

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

9: -

Chapter

#0.00 Unless ordered otherwise, appearances for matters may be made in-person **in Courtroom 201 at 1415 State Street, Santa Barbara, California, 93101**, by video through ZoomGov, or by telephone through ZoomGov. If appearing through ZoomGov, parties in interest may connect to the video and audio feeds, free of charge, using the connection information provided below. Individuals may participate by ZoomGov video and audio using a personal computer (equipped with camera, microphone and speaker), or a handheld mobile device. Individuals may opt to participate by audio only using a telephone (standard telephone charges may apply).

All parties making an appearance via ZoomGov video and audio connection **must** have their video on. Proper court attire is required of all parties appearing via ZoomGov video. Any virtual backgrounds are to be of a solid color, without pictures, videos, or scenes. No party may appear by ZoomGov from any place other than a quiet room in an office or home. Parties may not appear via ZoomGov from a vehicle of any kind, moving or not.

Regarding remote access to hearings, members of the public may NOT observe any hearing via ZoomGov web address or app. Members of the public may ONLY **listen to** non-evidentiary hearings, where no live testimony is being taken, via ZoomGov telephone conference line or in-person at the address listed above. If members of the public attempt to observe hearings remotely in any manner other than via ZoomGov telephone conference line, the Court will remove them from ZoomGov for the hearing(s). No members of the public will be permitted to observe, via telephone line or otherwise, trials, evidentiary hearings, hearings where live testimony will be taken, and hearings where sensitive information is being disseminated that may not be adequately safeguarded.

You may obtain the ZoomGov connection details by clicking the hyperlink below or copying and pasting the web address into your browser.

<https://forms.office.com/g/d3SqfMtsuv>

Neither a Zoom nor a ZoomGov account is necessary to participate, and no preregistration is required. The audio portion of each hearing will be recorded electronically by the Court and that recording will constitute its official record. Recording, retransmitting, photographing, or imaging Court proceedings by any means is strictly prohibited.

Docket 0

Tentative Ruling:

1/9/2024 9:35:02 AM

Page 1 of 110

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room

201

10:00 AM

CONT...

Chapter

- NONE LISTED -

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

9:19-11572 Mireya Navarro Chavez

Chapter 13

#1.00 Hearing
RE: [56] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 242 March Street, Unit 3, Santa Paula, CA 93060 . (Castle, Caren)

Docket 56

***** VACATED *** REASON: Motion voluntarily dismissed by movant on 1/3/24.**

Tentative Ruling:

January 9, 2024

Appearances required.

California Housing Finance Agency ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to the real property located at 242 March Street, Unit 3, Santa Paula, CA 93060 (the "Property") of Mireya Navarro Chavez (the "Debtor") on the grounds that Movant's interest in the Property is not adequately protected and the Debtor has failed to make post-confirmation mortgage payments as they became due under the *Original Chapter 13 Plan* (the "Plan"). See Docket No. 56, *Motion for Relief from Stay Under 11 U.S.C. § 362* (the "Motion"), pp. 3-4.

In addition to lifting the stay, Movant requests relief to (1) proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property, (2) the co-debtor stay of 11 U.S.C. § 1201(a) or § 1301(a) be terminated, modified, or annulled as to the co-debtor on the same terms and conditions as to the Debtor, and (3) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3). See *id.* at p. 5.

The Motion was filed on December 8, 2023, and served upon the Debtor and the non-filing co-debtor via U.S. Mail first class, postage prepaid on the same date. See Motion, *Proof of Service of Document*, p. 12. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtor, the non-filing co-debtor, nor any other party served with the Motion has

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room

201

10:00 AM

CONT...

Mireya Navarro Chavez

Chapter 13

timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, including the Debtor.

On December 27, 2023, the Debtor filed *Debtor's Opposition to Motion for Relief from the Automatic Stay Filed by Creditor California Housing Finance Agency, Its Successors and Assignees* (the "Opposition"). See Docket No. 60. Through the Opposition, the Debtor asserts that they have "cured the delinquency in full." See *id.* at p. 2, lines 10-11.

The Court will confer with Movant as to whether the post-confirmation payments have indeed been made.

Party Information

Debtor(s):

Mireya Navarro Chavez

Represented By

Rabin J. Pournazarian

Movant(s):

California Housing Finance Agency

Represented By

Daniel K Fujimoto

Caren J Castle

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

9:20-10003 Grant H Macgregor and Cecily B Macgregor

Chapter 13

#2.00 Hearing
RE: [64] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 5191 San Simeon Drive, Santa Barbara, CA 93111 .

Docket 64

***** VACATED *** REASON: Withdrawal of motion filed 12-4-23.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Grant H Macgregor

Represented By
Karen L Grant

Joint Debtor(s):

Cecily B Macgregor

Represented By
Karen L Grant

Movant(s):

BMO Bank N.A.

Represented By
Daniel K Fujimoto

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

9:21-11010 Kelly Charles Vaughn

Chapter 13

#3.00 HearingRE: [46] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1200 Alden Court, Lompoc, California 93436-8237 with proof of service. (Locke, Wendy)

Docket 46

Tentative Ruling:

January 9, 2024

Appearances waived. The Court will grant the Motion pursuant to 11 U.S.C. § 362(d)(1) for the reasons set forth *infra*. Movant to upload a conforming order within 7 days.

Wilmington Savings Fund Society, FSB, Not in Its Individual Capacity But Solely As Owner Trustee of CSMC 2019-RPL1 Trust ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to the real property located at 1200 Alden Court, Lompoc, CA 93436 (the "Property") of Kelly Charles Vaughn (the "Debtor") on the grounds that the Debtor has failed to make post-confirmation mortgage payments as they became due under the *1st Amended Chapter 13 Plan* (the "Plan"). See Docket No. 46, *Motion for Relief from Stay Under 11 U.S.C. § 362* (the "Motion"), pp. 3-4.

In addition to lifting the stay, Movant requests relief to (1) proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property, and (2) at its option, offer, provide and enter into a potential forbearance agreement or other loan workout/loss mitigation agreement by contacting the Debtor. See *id.* at p. 5.

The Motion was filed on December 6, 2023, and served upon the Debtor via U.S. Mail first class, postage prepaid on the same date. See Motion, *Proof of Service of Document*, p. 12. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtor, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room

201

10:00 AM

CONT... Kelly Charles Vaughn

Chapter 13

therefore takes the default of all non-responding parties, including the Debtor.

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay [] for cause, including the lack of adequate protection of an interest in property of such party in interest." Failure to make postpetition mortgage payments as they become due in a Chapter 13 case may constitute "cause" for relief from the automatic stay under § 362(d)(1). *See In re Marks*, 2012 WL 6554705, at *11 (9th Cir. BAP Dec. 14, 2012), *aff'd*, 624 F. App'x 963 (9th Cir. 2015) (citing *In re Ellis*, 60 B.R. 432, 435 (9th Cir. BAP 1985)).

Under the terms of the Plan, the Debtor is required to make regular payments to Movant under the terms of the prepetition lending agreement. *See* Docket No. 25, pp. 5-6, Class 2. Movant asserts that the Debtor defaulted on Plan payments consisting of seven (7) unpaid post-confirmation payments of \$1,777.13 and one (1) unpaid post-confirmation payment of \$1,978.06. *See* Motion, p. 9. Less a suspense account balance of \$1,149.12, Movant asserts that there is a total post-confirmation delinquency of \$13,268.85 (as of the date of the Motion) with a payment of \$1,978.06 becoming due November 1, 2023. *Id.* According to the Motion, the last monthly payment of \$1,777.13 was received by Movant on June 23, 2023. *Id.*

Cause has been shown sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1) due to the Debtor's failure to make no less than eight (8) postpetition/post-confirmation mortgage payments pursuant to the terms of the Plan.

Party Information

Debtor(s):

Kelly Charles Vaughn

Represented By
Michael B Clayton

Movant(s):

Wilmington Savings Fund Society,

Represented By
Wendy A Locke

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

CONT... Kelly Charles Vaughn

Chapter 13

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

9:23-10247 Cindy Diane Burkhart

Chapter 13

#4.00 HearingRE: [46] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 2053 Medina Avenue, Simi Valley, CA 93063 .

Docket 46

Tentative Ruling:

January 9, 2024

The Court will deny the Motion pursuant to Fed. R. Bankr. P. 9011(a). Movant to lodge a conforming order within 7 days.

Michael and Evelyn Hanna ("Movants") seek relief as to that residential real property located at 2053 Medina Ave., Simi Valley, CA 93063 on the grounds that "cause" exists as the debtor Cindy Diane Burkhart. *See Motion for Relief from the Automatic Stay or for An Order Confirming That Automatic Stay Does Not Apply Under 11 U.S.C. § 362(l)* (the "Motion") (Docket No. 46).

The Notice of the Motion contains the incorrect hearing courtroom. *See id.* at p. 1. The Motion itself is not signed, and was filed without paying the appropriate filing fee. *See id.* at p. 6; *see also* Docket No. 48. The Court's Clerk posted on the Docket, which was served on counsel to Movants via NEF, that Movants are "INSTRUCTED TO FILE THE PROPER SIGNATURE(S)." *See* Docket No. 48.

Pursuant to Fed. R. Bankr. P. 9011(a), "[e]very [] written motion [] shall be signed by at least one attorney of record in the attorney's individual name." "An unsigned paper shall be stricken unless omission of the signature is corrected promptly after being called to the attention of the attorney or party." *Id.*

Here, as noted *supra*, the Motion was not signed, and notice was provided to counsel to Movants on December 18, 2023 that the Motion needed to be signed. *See* Docket No. 48. The omission of the signature on the Motion was not promptly corrected, and so the Court will deny the Motion pursuant to Fed. R. Bankr. P. 9011(a).

Party Information

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

CONT... Cindy Diane Burkhart

Chapter 13

Debtor(s):

Cindy Diane Burkhart

Represented By
Tyson Takeuchi

Movant(s):

Michael Hanna

Represented By
John E Bouzane

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

9:23-10323 Margaret Jean Castelo

Chapter 13

#5.00 HearingRE: [60] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1918 Claudia Ave, Simi Valley, CA 93065-3641 . (Martinez, Kirsten)

Docket 60

Tentative Ruling:

January 9, 2024

Appearances are waived. The Court will approve that *Stipulation for Adequate Protection re: Motion for Relief from Automatic Stay*. See Docket No. 65. Movant to upload a conforming order within 7 days.

Party Information

Debtor(s):

Margaret Jean Castelo

Represented By
Joshua Sternberg

Movant(s):

Click n Close, Inc

Represented By
Mukta Suri
Kirsten Martinez

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

9:23-10209 Robert A Adams and Marla B Adams

Chapter 7

#6.00 HearingRE: [43] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1085 Triunfo Canyon Road, Westlake Village, California 91361 .

Docket 43

Tentative Ruling:

January 9, 2024

Appearances waived. The Motion is denied as moot via the Discharge Order. There is no stay to lift. Movant is to lodge a conforming order within 7 days.

Matthew Whiten, Thomas K. Brozowski, Propac Equipment Systems Corporation, the Brian G. Johnson Defined Benefit Plan, and Pacific Premier Trust, Custodiam FBO Anthony Lyon, IRA ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) in relation to the residential real property located at 1085 Triunfo Canyon Road, Westlake Village, CA 91361 (the "Property") of Robert A. Adams and Maria B. Adams (the "Debtors") on the grounds that Movant's interest in the Property is not protected by an adequate equity cushion. *See* Docket No. 43, *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 – Real Property* (the "Motion").

In addition to lifting the stay, Movant requests relief to (1) proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property, (2) at its option, offer, provide and enter into a potential forbearance agreement or other loan workout/loss mitigation agreement by contacting the Debtors, and (3) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3). *See id.* at p. 5.

The Motion and notice thereof were served upon the Debtors via U.S. Mail First class, postage prepaid on December 15, 2023, notifying the Debtors that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id.* at *Proof of Service of Document*, pp. 12-13. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room

201

10:00 AM

CONT... Robert A Adams and Marla B Adams

Chapter 7

to the granting or denial of the motion, as the case may be." Neither the Debtors, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, including the Debtors.

Legal Standard

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay [] for cause, including the lack of adequate protection of an interest in property of such party in interest." 11 U.S.C. § 362(d)(1). While the term "adequate protection" is not defined in the Code, 11 U.S.C. § 361 sets forth three non-exclusive examples of what may constitute adequate protection: 1) periodic cash payments equivalent to decrease in value, 2) an additional or replacement lien on other property, or 3) other relief that provides the indubitable equivalent. *See In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). "Equity cushion" is defined as the value in the property, above the amount owed to the creditor with a secured claim, that will shield that interest from loss due to any decrease in the value of the property during the time the automatic stay remains in effect. *Id.* at 1397. "Equity," as opposed to "equity cushion," is the value, above all secured claims against the property that can be realized from the sale of the property for the benefit of the unsecured creditors. *Id.*

"Although the existence of an equity cushion as a method of adequate protection is not specifically mentioned in § 361, it is the classic form of protection for a secured debt justifying the restraint of lien enforcement by a bankruptcy court." *Id.* (internal citations omitted). "In fact, it has been held that the existence of an equity cushion alone, can provide adequate protection." *Id.* (internal citations omitted). "A sufficient equity cushion has been found to exist although not a single mortgage payment had been made." *Id.* (internal citations omitted). "A 20% cushion has been held to be an adequate protection for a secured creditor." *Id.* at 1401. (internal citations omitted).

Analysis

11 § 362 U.S.C. 362(d)(1)

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room

201

10:00 AM

CONT... Robert A Adams and Marla B Adams

Chapter 7

Here, Movant first contends that arrearages total \$41,218.80, which represents twelve (12) unpaid payments of \$3,434.90 each (as of the date of the Motion) with a payment of \$3,434.90 becoming due January 1, 2024. *See* Docket No. 43, p. 8. Movant further alleges that its interest in the Property is not adequately protected. Movant asserts a secured claim against the Property in the amount of \$390,161.83. *Id.* As of the petition date of August 3, 2023, Movant asserts that the fair market value of the Property is \$1,000,000.00 per the Debtor's *Schedule A/B*. *Id.* at *Exhibit 2*. Movant asserts that it maintains an equity cushion in the Property. *See id.* at p. 8. The equity cushion in the Property exceeding Movant's liens is asserted to be \$318,217.17 (Movant's lien, the senior lien of Specialized Loan Servicing in the amount of \$291,621.70) or 31% of the fair market value of the Property. *Id.* at p. 8.

As a 20% cushion has been held to be an adequate protection for a secured creditor in the Ninth Circuit, so, Movant is adequately protected in the Property.

Discharge Injunction

On December 12, 2023, the Court entered that *Order of Chapter 7 Discharge* (the 'Discharge Order') granting a discharge under 11 U.S.C. § 727 to the Debtors. *See* Docket No. 41.

Pursuant to 11 U.S.C. § 522(c)(2)(A), "[u]nless a case is dismissed, property exempted under this section is not liable during or after the case for any debt of the debtor that arose, or that is determined under section 502 of this title as if such debt had arisen, before the commencement of the case, except a debt secured by a lien that is (A)(i) not avoided under subsection (f) or (g) of this section or under section 544, 545, 547, 548, 549, or 724(a) of this title; and (ii) not avoided under section 506(d) of this title."

"It is well settled that valid, perfected liens and other secured interests pass through bankruptcy unaffected." *See In re Cortez*, 191 B.R. 174, 177 (9th Cir. BAP 1995) (citing *Dewsnup v. Timm*, 502 U.S. 410, 418 (1992); *see also Siegel v. Fed. Home Loan Mortg. Corp.*, 143 F.3d 525, 531 (9th Cir. 1998). A "discharge [under 11 U.S.C. § 727] extinguishes only 'the personal liability of the debtor.'" *Johnson v. Home State Bank*, 501 U.S. 78, 83 (1991); *see also In re Cortez*, 191 B.R. at 178. "[T]he Code provides that a creditor's right to foreclose on the mortgage survives or

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room

201

10:00 AM

CONT... Robert A Adams and Marla B Adams

Chapter 7

passes through the bankruptcy." *Id.* (internal citations omitted); *see also In re Reed*, 640 B.R. 932, 938-939 (9th Cir. BAP 2022).

What is more, the Discharge Order contains the following language, "a creditor with a lien may enforce a claim against the debtors' property subject to that lien unless the lien was avoided or eliminated. For example, a creditor may have the right to foreclose a home mortgage or repossess an automobile". *See* the Discharge Order, p. 1.

It appears to the Court that upon entry of the Discharge Order, the automatic stay terminated as to the Property and the Movant retains the right to foreclose on the Property as a secured lienholder. The Motion is therefore moot.

Party Information

Debtor(s):

Robert A Adams

Represented By
Creig Creig Greaves

Joint Debtor(s):

Marla B Adams

Represented By
Creig Creig Greaves

Movant(s):

Matthew Whiten; Thomas K.

Represented By
Martin W. Phillips

Trustee(s):

Sandra McBeth (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

9:23-10302 Matthew Joseph Pavin

Chapter 7

#7.00 HearingRE: [27] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: not applicable .

Docket 27

Tentative Ruling:

January 9, 2024

Appearances waived. The Court will grant the Motion for "cause" under 11 U.S.C. § 362(d)(1) with waiver of the 14-day stay FRBP 4001(a)(3).

Matthew Joseph Pavin ("Debtor") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) to proceed against the Cynthia Pavin ("Cynthia"), in the nonbankruptcy action *In re Marriage of Cynthia Pavin and Matthew Pavin* (D401233) filed on April 15, 2021 (the "Nonbankruptcy Action"), pending before the Superior Court for the State of California, Ventura County, Family Law Division. *See Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum)* (the "Motion") (Docket No. 27).

The Debtor seeks relief from stay on the grounds that the claims arise under nonbankruptcy law and can be most expeditiously resolved in the nonbankruptcy forum. *See Motion*, p. 3. The Debtor also requests relief to proceed under applicable nonbankruptcy law to enforce its remedies to proceed to final judgment in the nonbankruptcy forum, provided that the stay remains in effect with respect to enforcement of any judgment against the Debtor or the property of the Debtor's bankruptcy estate. *See Motion*, p. 4.

The Motion and notice thereof were served by the Debtor via NEF and first class mail on December 11, 2023, notifying, among others, the Chapter 7 Trustee and United States Trustee that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id.*, *Proof of Service of Document*, p. 9. Neither the Chapter 7 Trustee, United States Trustee, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

CONT... **Matthew Joseph Pavin**
all non-responding parties.

