***** VACATED *** REASON: Per stipulation (dkt. 27) and order thereon.**

Tentative Ruling:

Party Information

Debtor(s):

Virginia Margaret Porchia-Thomas

Represented By
Kevin T Simon

Movant(s):

Virginia Margaret Porchia-Thomas

Represented By
Kevin T Simon

Trustee(s):

Kathy A Dockery (TR)

Pro Se

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8:30 AM

2:22-15664 Chauncey Espino

Chapter 13

#6.00 Hrg re: Whether to modify or extend bar

Docket 8

Tentative Ruling:

The tentative ruling is to extend the bar against being a debtor in bankruptcy through 5/6/2023 (180 days from dismissal of this case on 11/7/22) for willful failure to appear before this Court in proper prosecution of this bankruptcy case, pursuant to 11 U.S.C. 109(g)(1) for the reasons set forth in the Dismissal Order (dkt. 13) and in view of Debtor's failure to file any papers opposing a bar. Appearances are not required. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

After the hearing this Court will prepare the order.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

Key documents reviewed: N/A (no opposition on file as of the preparation of this tentative ruling)

Party Information

Debtor(s):

Chauncey Espino

Pro Se

Trustee(s):

Kathy A Dockery (TR)

Pro Se

**United States Bankruptcy Court
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2:22-13069 George Gordon Strong, III

Chapter 13

#7.00 Hrg re: Motion by Creditors Robert Hunt and David Vosicher to Dismiss Case

Docket 71

Tentative Ruling:

There is no tentative ruling except on certain preliminary issues set forth below.

Appearances required.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

Key documents reviewed: Creditors Hunt/Vosicher motion, request for judicial notice ("RJN"), and supplement (dkt. 71, 77); response of Creditors Michael and Thomas Horner, as co-trustees, in support of the motion ("Horners' Response," dkt. 76); Debtor's opposition and supplement ("Opp.," dkt. 78, 80); Debtor's Objection to RJN #6, 7, and 11 (dkt. 79); Reply (dkt. 81).

(1) Preliminary issues

(a) Horners' Response (dkt. 76)

The tentative ruling is to sustain Debtor's objection to Horners' Response because it is in effect a separate motion filed and served a day before Debtor's opposition papers were due, and (i) to the extent (if any) that it raises new issues, or gives the Horners standing that they would not otherwise have, there is insufficient cause to permit such shortened time (see Rule 9006(c)(1), Fed. R. Bankr. P.) and conversely (ii) to the extent the response adds nothing to the motion it is unnecessary.

(b) RJN

The tentative ruling is technically to overrule Debtor's objections to the request for judicial notice ("RJN") filed by creditors Hunt and Vosicher, but

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only for the limited purpose of noting that Debtor held himself out as an investment advisor, and that his brokerage license was expired, all of which is inconclusive and does not appear to add weight to either side's arguments.

(2) Whether Debtor is a "stockbroker" under 11 U.S.C. 101(53A) & 741, thereby making him ineligible for chapter 11 or 13 relief under 109(d) & (e)

There is no tentative ruling, but the parties are directed to address (a) whether the facts and circumstances presented are closer to *In re Slatkin*, 525 F.3d 805, 819 (9th Cir 2008) or to *In re Baker & Getty Fin Servs.*, 106 F.3d 1255 (6th Cir 1997), (b) whether this lower court is bound by the statements by the Court of Appeals for the Ninth Circuit in *Slatkin*, notwithstanding Movants' assertion that those statements are dicta (because even dicta may be binding if it is reasoned dicta), and (c) if the application of the statutory language to the facts presented is ambiguous, what was Congress' intent in excepting stockbrokers from relief under chapters 11 and 13.

Party Information

Debtor(s):

George Gordon Strong III

Represented By
Sevan Gorginian

Movant(s):

David Vosicher

Represented By
Stella A Havkin

Robert Hunt

Represented By
Stella A Havkin

Trustee(s):

Kathy A Dockery (TR)

Pro Se

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2:22-13069 George Gordon Strong, III

Chapter 13

#8.00 Cont'd hrg re: Motion to Dismiss Debtor's Chapter 13 Case
fr. 11/3/22

Docket 54

Tentative Ruling:

Tentative Ruling 12/1/22:

Appearances required.

At the hearing on 11/3/22 this Court was persuaded to adopt its tentative ruling (reproduced below) to "Deny [this motion to dismiss this case] in part (as to the debt limits of 11 U.S.C. 109(e)) and continue regarding all other issues to [today]" with a deadline of 11/23/22 for Debtor to provide certain financial information to Movants' counsel. First, this Court's records are that Debtor's counsel was supposed to lodge a proposed written order memorializing the foregoing oral rulings, and this Court has no record of such an order being lodged. The tentative ruling is to direct Debtor's counsel to lodge such an order forthwith, so that the written record is clear.

Second, Debtor's status report (dkt. 82) reflects that he partially met that deadline by providing tax returns for 2019 and 2020, and some profit and loss statement, but Debtor has not provided the 2021 tax returns and other financial information. The tentative ruling is to continue this matter again, to 1/12/23 at 8:30 a.m., with a **deadline of 1/5/23** for Debtor to provide the missing information, failing which the tentative ruling will be to grant the motion. If Debtor meets that deadline, the tentative ruling will be to grant a further continuance with a deadline for Movants to file and serve supplemental papers regarding Debtor's alleged bad faith.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted tentative rulings.

Tentative Ruling for 11/3/22:

Deny in part (as to the debt limits of 11 U.S.C. 109(e)) and continue regarding

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all other issues to 12/1/22 at 8:30 a.m., with a **deadline of 11/23/22** for Debtor to file and serve his declaration with his missing financial information, which may be partially redacted or, if appropriate, **filed under seal** by presenting the Clerk of this Court with a copy of an order adopting this tentative ruling, all as set forth below. Appearances are not required on 11/3/22. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

Proposed order: Unless otherwise ordered, Debtor is directed to lodge a proposed interim order, permitting him to file documents under seal and continuing this hearing, via LOU within 7 days after the hearing date (per LBR 9021-1(b)(1)(B)), and attach a copy of this tentative ruling, thereby incorporating it as this Court's final ruling.

Key documents reviewed (in addition to motion papers): Opposition (dkt. 59); Reply (dkt. 62).

Analysis

(A) Debtor is within the chapter 13 debt limits

Chapter 13 eligibility under 109(e) "should normally be determined by the debtor's originally filed schedules, checking only to see if the schedules were made in good faith." *In re Duque*, No. BAP CC-05-1069-MAMC, 2005 WL 6960181, at *4 (9th Cir. BAP Dec. 30, 2005) (citing *In re Scovis*, 249 F.3d 975, 982 (9th Cir. 2001)). There is an exception if Movants can point to or present concrete, specific evidence indicating that Debtor manipulated the scheduled debt amounts or acted in bad faith in characterizing them as contingent or unliquidated, so as to be able to fall within section 109(e)'s debt limits. See *In re Stahl*, No. 2:20-BK-11739-WB, 2021 WL 1293853 (9th Cir. BAP. Apr. 7, 2021)).

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George Gordon Strong, III

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Liquidated debts are those that are capable of "ready determination and precision in computation of the amount due." *In re Nicholes*, 184 B.R. 82, 89 (9th Cir. BAP 1995) (citation omitted). "The test for 'ready determination' is whether the amount due is fixed or certain or otherwise ascertainable by reference to an agreement or by a simple computation." *Id.*, 184 B.R. at 89 (citing *In re Sylvester*, 19 B.R. 671, 673 (9th Cir. BAP 1982)).