Chapter 7

Analysis

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay for cause, including the lack of adequate protection of an interest in property of such party in interest." Beyond the lack of adequate protection, "cause" is determined on a case-by-case basis. *See In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). "Courts in the Ninth Circuit have granted stay relief to permit the conclusion of pending litigation in a nonbankruptcy forum when the litigation involves multiple parties or is ready for trial." *In re Wang*, 2010 WL 6259970 *5 (9th Cir. BAP 2010)(citing *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990). "Courts have also considered whether permitting the conclusion of pending litigation is in the interest of judicial economy or within the expertise of a state court." *Id.* (citing *In re MacDonald*, 755 F.2d 715 at 717).

"Courts evaluate several non-exclusive factors to determine if cause exists to permit pending litigation to continue in another forum [including:]

- (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 creditor's committee and other interested parties;
- (8) Whether the judgment claim arising from the foreign action is subject to equitable subordination;
- (9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f);

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

CONT... Matthew Joseph Pavin

Chapter 7

- (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 and the 'balance of the hurt.'"

Id. (citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Ut. 1984); *In re Plumberex Specialty Prods., Inc.*, 311 B.R. 551, 559 (Bankr. C.D. Cal. 2004); *In re Sonnax Indus., Inc.*, 907 F.2d 1280, 1286 (2d Cir. 1990); *In re Smith*, 389 B.R. 902, 918-919 (Bankr. D. Nev. 2008).

Curtis Factors

Whether the relief will result in a partial or complete resolution of the issues

Were the Court to grant the Motion, the Debtor would be allowed to proceed in the dissolution matter with Cynthia in the effort to have the family court adjudicate a property settlement, including the rights to the Debtor's inheritance and potential inheritance in the residual trust (the "Trust") between the parties.

A judgment in the Nonbankruptcy Action should resolve the property ownership rights between the Debtor and Cynthia. Therefore, the favor weighs in favor of Movant.

The lack of any connection with or interference with the bankruptcy case

Resolution of the Nonbankruptcy Action has a direct impact on the bankruptcy case because it will determine the Debtor's rights and Cynthia's rights to the marital property, which includes property of the estate.

Whether the foreign proceeding involves the debtor as a fiduciary

It does not appear that the Nonbankruptcy Action asserts the Debtor to have maintained a fiduciary capacity.

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

The Nonbankruptcy Action involves causes of action for petition of dissolution of

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room

201

10:00 AM

CONT...

Matthew Joseph Pavin

Chapter 7

marriage. See Docket No. 17, p. 6. The family court is a specialized tribunal. "The superior court has jurisdiction in proceedings under this code." Cal Fam Code § 200. Family court law is a specialized area of the law that requires dedication and study. The supervising judge of the family court has a responsibility to maintain high-quality services in family court. 2023 California Rules of Court, Standard 5.30. Family court matters.

Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation

It does not appear that an insurance carrier has assumed financial responsibility for defending the litigation.

Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question

The Nonbankruptcy Action is between the Debtor and Cynthia and is not based on goods on which the Debtor functions as a bailee or conduit for.

Whether the litigation in another forum would prejudice the interests of other creditors, the creditor's committee and other interested parties

There is no evidence that litigation of the Nonbankruptcy Action would prejudice other creditors or interested parties.

Whether the judgment claim arising from the foreign action is subject to equitable subordination

This factor is not applicable to the Debtor.

Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f)

This factor is not applicable to the Debtor.

The interests of judicial economy and the expeditious and economical determination of litigation for the parties

The State Court has presided over the Nonbankruptcy Action since its filing in 2021. *Id.* at p. 6. It appears that the Nonbankruptcy Action may have proceeded to trial but

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

CONT... Matthew Joseph Pavin

Chapter 7

for the Debtor's filing of this bankruptcy case. *See* Docket No. 27, *Declaration of Matthew Joesph Pavin*, pp. 1-2, ¶ 2. However, no specific status of the martial dissolution case is provided by the Debtor. It seems that on a jurisdictional basis alone that the Nonbankruptcy Action would be most expeditiously resolved in State Court.

Whether the foreign proceedings have progressed to the point where the parties are prepared for trial

It is unclear at what stage the marital dissolution action is at in the State Court. The Nonbankruptcy Action began has been ongoing for "two years and eight months... For the past nearly eight months, all family law matter shave been put on hold during my bankruptcy." *Id.* It is likely that significant litigation has already occurred, but no specific details as to the status are provided by the Debtor. The Debtor also failed to attach a copy of the petition for divorce.

The impact of the stay and the 'balance of the hurt'

The Nonbankruptcy Action has been pending in State Court for over two years. The Debtor would be hurt if the stay relief was not granted.

This factor breaks in favor of Movant.

Conclusion

In analyzing the *Curtis* factors this Court finds cause to lift the stay as set forth in 11 U.S.C. § 362(d)(1) with waiver of the 14-day stay FRBP 4001(a)(3). Movant shall lodge a conforming order within 7 days.

Party Information

Debtor(s):

Matthew Joseph Pavin

Represented By
William E. Winfield

Movant(s):

Matthew Joseph Pavin

Represented By
William E. Winfield

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

CONT... Matthew Joseph Pavin

Chapter 7

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

9:23-10863 Sergio E. Torres

Chapter 7

#8.00 HearingRE: [21] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: all and proof of service.

Docket 21

Tentative Ruling:

January 9, 2024

Appearances waived. The Court will deny the Motion without prejudice for the reasons stated *infra*. Movant to upload a conforming order within 7 days.

Gabriela Torres ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) to proceed against the Sergio Torres (the "Debtor"), in the nonbankruptcy action *Gabriela Torres v. Sergio E Torres* (D405243) filed on April 8, 2022 (the "Nonbankruptcy Action"), pending before the Superior Court for the State of California, Ventura County. *See Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum)* (the "Motion") (Docket No. 21).

Movant seeks relief from stay on the grounds that (1) the claims are nondischargeable in nature and can be most expeditiously resolved in the nonbankruptcy forum, (2) the claims arise under nonbankruptcy law and can be most expeditiously resolved in the nonbankruptcy forum, and (3) the bankruptcy case was filed in bad faith. *See Motion*, pp. 3-4. Movant also requests (1) waiver of the 14-day stay prescribed by FRBP 4001(a)(3), (2) the order be binding and effective in any bankruptcy case commenced by or against the Debtor for a period of 180 days, so that no further automatic stay shall arise in that case as to the Nonbankruptcy Action, and (3) the order is binding and effective in any future bankruptcy case, no matter who the debtor may be, without further notice. *See Motion*, p. 5.

Notice

Pursuant to this Court's Local Rule 4001-1(c)(1)(C)(i), a lift stay motion must be

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

CONT... Sergio E. Torres

Chapter 7

served by the moving party upon "[t]he debtor and debtor's attorney (if any)." Under Local Rule 9013-1(e), the attached proof of service must also indicate the filed document was served via Notice of Electronic Filing ("NEF") on parties registered to receive such service. Under the Federal Rules of Bankruptcy Procedure, to properly serve a motion for relief from automatic stay upon an individual in accordance with Fed. R. Bankr. P. 4001(a)(1), Fed. R. Bankr. P. 9014(b), and Fed. R. Bankr. P. 7004(b)(1), the Motion may be served via one of the methods prescribed under Fed. R. Civ. P. 4(e)-(f), or upon an individual in the United States, "service may be made within the United States by first class mail postage prepaid." Fed. R. Bankr. P. 7004(b).

The Motion was filed and served on December 19, 2023 upon several parties registered to be served by "Court Notice of Electronic Filing." *See Proof of Service*, p. 9. The Debtor is not listed as a recipient via NEF, nor does the Motion list his real property address on the *Proof of Service of Document* as having been served via U.S. Mail first class, postage prepaid. Therefore, notice of the Motion was improper.

Party Information

Debtor(s):

Sergio E. Torres

Represented By
Kenumi T Maatafale

Movant(s):

Gabriela Torres

Represented By
Michael D Kwasigroch

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

9:23-10866 Joseph W Saraceni

Chapter 7

#9.00 Hearing
RE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 4647 Hawaina Way Glen Ellen, CA 95451 .

Docket 13

Tentative Ruling:

January 9, 2024

Appearances waived. The Court will deny the Motion for the reasons discussed *infra*. Movant is to lodge a conforming order within 7 days.

Deutsche Bank Trust Company Americas, as Trustees for Residential Accredit Loans, Inc., Mortgage Asset-Backed Pass-Through Certificates, Series 2006-Q07 ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(2) in relation to the residential real property located at 4647 Hawaina Way, Kelseyville, CA 95451 (the "Property") of Joseph W Saraceni (the "Debtor") on the grounds that the Debtor filed a statement of intention that indicates that the Debtor intends to surrender the Property. *See* Docket No. 13, *Motion for Relief from the Automatic Stay Under 11 U.S.C. 362 – Real Property* (the "Motion").

In addition to lifting the stay, Movant requests relief to (1) proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property, and (2) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a) (3). *See* Motion, at p. 5.

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on November 20, 2023, notifying the Debtor that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id.*, *Proof of Service of Document*, pg. 12. Movant filed that *Amended Notice for Motion for Relief from the Automatic Stay* on December 13, 2023 correcting the hearing date on the Motion to January 9, 2023, at 10:00 a.m. Pursuant to this Court's Local Rule

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room

201

10:00 AM

CONT...

Joseph W Saraceni

Chapter 7

9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtor, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, including the Debtor.

Legal Standard

Pursuant to 11 U.S.C. § 362(d)(2), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay with respect to a stay of an act against property under subsection (a) of this section, if (A) the debtor does not have an equity in such property and (B) such property is not necessary to an effective reorganization." "Since reorganization is not relevant in Chapter 7, the only issues is whether there is equity in the property." *In re Preuss*, 15 B.R. 896, 897 (9th Cir. BAP 1981).

Analysis

Here, Movant first contends that arrearages total \$5,508.88, which represents four (4) unpaid payments of \$1,377.22 each (as of the date of the Motion) with a payment of \$1,377.22 that became due on November 1, 2023. *See* Motion, p. 8. Movant further alleges that its interest in the Property is not adequately protected. Movant has a secured claim against the Property in the amount of \$344,610.18. *Id.* As of the petition date of September 28, 2023, Movant asserts that the fair market value of the Property is \$378,921.00 per the Debtor's *Schedule D*. *See* Docket No. 1, *Schedule D*, p 4. Movant argues that the equity cushion in the Property exceeding Movant's liens is \$34,310.68 (\$344,610.18 in liens against the Property valued at \$378,921.00) or 9.95% of the fair market value. *Id.*, p. 8.

Movant has provided no evidence in support of the Motion. "It is the movant's burden to prove the existence of each claimed lien by competent evidence." B. Grounds for Relief from Stay, *Cal. Prac. Guide Bankruptcy* Ch. 8(II)-B. Here, there is no evidence that Movant has a valid security interest in the Property, or evidence to support an assertion of lack of equity in the Property. Therefore, Movant has not

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

CONT... **Joseph W Saraceni** **Chapter 7**

carried its burden pursuant to 11 U.S.C. § 362(d)(2) to grant relief from stay. Movant to lodge a conforming order within 7 days.

Party Information

Debtor(s):

Joseph W Saraceni

Represented By
Julie J Villalobos

Movant(s):

DEUTSCHE BANK TRUST

Represented By
Merdaud Jafarnia

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

9:23-11147 Sheryl Katherine Schaap

Chapter 7

#10.00 Hearing
RE: [18] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: Single Family Residence - 4017 W. Hemlock Street, Oxnard, CA 93035 .

Docket 18

***** VACATED *** REASON: Case dismissed on 1/2/2024**

Tentative Ruling:

January 9, 2024

Appearances waived. This case was dismissed on January 2, 2024. See Docket No. 21.

Party Information

Debtor(s):

Sheryl Katherine Schaap

Represented By
Brian Nomi

Movant(s):

William Kinney

Represented By
Robert M Baskin

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

9:23-10061 South Bay Property Homes LLC

Chapter 11

#11.00 CONT'D Hearing

RE: [43] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 27009 Sea Vista Drive, Malibu, CA 90265 . (Wong, Jennifer)

FR. 7-25-23, 8-8-23, 9-12-23, 11-21-23, 12-12-23

Docket 43

***** VACATED *** REASON: Hearing continued by stipulation dated 1/9/24 to new hearing date of 1/23/24 at 10:00AM.**

Tentative Ruling:

January 9, 2024

Appearances required.

The Debtor and Movant filed that *Stipulation to Continue Hearing on Motion for Relief from Automatic Stay* on December 11, 2023, to provide the parties time to finalize a settlement. See Docket No. 109. That *Order on Stipulation to Continue Hearing on Motion for Relief from Automatic Stay* was entered on December 12, 2023, continuing the hearing on the stay relief motion to January 9, 2024. See Docket No. 110. To date, nothing further has been filed by the Debtor or Movant. Parties to appear and advise of status of the settlement.

December 12, 2023

Appearances required.

The Debtor and Movant filed that *Stipulation to Continue Hearing on Motion for Relief from Automatic Stay* on November 20, 2023, to provide the parties time to finalize a settlement. See Docket No. 96. That *Order on Stipulation to Continue Hearing on Motion for Relief from Automatic Stay* was entered on November 20, 2023, continuing the hearing on the stay relief motion to December 12, 2023. See Docket No. 97. To date, nothing further has been filed by the Debtor and/or Movant.

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

CONT... South Bay Property Homes LLC

Chapter 11

Parties to appear and advise of status of the settlement.

November 21, 2023

Appearances required. Has this matter settled? If not, the Court is inclined to grant the Motion pursuant to 11 U.S.C. § 362(d)(2), and, if there is no insurance for property loss related to the Property, the Court is also inclined to grant the Motion pursuant to 11 U.S.C. § 362(d)(1).

JPMorgan Chase Bank, National Association ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(4) in relation to the real property located at 27009 Sea Vista Drive, Malibu, CA 90265 (the "Property") of South Bay Property Homes, LLC ("Debtor") on the grounds that (1) Movant's interest in the Property is not protected by an adequate equity cushion and the fair market value of the Property is declining, (2) proof of insurance regarding the Property has not been provided, (3) the bankruptcy case was filed in bad faith because other bankruptcy cases have been filed in which an interest in the Property was asserted, and (4) the filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcies affecting the Property. See Docket No. 43, *Motion for Relief from the Automatic Stay Under 11 U.S.C. 362 – Real Property* (the "Motion").

In addition to lifting the stay, Movant requests (1) that it may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property, (2) waiver of the 14-day stay provided under Fed. R. Bankr. P. 4001(a)(3), (3) that a designated law enforcement officer may evict Debtor and any other occupant regardless of any future bankruptcy filing concerning the Property for 180 days from the hearing in the Motion upon recording a copy of the order or giving appropriate notice, (4) relief under 11 U.S.C. § 362(d)(4), including a finding that mortgagor, Iris Martin, through her corporate entity, filed a prior bankruptcy petition as a part of a scheme to delay, hinder, or defraud Movant and the three quitclaim deeds/grant deeds are unauthorized by Movant and the Court (5) that the order be binding and effective in any bankruptcy case commenced by or against any debtor who claims an interest in the Property for 180 days from the hearing on the Motion upon recording a copy of the order or giving appropriate notice, and (6) that the order is binding and effective in any future bankruptcy case, no matter who the

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

CONT... South Bay Property Homes LLC

Chapter 11

debtor may be upon recording a copy of the order or giving appropriate notice. *See id.* at p. 5.

A hearing on the Motion was initially held on August 8, 2023. The Debtor was served with the Motion at the incorrect address and the hearing was continued to September 12, 2023, to allow the Movant to correct service of the Motion. The September 12, 2023, hearing was subsequently continued to November 21, 2023, to provide the Debtor with the opportunity to make meaningful progress on reorganization and/or mediate the matter with Movant.

Notice

That *Proof of Service* was filed on August 11, 2023, indicating that the Debtor was served at the proper address via U.S. Mail First class, postage prepaid on August 11, 2023. *See* Docket No. 65, *Proof of Service of Document*, p. 2. That *Notice of Continued Hearing on Motion for Relief from the Automatic Stay* was also filed on August 22, 2023, indicating that the hearing was continued to September 12, 2023, and served upon the Debtor, the borrower Iris Martin, and the Debtor's 20 largest unsecured creditors via U.S. Mail first class, postage prepaid on the same date. *See* Docket No. 66, *Proof of Service of Document*, pp. 3-5. The Debtor's counsel and the United States Trustee were served with notice of the continued hearing via NEF on August 11, 2023. *See id.*, p.3. No notice of continued hearing to November 21, 2023, was filed by Movant.

Opposition

On July 25, 2023, the Debtor filed that *Opposition to Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Response"). *See* Docket No. 61. In the Response, the Debtor asserts that (1) Movant fails to demonstrate a lack of equity cushion protecting Movant's interest, (2) the Debtor has procured insurance on the Property, and (3) there is no scheme of intent to hinder, delay or defraud creditors. *See id.*

Reply

On August 1, 2023, Movant filed that *Reply to Debtor's Opposition to Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Reply"). *See* Docket. No.

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

CONT... South Bay Property Homes LLC

Chapter 11

64. In the Reply, Movant argues that stay relief is warranted because (1) the Debtor has no ability to reorganize Movant's debt, (2) the Debtor can't protect the Property, and (3) the Debtor lacks good faith. *See id.*

Supplement to the Motion

On October 27, 2023, Movant filed that *JPMorgan Chase Bank, National Association's Supplement to Motion for Relief from Automatic Stay* (the "Supplement"). *See* Docket No. 91. In the Supplement, Movant requests to supplement its Motion to add a request for relief pursuant to 11 U.S.C. § 362(d)(2) on the grounds that the Debtor does not have equity in the Property and it is not necessary for reorganization. *See id.*

Supplement to Opposition

On November 8, 2023, the Debtor filed that *Supplemental Opposition to Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Supplemental Opposition"). *See* Docket No. 95. The Debtor argues in the Supplemental Opposition that "the Debtor has successfully negotiated a settlement with Chase." *See id.* at p. 3, lines 11-15. The Debtor also disputes the claim of Movant in the Supplement that the Debtor lacks equity in the Property. The Debtor argues that it has "successfully avoided the \$2,360,500 debt and lien of Star Group," the "RBS Citizens and Thomas Block [claims] are disputed claims," and "[t]hese creditors have not filed claims," and "secured creditors National Mortgage Resources, Inc. is an affiliate of the Debtor, and such, its objectives are aligned with the Debtor and its \$2.6 lien will be addressed as necessary to benefit the estate in the Debtor's future plan." *Id.* at p. 3.

Analysis

11 U.S.C. § 362(d)(1)

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay [] for cause, including the lack of adequate protection of an interest in property of such party in interest." 11 U.S.C. § 362(d)(1). While the term "adequate protection" is not defined in the Code, 11 U.S.C. § 361 sets forth three non-exclusive examples of

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room

201

10:00 AM

CONT... South Bay Property Homes LLC

Chapter 11

what may constitute adequate protection: 1) periodic cash payments equivalent to decrease in value, 2) an additional or replacement lien on other property, or 3) other relief that provides the indubitable equivalent. *See In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). "Equity cushion" is defined as the value in the property, above the amount owed to the creditor with a secured claim, that will shield that interest from loss due to any decrease in the value of the property during the time the automatic stay remains in effect. *Id.* at 1397. "Equity," as opposed to "equity cushion," is the value, above all secured claims against the property that can be realized from the sale of the property for the benefit of the unsecured creditors. *Id.*

"Although the existence of an equity cushion as a method of adequate protection is not specifically mentioned in § 361, it is the classic form of protection for a secured debt justifying the restraint of lien enforcement by a bankruptcy court." *Id.* (internal citations omitted). "In fact, it has been held that the existence of an equity cushion alone, can provide adequate protection." *Id.* (internal citations omitted). "A sufficient equity cushion has been found to exist although not a single mortgage payment had been made." *Id.* (internal citations omitted). "A 20% cushion has been held to be an adequate protection for a secured creditor." *Id.* at 1401. (internal citations omitted).

First, Movant alleges that its interest in the Property is not adequately protected because it has a \$4,571,194.05 secured claim against the Property (\$3,974,586.83 principal, \$295,471.40 in accrued interest, \$7,473.00 in costs, and \$300,979.74 in advances less a suspense account of \$7,316.92), which came due and payable on August 1, 2021. *See* Docket No. 43, p. 7. The fair market value of the Property is \$7,400,000.00 as of the petition date of September 30, 2022 per Movant's exterior-only inspection residential appraisal report. *Id.* at *Exhibit 5*. Movant alleges the equity cushion in the Property is \$2,828,805.95 or 38.23 % (fair market value of the property of \$7,400,000.00 less Movant's secured claim of \$4,571,194.05 less estimated costs of sale of \$592,000.00). *See* Docket No. 43, pp. 8-9. The Court finds a 38.23% equity cushion to be adequate protection for Movant. *See In re Mellor*, 734 F.2d 1396, 1401.

Second, Movant alleges that the Debtor has failed to insure the Property. Failure to maintain insurance on a secured creditor's property (i.e., collateral) leaves the creditor without adequate protection and generally will be cause for lifting the stay. *See In re Monroe Park*, 17 B.R. 934, 939 (D. Del. 1982); *see also In re El Patio, Ltd.*, 6 B.R.

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

CONT... South Bay Property Homes LLC

Chapter 11

518, 522 (Bankr. C.D. Cal. 1980). In the Response, the Debtor provides evidence of a "Comprehensive Personal Liability Policy." See Docket No. 61, *Exhibit A*. The Court is unsure whether the Property is insured against loss. The proof of insurance provided by the Debtor appears to relate to personal liability for occurrences on the Property. If the Property itself is not insured against loss the stay should be lifted.

11 U.S.C. § 362(d)(2)

Pursuant to 11 U.S.C. § 362(d)(2), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay with respect to a stay of an act against property under subsection (a) of this section, if (A) the debtor does not have an equity in such property and (B) such property is not necessary to an effective reorganization." *In re Preuss*, 15 B.R. 896, 897 (9th Cir. BAP 1981). "Once the movant under § 362(d)(2) establishes that he is an undersecured creditor, it is the burden of the debtor to establish that the collateral at issue is "necessary to an effective reorganization." See 11 U.S.C. § 362(g). What this requires is not merely a showing that if there is conceivably to be an effective reorganization, this property will be needed for it; but that the property is essential for an effective reorganization that is in prospect. This means, as many lower courts, including the en banc court in this case, have properly said, that there must be "a reasonable possibility of a successful reorganization within a reasonable time." *United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 375–76, 108 S. Ct. 626, 632–33, 98 L. Ed. 2d 740 (1988) *citing In re Timbers of Inwood Forest Assocs., Ltd.*, 808 F.2d 363, 370–371, and nn. 12–13 (5th Cir. 1987).

Equity in the Property

The following claims have been asserted against the Debtor, secured by the Property: (1) Los Angeles County Treasurer and Tax Collector, \$198,996.78 (Claim No. 1); (2) W & E Deutsch Family Trust, \$993,522.04 (Claim No. 2); and (3) Movant, \$4,502,877.71 (Claim No. 4). The Debtor scheduled National Mortgage Resources, Inc. as having a secured claim, and not unliquidated, contingent or disputed, against the Property in the amount of \$2,636,749.16. See Docket No. 25, *Schedule D*, p. 2. Total allowed secured claims against the Property are \$8,332,145.69. With a value of \$7.4 million as of the Petition Date, the Debtor lacks equity in the Property. [FN1].

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

CONT... South Bay Property Homes LLC

Chapter 11

The equity cushion in the Property is negative \$932,145.69 taking into account currently allowed secured claims, or negative 11.18%.

Reasonable Probability of Successful Reorganization in Reasonable Time

The Debtor's case was filed approximately ten (10) months ago on January 30, 2023. *See* Docket No. 1. No plan of reorganization has been filed. The Debtor believes that if it files a plan, it "estimates plan confirmation can occur by early to mid 2024." *See* Docket No. 94, p. 4, lines 19-21. It does not appear to the Court that there is a reasonable probability that a plan will be proposed, much yet confirmed in any reasonable period of time.

Therefore, the Court finds that there is cause to grant stay relief under 11 U.S.C. § 362(d)(2).

11 U.S.C. § 362(d)(4)

Movant additionally alleges that the bankruptcy was filed in bad faith as part of a scheme to hinder, delay, or defraud creditors because the Property is the subject of multiple bankruptcy filings. To obtain relief under 11 U.S.C. § 362(d)(4), the Court must find the following three (3) elements are present: (1) the debtor's bankruptcy filing was part of a scheme; (2) the object of the scheme was to delay, hinder or defraud creditors; and (3) the scheme must involve either (a) the transfer of some interest in the real property without the secured creditor's consent or court approval, or (b) multiple bankruptcy filings affecting the property. *In re Dorsey*, 476 B.R. 261, 265–66 (Bankr. C.D. Cal. 2012) citing *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC*. (*In re First Yorkshire Holdings, Inc.*), 470 B.R. 864, 870–871 (9th Cir. BAP 2012).

Here, there is a series of transfers of ownership of the Property without consent of Movant, which initially appear to be part of a scheme to hold off foreclosure of the Property. However, the scheme appears to be on the part of the original borrower and World Systems, Inc. and not the Debtor. The original borrower purported to transfer an interest in the Property to World Systems, Inc. for no or nominal consideration on November 14, 2013 without Movant's knowledge. *See* Docket No. 43, *Exhibit 6*, p. 83. On February 6, 2019, World Systems, Inc. filed a voluntary Chapter 11 petition, case no. 1:19-bk-10282-MB. *Id.* at *Exhibit 7*. South Bay Properties, LLC filed a

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room

201

10:00 AM

CONT...

South Bay Property Homes LLC

Chapter 11

proof of claim in the World Systems, Inc. case in the amount of \$2,636,749.16. *Id.* at *Exhibit 9*. Pursuant to the terms of a settlement agreement between World Systems, Inc., the original borrower, Steve Miller, and South Bay Properties, LLC, South Bay Properties, LLC's proof of claim was reduced to \$750,000.00, and there were payments that World Systems, Inc. was required to make to South Bay Properties, LLC. *Id.* at *Exhibit 10*. As part of the settlement, the original borrower executed a grant deed and deed in lieu of foreclosure transferring the Property to South Bay Properties, LLC to hold in trust in the event of default under the settlement agreement. Subsequently, a dispute arose regarding nonpayment under the settlement agreement and the grant deed and deed in lieu of foreclosure was recorded on October 5, 2021. *Id.* at *Exhibit 6*, pp. 85-93. Movant contends that the deed was recorded without its consent. However, Movant was on notice of the settlement terms and notice was given to Movant, and the Court approved the settlement agreement. *See* Docket No. 61, *Declaration of Steven Miller*, p. 12, ¶ 5. It is not clear from the papers if Movant filed a response to the settlement motion. The transfer of the Property to the Debtor was part of a court approved settlement, which is distinguishable from the "new debtor syndrome" cited by Movant in the Reply.

Subsequently, on September 14, 2022, a quitclaim deed was recorded wherein South Bay Properties, LLC purported to transfer an interest in the Property to the Debtor. *See* Docket No. 43, *Exhibit 6*, pp. 94-97. The Debtor contends that this transfer was only to correct an error in the name, i.e. South Bay Properties, LLC should have actually been South Bay Property Homes, LLC. *See* Docket No. 61, *Declaration of Steven Miller*, p. 11, FN1.

Movant further alleges that as its loan remained delinquent, and a trustee's sale was scheduled for October 27, 2022. "However, in furtherance of a multi-year scheme to delay and hinder Secured Creditor [Movant] from pursuing foreclosure, Debtor South Bay Property Homes, LLC filed the instant bankruptcy on January 30, 2023." *See* Docket No. 43, pp. 13-14. The Debtor's filing bankruptcy three months after a scheduled foreclosure sale does not in itself evidence bad faith. Therefore, there is no evidence that the Debtor's filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud creditors.

The Court will deny the Motion as to 11 U.S.C. § 362(d)(4).

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

CONT... South Bay Property Homes LLC

Chapter 11

[FN 1] The lien in favor of Star Group, Inc. in the amount of \$2,360,500.00 was disallowed and avoided on August 29, 2023. *See* Docket No. 72.

September 12, 2023

Appearances required.

JPMorgan Chase Bank, National Association ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(4) in relation to the real property located at 27009 Sea Vista Drive, Malibu, CA 90265 (the "Property") of South Bay Property Homes, LLC ("Debtor") on the grounds that (1) Movant's interest in the Property is not protected by an adequate equity cushion and the fair market value of the Property is declining, (2) proof of insurance regarding the Property has not been provided, (3) the bankruptcy case was filed in bad faith because other bankruptcy cases have been filed in which an interest in the Property was asserted, and (4) the filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcies affecting the Property. *See* Docket No. 43, *Motion for Relief from the Automatic Stay Under 11 U.S.C. 362 – Real Property* (the "Motion").

In addition to lifting the stay, Movant requests (1) that it may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property, (2) waiver of the 14-day stay provided under Fed. R. Bankr. P. 4001(a)(3), (3) that a designated law enforcement officer may evict Debtor and any other occupant regardless of any future bankruptcy filing concerning the Property for 180 days from the hearing in the Motion upon recording a copy of the order or giving appropriate notice, (4) relief under 11 U.S.C. § 362(d)(4), including a finding that mortgagor, Iris Martin, through her corporate entity, filed a prior bankruptcy petition as a part of a scheme to delay, hinder, or defraud Movant and the three quitclaim deeds/grant deeds are unauthorized by Movant and the Court (5) that the order be binding and effective in any bankruptcy case commenced by or against any debtor who claims an interest in the Property for 180 days from the hearing on the Motion upon recording a copy of the order or giving appropriate notice, and (6) that the order is binding and effective in any future bankruptcy case, no matter who the debtor may be upon recording a copy of the order or giving appropriate notice. *See id.* at p. 5.

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

CONT... South Bay Property Homes LLC

Chapter 11

A hearing on the Motion was initially held on August 8, 2023. The Debtor was served with the Motion at the incorrect address the hearing was continued to September 12, 2023 to allow the Movant to correct service of the Motion.

Notice

That *Proof of Service* was filed on August 11, 2023 indicating that the Debtor was served at the proper address via U.S. Mail First class, postage prepaid on August 11, 2023. *See* Docket No. 65, *Proof of Service of Document*, p. 2. That *Notice of Continued Hearing on Motion for Relief from the Automatic Stay* was also filed on August 22, 2023 and served upon the Debtor, the borrower Iris Martin, and the Debtor's 20 largest unsecured creditors via U.S. Mail first class, postage prepaid on the same date. *See* Docket No. 66, *Proof of Service of Document*, pp. 3-5. The Debtor's counsel and the United States Trustee were served with notice of the continued hearing via NEF on August 11, 2023. *See id.*, p.3.

Opposition

On July 25, 2023, the Debtor filed that *Opposition to Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Response"). *See* Docket No. 61. In the Response, the Debtor asserts that (1) Movant fails to demonstrate a lack of equity cushion protecting Movant's interest, (2) the Debtor has procured insurance on the Property, and (3) there is no scheme of intent to hinder, delay or defraud creditors. *See id.*

Reply

On August 1, 2023, Movant filed that *Reply to Debtor's Opposition to Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Reply"). *See* Docket. No. 64. In the Reply, Movant argues that stay relief is warranted because (1) the Debtor has no ability to reorganize Movant's debt, (2) the Debtor can't protect the Property, and (3) the Debtor lacks good faith. *See id.*

Analysis

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room

201

10:00 AM

CONT... South Bay Property Homes LLC

Chapter 11

11 U.S.C. § 362(d)(1)

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay [] for cause, including the lack of adequate protection of an interest in property of such party in interest." 11 U.S.C. § 362(d)(1). While the term "adequate protection" is not defined in the Code, 11 U.S.C. § 361 sets forth three non-exclusive examples of what may constitute adequate protection: 1) periodic cash payments equivalent to decrease in value, 2) an additional or replacement lien on other property, or 3) other relief that provides the indubitable equivalent. See *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). "Equity cushion" is defined as the value in the property, above the amount owed to the creditor with a secured claim, that will shield that interest from loss due to any decrease in the value of the property during the time the automatic stay remains in effect. *Id.* at 1397. "Equity," as opposed to "equity cushion," is the value, above all secured claims against the property that can be realized from the sale of the property for the benefit of the unsecured creditors. *Id.*

"Although the existence of an equity cushion as a method of adequate protection is not specifically mentioned in § 361, it is the classic form of protection for a secured debt justifying the restraint of lien enforcement by a bankruptcy court." *Id.* (internal citations omitted). "In fact, it has been held that the existence of an equity cushion alone, can provide adequate protection." *Id.* (internal citations omitted). "A sufficient equity cushion has been found to exist although not a single mortgage payment had been made." *Id.* (internal citations omitted). "A 20% cushion has been held to be an adequate protection for a secured creditor." *Id.* at 1401. (internal citations omitted).

First, Movant alleges that its interest in the Property is not adequately protected because it has a \$4,571,194.05 secured claim against the Property (\$3,974,586.83 principal, \$295,471.40 in accrued interest, \$7,473.00 in costs, and \$300,979.74 in advances less a suspense account of \$7,316.92), which came due and payable on August 1, 2021. See Motion, p. 7. The fair market value of the Property is \$7,400,000.00 as of the petition date of September 30, 2022 per Movant's exterior-only inspection residential appraisal report. *Id.* at Ex. 5. The equity cushion in the Property is \$2,828,805.95 or 38.23 % (fair market value of the property of \$7,400,000.00 less Movant's secured claim of \$4,571,194.05 less estimated costs of

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room

201

10:00 AM

CONT... South Bay Property Homes LLC

Chapter 11

sale of \$592,000.00). *See* Motion, pp. 8-9. The Court finds a 38.23% equity cushion to be adequate protection for Movant. *See In re Mellor*, 734 F.2d 1396, 1401. [FN 1]

Second, Movant alleges that the Debtor's inability to reorganize is cause to terminate the stay. The Debtor filed this case approximately seven months ago on January 30, 2023. The Debtor is a non-operating entity and it does not anticipate any cash flow for the first six months of the case. *See* Docket No. 39, p. 5. As of two months ago, the Debtor was unable to obtain an appraisal of the Property due to its "state of disrepair." *See id.*, p. 3. To date, neither the Debtor, nor any interested party has filed a plan of reorganization. Overall, there has been little progress in this case, which concerns the Court.

Third, Movant alleges that the Debtor has failed to insure the Property. Failure to maintain insurance on a secured creditor's property (i.e., collateral) leaves the creditor without adequate protection and generally will be cause for lifting the stay. *See In re Monroe Park*, 17 B.R. 934, 939 (D. Del. 1982); *see also In re El Patio, Ltd.*, 6 B.R. 518, 522 (Bankr. C.D. Cal. 1980). In the Response, the Debtor provides evidence of a "Comprehensive Personal Liability Policy." *See* Response, Ex. A. The Court is unsure whether the Property is insured against loss. The proof of insurance provided by the Debtor appears to relate to personal liability for occurrences on the Property. If the Property itself is not insured against loss the stay should be lifted.

11 U.S.C. § 362(d)(4)

Movant additionally asserts that the bankruptcy was filed in bad faith as part of a scheme to hinder, delay, or defraud creditors because the Property is the subject of multiple bankruptcy filings. To obtain relief under 11 U.S.C. § 362(d)(4), the Court must find the following three (3) elements are present: (1) the debtor's bankruptcy filing was part of a scheme; (2) the object of the scheme was to delay, hinder or defraud creditors; and (3) the scheme must involve either (a) the transfer of some interest in the real property without the secured creditor's consent or court approval, or (b) multiple bankruptcy filings affecting the property. *In re Dorsey*, 476 B.R. 261, 265–66 (Bankr. C.D. Cal. 2012) citing *First Yorkshire Holdings, Inc. v. Pacifica L 22, LLC*. (*In re First Yorkshire Holdings, Inc.*), 470 B.R. 864, 870–871 (9th Cir. BAP 2012).

Here, there is a series of transfers of ownership of the Property without consent of

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

CONT... South Bay Property Homes LLC

Chapter 11

Movant, which initially appear to be part of a scheme to hold off foreclosure of the Property. However, the scheme appears to be on the part of the original borrower and World Systems, Inc. and not the Debtor. The original borrower purported to transfer an interest in the Property to World Systems, Inc. for no or nominal consideration on November 14, 2013 without Movant's knowledge. *See* Motion, Ex. 6, p. 83. On February 6, 2019, World Systems, Inc. filed a voluntary Chapter 11 petition, case no. 1:19-bk-10282-MB. *Id.* at Ex. 7. South Bay Properties, LLC filed a proof of claim in the World Systems, Inc. case in the amount of \$2,636,749.16. *Id.* at Ex. 9. Pursuant to the terms of a settlement agreement between World Systems, Inc., the original borrower, Steve Miller, and South Bay Properties, LLC., South Bay Properties, LLC's proof of claim was reduced to \$750,000.00 with payments to South Bay Properties, LLC. *Id.* at Ex. 10. As part of the settlement, the original borrower executed a grant deed and deed in lieu of foreclosure transferring the Property to South Bay Properties, LLC to hold in trust in the event of default under the settlement agreement. Subsequently, a dispute arose regarding nonpayment under the settlement agreement and the grant deed and deed in lieu of foreclosure was recorded on October 5, 2021. *Id.* at Ex. 6, pp. 85-93. Movant contends that the deed was recorded without its consent. However, Movant was on notice of the settlement terms and notice was given to Movant, and the Court approved the settlement agreement. *See* Response, *Declaration of Steven Miller*, p. 12, ¶ 5. It is not clear from the papers if Movant filed a response to the settlement motion. The transfer of the Property to the Debtor was part of a court approved settlement, which is distinguishable from the "new debtor syndrome" cited by Movant in the Reply.