If the "amount of a certain debt" may be determined by a "simple hearing," the debt is liquidated. *In re Slack*, 187 F.3d 1070, 1073-74 (9th Cir. 1999) (citations omitted). But a debt should be treated as unliquidated if "an extensive and contested evidentiary hearing in which substantial evidence may be necessary to establish amounts or liability." *Id.*

The tentative ruling is that Debtor has sufficiently established by a preponderance of the evidence that the major claims against him are unliquidated (the "Horner," "Hunt," "Vosicher," and "Avoyer" claims). Although the dollar amounts of portfolio losses can be calculated (e.g., Reply, Ex. 7, and Opp., dkt. 59, Ex. E, Avoyer claim for \$1,654,149.00), that is different from the dollar amount of any claim - i.e., how much of any losses are attributable to any wrongdoing for which Debtor might be held liable. The latter amounts are unliquidated. See Opp. (dkt. 59) p. 10:19-22 and pp. 11:8-13:26 (citing, *inter alia*, *In re Ho*, 274 B.R. 867 (9th Cir. BAP 2002)).

If those claims are excluded, the remaining claims against Debtor are within the debt limits of 11 U.S.C. 109(e), based on this Court's review of both (a) the filed proofs of claim and (b) his bankruptcy Schedule D (dkt. 1 at PDF p. 31) and Schedule E/F (dkt. 1, summarized at PDF p. 31). The motion papers do not establish otherwise.

In sum, Movants have not met their burden to show that Debtor is ineligible for chapter 13.

Note: Debtor also argues that the major claims against him are "contingent," but the tentative ruling is that Debtor has not established any contingency. Those major claims are disputed, which is not the same. See *In re Fountain*, 612 B.R. 743, 748 (9th Cir. BAP 2020).

But that does not matter because claims must be both liquidated *and* non-contingent to qualify under section 109(e). *Ho*, 274 B.R. 867, 871. Therefore, the fact that they are unliquidated means they are not counted for purposes of Debtor qualifying under section 109(e), regardless whether they are or are not contingent.

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Chapter 13

(B) Alleged bad faith

The tentative ruling is that, without more financial information from Debtor, it is impossible to know whether he has acted in good faith, or engaged in bad faith sufficient to warrant dismissal under 11 U.S.C. 1307(c). This Court must consider the totality of the circumstances, including the following:

- (1) whether the debtor misrepresented facts in his petition or plan, unfairly manipulated the Bankruptcy Code, or otherwise filed his Chapter 13 petition or plan in an inequitable manner;
- (2) the debtor's history of filings and dismissals;
- (3) whether the debtor only intended to defeat state court litigation; and
- (4) whether egregious behavior is present. [*In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999) (cleaned up; citations omitted)]

This Court also must bear in mind that:

Neither malice nor actual fraud is required to find a lack of good faith. The bankruptcy judge is not required to have evidence of debtor ill will directed at creditors, or that debtor was affirmatively attempting to violate the law -- malfeasance is not a prerequisite to bad faith. [*Id.* at 1224-25 (cleaned up; citations omitted).]

This Court previously has noted a lack of sufficient information about Debtor's possible good or bad faith. See Order (dkt. 32), p. 8 of 9 (para. "(5)"). Although Debtor's Opposition asserts that various documents have been produced, and makes various arguments to rebut the Motion's evidence and arguments in support of a bad faith finding, the Opposition does not overcome the need for Debtor to provide the missing information described by Movants. See Motion (dkt. 54), p. 9:7-20; and *cf.* Opp. (dkt. 59) pp. 11:24-27 and 15:1-17:15.

Although arguably Debtor's failure to provide the missing information in his opposition papers could support dismissal right now, the tentative ruling is that a continuance to provide such information is warranted. This Court notes Debtor's arguments about his efforts and his actual production of a substantial number of documents so far; but he does not appear to have established an inability to provide those things if given a short period of additional time.

The tentative ruling is to set the deadline at the start of this tentative

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ruling for additional documents from Debtor, but not to establish any deadlines for additional briefing at this time. Instead, the tentative ruling is to address the issues without additional briefs at the next hearing, and determine at that time whether further briefing is necessary.

In addition, the tentative ruling is that, to the extent Debtor files any information that may be appropriately redacted, he may redact such information; and in that event Debtor must lodge a proposed order permitting him to file an unredacted version under seal, and he must serve that unredacted version on Movants. The tentative ruling is not to require any separate motion or application to be permitted to file such documents under seal; but to permit such filing under seal on this Court's own motion, in the interest of efficiency, with all rights reserved for any parties in interest, including the United States Trustee, to challenge, at a later date, whether any documents should not be under seal. *See, e.g.,* 11 U.S.C. 105(a), 107 *and* 112 (redaction of names of minor children); *and* Rule 9018 (Fed. R. Bankr. P.).

Meanwhile, it appears appropriate to provide the parties with the following tentative rulings on certain subsidiary issues. These tentative rulings can be addressed at the continued hearing: they do not need to be contested in connection with this 11/3/22 hearing (all rights are reserved).

First, this Court gives very little weight to the finding of "good faith" in connection with Debtor's motion to continue the automatic stay under 11 U.S.C. 362(c)(3). As explained in the order granting that motion, "good faith" is a narrow finding in that context - *i.e.*, there is a "low bar" to establish enough good faith to continue the automatic stay, in view of the benefits of the automatic stay to protect creditors, not just Debtor. *See* Order (dkt. 34) pp. 2-3 (para. "6.(2)" and "6.(3)").

Second, the preclusive effect of Debtor's divorce judgment only goes so far. The property division in that divorce might be sufficiently egregious that (x) it would be avoidable under applicable nonbankruptcy law (*see, e.g.,* Reply, dkt. 62, pp. 9:21-10:4) or (y) it would be evidence of a lack of good faith for purposes of federal law, under 11 U.S.C. 1307.

Third, this Court distinguishes the issues at this stage from other issues that might arise later in this case. As stated in the concurrence in *Ho*, if the case is not dismissed on the present motion, the issue of good or bad faith can be properly revisited at the plan confirmation stage, at which time the burden will be on Debtor to establish, *inter alia*, that the plan has been

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proposed in good faith. 11 U.S.C. 1325(a)(3); *Ho*, 274 B.R. at 883. In addition, if Movants' allegations of wrongdoing are correct, they might be able to establish nondischargeability. See 11 U.S.C. 523, 1328. But those confirmation and dischargeability issues are not presently before this Court.

Party Information

Debtor(s):

George Gordon Strong III

Represented By
Sevan Gorginian

Movant(s):

Michael Horner and Thomas Horner

Represented By
Byron Z Moldo
Sonia Singh

Trustee(s):

Kathy A Dockery (TR)

Pro Se

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2:22-12411 William Leo Creedon

Chapter 13

#9.00 Hrg re: Motion for relief from stay [NA]

WALKER CREEDON
vs
DEBTOR

Docket 147

Tentative Ruling:

Please see the tentative ruling for calendar no. 10 (12/1/22 at 8:30 a.m.).

Party Information

Debtor(s):

William Leo Creedon

Represented By
Monserrat Morales
Robert M. Klein

Movant(s):

Walker Creedon

Represented By
James Bulger

Trustee(s):

Kathy A Dockery (TR)

Pro Se

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2:22-12411 William Leo Creedon

Chapter 13

#10.00 Cont'd hrg re: Motion for relief from stay [NA]
fr. 10/11/22

KEESE HARGRAVES, LLP
vs
DEBTOR

Docket 98

Tentative Ruling:

Tentative Ruling for 12/1/22

Grant the motions for relief from the automatic stay filed by Debtor's son, Walker Creedon (dkt. 147), and the Keese Hargraves LLP firm (dkt. 98) (the "R/S Motions"), if this bankruptcy case is not dismissed, all as set forth below.
Appearances required.