Subsequently, on September 14, 2022, a quitclaim deed was recorded wherein South Bay Properties, LLC purported to transfer an interest in the Property to the Debtor. *See* Motion, Ex. 6, pp. 94-97. The Debtor contends that this transfer was only to correct an error in the name, i.e. South Bay Properties, LLC should have actually been South Bay Property Homes, LLC. *See* Response, *Declaration of Steven Miller*, p. 11, FN1.

Movant further argues that as its loan remained delinquent, a trustee's sale was scheduled for October 27, 2022. "However, in furtherance of a multi-year scheme to delay and hinder Secured Creditor [Movant] from pursuing foreclosure, Debtor South Bay Property Homes, LLC filed the instant bankruptcy on January 30, 2023." *See*

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

CONT... South Bay Property Homes LLC

Chapter 11

Motion, pp. 13-14. The Debtor's filing bankruptcy three months after a scheduled foreclosure sale does not in itself evidence bad faith. Therefore, there is no evidence that the Debtor's filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud creditors.

[FN 1] In the Reply, Movant acknowledges that it has a 38% equity cushion. Yet, Movant argues that there are several other liens affecting the Property and, if those liens are found value, there is no overall equity in the Property. Therefore, it would also have a basis for relief under 11 U.S.C. § 362(d)(2). Since the Motion did not assert 11 U.S.C. § 362(d)(2) as a basis for relief, the Court declines to address it now.

August 8, 2023

Appearances waived. The Motion is denied without prejudice for the reasons *infra*.

JPMorgan Chase Bank, National Association ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(4) in relation to the real property located at 27009 Sea Vista Drive, Malibu, CA 90265 (the "Property") of South Bay Property Homes, LLC ("Debtor") on the grounds that (1) Movant's interest in the Property is not protected by an adequate equity cushion and the fair market value of the Property is declining, (2) proof of insurance regarding the Property has not been provided, (3) the bankruptcy case was filed in bad faith because other bankruptcy cases have been filed in which an interest in the Property was asserted, and (4) the filing of the bankruptcy petition was part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcies affecting the Property. *See* Docket No. 43, *Motion for Relief from the Automatic Stay Under 11 U.S.C. 362 – Real Property* (the "Motion").

In addition to lifting the stay, Movant requests (1) that it may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property, (2) waiver of the 14-day stay provided under Fed. R. Bankr. P. 4001(a)(3), (3) that a designated law enforcement officer may evict Debtor and any other occupant regardless of any future bankruptcy filing concerning the Property for 180 days from the hearing in the Motion upon recording a copy of the order or giving appropriate notice, (4) relief under 11 U.S.C. § 362(d)(4), including a

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

CONT... South Bay Property Homes LLC

Chapter 11

finding that mortgagor, Iris Martin, through her corporate entity, filed a prior bankruptcy petition as a part of a scheme to delay, hinder, or defraud Movant and the three quitclaim deeds/grant deeds are unauthorized by Movant and the Court (5) that the order be binding and effective in any bankruptcy case commenced by or against any debtor who claims an interest in the Property for 180 days from the hearing on the Motion upon recording a copy of the order or giving appropriate notice, and (6) that the order is binding and effective in any future bankruptcy case, no matter who the debtor may be upon recording a copy of the order or giving appropriate notice. *See id.* at p. 5.

Notice

Pursuant to Fed. R. Bankr. P. 4001(a)(1) and this Court's Local Rule 4001-1(c)(B) and (C), the Motion must be served upon the "original borrower", the Debtor and the Debtor's attorney, and the Debtor's 20 largest unsecured creditors. The Motion and notice thereof were properly served upon Iris Martin (the "Original Borrower"), the Debtor's 20 largest unsecured creditors, and the Debtor's attorney. The Motion and notice thereof was served on the Debtor at the incorrect address of 27009 Sea Vista Drive, Malibu, CA 90265. According to the petition, the Debtor's address is 595 S. Burlingame Ave., Los Angeles, CA 90049. *See* Docket 1, p. 1. [FN 1] Therefore, notice of the Motion was defective.

The Motion is denied without prejudice.

[FN 1] The Debtor's address on the docket was incorrectly listed as 27009 Sea Vista Drive, Malibu, CA 90265 until June 20, 2023. The docket was updated on June 20, 2023 to correct the Debtor's address to the business/mailling address that is listed on the Petition. *See* Docket No. 46.

Party Information

Debtor(s):

South Bay Property Homes LLC

Represented By
Leslie A Cohen

Movant(s):

JPMorgan Chase Bank, National

Represented By
Jennifer C Wong

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

9:23-10377 Ari Anna Mendoza

Chapter 7

#12.00 HearingRE: [26] Motion to Avoid Lien Judicial Lien with PERSOLVE Motion to Avoid Judicial Lien

Docket 26

Tentative Ruling:

January 9, 2024

Appearances required. The Motion is denied without prejudice for the reasons stated *infra*. Movant to upload a conforming order within seven (7) days.

Background

On May 15, 2023 Ari Anna Mendoza (the "Debtor") filed that *Chapter 7 Voluntary Petition for Individuals* commencing this case. *See* Docket No. 1. Pursuant to *Schedule A/B*, the Debtor has an ownership interest in a single-family home located at 1817 Driftwood Ct., Paso Robles, CA 93446-0000 (the "Property"). *See* Docket No. 16, p. 1. The Debtor lists the Property's current value at \$529,167.00 (the "Property Value"), all of which the Debtor owns. *See id.* The Debtor claims a homestead property exemption in the Property of \$365,973.00 under California Code of Civil Procedure § 704.730. *See* Docket No. 1, *Schedule C: The Property You Claim as Exempt*, p. 1. Pursuant to *Schedule D*, there is a lien on the Property held by Wells Fargo Home Mortgage in the amount of \$118,688.00 (the "First Lien"), a lien held by Wells Fargo Mortgage in the amount of \$44,506.00 (the "Second Lien"), and a judicial lien held by Persolve, LLC dba Account Resolution Assoc. in the amount of \$27,812.64 (the "Judicial Lien"). *See* Docket No. 1, *Schedule D: Creditors Who Have Claims Secured by Property*, pp. 1-2.

On October 16, 2023, the Debtor filed that *Motion to Avoid Lien Under 11 U.S.C. § 522(f)* (the "Motion"), seeking to avoid the Judicial Lien under 11 U.S.C § 522(f). *See* Docket No. 26. In the Motion, the Debtor claims that her entitlement to the homestead exemption is impaired by the Judicial Lien, resulting from a San Luis Obispo County Superior Court judgment that was entered on September 7, 2012, in

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

CONT... Ari Anna Mendoza

Chapter 7

the case of *Persolve LLC v Ari Anna Mendoza*, docket number LC128528. *See id.*

On November 27, 2023, the Debtor filed that *Declaration that No Party Requested a Hearing on Motion*, requesting that the Court grant the Motion and enter an order without a hearing. *See* Docket No. 27. On the same day, the Court entered that *Order Setting for Hearing Debtor's Motion to Avoid Lien Under 11 U.S.C §522(f)*. *See* Docket No. 28.

Notice

Pursuant to this Court's Local Bankruptcy Rule ("LBR") 4003-2(c)(1), in the context of a motion to avoid a lien, "[t]he motion, notice, and supporting documents must be served on the holder of the lien to be avoided in the same manner as a summons and complaint under FRBP 7004." *See* LBR 4003-2(c)(1).

Pursuant to Fed. R. Bankr. P. 7004(b)(3), service is to made "upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

On October 16, 2023, the Debtor served "Bill Finley, CFO" via United States first class mail, postage prepaid. *See* Docket 26, *Proof of Service Document*. The Debtor does not indicate that Persolve, LLC itself was properly served with the Motion or that Bill Finley is an officer of Persolve, LLC.

Therefore, notice is improper.

Party Information

Debtor(s):

Ari Anna Mendoza

Represented By
Richard E Rossi

Movant(s):

Ari Anna Mendoza

Represented By
Richard E Rossi

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

CONT... Ari Anna Mendoza

Richard E Rossi

Chapter 7

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

9:22-10278 James E Goldstein

Chapter 11

#13.00 CONT'D Chapter 11 Status Conference

FR. 6-8-22, 9-7-22, 12-14-22, 2-21-23, 4-4-23, 6-13-23, 10-10-23, 11-21-23

Docket 1

Tentative Ruling:

January 9, 2024

Appearances required.

The Court has reviewed that *Status Report Regarding Chapter 11 Case*. See Docket No. 125. It appears that the Debtor's largest obstacle to its exit from Chapter 11 has been resolved. The Debtor expects to file a disclosure statement and plan by January 2024's end. The Court will confer with the Office of the United States Trustee regarding the Debtor's compliance with the *Guidelines and Requirements for Chapter 11 Debtors in Possession*. Assuming compliance, the Court is inclined to continue the status conference to February 20, 2024, at 2:00 p.m.

November 21, 2023

Appearances required.

October 10, 2023

Appearances required.

The Court has reviewed the *Status Report Regarding Chapter 11 Case*. See Docket No. 116. The Court is inclined to continue the status conference to November 21, 2023, at 2:00 p.m., but will hear from the Office of the United States Trustee regarding the Debtor's compliance with the *Guidelines and Requirements for Chapter 11 Debtors in Possession*.

June 13, 2023

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

CONT... James E Goldstein

Chapter 11

Appearances required.

The Court has reviewed the *Status Report Regarding Chapter 11 Case*. See Docket No. 84. The Court is inclined to continue the status conference for 120 days, but will hear from the Office of the United States Trustee as to the Debtor's compliance with those *Guidelines and Requirements for Chapter 11 Debtors in Possession*.

April 4, 2023

Appearances required.

The Court has reviewed the *Status Report Regarding Chapter 11 Case*. See Docket No. 80. The Court will inquire with the U.S. Trustee regarding the Debtor's compliance with the *Guidelines and Requirements for Chapter 11 Debtors in Possession* (the "Guidelines"). Assuming full compliance with the Guidelines, the Court intends on continuing the status conference to June 13, 2023, at 2:00 p.m.

February 21, 2023

Appearances required.

In reviewing the *Status Report Regarding Chapter 11 Case*, it appears that the Debtor is attempting to re-file a motion to settle Adversary Proceeding No. 9:22-ap-1028-RC, and is litigating Adversary Proceeding No. 9:22-ap-01059-RC to a conclusion. See Docket No. 76. The Court is inclined to continue the status conference to April 4, 2023, at 2:00 p.m.

December 14, 2022

Appearance not required.

The Court reviewed the *Status Report Regarding Chapter 11 Case*. See Docket No. 62. The Court will continue the status conference to February 21, 2023, at 2:00 p.m.

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

10:00 AM

**CONT... James E Goldstein
September 7, 2022**

Chapter 11

Appearance required.

The Court has reviewed the *Status Report Regarding Chapter 11 Case*. See Docket No. 38. The Court intends on setting a claims bar date in the matter of November 30, 2022, with notice of the bar date to be served by September 15, 2022, and continuing the status conference to December 14, 2022, at 2:00 p.m., with a status conference report filing requirement of December 1, 2022.

Party Information

Debtor(s):

James E Goldstein

Represented By
Michael G Spector
Vicki L Schennum
Jin Soo Lee

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

9:22-10607 Bernardo Tellez and Rosa Elena Tellez

Chapter 7

#14.00 Chapter 7 Trustee's Final Report, Application for Compensation and Application(s) for Compensation of Professionals filed on behalf of Trustee Faith. The United States Trustee has reviewed the Chapter 7 Trustee's Final Report. Filed by United States Trustee. (united states trustee (fsy))

Docket 60

Tentative Ruling:

January 9, 2024

Appearances waived.

Before the Court is the *Trustee's Final Report* (the "Report") filed by the duly appointed Chapter 7 Trustee, Jeremy W. Faith (the "Trustee"), for the bankruptcy estate of Bernardo Tellez and Rosa Elena Tellez on December 13, 2023. *See* Docket No. 60.

On July 25, 2023, Zamora & Hoffmeier, PC ("ZHPC"), in its capacity as counsel to the Trustee, filed that *First and Final 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* (the "ZH Application"), covering the Period from November 3, 2022 to July 18, 2023, through which ZHPC requested allowance on a final basis of fees of \$14,795.00, reflecting a voluntary reduction of \$1,705.00 from the total fees incurred of \$16,500.00 and reimbursement of expenses in the amount of \$724.50. *See* Docket No. 49. According to that *Declaration of Nancy Hoffmeier Zamora*, "[ZHPC] has consented to a reduction of 3.1 hours in time, representing \$1,705.00 in [its] fees." *See id.* at p. 18, lines 20-22.

On November 8, 2023, Hahn Fife & Company, LLP ("HF"), in its capacity as accountant to the Trustee, filed that *First and Final Fee Application of Hahn Fife & Company for Allowance of Fees & Expenses from July 5, 2023 through November 1, 2023* (the "HF Application"), through which HF requested allowance on a final basis of fees of \$2,401.00 and reimbursement of expenses of \$367.70. *See* Docket No. 57. On the same date, HF filed that *Declaration re: Trustee's Support of the First & Final*

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

CONT... Bernardo Tellez and Rosa Elena Tellez

Chapter 7

Fee Application. See Docket No. 58.

On December 13, 2023, that *Notice of Trustee's Final Report and Application for Compensation and Deadline to Object* (the "Notice") was filed with the Court and served on the NEF parties, and on December 15, 2023, the Notice was served on the non-NEF noticed creditors of the bankruptcy estate by U.S. Mail. *See Docket Nos. 61 and 62.* Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." No party served with the Notice has timely filed an opposition to the Report, the ZH Application or the HF Application. The Court therefore takes the default of all non-responding parties.

As of the date of the filing of the Report, the Trustee had approximately \$34,548.95 in cash on hand. *See Docket No. 60, p. 1.*

Through the Report, the Trustee, *inter alia*, seeks (1) the payment of the Trustee's statutory fee of \$4,229.90 pursuant to 11 U.S.C. § 326(a) and reimbursement of expenses incurred of \$44.20, (2) the payment of \$14,795.00 in fees and reimbursement of \$724.50 in expenses related to the ZH Application, (3) the payment of \$2,401.00 in fees and reimbursement of \$367.70 in expenses related to the HF Application, and (4) the Court's Clerk's costs totaling \$350. *See id.* at *Exhibit D.*

After payment to professionals and the Trustee, the balance of cash on hand for unsecured creditors is \$11,636.65. *See id.* Timely claims of general (unsecured) creditors totaling \$154,843.49 have been allowed and will be paid a *pro rata* distribution of approximately 7.5%, only after all allowed administrative and priority claims have been paid in full. *See id.*

Pursuant to 11 U.S.C. § 330, the Court (1) approves the ZH Application, on a final basis, for fees in the amount of \$14,795.00 and expenses of \$724.50, and approves payment on the ZH Application of \$14,795.00 in fees and \$724.50 in expenses, (2) approves the HF Application, on a final basis, for fees in the amount of \$2,401.00 and expenses of \$367.70, and approves payment on the HF Application of \$2,401.00 in fees and \$367.70 in expenses, (3) the Report is approved in conformance with 11 U.S.C. § 704(9), and the Trustee is awarded their statutory fee in the amount of \$4,229.90, and reimbursement of the Trustee's expenses in the amount of \$44.20.

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

CONT... Bernardo Tellez and Rosa Elena Tellez

Chapter 7

The Trustee is to upload a confirming order within 7 days.

Party Information

Debtor(s):

Bernardo Tellez

Represented By
Nicholas M Wajda

Joint Debtor(s):

Rosa Elena Tellez

Represented By
Nicholas M Wajda

Trustee(s):

Jeremy W. Faith (TR)

Represented By
Nancy H Zamora

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

9:23-11147 Sheryl Katherine Schaap

Chapter 7

**#15.00 ORDER TO SHOW CAUSE RE: DISMISSAL
(RE: [6] Certificate of Credit Counseling)**

Docket 6

***** VACATED *** REASON: Case dismissed on 1/2/2024**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Sheryl Katherine Schaap

Represented By
Brian Nomi

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

9:19-10312 Sergio Garcia Villanueva

Chapter 7

#16.00 Motion to Approve Compromise Under Rule 9019 Filed by Trustee Jerry Namba (TR) (Horowitz, Carissa)

Docket 113

Tentative Ruling:

January 9, 2024

Appearances required.

Background

Sergio Garcia Villanueva (the "Debtor") filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code on February 25, 2019 (the "Bankruptcy Case"). See Docket No. 1. At the time of the filing of the Bankruptcy Case, the Debtor was a party to a marriage dissolution proceeding with Ana Maria Garcia Yerena ("Garcia"). See *id.* at *Statement of Financial Affairs for Individuals Filing for Bankruptcy*, p. 3. Jerry Namba (the "Trustee") is the duly appointed Chapter 7 Trustee for the Bankruptcy Case. See Docket No. 5, *Notice of Chapter 7 Bankruptcy Case*.

In his *Schedule A/B*, the Debtor disclosed that he "may have some community property interest in the real estate located at 1550 Rory Ln., Space 36, Simi Valley, CA 93065 [the "Rory Property"]..." See Docket No. 1, *Schedule A/B*, p. 5. In his *Schedule A/B*, the Debtor also disclosed a community property interest a parcel of the real property located at 2401 Chandler Avenue, Unit 2, Simi Valley, California, with a fair market value of \$430,000 (the "Condominium"). See *id.* at p. 5. In his *Schedule C*, the Debtor exempted his interest in the Condominium pursuant to Cal. Civ. Proc. § 703.140(b)(5) in the amount of \$27,745.00. See Docket No. 1, *Schedule C: The Property You Claim as Exempt*, p. 2.

On June 30, 2019, the Court's Clerk entered that *Notice of Possible Dividend and Order Fixing Time to File Claims* on the Bankruptcy Case's Docket, which established October 3, 2019 as the claims bar date. See Docket No. 27-1. A total of \$45,939.76 in claims were filed prior to the claims bar date. See Court's Claim Register.