Proposed order(s): Unless otherwise ordered, Movant(s) are directed to lodge proposed order(s) on the foregoing matter(s) via LOU within 7 days after the hearing date (per LBR 9021-1(b)(1)(B)) and attach a copy of this tentative ruling, thereby incorporating it as this Court's final ruling.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

Key documents reviewed (in addition to motion papers): Debtor's limited Opposition to the Keese Hargraves R/S Motion (dkt. 114); Debtor's opposition to the Walker Creedon motion (dkt. 156) and Walker Creedon's reply (dkt. 161).

Analysis:

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William Leo Creedon

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(1) Limited relief. If this bankruptcy case is not dismissed (see calendar no. 11), the tentative ruling is to modify and condition the automatic stay under 11 U.S.C. 362(d)(1) such that the movants may proceed in the nonbankruptcy forum to final judgment (including any appeals) in accordance with applicable nonbankruptcy law, subject to (A) a limited budget - the dollar amount of which can be addressed at the hearing, sufficient for Debtor to defend himself but not sufficient for Debtor to engage in the types of protracted delays and abuses that he has exhibited in this bankruptcy case and that, according to the limited record before this Court, he appears to have engaged in before the State Court - and (B) the following limitations (Judge Bason's standard limitations).

(a) No enforcement against property of the bankruptcy estate. The stay remains in effect with respect to enforcement of any judgment against property of the debtor's bankruptcy estate - any such property shall be distributed when and how provided by the Bankruptcy Code. Nevertheless, the movant is permitted to enforce its final judgment by (i) collecting upon any available insurance in accordance with applicable nonbankruptcy law or (ii) proceeding against the debtor as to any property that is not property of this bankruptcy estate. See, e.g., 11 U.S.C. 362(b)(2)(B) & 541(b)(7) (collection of domestic support obligations from ERISA qualified retirement plans).

(b) Claim allowance, priority, and discharge issues. Any claims arising from the nonbankruptcy litigation are subject to this Bankruptcy Court's jurisdiction regarding claim allowance and priority, and the existence and scope of any bankruptcy discharge.

(c) No relief in *other* bankruptcy cases. To the extent, if any, that the motion seeks to terminate the automatic stay in *other* past or pending bankruptcy cases, such relief is denied on the present record. See *In re Ervin* (Case No. 14-bk-18204-NB, docket no. 311).

In limiting the nonbankruptcy litigation as set forth above, this Bankruptcy Court emphasizes that it does not seek in any way to impinge on the authority of the Nonbankruptcy Courts presiding over the nonbankruptcy action. Rather, this Bankruptcy Court takes seriously its obligations, as a subordinate unit of the District Court, to manage this bankruptcy case. Those

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obligations include taking into consideration the interests of those creditors who are not parties to the underlying nonbankruptcy litigation, and preserving the bankruptcy estate by placing limits on any relief from the automatic stay that Congress has mandated (11 U.S.C. 362(a) & (d)).

(2) Additional analysis:

The Bankruptcy Court "shall grant relief from the stay" upon a showing of "cause." 11 U.S.C. 362(d)(1). Such relief need not take the form of a complete termination of the automatic stay, but instead may include "modifying or conditioning such stay." *Id.*

"Cause" is determined on a case-by-case basis." *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1166 (9th Cir.1990). In determining whether "cause" exists to grant relief from the automatic stay to allow a movant to pursue litigation in a non-bankruptcy forum, courts in the Ninth Circuit have examined the factors set forth in *In re Curtis*, 40 B.R. 795, 799–800 (Bankr. D. Utah 1984). See *In re Merriman*, 616 B.R. 381, 389 & n. 5 (9th Cir. BAP 2020); *In re Kronmeyer*, 405 B.R. 915 (9th Cir. BAP 2009); *In re Plumberex Specialty Prods., Inc.*, 311 B.R. 551, 559–60 (Bankr. C.D. Cal.2004). Those factors are: (1) Whether the relief will result in a partial or complete resolution of the issues; (2) The lack of any connection with or interference with the bankruptcy case; (3) Whether the foreign proceeding involves the debtor as a fiduciary; (4) Whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases; (5) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation; (6) Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question; (7) Whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties; (8) Whether the judgment claim arising from the foreign action is subject to equitable subordination under Section 510(c); (9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f); (10) The interests of judicial economy and the expeditious and economical determination of litigation for the parties; (11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and (12) The impact of the stay on the parties and the "balance of hurt." *Plumberex*, 311 B.R. at 559. "[W]hile the *Curtis* factors are widely used to

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determine the existence of 'cause,' not all of the factors are relevant in every case, nor is a court required to give each factor equal weight." *In re Landmark Fence Co., Inc.*, 2011 WL 6826253 at *4 (C.D. Cal. Dec. 9, 2011). *Accord Merriman*, 616 B.R. 381, 389.

Based on the present record, the tentative ruling is that these factors weigh in favor of granting relief as set forth above. The most significant factors are: (1) (partial or complete resolution of issues), (2) (connection to/interference with bankruptcy case), (4) (specialized tribunal), (7) (prejudice to other creditors), (10) (judicial economy and expeditious and economical litigation); (11) (readiness for trial); and (12) (balance of hurt). On those issues, the tentative rulings are as follows.

As to the Walker Creedon personal injury action, Debtor argues that the relief will not fully resolve the issues because his son inevitably will bring a "non-dischargeability claim" involving "the same parties" and arising "from the same set of facts." Opp., (dkt. 156), p. 7:3-5. But, first, Congress has required that the issues be bifurcated: this Court is prohibited from trying personal injury matters, and conversely dischargeability matters can only be addressed within this bankruptcy case. This Court cannot disregard Congress' mandate. See Reply (dkt. 161), p. 2:15-20 & 5:6-13 (citing 28 USC 157(b)(2)(B), (O), 28 U.S.C. 157(b)(5)), and see also 28 U.S.C. 157(b)(2)(I).

Second, there need not be any substantial inefficiency in such bifurcation. Capable legal counsel can frame the issues in nonbankruptcy litigation in such a way that, due to issue preclusion, the nondischargeability issues will be narrowed or can be determined as a matter of law.

Third, the dispute over Movant's claim, and the nondischargeability issues, need not unduly delay this bankruptcy case (if it is not dismissed). Debtor can propose a plan that devotes all of his disposable income to paying whatever claims are eventually allowed, and meanwhile establish disputed claims reserve(s) to hold distributions on any disputed claims.

Debtor asserts that the scheduled personal injury trial likely would have been continued by the State Court even without this bankruptcy case; that re-setting trial in the State Court at this point will be delayed due to backlogs; and that he wants to conserve the Estate's "time and resources" in resolving disputes quickly in bankruptcy court. Opp. (dkt. 156), pp. 4:2 & 8:15-20. But, as Movant points out, it was Debtor who elected to file his bankruptcy petition six days before his deposition and only a "month before" the scheduled trial (Motion, dkt. 147, p. 7; Reply, dkt. 161, p. 2:9-14 & p. 5:3-6) - there is no

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evidence that other factors impelled him to file his petition on the eve of that scheduled trial. In addition, this Court cannot, in the name of alleged efficiency, deprive Movant of his right to a jury trial, or preside over a personal injury matter that Congress has prohibited this Court from adjudicating. Moreover, Debtor has not exhibited either efficiency nor speediness in proposing any legitimate plan to restructure his debts in this bankruptcy case. To the contrary, he appears to have been using this case for purposes of delay and increasing the expense to his son and former wife; so there is no reason to believe that, if this Court somehow could preside over the personal injury dispute, that would save expenses.

As to a specialized tribunal, this Bankruptcy Court does not preside over personal injury trials, so the State Court is better suited to that litigation. Turning to the divorce proceedings, this Bankruptcy Court cannot preside over any divorce litigation. In addition, it has been asserted without dispute that Superior Court Judge Silberman has been presiding over the divorce proceedings throughout their (now more than) ten year history, which gives him (or any judicial colleague who might succeed him and gain the benefit of conferring with him) the effective status of a specialized tribunal. See Keese Hargraves R/S Motion (dkt. 98), p. 6.

As for the "balance of hurt," and more broadly all of the facts and circumstances, Debtor's acts and omissions within this bankruptcy case have already caused substantial delay and waste of time and resources. He has proposed

, and Debtor appears to have attempted to use the automatic stay as a sword, not a shield, to drive up the expenses, and delay resolution of claims, of his son and his former wife, who are the principal creditors in this case. Those issues will be more fully addressed in connection with the order to show cause why this case should not be dismissed with a bar, or other remedies imposed (calendar no. 11, 12/1/22 at 8:30 a.m.).

In sum, the tentative ruling is that the *Curtis* factors, and all of the facts and circumstances, favor granting relief from the automatic stay as set forth above. Alternatively, the tentative ruling is that all of the foregoing analysis also favors dismissal of this bankruptcy case, and imposition of a bar against being a debtor in future bankruptcy cases.

(3) Effective date of relief

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Deny the request to waive the 14-day stay provided by FRBP 4001(a) (3) for lack of sufficient cause shown.

(4) Co-debtor stay

Any co-debtor stay (11 U.S.C. 1301(c)) has not been shown to have any basis for any different treatment from the stay under 11 U.S.C. 362(a), so the tentative ruling is to grant the identical relief regarding any co-debtor stay.

Tentative Ruling for 10/11/22

Continue to 12/1/22 at 8:30 a.m. to be concurrent with the continued hearing on this Court's OSC (re dismissal etc.) (dkt. 87), in view of this Court's oral ruling at a hearing on 10/6/22 at 8:30 a.m. denying without prejudice Debtor's application to employ special litigation counsel to represent him in the divorce proceedings.

Appearances are not required on 10/11/22. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted tentative rulings.

Party Information

Debtor(s):

William Leo Creedon

Represented By
Monserrat Morales
Robert M. Klein

Movant(s):

Keese Hargraves LLP

Represented By
Leonard Pena

Trustee(s):

Kathy A Dockery (TR)

Pro Se

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#11.00 Cont'd OSC: Why This Case Should Not be Dismissed
or Converted, or Other Remedies Imposed
fr. 10/6/22

Docket 87

Tentative Ruling:

Tentative Ruling for 12/1/22:

Appearances required by Debtor and Debtor's Counsel. The tentative ruling is to dismiss this case with a permanent bar to being a debtor in any future bankruptcy case, absent a future order of this Court lifting that bar, and additionally and alternatively with a concurrent 180-day bar under 11 U.S.C. 109(g)(1).

Proposed order: Unless otherwise ordered, Sally Creedon is directed to lodge a proposed order on the foregoing matter(s) via LOU within 7 days after the hearing date (per LBR 9021-1(b)(1)(B)) and attach a copy of this tentative ruling, thereby incorporating it as this Court's final ruling.

Key documents reviewed (in addition to Order to Show Cause, "OSC," dkt. 87): Debtor's declaration of service (dkt. 93); Scheduling Order (dkt. 126); Debtor's brief (dkt. 155); former wife Sally Creedon's brief (dkt. 162); son Walker Creedon's brief (dkt. 163); and Debtor's proposed plans, bankruptcy schedules, statement of financial affairs, and the other filed documents in this bankruptcy case.

The reasons for the foregoing tentative ruling are as stated in the above-referenced documents, as well as the findings of fact and conclusions of law stated on the record at the hearings on this matter, and in the tentative rulings for calendar nos. 9 and 10 (12/1/22 at 8:30 a.m.), all leading to ultimate findings of bad faith, willful failure to appear in proper prosecution of this case, and consideration of the totality of the circumstances, taking into consideration: "(1) whether the debtor misrepresented facts, unfairly manipulated the Bankruptcy Code or otherwise proposed the plan in an

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inequitable manner; (2) the history of the debtor's filings and dismissals; (3) whether the debtor intended only to defeat state court litigation; and (4) whether the debtor's behavior was egregious." *In re Leavitt*, 171 F.3d 1219, 1224 (9th Cir. 1999). The tentative ruling is that every one of these considerations weighs in favor of dismissal under pursuant to 11 U.S.C. §§ 105(a), 349(a), 1307(c) including (c)(1) and (3), and, alternatively, pursuant to this court's inherent powers to manage its own docket. See *In re Glover*, 537 Fed.Appx. 741 (9th Cir. 2013) (affirming dismissal with a five-year bar to refile under 11 U.S.C. § 105(a)); *Leavitt*, 171 F.3d 1219 (affirming dismissal with prejudice).

All of the foregoing is subject to the following additions and caveats.

(1) State Court matters

The tentative ruling is that the evidence of the State Court's contempt rulings and determinations that Debtor has failed to comply with that Court's orders are both relevant and admissible. See Rule 201(b)(2) (Fed. R. Evid.). See also S. Creedon Brief (dkt. 162), p. 20:13-24 (and evidence cited therein, including at dkt. 162-3, Zolkin Decl. Ex. 1 (Tr., Superior Ct., Case No. GD050883, 10/19/22), pp. 7:1-11, 8:1-8, & 9:8-25 (PDF pp. 14-16)). See also S. Creedon Decl. (dkt. 162-1) Ex. 13 (Tr., Superior Ct., Case No. GD050883, 11/15/19) pp. 80:9-84:9 (Bates pp. 136-143); and Tr., Superior Ct., Case No. GD050883, 1/23/20) pp. 1:13-4:11 (Bates pp. 154-157)). See also S. Creedon Decl. (dkt. 162-1) Ex. 14 (findings and order re contempt).

Alternatively, the tentative ruling is that this Court would reach the same findings of fact and conclusions of law without such evidence of proceedings in the State Court.

(2) Allegations not considered

The tentative ruling is not to rely on the substance of any alleged communications between Debtor and the Chapter 13 Trustee. See Sally Creedon Brief (dkt. 162), p. 18:5-21. Likewise, the tentative ruling is not to rely on any alleged conversations between Debtor and Sally Creedon or between Debtor and his son Garrett Creedon, or on Debtor's alleged nondisclosure of one of two Rolex watches with different colored faces. The tentative ruling is that an evidentiary hearing would be necessary or appropriate before taking those alleged facts into consideration, and that the expense and delay of an evidentiary hearing is not warranted or necessary.

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(3) Acknowledgment of Walker Creedon claim

The tentative ruling is not to rely on the objection of Walker Creedon that Debtor's plan allegedly "does not even acknowledge that a debt [to him] is claimed to be owed" (dkt. 163, p. 3:17-19), because this Court is not aware that the local form of chapter 13 plan requires any acknowledgment of individual general unsecured claims.

(4) Debtor's alleged intent not to pay creditors

The tentative ruling is not to take into account against Debtor any statements he allegedly made that he does not intend to pay his former wife Sally Creedon or his son Walker Creedon. The tentative ruling is that there is insufficient showing that this was anything other than Debtor's understanding (or misunderstanding) of what he legitimately might be able to do in a bankruptcy case.

(5) Use of bankruptcy tools or options

The tentative ruling is not to take into account against Debtor any use of legitimate bankruptcy tools or options. In other words, all debtors are entitled to exclude some revenues from the disposable income that is available to pay creditors, or to include various expenses, if those things are adequately supported by detailed disclosure and analysis. But this Court does take into account Debtor's failure to provide sufficient detail and analysis.