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

CONT... Sergio Garcia Villanueva

Chapter 7

The Valero Adversary Proceeding

On November 3, 2020, the Trustee filed against Caleb and Dulce Adriana Valero (collectively, the "Valeros") that *Complaint to Recover Avoidable Transfers* initiating adversary proceeding case 9:20-ap-01054-RC (the "Valero Adversary Proceeding"). See Docket No. 55. Through the Valero Adversary Proceeding, the Trustee sought a turnover of the Rory Property pursuant to 11 U.S.C. §§ 542 and 544. See *id.* at p. 3. On December 30, 2020, the Valeros filed that *Answer of Defendants Caleb Valero and Dulce Adriana Valero to Complaint to Recover Avoidable Transfers*. See Valero Adversary Proceeding, Docket No. 8. With Garcia claiming an interest in the Rory Property, on December 1, 2022, the Court entered that *Order on Motion to Intervene*. See Valero Adversary Proceeding, Docket No. 51. On December 12, 2022, Garcia filed that *Complaint in Intervention and for Declaratory Relief* (the "Garcia Complaint"), wherein, *inter alia*, Garcia claims to be "a title owner" of the Rory Property alongside the Valeros. See *id.* at pp. 3-4. In response to the Garcia Complaint, on December 15, 2022, the Valeros filed that *Answer of Caleb Valero and Dulce Adriana Valero to Complaint in Intervention of Ana Maria Garcia Yerena and Counterclaim for Declaratory Relief Against Ana Maria Garcia Yerena* (the "Answer to the Garcia Complaint"). See Valero Adversary Proceeding, Docket No. 55. Among other things, the Valeros, through the Answer to the Garcia Complaint, seek to quiet title to the Rory Property in their names alone through application of the resulting trust doctrine. See *id.* at pp. 2-4.

The Garcia Adversary Proceeding

On December 20, 2021, the Trustee filed against Garcia that *Complaint for Turnover and Sale of Property* initiating adversary proceeding 9:21-ap-0104-RC (the "Garcia Adversary Proceeding"). See Docket No. 71. The Garcia Adversary Proceeding seeks turnover of the Condominium by Garcia to the Debtor's estate pursuant to 11 U.S.C. § 542, and for the sale of the Condominium pursuant to 11 U.S.C. § 363(h). See *id.* The Trustee alleges through the Garcia Adversary Proceeding that the Condominium was purchased in 2002 during the marriage of the Debtor and Garcia with community property funds, and so it constitutes community property of which the Debtor's estate has an interest. *Id.* at p. 2.

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room

201

2:00 PM

CONT... Sergio Garcia Villanueva

Chapter 7

On January 20, 2022, Garcia filed that *Answer of Ana Maria Garcia*. See Garcia Adversary Proceeding, Docket No. 5. Garcia raises twenty eight (28) affirmative defenses, including: (1) The Condominium is the separate property of Garcia, and is not community property, (2) any alleged interest of the estate in the Condominium is solely a monetary reimbursement issue, and not an actual or equitable or legal ownership interest in the Condominium, which is to be determined in the family law state court; and (3) as the Debtor has exempted at least a portion of the equity in the Condominium, if it is his or the estate's, it is not subject to turnover. See *id.* at p. 3

The 9019 Motion

Before the Court is that *Motion to Approve Compromise of Controversary* [sic] Pursuant to Bankruptcy Rule 9019 (the "Motion") filed by the Trustee on November 24, 2023, wherein the Trustee seeks this Court's approval of that *Purchase and Settlement Amendment* (the "Agreement") between the Trustee and Garcia, "to sell the estate's right, title and interest in [the Rory Property and the Condominium] to [Garcia] for the sum of \$80,000 pursuant to Rule 9019, as well as resolving litigation matters between the Trustee and [Garcia]." See Docket No. 113, p. 1, lines 20-24. The Agreement does not make it clear, but the Motion provides that of the \$80,000 to be paid by Garcia to the Trustee for the benefit of the Debtor's estate, \$75,000 comprises the consideration to settle the Garcia Adversary Proceeding, and \$5,000 comprises the consideration to settle the Valero Adversary Proceeding. See Docket No. 113, p. 4, lines 5-9.

On December 26, 2023, the Valeros filed that *Opposition of Caleb Valero and Adriana Valero to Motion to Compromise Pursuant to Rule 9019* (the "Opposition"). See Docket No. 115. Through the Opposition, the Valeros reiterate their argument that title in the Rory Property should be settled in their names solely. See *id.* at p. 2. The Valeros further contend that the Motion is uncertain, incomplete and unfair to them. The Valeros take issue with the Motion's request that the Valero Adversary Proceeding be dismissed, including the Valeros' counterclaims against Garcia, and the lack of any overbid procedure in the Motion. See *id.* at pp. 3-5.

On January 2, 2024, the Trustee filed that *Reply to Opposition to Motion to Compromise of Controversary* [sic] Pursuant to Bankruptcy Rule 9019 (the "Reply"). See Docket No. 116.

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

CONT... **Sergio Garcia Villanueva**
Notice and Service

Chapter 7

Federal Rule of Bankruptcy Procedure ("Rule") 9019(a) authorizes the Court to approve a compromise or settlement upon a trustee's motion and directs that notice of the motion be provided in accordance with Rule 2002. Pursuant to Rule 2002(a)(3), "the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days; notice by mail of [] the hearing on approval of the compromise or settlement of a controversy..." Pursuant to Rule 2002(g)(1)(A), "[n]otices required to be mailed under Rule 2002 to a creditor [] shall be addressed as such entity or an authorized agent has directed in its last request filed in the particular case," and "[f]or purposes of this subdivision [] a proof of claim filed by a creditor [] that designates a mailing address constitutes a filed request to mail notices to that address []."

That *Notice of Hearing on Motion to Approve Compromise of Controversy Pursuant to Bankruptcy Rule 9019* (the "Notice") was served upon the Debtor and a purported list of creditors via U.S. Mail, first class, postage pre-paid, and on the Trustee and Office of the United States Trustee via NEF, on November 24, 2023. *See* Docket No. 114, *Proof of Service Document*, p. 3. It does not appear that U.S. Bank National Association, a holder of two (2) claims totaling \$11,187, the second largest creditor in the case, was served with the Notice.

The Court will note that pursuant to *Judge Clifford's Courtroom Policies and Procedures*, "[t]he movant must use the Court's creditor mailing matrix dated the date of service, which can be found on CM/ECF, and attach the same to the proof of service on all motions that require service on all creditors. Movant should not create or use their own creditor lists as a substitute for the Court's creditor mailing matrix." The Court's policies and procedures are there to assist both the Court and the parties. Had the Trustee utilized the mailing matrix, the Notice would have been served on all creditors, including U.S. Bank National Association.

The Motion fails for proper service.

Legal Standard

Pursuant to Rule 9019(a), "[o]n motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement."

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room

201

2:00 PM

CONT...

Sergio Garcia Villanueva

Chapter 7

The bankruptcy court has great latitude in approving settlement agreements. *See In re A & C Properties*, 784 F.2d 1377, 1380-81 (9th Cir. 1986). A proposed settlement may only be approved if it is "fair and equitable." *See In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988); *see also In re Guy F. Atkinson Co. of California*, 242 B.R. 497, 502 (9th Cir. BAP 1999) ("At its base, the approval of a settlement turns on the question of whether the compromise is in the best interest of the estate."). Under this standard, the court must consider: (a) the probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises. *See Woodson*, 839 F.2d at 620. A fifth factor applies under this standard when a denial of discharge is involved: the public interest in proper administration of the bankruptcy laws. *See In re Speece*, 159 B.R. 314, 317 (Bankr. E.D. Cal. 1993). A court generally gives deference to a trustee's business judgment in deciding whether to settle a matter. *See In re Mickey Thompson Entertainment Group, Inc.*, 292 B.R. 415, 420 (9th Cir. BAP 2003).

The *Mickey Thompson* case is the basis for the so-termed *Mickey Thompson* rule. *See In re Open Medicine Institute, Inc.*, 639 B.R. 169, 182 (9th Cir. BAP 2022). As the Ninth Circuit BAP has held, "[t]he Ninth Circuit has examined our reasoning in *Mickey Thompson* and agreed that it is not always necessary for a bankruptcy court to treat a compromise of claims as a sale under § 363." *Id.* at 181. The "bankruptcy court has discretion to apply § 363 to the compromise of claims." *Id.* at 182. "[T]he purpose of the *Mickey Thompson* rule is to maximize estate assets by requiring trustees and bankruptcy courts to consider 'whether there is a more attractive solution than that which the trustee has negotiated.'" *Id.*

While filed as a single motion, the Motion is a settlement of two (2) separate adversary proceedings, the Valero Adversary Proceeding and the Garcia Adversary Proceeding. The only opposition is to the Valero Adversary Proceeding.

The Garcia Adversary Proceeding

As noted *supra*, notice of the Motion was not properly effectuated. However, if the hearing on the Motion were properly noticed, the Court would grant the Motion as to the request to compromise the Garcia Adversary Proceeding. As previously

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room

201

2:00 PM

CONT...

Sergio Garcia Villanueva

Chapter 7

discussed, the Debtor claimed a community property interest in the Condominium. The Debtor's *Schedule A/B* listed the Condominium as being valued at \$430,000, with liens of \$308,409 against it. *See* Docket No. 1, *Schedule A/B*, p. 5. The Debtor asserted an exemption in the Condominium of \$27,745. *See* Docket No. 1, *Schedule C*. Even paying the Debtor's exemption nets the estate \$47,255. This amount exceeds the Debtor's valuation of his interest in the Condominium of \$43,500, at least as of the Petition Date. The time, expense, and risk of litigation all favor the granting of the Motion. The Court agrees with the Trustee that the Motion as to the Condominium should be granted, but for the service issue.

The Valero Adversary Proceeding

Pursuant to the Agreement, "[t]he Trustee agrees to release any interest the Debtor and the marital community of the Debtor and Garcia in the [Rory Property]." *See* Docket No. 113, *Exhibit A*, p. 3. Through the plan language of the Agreement, the Trustee is releasing any interest of the estate in the Rory Property. The Agreement provides that "[t]hrough payment of the settlement consideration, Garcia has purchased any interest that the Debtor and/or community may have, including any equitable interest, in the Condominium." *See id.* The Agreement does not read that Garcia is purchasing the Debtor's alleged interest in the Rory Property.

The Court is unclear about what opposition remains to the Motion. The Trustee is releasing any interest of the estate in the Rory Property and the Condominium. Any issues as to title as between Garcia and the Valeros is the subject of pending state court litigation. That is an issue squarely between Garcia and the Valeros. Should the Court grant the Motion there is no impediment to Garcia and the Valeros concluding that litigation. In fact, the state court has already presided over significant portions of that case, and the conclusion of the case in the state court would almost certainly be less expensive and nearer than if this Court were to grant the Motion, but maintain jurisdiction over two non-creditors regarding a non-estate asset.

Compromising the estate's interest in the Rory Property appears to the Court to illustrate the Trustee's belief of the value of the estate's interest in the Rory Property. The settlement value of \$5,000 prescribed to the Valero Adversary Proceeding shows that the Rory Property could have very well been abandoned. That would have also left the issue as between Garcia and the Valeros.

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

CONT... Sergio Garcia Villanueva

Chapter 7

The Court will deny the Motion for the aforementioned service issue, but it is inclined to grant any renewed motion on similar terms. If the Valeros are willing to overbid the proposed settlement, why have the parties not discussed what that overbid would be, and a potential auction? If the Rory Property is worth what the Debtor asserts it to be worth, and if Garcia claims to own 50% of that value, after costs of sale, litigation costs and delay, is this not a matter that is ripe for further settlement discussions?

Party Information

Debtor(s):

Sergio Garcia Villanueva

Represented By
Matthew D. Resnik

Movant(s):

Jerry Namba (TR)

Represented By
William C Beall
Carissa N Horowitz

Trustee(s):

Jerry Namba (TR)

Represented By
William C Beall
Carissa N Horowitz

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

9:19-11547 Douglas Joseph Castell and Joan Cathey Castell

Chapter 7

#17.00 CONT'D Hearing

RE: [92] Motion to vacate order for Sanctions - entered on 08/25/23 # 2 Exhibit Exhibits (A-F) to Declaration of Nathan Fransen) (Fransen, Nathan)

FR. 10-24-23, 11-21-23, 12-12-23

Docket 92

Tentative Ruling:

January 9, 2024

In-person appearances required.

December 12, 2023

Appearances waived.

This matter is continued to January 9, 2024, at 2:00 p.m.

November 21, 2023

Appearances waived.

This matter is continued to December 12, 2023, at 2:00 p.m.

Party Information

Debtor(s):

Douglas Joseph Castell

Represented By
Nicholas M Wajda
Nathan Fransen

Joint Debtor(s):

Joan Cathey Castell

Represented By
Nicholas M Wajda

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

**CONT... Douglas Joseph Castell and Joan Cathey Castell
Nathan Fransen**

Chapter 7

Movant(s):

Douglas Joseph Castell

Represented By
Nicholas M Wajda
Nathan Fransen

Joan Cathey Castell

Represented By
Nicholas M Wajda
Nathan Fransen

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

9:20-11123 Peter James Compton

Chapter 7

#18.00 HearingRE: [359] Motion to Approve Compromise Under Rule 9019 Amended 352
Motion to Approve Compromise Under Rule 9019

Docket 359

Tentative Ruling:

January 9, 2024

Appearances required.

Background

On September 14, 2020, Peter James Compton (the "Debtor"), filed with this Court a voluntary petition under Chapter 7 of Title 11 of the United States Code (the "Bankruptcy Case"). *See* Case No. 9:20-bk-11123-RC, Docket No. 1.

On May 27, 2021, Nutrien Ag Solutions, Inc. ("Nutrien") filed in the Bankruptcy Case that *Complaint to Determine Dischargeability of Claim* (the "Complaint") initiating adversary case 9:21-ap-01017-RC (the "Adversary Proceeding"). *See* Docket No. 127. The Compliant seeks to deny the Debtor's discharge under various provisions of 11 U.S.C. § 727(a).

On November 27, 2023, Nutrien filed that Amended *Notice of Motion and Motion to Approve Compromise Under FRBP 9019* (the "Notice"). *See* Docket No. 359. The Notice provides none of the terms of the proposed settlement. Filed with the Notice was that *Proof of Service of Document* (the "Proof of Service"). *See* Docket No. 360. According to the Proof of Service, the Notice was served via NEF on the Office of the U.S. Trustee, counsel to the Debtor, the Chapter 7 Trustee, and counsel to the Chapter 7 Trustee. *See id.* On December 12, 2023, Nutrien filed that *Amended Proof of Service of Document*, which provides that on December 12, 2023, the "attached Label Matrix" comprises parties that were served via NEF with the Notice and underlying moving documents. *See* Docket No. 366. The attached creditor matrix lists the creditors' mailing addresses. However, when service is effectuated via NEF service this Court's local rules require that the proof of service list email addresses of CM/ECF Users who are related to the motion or other proceeding described in the

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room

201

2:00 PM

CONT...

Peter James Compton

Chapter 7

document being filed, and explicitly indicate how each person or entity is related to the case. *See* LBR 9013-3(d)(2)(A). It appears that the Notice and underlying moving documents were served upon certain parties via NEF, including the United States Trustee and Counsel for Debtor. However, it is not clear to the Court that the Debtor and all of the Debtor's creditors were properly served via NEF.

Party Information

Debtor(s):

Peter James Compton

Represented By
Reed H Olmstead

Movant(s):

Nutrien Ag c/o Steven Stoker Esq.

Represented By
Steven R Stoker

Trustee(s):

Jerry Namba (TR)

Represented By
D Edward Hays
Laila Masud

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

9:22-10674 John E King

Chapter 7

#19.00 CONT'D Hearing
RE: [104] Motion to Appoint Trustee Interim Trustee Pursuant to 11 USC §
303(g)

FR. 8-8-23, 9-26-23, 9-27-23, 10-3-23, 11-21-23

Docket 104

Tentative Ruling:

January 9, 2024

Appearances required.

November 21, 2023

Appearances waived.

The matter is continued to January 9, 2024, at 2:00 p.m.

October 3, 2023

Appearances required.

September 26, 2023

Appearances waived.

The motion is continued to September 27, 2023, at 2:00 p.m.

Party Information

Debtor(s):

John E King

Represented By
William C Beall
Carissa N Horowitz

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

CONT... John E King

Chapter 7

Movant(s):

Wolverine Endeavors VIII, LLC

Represented By
Brett Ramsaur
Casey Z Donoyan

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

9:22-10674 John E King

Chapter 7

#20.00 CONT'D Hearing
RE: [112] Motion to Quash with proof of service

FR. 8-22-23, 9-12-23, 9-26-23, 9-27-23, 10-3-23, 11-21-23

Docket 112

Tentative Ruling:

January 9, 2024

Appearances required.

November 21, 2023

Appearances waived.

The matter is continued to January 9, 2024, at 2:00 p.m.

October 3, 2023

Appearances required.

September 26, 2023

Appearances waived.

The motion is continued to September 27, 2023, at 2:00 p.m.

August 22, 2023

Appearances required.

On July 31, 2023, John E. King ("King") filed that *Motion to Quash*. (the "Motion").
See Docket No. 112. Through the Motion, King requests that the Court quash the 155

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

CONT...

John E King

Chapter 7

subpoenas for production of documentation listed in *Exhibit A* attached to the Motion (the "Subpoenas"). *Id.* at p. 2, lines 14-21. King argues that Wolverine Endeavors VIII, LLC ("Wolverine") violated multiple provisions of Fed. R. of Civ. P. 45 ("Rule 45") regarding the service, location, timing, and breadth of the Subpoenas. *Id.* pp. 3-4. Accordingly, the Motion further requests that the Court grant monetary sanctions to King against Wolverine, Casey Z. Donovan, Wilson Elser, and Moskowitz Edelman & Dicker LLP in a minimal amount of \$5,635.00, 9.8 hours at \$575.00 per hour, the purported amount of time billed by King's counsel of record for services associated with the Subpoenas. *Id.* at p. 7. King also requests that the Court grant monetary sanctions to the recipients of the Subpoenas. *Id.* at p. 8.

On August 8, 2023, Wolverine filed *Petitioning Creditor's Limited Opposition to Alleged Debtor's Motion to Quash* (the "Opposition"). Docket No. 118. In the Opposition, Wolverine states that although it believes it has remedied its technical violations of Rule 45, such that neither King nor the subpoenaed parties have been prejudiced, it agrees to withdraw the Subpoenas and re-serve them in strict compliance with Rule 45, *et seq.* *Id.* at p. 2.