For example, Debtor has not adequately supported, in response to this OSC or anywhere else in the record before this Court, his purported monthly unreimbursed business expenses, or the purported net benefit of his proposed expenditures on his boat and home that he rents (from his mother in law), or his charitable contributions (which apparently have increased from their historical level). More generally, despite this Court's repeated questioning how Debtor can have monthly gross income of over \$78,000.00 per month (OSC, dkt. 87, at PDF p. 5) and yet propose to pay little or nothing to his creditors, Debtor has failed to "do the math" and cite legal authority to show how this is necessary or appropriate.

Note: This Court is also troubled by the lack of disclosure of how Debtor apparently has structured his compensation with his employer so as to include loans. The tentative ruling is that,

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although generally a repayment of loans from retirement accounts is permissible, it can be an abuse of bankruptcy to shift a very substantial dollar amount of compensation into the form of payments into retirement accounts that is then offset by loans (whether or not those loans are forgivable). The tentative ruling is that Debtor has not adequately explained that issue. Alternatively, the tentative ruling would be to reach the same ultimate findings of fact and conclusions of law regardless of this issue.

(6) Representations of Debtor's counsel to the State Court

Solely for purposes of this tentative ruling, this Court presumes that Debtor's counsel was only confused, not consciously lying when, one day prior to the Chapter 13 Trustee's extensive objections to Debtor's proposed plan, counsel represented to the State Court that "we ha[ve] gotten sign-offs from the chapter 13 trustee that the plan is feasible and confirmable." S. Creedon Brief (dkt. 162), p. 18:21-22 (citation omitted). More generally, on the record before this Court, the tentative ruling is that none of this Court's findings of fact or conclusions of law regarding Debtor's acts or omissions have been shown to be attributable to Debtor's counsel (either bankruptcy counsel or nonbankruptcy counsel).

(7) Debtor's own acts and omissions

The tentative ruling is that it is Debtor himself who is responsible for the acts and omissions established by a preponderance of the evidence on the record before this Court. It is Debtor himself who has elected to propose repeatedly - in proceedings regarding his budget, and in his proposed chapter 13 plans - that, despite very large monthly income, he can pay little or nothing to his creditors. It is Debtor himself who has proposed to pay instead for "expenses" such as his boat, manicures, expensive clothing, and other matters, without a sufficient showing in the record before this Court how all of those things and other purported expenses are appropriate. It is Debtor himself who filed this case on the eve of trial in his son's personal injury action, and just prior to important adjudications in his 10-year old divorce proceedings. It is Debtor himself who opted to file this bankruptcy case with the only creditors being his son, his former wife, their attorneys, and his employer (with whom Debtor has apparently restructured his finances so as to receive compensation through loans, or at least has never adequately

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explained otherwise). It is Debtor himself who has not disclosed in papers filed in this Court (including as required by the instructions on his bankruptcy Schedule I, line 8.a.) any details of his alleged business expenses. It is Debtor himself who has not disclosed his prepetition transfers that Sally Creedon has uncovered (prepetition increased rent with his mother in law, and transfer of his book of business). It is Debtor himself who proposed to retain, at the expense of the bankruptcy estate, divorce counsel to litigate a dismissed appeal, without ever providing a cost/benefit analysis even attempting to show how that this proposed use of funds, in that very expensive and protracted litigation, was for the benefit of the estate rather than for Debtor's own benefit. It is Debtor himself who has engaged in the other acts and omissions described in the briefs filed by his former wife, his son, and the other sources referenced above, including the acts and omissions found and determined by the State Court.

(8) Factual issues that might be in dispute

To the extent Debtor disputes the factual assertions in the parties' briefs, or in this tentative ruling, Debtor is encouraged to specify at this hearing the exact nature of such factual disputes; whether they are material; and whether Debtor seeks additional time or discovery to address any such disputes. The tentative ruling is that the matters that have already been acknowledged by Debtor, or that are not subject to bona fide dispute (e.g., the terms of his previously proposed chapter 13 plans), support dismissal of this case with a bar as set forth herein. But Debtor is encouraged to point out any factual issues that could alter this tentative ruling.

(9) Reservation of jurisdiction, including as to Sally Creedon's request for attorney fees

If this Court does in fact dismiss this case (with or without a bar) the tentative ruling is to reserve jurisdiction to address any appropriate post-dismissal matters. Without limiting the scope of the immediately preceding sentence, jurisdiction will be reserved to address any motion by Sally Creedon for an award of her attorney fees.

That request was included in her brief regarding this OSC, but the tentative ruling is that such request must be made by separate motion, with citation to appropriate authority. In the interests of full disclosure and a level playing field for all parties, this Court notes that some information regarding

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sanctions is included in a "Sanctions Table" available at www.cacb.uscourts.gov (under the section for Judge "Bason, N.," "Instructions/Procedures" tab). As stated in that table (which was originally published as part of a CLE program to the bar), it is provided solely as an aid, not a substitute, for the parties' own research.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

Tentative Ruling for 10/6/22:

Appearances required by Debtor and Debtor's Counsel.

There is no tentative ruling. The parties should be prepared to address whether the mediation ordered by this Court (dkt. 97) has resulted in any settlement, or whether the parties seek a continuance of today's hearing to pursue further mediation/discussions. If not, the parties are directed to address a briefing schedule and any other preliminary considerations relative to the issues raised in this Court's Order setting this preliminary hearing directing Debtor to show cause why this case should not be dismissed, converted or other remedies imposed (dkt. 87, "OSC").

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

Party Information

Debtor(s):

William Leo Creedon

Represented By
Monserrat Morales
Robert M. Klein

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Trustee(s):

Kathy A Dockery (TR)

Pro Se

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#12.00 Cont'd hrg re: Motion for relief from stay [RP]
fr. 5/31/22, 8/9/22, 9/6/22, 10/6/22, 11/3/22

YAANGA, LLC
vs
DEBTOR

Docket 16

Tentative Ruling:

Tentative Ruling for 12/1/22:

Continue to 1/12/23 at 8:30 a.m. to allow time for escrow to close on Debtor's anticipated refinance and pay Movants' claims in full, pursuant to Debtor's declaration regarding the refinance (dkt. 62) and the lodged order thereon (dkt. 65), which this Court anticipates issuing after this hearing date (assuming that nobody successfully contests the tentative ruling thereon - see calendar no. 13, 12/1/22 at 8:30 a.m.). Appearances are not required on 12/1/22. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

Tentative Ruling for 11/3/22:

Appearances required.

This motion for relief from the automatic stay (the "R/S Motion," dkt. 16) has been pending since 5/10/22. Almost half a year later, and despite repeated chances to file declarations explaining how his proposed refinance and construction project is feasible and will generate a net benefit for creditors, Debtor has once again failed and refused to do so.

Debtor has been told repeatedly and explicitly what information is

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required - for example, he was told in the adopted tentative ruling for 8/9/22 in this matter (reproduced below). Yet Debtor still proposes to spend thousands of dollars to do only a portion of a construction project that he hopes at some unspecified future date might start to generate uncertain income, all without adequate information or evidentiary support, as more fully set forth in the tentative ruling for the Refinance Motion (Calendar No. 10, 11/3/22 at 8:30 a.m.).

The tentative ruling is that Debtor is acting in bad faith and abusing the bankruptcy system. True, on the one hand, it appears that Movant might be protected by a fairly substantial equity cushion, based on Debtor's estimate of the subject property's value in his sworn bankruptcy schedules. On the other hand, that misses the point, because Movant seeks relief not based on any lack of adequate protection but instead based on Debtor's bad faith.