On August 9, 2023, Apple Turnover LLC, The Bear and The Bull LLC, Fresno Pacific Towers, Inc., Full Glass Productions, Inc., HKH Partners, HRGC, Inc., Inn at Morro Bay, LLC, King Coastal Properties, LLC, Kingcorp, Larking Group Inc., Margarita Annex LLC, Marine Collection LLC, Nipomo Center, LLC, Oak Bay, Tract 720, Phase II, LLC, Oyster Point Hospitality Services, Pharma CBD LLC, RSI Partners LP, RX CBD LLC, SLO Heritage Group, LLC, Spanish Springs II LLC, Spanish Springs LLC, Spanish Springs North Ranch LLC, Tubs 2 Go, Inc., Two Bunch Palms LLC, Vaquero de los Robles, LLC, The Bluffs Group III, Oyster Point Marina Inn, Big Hat No Cattle, LLC, Black Chaps LLC, Bluffs Group N, Boutique Hotel Collection, Inc., Buena Vista Group, HREE, Inc., Mission Grove Associates, Montalban Street Group, Napa River Inn, Oak Shores Group LLC, Oak Shores II, LP, Oyster Point Inn II, LLC, Palm Dunes LLC, SMS Resorts, Inc., and The Bluffs Group III, LLC filed that *Notice of Joinder and Joinder in Debtors' Motion to Quash Subpoenas*. See Docket No. 121. On the same date, that *Notice of Joinder and Joinder in Debtors' Motion to Quash Subpoenas* was filed by RKO, Ruidoso Associates, LLC, Rossi King Enterprises, A California Limited Partnership, Orka Real Estate Partners LLC, Sperry Flour LLC, and Chumash Hill Properties, Inc. See

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

CONT...

John E King

Chapter 7

Docket No. 122, and together with Docket No. 121, the "Joinders."

On August 10, 2023, that *Petitioning Creditor's Notice of Withdrawal of Subpoenas* was filed by Wolverine, withdrawing the Subpoenas. *See* Docket No. 124.

The withdrawal of the Subpoenas moots the request that the Subpoenas be quashed. As the Subpoenas have been withdrawn, there is nothing for this Court to quash. It appears the only issue remaining is whether monetary sanctions should be levied against Wolverine, Casey Z. Donovan, Wilson Elser, and Moskowitz Edelman & Dicker LLP, and in favor of King and the parties to the Joinders. As to the parties to the Joinder, it is not clear what their sanction requests consist of, and so, due to lack of any evidence under Fed. R. Civ. P. 45(d)(1) or otherwise, the request is denied without prejudice. As to King's request for sanctions, King has not complied with this Court's Local Rule 7026-1(c). The Court, therefore, denies King's request for monetary sanctions.

Party Information

Debtor(s):

John E King

Represented By
William C Beall
Carissa N Horowitz

Movant(s):

John E King

Represented By
William C Beall
Carissa N Horowitz

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

9:22-10735 GCLI, LLC

Chapter 7

#21.00 CONT'D Hearing
RE: [46] Motion to Dismiss Debtor's Bankruptcy Case (Winthrop, Rebecca)

FR. 5-30-23, 8-8-23, 9-26-23, 11-21-23

Docket 46

***** VACATED *** REASON: Order was entered continuing hearing to
April 9, 2024 at 2:00 PM.**

Tentative Ruling:

January 9, 2024

Appearances waived.

This matter is continued to April 9, 2024, at 2:00 p.m., pursuant to the Court's order granting that *Stipulation to Continue Hearing on Motion to Dismiss Debtor's Bankruptcy Case Filed by Metropolitan Partners Group Management, LLC and Certain Affiliated Entities*. See Docket No. 104.

November 21, 2023

Appearances waived.

This matter is continued to January 9, 2024, at 2:00 p.m. pursuant to that *Stipulation to Continue Hearing on Motion to Dismiss Debtor's Bankruptcy Case Filed by Metropolitan Partners Group Management, LLC and Certain Affiliated Entities*. See Docket No. 95.

September 26, 2023

Appearances waived.

The Motion is continued to November 21, 2023, at 2:00 p.m. pursuant to that *Order Granting Stipulation to Continue Hearing on Motion to Dismiss Debtor's Bankruptcy*

United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar

Tuesday, January 9, 2024

Hearing Room

201

2:00 PM

CONT...

GCLI, LLC

Chapter 7

Case Filed by Metropolitan Partners Group Management, LLC and Certain Affiliated Entities.

Party Information

Debtor(s):

GCLI, LLC

Represented By
William S Brody

Movant(s):

Metropolitan Partners Group

Represented By
Rebecca J Winthrop

Trustee(s):

Jerry Namba (TR)

Represented By
D Edward Hays
Laila Masud
Bradford Barnhardt

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

9:22-11001 Alan Rashkin and Rochelle Rashkin

Chapter 7

#22.00 HearingRE: [52] Motion for Turnover of Property and Objection to Claimed Exemptions (Horowitz, Carissa)

Docket 52

Tentative Ruling:

January 9, 2024

Appearances required.

Before the Court is the motion filed by Jerry Namba, Chapter 7 Trustee (the "Trustee") of the estate of Alan and Rochelle Rashkin (collectively, the "Debtors") entitled *Objection to Claimed Exemptions and Motion for Turnover* (the "Motion"). See Docket No. 52. At bottom, the Trustee objects to the Debtors' exemptions as exceeding what is allowable under California law, and requests that the amount that exceeds the allowable exemptions under California law, \$24,303.70, be turned over to the Trustee pursuant to 11 U.S.C. § 542.

On December 13, 2023, the Debtors filed *Debtors' Opposition to the Trustee Objection to Claimed Exemptions and Motion for Turnover* (the "Opposition"). See Docket No. 58. Through the Opposition, the Debtors prescribe any issues relating to their exceeding the statutorily set ceilings for exemptions on "errors" in their *Schedule C*. See *id.* at p. 3. The response to the Motion, principally, is that the Debtors will amend their *Schedule C*, and "[t]he Debtors submit that their proposed amendments to their schedules will cure any errors contained in their originally filed schedules." See *id.* at lines 15-16.

The Debtors oppose the Motion by informing the Court and the Trustee of revisions to be made to their *Schedule C*, although no such revisions have been made to date. The Debtors were on notice of the Trustee's issues with their claimed exemptions as early as July 6, 2023, when that *Complaint to Deny Discharge, Recover Avoidable Transfers, and for Turnover* was filed. See Docket No. 42. It is difficult to comprehend why the Debtors' schedules were not amended at the time, or before the time the Opposition was filed. The Court is inclined to grant the Motion.

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

CONT... Alan Rashkin and Rochelle Rashkin Chapter 7

Party Information

Debtor(s):

Alan Rashkin

Represented By
Haleh C Naimi

Joint Debtor(s):

Rochelle Rashkin

Represented By
Haleh C Naimi

Movant(s):

Jerry Namba (TR)

Represented By
Carissa N Horowitz
William C Beall

Trustee(s):

Jerry Namba (TR)

Represented By
Carissa N Horowitz
William C Beall

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

9:23-10256 Music Getaways LLC

Chapter 7

#23.00 HearingRE: [176] Motion to Withdraw as Attorney

Docket 176

Tentative Ruling:

January 9, 2024

Appearances required.

Party Information

Debtor(s):

Music Getaways LLC

Represented By
Michael Jay Berger

Movant(s):

Music Getaways LLC

Represented By
Michael Jay Berger
Michael Jay Berger

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

9:23-10318 Michael Moore and Marlena Moore

Chapter 13

#24.00 CONT'D Hearing
RE: [15] Motion Objection to Debtors' Claims of Exemption (David, Jill)

FR. 7-25-23, 9-12-23, 10-10-23

Docket 15

***** VACATED *** REASON: Stipulated order entered 12-15-23. Hearing
continued to March 19, 2024 at 2:00pm.**

Tentative Ruling:

October 10, 2023

Appearances required.

September 12, 2023

Appearances waived.

This matter is continued to October 10, 2023, at 10:00 a.m.

July 25, 2023

Appearances required.

Background

On April 25, 2023, Michael Moore and Marlena Moore (the "Debtors") filed a voluntary petition under Chapter 13 of Title 11 of the U.S. Code (this "Case"). *See* Docket No. 1. The Debtors' *Schedule A/B* lists property described as "Future Medical for Auto Accident Injuries" in the amount of \$1,000,000.00 (the "Settlement"). *Id.* at p. 19. On their amended *Schedule C*, the Debtors claim an exemption of the Settlement in the amount of \$1,000,000.00 pursuant to Cal. Code of Civ. P. §§ 704.140(a) and 704.150(a) (the "Exemption"). *See* Docket No. 24, p. 6.

Richard J. Moore, as Trustee of the Moore Marital Trust UA DTD 12/23/1986 (the

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room

201

2:00 PM

CONT...

Michael Moore and Marlena Moore

Chapter 13

"Creditor") has filed two secured claims in this case: (1) Proof of Claim No. 3-1, in the amount of \$793,152.53, for a judgment lien resulting from case number 30-2019-01112125-CU-BC-CJC in the Superior Court of California for the County of Orange; and (2) Proof of Claim No. 6-1, in the amount of \$209,831.94 for a matured note secured by a deed of trust against the Debtors' residential property at 2775 Summer Ranch Road, in Paso Robles, CA. *See* Claim Nos. 3-1 and 6-1.

Before the Court is *Secured Creditor Richard J. Moore, as Trustee of the Moore Marital Trust's Objection to Claims of Exemption* (the "Objection"). *See* Docket No. 15. Through the Objection, the Creditor requests the entry of an order: (1) sustaining its objections to, and striking the Exemption; (2) that confirmation of the Debtors' proposed Chapter 13 plan be denied; (3) that the case be converted to Chapter 7; (4) alternatively, that Debtors' Chapter 13 plan be amended to reflect that the arrears listed in Creditor's Proofs of Claim Nos. 3 and 6 be paid within a period not exceeding 60 months; and (5) any other relief as this Court deems just and proper. *Id.* at p. 10.

Notice and Service

The Objection was filed on June 30, 2023. *See* Docket No. 15. Filed together with the Objection, is that *Notice of Motion For: Objection to Debtors' Claims of Exemption* (the "Notice"), informing parties served with the Notice that a hearing on the Objection is set for July 25, 2023. *Id.* The Notice also provides that pursuant to this Court's Local Rule 9013-1, any opposition to the Objection must be filed and served no less than fourteen (14) days prior to the hearing on the Objection, or June 11, 2023. *Id.* The Objection and the Notice were served on the date of its filing on the Debtors via U.S. Mail, and on counsel of record to the Debtors, the Office of the United States Trustee and the Chapter 13 Trustee via NEF. *Id.* at p. 3 and p. 11, *Proof of Service of Document*.

The Debtors' Response

On July 11, 2023, the Debtors filed *Debtor's [sic] Response to Secured Creditor Richard J. Moore, as Trustee of the Moore Marital Trust's Objection to Claims of Exemption* (the "Response"). *See* Docket No. 18.

Analysis of the Objection

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

CONT... **Michael Moore and Marlena Moore**
Timeliness

Chapter 13

Pursuant to Fed. R. Bankr. P. 4003(b)(1), an objection to the list of property claimed as exempt must be filed "within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later." In this Case, the 341(a) meeting of creditors was scheduled to be held on June 7, 2023. *See* Docket No. 6. Therefore, to the extent the Objection is an objection to the Exemption, the Objection was timely filed given the fact that it was filed within 30 days following June 7, 2023.

Legal Standard

"When a debtor files a bankruptcy petition, all of his assets become property of the estate and may be used to pay creditors, subject to the debtor's ability to reclaim specified property as exempt." *In re Elliott*, 523 B.R. 188, 192 (9th Cir. BAP 2014) (citing *Schwab v. Reilly*, 560 U.S. 770, 774, 130 S. Ct. 2652, 177 L. Ed. 2d 234 (2010)). "Section 522 provides a default list of exemptions, but allows states to opt out of the federal scheme and define their own exemptions. 11 U.S.C. §§ 522(b)(2), (b)(3)(A), (d). California has opted out of the federal exemption scheme. Cal. Civ. Proc. Code § 703.130. The bankruptcy court decides the merits of state exemptions, but the validity of the exemption is controlled by California law." *See In re Diaz*, 547 B.R. 329, 334 (9th Cir. BAP 2016) (citing *LaFortune v. Naval Weapons Ctr. Fed. Credit Union (In re LaFortune)*, 652 F.2d 842, 846 (9th Cir. 1981)).

Pursuant to Cal. Code Civ. P. § 704.150(a), "[e]xcept as provided in Article 5 (commencing with Section 708.410) of Chapter 6, a cause of action for wrongful death is exempt without making a claim."

Pursuant to Cal. Code Civ. P. § 704.140(a), "[e]xcept as provided in Article 5 (commencing with Section 708.410) of Chapter 6, a cause of action for personal injury is exempt without making a claim." Pursuant to Cal. Code of Civ. P. § 704.140(b), "[e]xcept as provided in subdivisions (c) and (d), and award of damages or a settlement arising out of personal injury is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor."

Burden of Proof

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room

201

2:00 PM

CONT...

Michael Moore and Marlena Moore

Chapter 13

As a preliminary matter, the parties disagree on who has the burden of proof regarding the Objection. The issue is whether the burden of proof found under California law applies, or if it is Fed. R. Bankr. P. 4003 that the Court is to use. "California Code of Civil Procedure § 703.580 expressly provides that for the exemptions claimed using the California exemption scheme: [] (b) At a hearing under this section, the exemption claimant has the burden of proof." *See In re Sinclair*, 563 B.R. 554, 558 (Bankr. E.D. Cal. 2017); *see also* Cal. Code. Civ. P. § 703.580(b). Pursuant to Fed. R. Bankr. P. 4003(c), "[i]n any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed." Courts have differed on the burden of proof question in this context.

The Supreme Court considered whether the burden of proof, in the context of a claim objection, is determined by reference to state law in the case of *Raleigh v. Ill. Dep't of Revenue*. In *Raleigh*, the Supreme Court held that the burden of proof should be determined by reference to state law. *See Raleigh v. Ill. Dep't of Revenue*, 530 U.S. 15 (2000).

Although *Raleigh* was decided in the context of an objection to a proof of claim and did not involve Fed. R. Bankr. P. 4003(c), some bankruptcy courts have addressed the issue of whether *Raleigh* dictates that Fed. R. Bankr. P. 4003(c) is invalid when a debtor exempts property under state law, and where state law identifies its own burden for claiming that exemption. *See, e.g., In re Diaz*, 547 B.R. 329 (9th Cir. BAP 2016); *In re Williams*, 556 B.R. 456 (Bankr. C.D. Cal. 2016); *In re Vaughn*, 558 B.R. 897 (Bankr. D. Ala. 2016); *In re Pashenee*, 531 B.R. 834 (Bankr. E.D. Cal. 2015). Other courts have concluded that Rule 4003(c) is still valid despite *Raleigh*. *See, e.g., In re Nicholson*, 435 B.R. 622 (9th Cir. BAP 2010) (partially abrogated on other grounds); *Matter of Hoffman*, 605 B.R. 560 (Bankr. N.D. Ga. 2019); *In re Weatherspoon*, 605 B.R. 472 (Bankr. S.D. Ohio 2019).

The Ninth Circuit BAP has held that "where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation." *In re Diaz*, 547 B.R. at 337. While recognizing that there is much disagreement on the issue, this Court finds the BAP's holding in *Diaz* sound. Thus, the Debtors here have the burden to prove that they are entitled to the Exemption.

Cal. Code Civ. P. § 704.150(a)

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room

201

2:00 PM

CONT...

Michael Moore and Marlena Moore

Chapter 13

As noted *supra*, Cal. Code Civ. P. § 704.150(a) relates to wrongful death. The Response provides no response to the Objection as it relates to Cal. Code of Civ. P. § 701.150(a). *See generally*, Docket No. 18. The Response solely analyzes Cal. Code of Civ. P. 704.140. *See id.* at pp. 5-10. As there is no analysis by the Debtors as to their claimed exemption under Cal. Code Civ. P. § 701.150(a), the Court sustains the Objection as to this issue.

Cal. Code Civ. P. § 704.140(a)

"[T]he Debtor must meet two criteria before an exemption pursuant to CCP § 704.140 may be taken. First, the funds sought to be exempted must arise as a result of 'personal injury.' Second, the funds are only exempt 'to the extent necessary for support' of the Debtor." *In re Sylvester*, 220 B.R. 89, 91 (9th Cir. BAP 1998). Noting that the debtor's exemption rights under state law are determined as of the date of the petition, the Bankruptcy Appellate Panel for the Ninth Circuit identified factors which are relevant in determining the extent of the debtor's exemption under the "necessary for support" standard. *In re Moffat*, 119 B.R. 201, 204, n.3 (9th Cir. BAP 1990); *see also In re Altmiller-Rubio* (Bankr. E.D. Cal. Sept. 13, 2011), 2011 Bankr. LEXIS 5570 (The right to claim the exemption was determined as of commencement of the bankruptcy, but the court could look to changes in the debtors' circumstances in determining the amount of exemption to allow as necessary for their support under § 704.140(b)). Those factors included "anticipated living expenses and income; the age and health of the debtor and his or her dependents; the debtor's ability to work and earn a living; the debtor's training, job skills and education; the debtor's other assets and their liquidity; the debtor's ability to save for retirement; and any special needs of the debtor and his or her dependents." *Id.* at 206 (citation omitted). The *Moffat* court considered the debtor's assets, income, and expenses in affirming the bankruptcy court's decision. *Id.*

As discussed, the Debtor has the burden to prove these elements. This Court's Local Rule 9013-1(f)(2) provides that "[a] Response [to a motion] must be a complete written statement of all reasons in opposition thereto or in support, declarations and copies of all evidence on which the responding party intends to rely, and any responding memorandum of points and authorities."

The parties do not appear to disagree on the first prong, which is that the \$1 million

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room

201

2:00 PM

CONT...

Michael Moore and Marlena Moore

Chapter 13

referenced in the Exemption relates to a settlement received at some point by Michael Moore for a personal injury action. There is a question as to what Mr. Moore did with a part of the money, and where any remaining monies are, but that is a separate question from whether there exists, somewhere, \$1 million in proceeds of a settlement from a personal injury action.

As to the second prong, there is virtually no admissible evidence the Court may rely on to conduct an analysis. As the Creditor states, the Response "offer[s] only conclusory statements of 'anticipated significant future medical expenses,' including Michael Moore [is] 'almost certain to undergo spinal surgery' and Marlena Moore [is] 'awaiting confirmation of' 'potential surgery and future treatment related to her work injuries.'" See Docket No. 21, pp. 6-7. The Response was filed without any declarations in support. There are a number of factual arguments in the Response, but none of them is supported by a declaration, request for judicial notice of documents or other facts, or any other evidentiary vehicle to corroborate the statements of counsel made therein. *Exhibit A* to the Response seems to be submitted in support of Michael Moore's cognitive decline, but the Court cannot understand what *Exhibit A* means or how to interpret it. What precisely is the Court to take away from *Exhibit A* other than the apparent prescription of medicine for cognitive decline? The Response just references *Exhibit A* generally to support the Debtors' necessity for future medical care, loss of earnings, and loss of earnings capacity. See Docket No. 18, p. 5, lines 12-15. *Exhibit B* is likewise referenced in the Response as supporting the Debtors' argument as to the necessity for future medical care, loss of earnings, and loss of earnings capacity, but no *Exhibit B* is attached to the Response.

Anticipated Living Expenses and Income of the Debtors

Through the Response, the Debtors allege that they received a settlement for \$1,827,751 in 2018 and their medical bills included operations often costing more than \$100,000 per operation. See Docket No. 18, p. 7, lines 1-5. They further argue that conservatively estimating an average of \$50,000 per year for medical expenses, this leaves them with approximately \$1,000,000 from the settlement for medical treatment, care, and living expenses until the end of life. See *id.* at lines 2-13. The Debtors argue that they are senior citizens with a limited income, primarily from Social Security, which is insufficient to meet their monthly expenses. See *id.* at p. 6, line 28. They further argue that the cost of living continues to rise, and they anticipate

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room

201

2:00 PM

CONT... Michael Moore and Marlena Moore

Chapter 13

significant future medical expenses. *See id.* The Response asserts that Michael Moore has a confirmed need for future physical therapy, injections, and is almost certain to undergo another spinal surgery and Marlena Moore is awaiting confirmation of potential surgery and future treatment related to her work injuries. *See id.* The Debtors also contend that their income is further strained by unreimbursed expenses related to the Debtors' supervision of properties in Salton City, CA. *See id.*

Again, there is no declaration or documentary evidence to support any of these statements.

Pursuant to *Schedule I*, Mr. Moore is unemployed, and the only source of his income is \$2,484.00 in monthly social security benefits and Mrs. Moore is employed, yet her monthly income consists of \$2,080.00 in "disability income" and \$643.00 in monthly social security benefits. *See* Docket No. 1, at pp. 37-38. The Debtors also allege that "[Mrs. Moore] has some injuries and she may not be able to return to work field." *Id.* at p. 41. On *Schedule J*, the Debtors list \$123.00 in monthly "medical and dental expenses." *Id.* at p. 40. The Debtors' monthly net income is \$222.32. *Id.* With \$123.00 in monthly medical expenses, the Court is unable to reconcile the claimed exemption of \$1,000,000.00 in "future medical for auto accident injuries" absent further evidentiary support. *See* Docket No. 1, p. 26. Here, the Debtors have proposed a plan lasting sixty months, based on the Debtors' proposed medical expenses of \$123.00, the amount incurred over the length of the plan should be approximately \$7,380.00. *See* Docket No. 11, p. 3. Does the evidence in other parts of the record not conflict with the Response?

The Debtors' Age and Health

Here, the Debtors assert that Michael Moore is 67 and Marlena Moore is 66, and that "[b]oth have significant health issues." *See* Docket No. 18, p. 7, lines 22-24. Attached to the Response as *Exhibit A* is correspondence from a David S. Ramin, M.D. indicating a diagnosis of "cognitive decline", presumably for Michael Moore as the name "Michael" is listed in the top left-hand corner but the last name and DOB are redacted. *Id.* at p.15. Again, the Court has no proof of any of these statements other than the statements that appear in the Response, which statements are not supported by declarations or other admissible evidence.

United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

CONT...

Michael Moore and Marlena Moore

Chapter 13

The Debtors' Other Assets and Their Liquidity

"In determining an exemption based upon the needs of the judgment debtor[s] . . . , the court shall take into account all property of the judgment debtor[s] . . . , including community property and separate property . . . , whether or not such property is subject to enforcement of the money judgment." Cal. Code Civ. Proc. § 703.115.

According to *Schedule A/B*, the Debtors have nonexempt equity in property comprising of real property located at 2450 Shore Isle Ave., Salton City, CA, 92274 (titled "Sandy"), a 2006 Dodge Ram 2500 Turbo Diesel valued at \$15,000.00, a 2003 Dodge Ram Turbo Diesel valued at \$15,000.00, a 2009 Streamline Airstream Trailer valued at \$17,000.00, a 1998 Dodge Ram 2500 Turbo Diesel valued at \$12,000.00, 1997 Dodge Ram 2500 Turbo Diesel valued at \$12,000.00 and a 1996 Dump Trailer valued at \$8,000.00. *See* Docket No. 1, pp. 10-11. In addition, the Debtors list a life insurance policy with Mutual of Omaha valued at \$20,000.00. *Id.* at p. 16.

The Debtors argue that they have limited assets, most of which are essential for their daily living or have little resale value, including older model vehicles, household items, power equipment, livestock, and personal belongings. They contend that liquidating these assets would not significantly contribute to their income but would severely impact their quality of life. *See* Docket No. 18. However, based on the representations in the Response regarding the health of the Debtors and their ability to work, what use do the Debtors have for four (4) Dodge Ram work trucks? The four trucks and the Dump trailer have a collective value of over \$60,000.00. It does not appear to the Court that it would be extremely difficult to market the vehicles for sale in today's market. Furthermore, the sale of the real property located at Shore Isle Ave would not require much effort from the Debtors besides listing the parcel on the market for sale. Based on the Debtors' Plan projections for expenses of the Debtors, it appears that they have sufficient income to meet their medical expenses, and there is value in their non-exempt assets to pay their medical costs for the foreseeable future that exceed the projected expenses.

The Debtors' Ability to Work and Earn a Living

The Response asserts that the Debtors "are unable to work due to their health conditions." *See* Docket No. 18, p. 9, lines 8-9. However, Marlene Moore's "ability to work is uncertain pending recovery from her injuries..." *Id.* at lines 9-10. Taking

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

CONT...

Michael Moore and Marlena Moore

Chapter 13

these statements as true, and admissible, it is wholly unclear to the Court what Merlene Moore's earning capacity is. At present, it appears she cannot work, but the Response does not make it clear when she would be able to work post-surgery, and what her earning capacity would be.

The Debtors' Ability to Save for Retirement

The Response provides that the Debtors' "only retirement savings are the proceeds from their 2016 car accident and their Social Security income." *See* Docket No. 18, p. 10, lines 14-16. This, however, does not include what Marlene Moore's earning potential in the future post-surgery could add to the Debtors' monthly net income budget.

Special Needs of the Debtors

The Response provides that "[b]oth debtors are certain to need specialized elderly care in the future, as Michael has severe cognitive decline that is only worsening." *See* Docket No. 18, p. 10, lines 26-28. This statement is completely unsupported, and gives the Court no understanding of what the specialized elderly care actually is, what it would cost, and when it would be required.

The Court simply has little to no evidence that can be used in an analysis under Cal. Code Civ. P. § 704.140 other than the information it can glean from the Debtor's schedules and the Debtor's proposed plan of reorganization. The Debtors' schedules and plan provide a picture that is much different than what the Response provides in terms of what money they require monthly for medical needs.

Without more evidence, the Court is inclined to sustain the Objection.

Party Information

Debtor(s):

Michael Moore

Represented By
Anthony James Francisco I

Joint Debtor(s):

Marlena Moore

Represented By
Anthony James Francisco I

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

CONT... Michael Moore and Marlena Moore

Chapter 13

Movant(s):

Richard J. Moore, as Trustee

Represented By
Jill David

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room

201

2:00 PM

9:23-10318 Michael Moore and Marlena Moore

Chapter 13

#25.00 CONT'D Hearing

RE: [34] Motion to Convert Case From Chapter 13 to 7. as Trustee
(Attachments: # 1 Affidavit Declaration of Jill S. David in Support of Motion to
Convert to Chapter 7) (David, Jill)

FR. 8-17-23, 9-12-23, 10-10-23

Docket 34

***** VACATED *** REASON: Stipulated order entered 12-15-23. Hearing
continued to March 19, 2024 at 2:00pm.**

Tentative Ruling:

October 10, 2023

Appearances required.

Background

On April 25, 2023, Michael Moore and Marlena Moore (the "Debtors") filed a voluntary petition under Chapter 13 of Title 11 of the U.S. Code (this "Case"). *See* Docket No. 1. The Debtors' *Schedule A/B* lists property described as "Future Medical for Auto Accident Injuries" in the amount of \$1,000,000.00 (the "Settlement"). *Id.* at *Schedule A/B: Property*, p. 11. On their amended *Schedule C*, the Debtors claim an exemption of the Settlement in the amount of \$1,000,000.00 pursuant to Cal. Code of Civ. P. §§ 704.140(a) and 704.150(a) (the "Exemption"). *See* Docket No. 24, p. 6.

The claims bar date lapsed for non-government creditors on July 5, 2023. Two (2) secured creditors have timely filed a total of three (3) proofs of claim: (1) Richard J. Moore, as Trustee of the Moore Marital Trust UA DTD 12/23/1986 (the "Moore Trust"), holding a claim in the amount of \$793,152.53; (2) the Moore Trust, holding a second claim in the amount of \$209,831.94; and (3) JPMorgan Chase Bank, N.A., holding a claim in the amount of \$196,302.85. *See* Claim Nos. 3-3, 6-2, and 7-1.

The Objection to Exemption

On June 30, 2023, the Moore Trust filed that *Notice of Motion for Objection to*

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

CONT...

Michael Moore and Marlena Moore

Chapter 13

Debtors' Claims of Exemption (the "Exemption Objection"), seeking to strike the Debtors' claimed exemption of \$1,000,000.00 for "future medical for auto accident injuries" under Cal. Civ. Code. Proc. §§ 704.140(a) and 704.150(a). *See* Docket No. 15. Through the Exemption Objection, the Moore Trust requests the entry of an order: (1) sustaining its objections to, and striking the Exemption; (2) that confirmation of the Debtors' proposed Chapter 13 plan be denied; (3) that this Case be converted to Chapter 7; (4) alternatively, that Debtors' Chapter 13 plan be amended to reflect that the arrears listed in the Moore Trust's Proofs of Claim Nos. 3 and 6 be paid within a period not exceeding 60 months; and (5) any other relief as this Court deems just and proper. *See id.* at p. 10.

On July 25, 2023, a hearing was held on the Exemption Objection. The Court continued the hearing to September 12, 2023. *See* Docket No. 38. The Court further ordered that the Debtors were to augment the Opposition to Exemption Objection by August 30, 2023 and the Moore Trust was to augment the Reply by September 5, 2023. *See id.*

On August 30, 2023, one or both Debtors filed that *Augmented Response to Creditor Richard J Moore's Objection to Claim of Exemption*. *See* Docket No. 65.

On September 5, 2023, that *Secured Creditor Richard J Moore's Reply In Support of Objection to Claims of Exemption* (the "Second Reply") together with that *Secured Creditor Richard J Moore as Trustee's Evidentiary Objections to Debtors' Exhibits* and that *Supplemental Declaration of Jill S. David In Support of Creditor the Moore Martial Trust's Objection to Debtors' Claims of Exemption* were filed. *See* Docket No. 69.

The Motion to Convert

On July 25, 2023, the Moore Trust filed that *Notice of Motion and Secured Creditor Richard J. Moore as Trustee's Motion to Convert Chapter 13 Case to Case Under Chapter 7 of Title 11 of U.S. Code* (the "Motion to Convert") pursuant to 11 U.S.C. § 1307(c). *See* Docket No. 34, p. 8.

The Motion to Dismiss

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

CONT... Michael Moore and Marlena Moore Chapter 13

The day before the September 12, 2023 hearings on the Exemption Objection and the Motion to Convert, the Debtors filed that *Emergency Notice of Motion for Hearing on Shortened Notice of Debtor's Motion to Dismiss*. See Docket No. 71.

On September 12, 2023, the Debtors filed *Debtor's Motion for Voluntary Dismissal of Chapter 13 Case* (the "Motion to Dismiss"). See Docket No. 73. Through the Motion to Dismiss, the Debtors assert their absolute right to dismiss this Case and retract any prior statements regarding their consent to conversion of this Case to Chapter 7. The Motion to Dismiss further alleges that the Debtors have reached a settlement with the Moore Trust. *Id.*

On September 16, 2023, the Debtors filed that *Notice of Opportunity to Request a Hearing on Motion Re: Debtor's Motion for Voluntary Dismissal of Chapter 13 Case* (the "Notice") and served a copy of the Notice and Motion to Dismiss via U.S. Mail, postage pre-paid on all of the Debtors creditors on September 15, 2023. See Docket No. 79, p. 3, *Proof of Service of Document*.

On September 26, 2023, the Moore Trust filed that *Opposition to Debtor's Motion to Dismiss* (the "Opposition to Dismissal"). See Docket No. 89. Through the Opposition to Dismissal, the Moore Trust argues that the Court should deny the Motion to Dismiss and grant the Motion to Convert because the Debtors filed conflicting notices of hearings. *Id.* at p. 2. Alternatively, if the Court is inclined to dismiss this Case, the Moore Trust requests the Court impose a 180-day or longer bar against refile and the Court deny as moot the Debtors' pending Lien Avoidance Motion (Docket No. 59), the Debtors' Objection to Creditor's Proof of Claim #3 and #6 (Docket No. 66), the Debtors' Motion to Dismiss Adversary (Docket No. 6), and Debtors' Application for Attorney's Fees (Docket No. 87). See *id.* at p. 2.

On October 2, 2023, the Debtors filed that *Reply to Creditor Richard J. Moore's Opposition to Debtors' Motion to Dismiss*. See Docket No. 92.

Legal Standard

Pursuant to Section 1307(b) of the Bankruptcy Code, "[o]n request of the debtor at any time, if the case has not been converted under section 706, 1112, or 1208 of this title, the court shall dismiss a case under this chapter." "The term 'shall' 'normally creates an obligation impervious to judicial discretion.'" *In re Nichols*, 10 F.4th 956,

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

CONT... Michael Moore and Marlena Moore

Chapter 13

963 (9th Cir. 2021)(citing *Lexecon Inc. v. Milberg Weiss Bershad Hynes & Lerach*, 523 U.S. 26 (1998); *In re Barbieri*, 199 F.3d 616, 619 (2d. Cir. 1999)). "Section 1307(b)'s text plainly requires the bankruptcy court to dismiss the case upon the debtor's request. There is no textual indication that the bankruptcy court has any discretion whatsoever." *Id.* The Ninth Circuit has concluded "that § 1307(b)'s text confers upon the debtor an absolute right to dismiss a Chapter 13 bankruptcy case, subject to the single exception noted expressly in the statute itself." *Id.* at 964. That single exception being prior conversion under 11 U.S.C. §§ 706, 1112, or 1208. Further, *Nichols* dictates that bad faith or abuse of the bankruptcy process does not deprive a chapter 13 debtor of his right to voluntarily dismiss his case." *In re Powell*, 644 B.R. 181, 187 (9th Cir. BAP 2022). "*Nichols* also recognizes that the bankruptcy court has other tools to address such abuse. [] For example, it could impose a bar on refiling or other conditions under § 105." *Id.* (internal citations omitted).

"[B]ecause the mandatory right to dismiss under [11 U.S.C. § 1307(b)] is granted only by motion, the court retains jurisdiction sufficient to impose any proper sanctions on the debtor for improper behavior under 11 U.S.C. §§ 349(a), 109(g) and F.R.Bankr.P. 9011 prior to dismissal." *In re Harper-Elder*, 184 B.R. 403, 403 (Bankr. D.D.C. 1995) (citing *In re Dilley*, 125 B.R. 189 (Bankr. N.D. Oh. 1991). "All roads to dismissal pass through Bankruptcy Code § 349(a)." *In re Duran*, 630 B.R. 797, 804 (9th Cir. BAP 2021). Section 349(a) of the Bankruptcy Code "is an independent question that applies to all forms of dismissal, including § 1307(b)." *Id.* at 807.

Pursuant to 11 U.S.C. § 349(a), "[u]nless the court, for cause, orders otherwise, the dismissal of a case under this title does not bar the discharge, in a later case filed under this title, of debts that were dischargeable in the case dismissed; nor does the dismissal of a case under this title prejudice the debtor with regard to the filing of a subsequent petition under this title, except as provided in section 109(g) of this title." *See also In re Leavitt*, 171 F.3d 1219, 1223 (9th Cir. 1999).

"A dismissal with prejudice bars further bankruptcy proceedings between the parties and is a complete adjudication of the issues." *In re Leavitt*, 171 F.3d at 1223-24. "Cause" for dismissal with prejudice under 11 U.S.C. § 349(a) is not defined by the Bankruptcy Code. *See id.* at 1224. The Ninth Circuit has held that "bad faith is 'cause' for a dismissal of a Chapter 13 case with prejudice under § 349(a) and § 1307(c)." *Id.* This same analysis has been held to apply to dismissal requests by

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

CONT... Michael Moore and Marlena Moore

Chapter 13

Chapter 13 debtors under 11 U.S.C. § 1307(b). *In re Duran*, 630 B.R. at 810.

Determining whether bad faith exists "involves the application of the 'totality of the circumstances' test." *Id.* (citing *In re Leavitt*, 171 F.3d at 1224)). A bankruptcy court should consider the following factors:

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.
4. Whether egregious behavior is present.

Id. A finding of bad faith does not require fraudulent intent, malice, or malfeasance on the part of the debtor. *Id.* at 1224-25; *see also, In re Cortez*, 349 B.R. 608, 612-13 (Bankr. N.D. Cal. 2006).

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

The Debtors have not filed a viable plan of reorganization. The *2nd Amended Chapter 13 Plan* (the "Plan") suggests that unsecured non-priority creditors hold claims totaling \$171,398.78, despite the fact that unsecured creditors have filed claims totaling only \$20,777.27, and that the claims bar date for non-government claims had lapsed at the time the Plan was filed. *See* Docket No. 49, p. 3.; *see also* Claim Nos. 1-1, 2-1, 4-1, and 5-1. Not only is the estimated amount of unsecured claims incorrect, but the Debtors propose to pay a total of 13.63% of those claims for an estimated total payment of \$8,280.00—a figure which represents 4.83% of the estimated non-priority unsecured claims. *See id.* Notably, the Debtors' First Amended Plan proposed a total payment of 1% of \$171,398.78 in estimated non-priority unsecured claims, in the amount of "\$27430.00 [sic]," even though one percent of \$171,398.78 is \$1,713.99. *See* Docket No. 25, p. 3. The Plan appears to admit that conversion to Chapter 7 is in the best interests of creditors, as it provides that the sum of \$27,430.00 represents the liquidation value of the Estate in a hypothetical Chapter 7 case, whereas the Debtors plan to pay but \$13,200.00 per the Plan. *See* Docket No. 49, p. 3. The calculations provided by the Debtors and their counsel are concerning, and the Plan is nowhere

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

CONT... Michael Moore and Marlena Moore Chapter 13

near close to being confirmable. Four months into this Case, the Debtors have failed to make a single Plan payment. *See* Docket No. 31, p. 11. The Trustee has not received the Debtors' 2022 tax returns or the Debtors' proof of income. *Id.* at p. 5.