The tentative ruling is that Debtor's bad faith has now been established by the conduct set forth in the motion (dkt. 15, at PDF pp. 12-16) combined with Debtor's repeated delays, failure to comply with this Court's directions, and failure to provide evidence that his speculative refinance and construction project is feasible and will cause anything but a substantial net loss for creditors. The tentative ruling is that this is sufficient "cause" for relief from the automatic stay, based on the authorities cited by Movant. See *id.*

The tentative ruling is that the appropriate form of relief from the automatic stay is to modify, condition, and partially terminate the stay such that Movant may proceed with all steps that are predicate to foreclosing, but may not actually conduct any foreclosure sale until 90 days after entry of an order on the R/S Motion.

Proposed order(s): Unless otherwise ordered, Movant is directed to lodge proposed order(s) on the foregoing matter(s) via LOU within 7 days after the hearing date (per LBR 9021-1(b)(1)(B)) and attach a copy of this tentative ruling, thereby incorporating it as this Court's final ruling.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

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Termination

Terminate the automatic stay under 11 U.S.C. 362(d)(1) but prohibit any foreclosure sale for a period of 90 days from entry of an order on the motion.

To the extent, if any, that the motion seeks to terminate the automatic stay in *other* past or pending bankruptcy cases, such relief is denied on the present record. See *In re Ervin* (Case No. 14-bk-18204-NB, docket no. 311).

Effective date of relief

Grant the request to waive the 14-day stay provided by FRBP 4001(a)(3).

Co-debtor stay

Any co-debtor stay (11 U.S.C. 1301(c)) has not been shown to have any basis for any different treatment from the stay under 11 U.S.C. 362(a), so the tentative ruling is to grant the identical relief regarding any co-debtor stay.

Tentative Ruling for 10/6/22:

Appearances required.

At the hearing on 9/6/22 this Court was persuaded to continue this matter to today. The tentative ruling is to continue both the refinance motion and the motion for relief from the automatic stay to 11/3/22 at 8:30 a.m., **but** to set a **deadline of 10/13/22** for the debtor to file much more thorough declarations explaining how the proposed refinance will work. This Court will address the missing and inadequate information at the hearing.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted tentative rulings.

Tentative Ruling for 9/6/22:

Appearances required.

At the hearing on 8/9/22 this Court was persuaded to continue this matter to today. There is no tentative ruling but the parties should be

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prepared to address the current status of this matter, and whether this Court should set any briefing schedules, any hearings, or any other procedures.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted tentative rulings.

Tentative Ruling for 8/9/22:

Appearances required.

At the hearing on 5/31/22 this Court was persuaded to continue this matter to today. This Court has reviewed the supplemental papers filed by Movant (dkt. 27) and Debtor (dkt. 28, 32), as well as the papers regarding Debtor's proposed refinancing (dkt. 28, 33, 34).

Debtor is directed to address feasibility, including how Debtor will finance conversion of his garage into a rental unit, the estimated cost and time involved, the estimated increase in monthly revenue once the conversion is completed, and any other information pertinent to feasibility. (To be clear, this is not a hearing on whether to approve the proposed refinancing; but feasibility is relevant to adequate protection while this motion for relief from the automatic stay is continued. See 11 U.S.C. 361, 362(d)(1).)

Debtor is also directed to address why this information has not already been provided, as part of the refinancing motion or in his supplemental opposition to Movant's motion for relief from the automatic stay.

Subject to Debtor sufficiently addressing the foregoing, the tentative ruling is to continue this hearing to 9/20/22 at 10:00 a.m. (as requested by Debtor, dkt. 32, p. 2:15-17).

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted tentative rulings.

Tentative Ruling for 5/31/22:

Appearances required.

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If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

Key documents reviewed (in addition to motion papers): No opposition on file.
Analysis:

Movant seeks relief from stay under 11 U.S.C. 362(d)(1) based on Debtor's alleged (i) bad faith in filing this bankruptcy case and (ii) defaults to senior lienholders, among other things. Filing a bankruptcy case to stop a foreclosure sale is not *per se* bad faith. To the contrary, delaying a bankruptcy petition until the eve of foreclosure might be evidence that Debtor was attempting in good faith to explore alternatives to bankruptcy and only filed the petition as a last resort after other efforts to resolve the financial issues were unavailing.

True, Movant appears to be correct that Debtor's proposed chapter 13 plan does not adequately address senior lienholders' claims at present, because there is no evidence that Debtor is eligible and has applied for the California Mortgage Relief Program, or that any refinance as proposed in the chapter 13 plan is realistic. Nor has Debtor responded to this motion as of the preparation of this tentative ruling.

But, based on a review of Debtor's bankruptcy schedules (dkt. 1, PDF pp. 12, 20-21), it appears Movant is protected by a very large equity cushion (approximately \$480,000.00). Dkt. 2, p. 3. If Debtor's attempts to obtain mortgage relief funds and/or refinance are unsuccessful, it appears that Movant will be adequately protected by Debtor's ability to sell the subject property and pay Movant out of the proceeds (or, alternatively, by Movant's ability to foreclose).

There is no tentative ruling, but the parties should be prepared to address whether this Court should (1) continue this hearing for several months, e.g., to 8/2/22 at 10:00 a.m. to determine whether Debtor has obtained mortgage relief funds and/or a refinance, and/or (2) grant Movant some form of modified relief that would protect it's interests (a) in the event that Debtor does not timely address the problems identified by Movant or (b) if this Court is persuaded in future to grant relief from stay to any other

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lienholder (*i.e.*, so that Movant is not prejudiced by another lienholder
foreclosing before Movant can proceed with its own foreclosure).

Party Information

Debtor(s):

James Benjamin Williams

Represented By
Sanaz Sarah Bereliani

Movant(s):

Yaanga, LLC

Represented By
David I Brownstein

Trustee(s):

Kathy A Dockery (TR)

Pro Se

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2:22-11884 James Benjamin Williams

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#13.00 Cont'd hrg re: Debtor's Motion for Order
to Allow Financing of Real Property
fr. 10/6/22, 11/3/22

Docket 28

Tentative Ruling:

Tentative Ruling for 12/1/22:

Grant, subject to the filed responses, for the reasons set forth on the record at the prior hearings and in view of Debtor's representation that the proposed refinance will pay all claims in full (except the first lienholder, which purportedly is current and will retain its lien, and the second lienholder, as to which Debtor anticipates obtaining a default judgment that the debt has been paid and the lien no longer exists). See Debtor's Supplemental Decl. (dkt. 62), p. 2:13-14. Appearances are not required. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

Proposed order(s): After the hearing this Court anticipates issuing an order substantially in the form of the proposed order lodged by Debtor in advance of the hearing (see dkt. 65) after adding conditions based on the filed responses to the motion.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

Tentative Ruling for 11/3/22:

Deny. Appearances required.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For

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Key documents reviewed (in addition to motion papers): Trustee's comments (dkt. 34, 38), notice of hearing (dkt. 42), Williams Declarations (dkt. 48, 52), Omidvar Declaration (dkt. 51), Opposition of Pac Fin, LLC and Yaanga, LLC ("Creditors") (dkt. 53), Debtor's reply (dkt. 54), Supplemental Williams Declaration (dkt. 56), Supplemental Omidvar Declaration (dkt. 57), and Creditors' motion for relief from the automatic stay (the "R/S Motion," dkt. 16) and related papers (see the tentative ruling for calendar no. 9, 11/3/22 at 8:30 a.m.).

Analysis:

On July 29, 2022 Debtor filed his motion (dkt. 28, the "Refinance Motion") seeking authority under 11 U.S.C. 364(c) to obtain post petition financing of \$160,000.00 in exchange for a third priority lien against his residence for the purpose of paying off the objecting Creditors' third and fourth priority liens and to fund renovations to turn his garage to into an additional dwelling unit (an "ADU") that he could rent out. Both the Chapter 13 Trustee and the objecting Creditors filed papers raising a number of issues with the proposed financing.

Previously, this Court has been persuaded to continue this matter, as well as multiple hearings on Creditors' R/S Motion, to allow time for Debtor to file much more thorough declarations explaining how the proposed refinance and development of an ADU would work. As set forth in the tentative ruling for the R/S Motion (calendar no. 9, 11/3/22 at 8:30 a.m.), and on the record at the prior hearings, Debtor has been told repeatedly what such declarations must address, and yet Debtor continues to fail and refuse to provide the information required by this Court.

Specifically, Debtor's supplemental declarations (dkt. 56 and 57) fail to provide, at a minimum, the following information.

(a) No projected cash flow statements

Debtor states that converting his garage into an ADU will bring in extra income (dkt. 52, p. 1, para. 3), but where are Debtor's cash flow projections showing that the refinance and development are feasible and that, over the course of a five-year chapter 13 plan, there will be a reliable net benefit to creditors? Debtor states that projected income from the ADU will be

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\$1,200.00 to \$1,500.00 per month; but (i) how reliable is that projection of income? (ii) when will it start? and (iii) how about expenses?

(i) How reliable is Debtor's projection?

Debtor's projected income is based on his vague assertion of familiarity with the local rental market. He offers no specifics and no examples.

(ii) When will any income from the ADU start to flow in?

Debtor will not begin to receive any monthly income until renovations are completed and he has found a renter. There is no projection how long that might take.

(iii) What about expenses?

First and foremost, what about the cost of interest at 12% per annum on the proposed \$160,000.00 loan for the year until the loan comes due? This Court recognizes that this interest will be prepaid out of the loan proceeds, but for purposes of figuring out whether the proposed transaction ultimately would generate positive or negative cash flow the monthly imputed interest should be included in Debtor's expenses.

This Court calculates $0.12 \text{ interest} \times \$160,000.00 / 12 \text{ months} = \$1,600.00$ per month. That exceeds the gross monthly projected revenues from the completed ADU, so how will Debtor make up the shortfall?

Moreover, when the loan comes due in one year, what about the cost of refinancing again? How will Debtor qualify for and pay for that refinance?

Meanwhile there are numerous expenses that will eat into any profits from the projected \$1,200.00 to \$1,500.00 of gross monthly revenues from the ADU. For example, Debtor admits that he will have to pay some increase in his homeowner's insurance policy (dkt. 56, pp. 2-3, para. 9), but how much? How about the cost of advertising (or the cost of potentially lower rents if Debtor does not advertise)? How about the cost of credit checks for prospective tenants, and setting up a separate bank account to hold a security deposit, and any other incidental expenses? How about paying a lawyer to draw up a lease (or, the risks and expenses of leasing without the help of a lawyer)? How about the costs to evict any tenant who ceases to pay rent? How about repairs (if the roof leaks or if any tenant damages the property)? How about regular maintenance?

This Court recognizes that Debtor probably expects to minimize expenses in numerous ways (e.g., finding a renter through word of mouth or a free internet service, or renting to a friend or relative, and using a very simple form of lease from a cheap or free internet source, etc.). But such cost-

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cutting measures will likely increase the risk of expenses later on (e.g., a poorly drafted lease could result in a very expensive eviction proceeding if things do not go as planned).

Very rough estimates of all of these types of things might well have been acceptable; but Debtor has offered nothing, despite repeated instructions to do so. Perhaps Debtor has avoided doing so because his proposed transaction makes no economic sense at all. In any event, for whatever reason, he has failed to do so.

(b) Source(s)/proof of funds

Debtor says his daughter will pay the \$5,750.00 in estimated costs to draw up plans (dkt. 48, p. 2, para. 5) but who will pay the estimated \$2,100.00 or more of closing costs? See Omidvar Decl. (dkt. 51), Ex. 1 (LOI), para. 6 (at PDF p. 6).

(c) Estimated renovation costs

Debtor attached evidence reflecting the estimated cost for the renovation to be \$55,000.00 (dkt. 56, Ex. 2), but says he believes the real figure is closer to \$25,000.00 to \$30,000.00. Id. p. 2, para. 6. Based on what?

In this Court's experience, contractors' estimates typically increase rather than decrease. Where is the declaration from Mr. Zeevi explaining what changes will be made to bring that proposed estimate lower? What renovations will be sacrificed to reduce the estimate? Will the ADU be up to code?

(d) Conclusion

Debtor's proposed refinance appears to be nothing more than a sham that is being used for delay. As Creditors have pointed out in their R/S Motion (dkt. 16, at, e.g., PDF p. 12:11-20), Debtor had many months prior to the filing of this bankruptcy case to attempt to work out a refinance, sale, or other solution; and his initial proposed chapter 13 plan was fatally flawed. His current proposed refinance and development of an ADU appear to be a continuation of that pattern. In sum, Debtor appears to be acting in bad faith, abusing the bankruptcy system, and willfully failing to appear in proper prosecution of this case.

It is tragic to lose one's home. But Debtor has had multiple opportunities to propose any feasible way to keep the home. If Debtor is correct about the amount of equity in the home, he might have to sell it (or find some other solution). For purposes of today's hearing, the point is that

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his proposed refinance and development of an ADU appears on its face to be completely unworkable. Debtor has not shown how it could be made to work, despite repeated directions to do so. Therefore, the tentative ruling is to deny the Refinance Motion.

Tentative Ruling for 10/6/22:

Please see the tentative ruling for calendar no. 7 (10/6/22 at 8:30 a.m.).

Appearances required.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

Party Information

Debtor(s):

James Benjamin Williams

Represented By
Sanaz Sarah Bereliani

Movant(s):

James Benjamin Williams

Represented By
Sanaz Sarah Bereliani

Trustee(s):

Kathy A Dockery (TR)

Pro Se

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2:00-00000

Chapter

**#1.00 PLEASE BE ADVISED THAT THE CHAPTER 13 9:30 AM
CONFIRMATION CALENDAR CAN BE VIEWED ON THE
COURT'S WEBSITE (www.cacb.uscourts.gov) UNDER:
JUDGES>BASON, N.>CHAPTER 13>CONFIRMATION HEARINGS CALENDAR**

Docket 0

Tentative Ruling:

- NONE LISTED -

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Chapter

**#1.00 PLEASE BE ADVISED THAT THE CHAPTER 13 HEARINGS
at 11:00 AM CAN BE VIEWED ON THE COURT'S WEBSITE
(www.cacb.uscourts.gov) UNDER: JUDGES>BASON, N.>CHAPTER 13**

Docket 0

Tentative Ruling:

- NONE LISTED -

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11:00 AM

2:22-15089 Cristino Pineda

Chapter 13

#2.00 [CASE DISMISSED ON 10/18/22]

Cont'd hrg re: Motion for relief from stay [RP]
fr. 11/8/22

WILMINGTON TRUST, NATIONAL ASSOCIATION
vs
DEBTOR

Docket 15

Tentative Ruling:

Tentative Ruling for 12/1/22:

Appearances required.

At the hearing on 11/8/22 this Court was persuaded to continue this matter to today. Debtor was informed of that continuance at that hearing, and by Movant's written notice served on Debtor at her address of record in this case (dkt. 29). Movant has filed and served a status report (dkt. 30) stating that its attorney received and is holding the payment that this Court required as a condition of the continuance to today, but that Movant has not had additional substantive communication from Debtor or any attorney for her, and renewing its request for relief from the automatic stay.

There is no tentative ruling but the parties should be prepared to address the current status of this matter, including whether Debtor has retained legal counsel, and whether Debtor has a realistic prospect of using the bankruptcy system or other means (a) to cure defaults, (b) to provide adequate protection of Movant's interests, and (c) to overcome Movant's showing of grounds for annulment of the automatic stay, which would validate Movant's foreclosure sale.

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted tentative rulings.

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Tentative Ruling 11/8/22

Grant as set forth below.

Proposed order(s): Unless otherwise ordered, Movant is directed to lodge proposed order(s) on the foregoing matter(s) via LOU within 7 days after the hearing date (per LBR 9021-1(b)(1)(B)).

Appearances are not required. (If you wish to contest the tentative ruling, see the Posted Procedures of Judge Bason, available at www.cacb.uscourts.gov, then search for "tentative rulings.")

If you are making an appearance, you may do so (1) in person in the courtroom, unless the Court has been closed (check the Court's website for public notices), (2) via ZoomGov video, or (3) via ZoomGov telephone. For ZoomGov instructions for all matters on calendar, please see page 1 of the posted Tentative Rulings.

Key documents reviewed (in addition to motion papers): N/A (no opposition on file as of the preparation of this tentative ruling.

The automatic stay does not apply

This case has been dismissed, which terminates the automatic stay. See 11 U.S.C. 349(b)(3) & 362(c).

In the alternative and in addition, the tentative ruling is to grant relief from the automatic stay as follows.

Note regarding mootness: Judge Bason's standard tentative ruling is as follows. For three reasons the above tentative ruling that there *is no stay* does not moot requests for relief from whatever stay might apply. First, such *alternative* rulings are appropriate because (i) the very nature of *tentative* rulings is that this Court could be persuaded to depart from any one of them, and (ii) a *final* ruling on any one issue could be reversed on appeal. Second, even if there is currently no stay, that could change - e.g., if there is no stay because of dismissal of this bankruptcy case, such dismissal could be vacated and that might reimpose the stay even if there is a lack of adequate protection,

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Cristino Pineda

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or other grounds why the stay should not apply, and therefore the movant will suffer cognizable harm unless the issues are addressed now (Judge Bason regularly vacates dismissals based on stipulations or other good cause). Third, if the motion includes any request for relief as to *past* acts (annulment) or *future* cases (*in rem* relief), those things are still at issue even if there is no *current* automatic stay. See *In re Aheong*, 276 B.R. 233 (9th Cir. BAP 2002). For all of these reasons, the tentative ruling is that it is appropriate to address the following issues.

Termination

Terminate the automatic stay under 11 U.S.C. 362(d)(1) and (d)(4).

To the extent, if any, that the motion seeks to terminate the automatic stay in *other* past or pending bankruptcy cases, such relief is denied on the present record. See *In re Ervin* (Case No. 14-bk-18204-NB, docket no. 311).

Retroactive relief

Grant the request for retroactive annulment of the stay. See *In re Nat'l Enviro. Waste Corp.*, 129 F.3d 1052, 1054-56 (9th Cir. 1997); *In re Fjeldsted*, 293 B.R. 12 (9th Cir. BAP 2003); and see also *In re Merriman*, 616 B.R. 381, 389-90 & n. 6 and 391-95 (9th Cir. BAP 2020) (retroactive relief is permissible, and Fjeldsted factors should not be applied mechanically); *In re Williams*, 323 B.R. 691, 697-702 (9th Cir. BAP 2005) (various issues involving annulment, and application of *Fjeldsted*), *aff'd*, 204 Fed.Appx. 582 (9th Cir. 2006), *overruled on other issues*, *In re Perl*, 811 F.3d 1120 (9th Cir. 2016) (scope of automatic stay).

Relief notwithstanding future bankruptcy cases.

Grant the following relief pursuant to 11 U.S.C. 362(d)(4) and the legal analysis in *In re Vazquez*, 580 B.R. 526 (Bankr. C.D. Cal. 2017), and/or *In re Choong* (case no. 2:14-bk-28378-NB, docket no. 31), as applicable:

If this order is duly recorded in compliance with applicable State laws governing notices of interests or liens in the property at issue, then no automatic stay shall apply to such property in any bankruptcy case purporting to affect such property and filed within two years after the date of entry of this order, unless otherwise ordered by the court presiding over that bankruptcy case.

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For the avoidance of doubt, any acts by the movant to obtain exclusive possession of such property shall not be stayed, including any eviction actions, through and including any lockout or other enforcement by the Sheriff or other authorized legal authority.

Note: Per the Posted Procedures of Judge Bason (available at www.cacb.uscourts.gov) this Court's order will state that the Court "does not make" a finding that Debtor was involved in the "scheme" referenced in section 362(d)(4), unless there is sufficient evidence that Debtor was involved and Debtor is given clear notice that the movant seeks an express finding that Debtor was involved. The tentative ruling in this particular case is that there is not sufficient evidence and notice.

No prejudice to Debtor intended. Based on the record, it appears that this might be a "hijacked" case, and that Debtor might be innocent of any involvement. See e.g., *In re Vazquez*, 580 B.R. 526 (Bankr. C.D. Cal. 2017) (describing hijacking); *In re Dorsey*, 476 B.R. 261 (Bankr. C.D. Cal. 2012) (same). In a hijacking case, the Debtor faces the legitimate concern of being subject to a 180-day bar and other adverse consequences if, for example, Debtor later requests and obtains a voluntary dismissal and subsequently needs to file another bankruptcy petition. See, e.g., 11 U.S.C. 109(g)(2), 362(b)(21)(A). There is authority that section 109 "eligibility issues" are nonjurisdictional, can be waived, forfeited, or subject to estoppel, and should not be applied if that would produce an "illogical, unjust, or capricious result, or when the benefit of dismissal would inure to a bad faith creditor." *In re Lefty*, 489 B.R. 545, 550-51 (9th Cir. BAP 2012) (citing cases including under 109(g)(2)). See also *In re Mendez*, 367 B.R. 109, 116-17 (9th Cir. BAP 2007); *In re Luna*, 122 B.R. 575, 577 (9th Cir. BAP 1991); *Dorsey*, 476 B.R. 261, 270. The same principles apply to any other adverse consequences from a hijacking. Accordingly, the tentative ruling is to condition the relief from the automatic stay granted in this tentative ruling such that no adverse consequences apply to Debtor from the hijacking, including under 11 U.S.C. 109(g)(2) or 362(b)(21)(A). Note: None of the foregoing will shield Debtor if it turns out that Debtor was not, in fact, innocent of any involvement in the apparent hijacking or other abusive scheme.

Effective date of relief

Grant the request to waive the 14-day stay provided by FRBP 4001(a) (3).

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Attorney fees

Movant requests that its attorney fees be allowed (dkt. 15, p. 4). The tentative ruling is that this Court will not express any view regarding any attorney fee request because (a) in any nonjudicial foreclosure action, attorney fee issues typically are not decided by a court (and in a judicial foreclosure it is the State Court, not this Bankruptcy Court, that would determine attorney fee issues), (b) a motion for relief from the automatic stay is not the proper vehicle to adjudicate attorney fees in this Bankruptcy Court, and (c) this hearing does not involve any claim objection or other proceeding that might properly present that issue for this Court's determination.

Co-debtor stay

Any co-debtor stay (11 U.S.C. 1301(c)) has not been shown to have any basis for any different treatment from the stay under 11 U.S.C. 362(a), so the tentative ruling is to grant the identical relief regarding any co-debtor stay.

Party Information

Debtor(s):

Cristino Pineda

Pro Se

Movant(s):

Wilmington Trust, National

Represented By
Cassandra J Richey

Trustee(s):

Kathy A Dockery (TR)

Pro Se