It is difficult to appreciate how the Debtors entered bankruptcy with a goal of exiting through a confirmed plan of reorganization. Counsel to the Debtors stated early in the case that the initial miscues were his fault, and not that of the Debtors. That excuse, however, has worn thin, as months into this Case have passed without the Debtors ever having proposed a plan of reorganization that is confirmable. Even if the Court were to accept lawyering as of the cause of the errors in the plans of reorganization filed, why have no plan payments been made based on those numbers? It seems clear that the Debtors filed this Case simply to stall the Moore Trust's collection efforts, but without any true intent on confirming a Chapter 13 plan of reorganization.

History of Prior Filings

The Debtors have not had any prior bankruptcy filings that the Court is aware of. *See* Docket No. 1, p. 3.

Filing Bankruptcy Solely to Defeat State Court Litigation

The only state court litigation pertinent to this Case is the State Court Action, commenced by the Moore Trust against the Debtors in 2019. *See id.* at p. 48; *see also* Docket No. 34, p. 11. The State Court found in favor of the Moore Trust and against the Debtors on all causes of action, and awarded the Moore Trust damages of \$793,152.53 (the "Judgment"). *See* Claim No. 3-3, p. 13; *see also* Docket No. 34-1, *Exhibit 1*, p. 12.

Egregious Behavior

The Debtors claim that they gave \$1 million to a third party to hold for them for the Debtors' future health expenses. In response to the discussion of the transfer in the Motion to Dismiss, the Debtors state that any "allegations of fraudulent transfer and concealment of assets are unfounded and unsupported by the facts." Docket No. 45, p. 14. The Debtors have not been forthcoming about the transfer of the \$1 million, and its present location. The Court had to press the Debtors about the transfer, and only then did the Debtors claim that they gave the \$1 million to someone at church that they apparently barely know and have no contact information for. The Debtors

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

CONT...

Michael Moore and Marlena Moore

Chapter 13

claim that they are unaware if this individual they gave the \$1 million to still has the money. The Debtors' story seems like a tall tale. If this were all true, why have the Debtors not attempted to regain control of the \$1 million, through an action in this Court or otherwise? The failure to provide a believable explanation to the Court of the whereabouts of the \$1 million in cash constitutes egregious behavior in this Case warranting a bar to refiling.

In sum, viewing the totality of the circumstances, and guided by the *In re Leavitt* factors, the Court finds cause to bar the Debtors from a further bankruptcy filing for 120 days from the date of an order dismissing this Case.

September 12, 2023

Appearances required.

On August 30, 2023, one or both of the Debtors filed that *Augmented Response to Creditor Richard J Moore's Objection to Claim of Exemption* (the "Response"). See Docket No. 65. Through the Response, one or both of the Debtors provide that "Debtor now files this response to Creditor's Objection to the Proof of Claim, but consents to conversion to allow the Ch. 7 Trustee to pursue the settlement funds they transferred to Steven Martindale to be held in trust for their future care and support." *Id.* at p. 5, lines 9-13.

It is the Court's understanding that the Debtors now support *Secured Creditor Richard J. Moore as Trustee's motion to Convert Chapter 13 Case to Case Under Chapter 7 of Title 11 of U.S. Code* (the "Motion"). See Docket No. 34.

The Court will grant the Motion based on the Debtors' support of the Motion, and for cause as set forth in the Motion and related exhibits.

Movant to upload an order within 7 days.

August 17, 2023

Appearances waived. The Motion is denied without prejudice due to the

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

CONT... Michael Moore and Marlena Moore

Chapter 13

Movant's failure to properly serve all creditors. The Movant shall lodge a conforming order within seven days.

Background

On April 25, 2023 (the "Petition Date"), Michael Moore and Marlena Moore (collectively, hereinafter, the "Debtors") filed a voluntary petition for relief under Chapter 13 of Title 11 of the U.S. Code (this "Case"). *See* Docket No. 1.

The claims bar date lapsed for non-government creditors on July 5, 2023. Two secured creditors have timely filed a total of three proofs of claim: (1) Richard J. Moore, as Trustee of the Moore Marital Trust UA DTD 12/23/1986 (the "Movant"), holding a claim in the amount of \$793,152.53; (2) the Movant, holding a second claim in the amount of \$209,831.94; and (3) JPMorgan Chase Bank, N.A., holding a claim in the amount of \$196,302.85, secured by a second deed of trust against the Property. *See* Claim Nos. 3-3, 6-2, and 7-1. Three unsecured creditors have timely filed a total of four proofs of claim: (1) Wells Fargo Bank, N.A., holding an unsecured claim in the amount of \$8,208.29; (2) Wells Fargo, holding another unsecured claim in the amount of \$8,014.12; (3) LVNV Funding, LLC, holding an unsecured claim in the amount of \$4,431.34; and (4) CEP America California, holding an unsecured claim in the amount of \$123.52. *See* Claim Nos. 1-1, 2-1, 4-1, and 5-1.

Before the Court now is that *Notice of Motion and Secured Creditor Richard J. Moore as Trustee's Motion to Convert Chapter 13 Case to Case Under Chapter 7 of Title 11 of U.S. Code* (the "Motion"), filed by the Movant on July 25, 2023. *See* Docket No. 34. The Motion seeks a Court order converting this Case to a Chapter 7 case, or alternatively dismissing this Case with a bar to refiling. *See id.*

Notice

Fed. R. Bankr. P. 9014 governs a proceeding under 11 U.S.C. § 1307(c) to dismiss a case, or to convert a case to another chapter. *See* Fed. R. Bankr. P. 1017(f)(1); *see also* Fed. R. Bankr. P. 9014(b) ("[t]he motion shall be served in the manner provided for service of a summons and complaint by Rule 7004"). Fed. R. Bankr. P. 7004(b) provides that "service may be made within the United States by first class mail postage prepaid" Fed. R. Bankr. P. 7004(b). Notice must be provided to "the debtor, debtor's attorney (if any), all creditors, the chapter 13 trustee, any former

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room

201

2:00 PM

CONT... Michael Moore and Marlena Moore

Chapter 13

trustee, and the United States trustee." LBR 3015-1(q)(3).

The Motion and notice thereof were served upon the Debtors via FedEx Overnight Mail on July 25, 2023, using the addresses listed in that *Chapter 13 Voluntary Petition*. See Docket No. 34, *Proof of Service of Document*, p. 3; see also Docket No. 1, p. 2. The Trustee, U.S. Trustee, and Debtor's counsel were each served via Notice of Electronic Filing ("NEF") on July 25, 2023. *Id.* No other parties were served. Service of the Motion and notice thereof was accordingly deficient and did not comply with Fed. R. Bankr. P. 1017(f)(1), 9014(b), and 7004(b) and this Court's Local Rule 3015-1(q)(3). The Court denies the Motion without prejudice to allow the Movant to refile and serve all creditors with the same.

Party Information

Debtor(s):

Michael Moore

Represented By
Anthony James Francisco I

Joint Debtor(s):

Marlena Moore

Represented By
Anthony James Francisco I

Movant(s):

Richard J. Moore, as Trustee

Represented By
Jill David

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

9:23-10318 Michael Moore and Marlena Moore

Chapter 13

#26.00 CONT'D Hearing

RE: [59] Motion to Avoid Lien Junior Lien with Richard J. Moore, as Trustee of the Moore Marital Trust UADD 12/23/1986

FR. 10-10-23

Docket 59

***** VACATED *** REASON: Stipulated order entered 12-15-23. Hearing continued to March 19, 2024 at 2:00pm.**

Tentative Ruling:

October 10, 2023

Appearances required.

Party Information

Debtor(s):

Michael Moore

Represented By
Anthony James Francisco I

Joint Debtor(s):

Marlena Moore

Represented By
Anthony James Francisco I

Movant(s):

Michael Moore

Represented By
Anthony James Francisco I

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

9:23-10425 Eric Francisco Bruget

Chapter 13

#27.00 Hearing
RE: [68] Application for Compensation for Michael F Chekian, Debtor's Attorney, Period: 5/22/2023 to 10/24/2023, Fee: \$11,007.00, Expenses: \$197.07.

Docket 68

***** VACATED *** REASON: Voluntarily dismissal of motion was filed by counsel on 12/15/23.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Eric Francisco Bruget

Represented By
Michael F Chekian

Movant(s):

Eric Francisco Bruget

Represented By
Michael F Chekian

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

9:23-10512 Peter Hendrix and Jana Powell

Chapter 13

#28.00 HearingRE: [38] First Objection to Claim #16 by Claimant Laveta Casdorff. in the amount of \$ 1200

Docket 38

Tentative Ruling:

January 9, 2024

Appearances waived. The Objection is sustained. Claim No. 16-1 is disallowed. Debtors are to upload a conforming order within 7 days.

Background

On June 23, 2023, Peter Hendrix and Jana Powell (the "Debtors") filed a voluntary petition under Chapter 13 of the U.S. Bankruptcy Code (this "Case"). See Docket No. 1.

On July 17, 2023, Laveta Casdorff (the "Claimant") filed *Proof of Claim No. 10-1* (the "Initial Claim") in the amount of \$1,200.00 for "Deposit for unlimited exercise instruction services – Unlimited Pilates/exercise classes." See Claim No. 10-1.

On July 20, 2023, the Claimant filed that *Proof of Claim No. 16-1* (the "Second Claim") in the amount of \$1,200.00 for "Deposit for unlimited exercise instruction services – Unlimited Pilates/exercise classes." See Claim No. 16-1.

Before the Court is *Debtors' Objection to Claim 16-1 of Laveta Casdorff as a Duplicate of Claim #10-1* (the "Objection"), filed on November 17, 2023. See Docket No. 38.

Notice and Service

Pursuant to this Court's Local Bankruptcy Rule ("LBR") 3007-1(b), a claim objection must be set for hearing on notice of not less than 30 days. See LBR 3007-1(b)(1). The claim objection must be served on the claimant at the address disclosed by the claimant in its proof of claim and at such other addresses and upon such parties as may be required by FRBP 7004 and other applicable rules.

On November 22, 2023, 48 days prior to the hearing on the Objection, that *Notice of*

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room

201

2:00 PM

CONT... Peter Hendrix and Jana Powell

Chapter 13

Objection to Claim was filed and served via U.S. Mail on the Claimant at the address listed on both the Initial and Second Claim. *See* Docket No. 41, p. 2, *Proof of Service Document*; *see also* Claim No. 10-1 and, Claim No. 16-1.

In accordance with LBR 3007-1(b)(3)(A), "[a] response [to an objection] must be filed and served not later than 14 days prior to the date of hearing set forth in the notice..." Further, "[i]f a response is not timely filed and served, the court may grant the relief requested in the objection without further notice or hearing." *See* LBR 3007-1(b)(3)(B).

Analysis

Pursuant to 11 U.S.C. § 502(a), a proof of claim is deemed allowed unless a party in interest objects. Section 502(b) of the Bankruptcy Code enumerates an exhaustive list of reasons for sustaining an objection to a proof of claim. *See* 11 U.S.C. § 502(b). Pursuant to 11 U.S.C. § 502(b)(1), upon the filing of an objection to a claim, "the court, after notice and a hearing, shall determine the amount of such claim [] and shall allow such claim in such amount, except to the extent that such claim is unenforceable against the debtor and property of the debtor, under any agreement or applicable law for a reason other than because such claim is contingent or unmatured." "It is axiomatic that one can not [sic] recoveer for the same debt twice." *In re GGSI Liquidation, Inc.*, 2016 WL 6808510 *3 (Bankr. N.D. Ill. 2016)(citing *In re Handy Andy Home Imp. Centers, Inc.*, 222 B.R. 571, 575 (Bankr. N.D. Ill. 1998)). "Therefore, claims that assert a right to payment on the same liability for which payment is sought in another claim filed by the same creditor state no independent right to recovery, and are unenforceable to the extent of the duplication." *Id.* (citing *In re Pierport Dev. & Realty, Inc.*, 491 B.R. 544, 547 (Bankr. N.D. Ill. 2013)).

Federal Rules of Bankruptcy Procedure ("Rule") 3001 applies to proofs of claims. Rule 3001(a) requires the creditor to attach the supporting documents to the proof of claim. *See* Fed. R. Bankr. P. 3001(a). Under Rule 3001(f) a proof of claim must be "executed and filed in accordance with these rules" in order to "constitute prima facie evidence of the validity and amount of the claim." *See* Fed. R. Bankr. P. 3001(f).

The Claimant filed two (2) attachments to substantiate the Initial Claim. The Claimant attached to the Initial Claim a copy of two (2) separate checks from an account at USAA Federal Savings Bank in the name of Thomas R Casdorff or [Claimant], Check No. 2042 in the amount of \$700.00 and Check No. 180 in the

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

CONT... Peter Hendrix and Jana Powell

Chapter 13

amount of \$1,200.00 (collectively, the "Checks"). *See* Claim No. 10-1, Attachment 1. The checks are both dated December 2, 2022, both are made "Pay to the Order of" "The Nine" and both appear to be signed by the Claimant. Both checks were also "[c] redited to the account within the named payee at CoastHills CU." *See id.*

The Claimant also attaches a brief narrative in support of the Initial Claim, explaining that they paid a deposit in the amount of \$1,900.00 to The Nine via the Checks for "9 months of unlimited number of Pilates/other exercise services from January 2023 through September 2023." *See* Claim No. 10-1, Attachment 2, p. 1. The Claimant further explains that they "[b]egan unlimited classes until the studio closed on February 10, 2023. Therefore, of the 9-month period...[I] only received 6 weeks of unlimited services." *See id.* The Claimant goes on to state that, "[I] am willing to count January through February 10 services, plus the 14 classes [] between February 25 and May 14 as fulfilling \$700 credit of the \$1900 deposit." *See id.* at p. 2.

Therefore, the Initial Claim was executed and filed in accordance with Rule 3001 and constitutes *prima facie* evidence of the validity and amount of the Initial Claim under Rule 3001(f).

Through the Objection, the Debtors do not dispute that they incurred the debt to the Claimant, but rather argue that the Second Claim should be disallowed on the grounds that it is a duplicate of the Initial Claim. *See id.* Here, the Claimant, the amount claimed, the basis for the Second Claim and the documentation filed in conjunction with the Second Claim are identical to the Initial Claim. *Compare* Claim No. 10-1, *with* Claim No. 16-1.

Thus, Claim No. 16-1 appears to be a duplicate of Claim No. 10-1. The Objection is sustained. Claim No. 16-1 is disallowed. Debtors to upload a conforming order within 7 days.

Party Information

Debtor(s):

Peter Hendrix

Represented By
Chris Gautschi

Joint Debtor(s):

Jana Powell

Represented By
Chris Gautschi

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

CONT... Peter Hendrix and Jana Powell

Chapter 13

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

9:23-10699 Todd Merritt Richardson and Stephanie Beverlee

Chapter 13

#29.00 CONT'D Hearing
RE: [15] Motion to Avoid Lien JUDICIAL LIEN with Portfolio Recovery
Associates, LLC with proof of service

FR. 11-7-23

Docket 15

Tentative Ruling:

January 9, 2024

Appearances waived. In accordance with 11 U.S.C. § 522(f), the Motion is granted. Debtors shall upload a conforming order within seven (7) days.

Background

On August 15, 2023, Todd Merritt Richardson and Stephanie Beverlee Richardson (the "Debtors") filed a voluntary Chapter 13 petition (this "Case"). *See* Docket No. 1. Pursuant to *Schedule A/B*, the Debtors have an ownership interest in a single-family home located at 2684 Painted Cave Road, Santa Barbara, CA 93105 (the "Property"). *See* Docket No. 1, p. 14.

On September 12, 2023, the Debtors filed that *Motion to Avoid Judicial Lien* (the "Motion"), seeking to avoid the judicial lien held by Portfolio Recovery Associates ("Portfolio") under 11 U.S.C. § 522(f). *See* Docket No. 15. The Debtors claim that their entitlement to the homestead exemption is impaired by a judicial lien in the amount of \$3,176.43 (the "Judicial Lien"), resulting from a Santa Barbara Superior Court judgment that was entered on February 8, 2011, in the case of *Portfolio Recovery Associates, LLC v. Todd M. Richardson*, docket number 1343519. *See id.*, p. 2. The Judicial Lien was recorded on March 16, 2011, at the Santa Barbara County Clerk-Recorder's Office under instrument number 11-16151. *See id.*

The hearing on the Motion was initially set for November 7, 2023. *See* Docket No. 19. As a threshold issue, the Court continued the November 7, 2023 hearing on the Motion to January 9, 2024 to allow the Debtors to augment the record because the

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room

201

2:00 PM

CONT... Todd Merritt Richardson and Stephanie Beverlee

Chapter 13

Motion was not accompanied by a declaration or any evidence establishing the fair market value of the property as required under LBR 4003-2(d)(2).

On November 29, 2023, that *Declaration of Todd and Stephanie Richardson In Support of Debtors' Motion to Avoid Lien Under 11 U.S.C. § 522(f) (Real Property)* (the "Declaration") was filed. *See* Docket No. 25.

Notice

Pursuant to this Court's Local Bankruptcy Rule ("LBR") 4003-2(c)(1), in the context of a motion to avoid a lien, "[t]he motion, notice, and supporting documents must be served on the holder of the lien to be avoided in the same manner as a summons and complaint under FRBP 7004." *See* LBR 4003-2(c)(1). On September 12, 2023, the Debtors served Portfolio via United States first class mail, postage prepaid, to the attention of one of its officers in accordance with FRBP 7004(b)(3). *See* Docket No. 15, p. 11, *Proof of Service Document*. On November 29, 2023, the Debtors served the Declaration upon Portfolio via United States first class mail, postage prepaid, to the attention of one of its officers in accordance with FRBP 7004(b)(3). *See* Docket No. 25, p. 3, *Proof of Service Document*.

LBR 4003-2(c)(2) provides that "[t]he motion, notice, and supporting documents also must be served on any other holder of a lien or encumbrance against the subject property." LBR 4003-2(c)(2). Here, it appears the Motion and Notice thereof were not served upon Chase, the holder of the First Lien against the Property. *See id.* However, the Debtors served the Declaration upon Chase via United States first class mail, postage prepaid on November 29, 2023. *See* the Declaration, p. 3, *Proof of Service Document*. Nonetheless, the Ninth Circuit BAP has held that defective service on an unaffected senior lienholder is not fatal to a motion to avoid a junior lien. *See In re Laskin*, 222 B.R. 872, 874 (9th Cir. BAP 1998) (defective service of a motion to avoid junior lien upon senior lienholder was "not fatal, as no relief was sought against that entity").

Thus, service of the Motion and Notice thereof appear proper. Portfolio, has not filed a timely opposition to the Motion. The Court therefore takes Portfolio's default.

Analysis

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

CONT... Todd Merritt Richardson and Stephanie Beverlee

Chapter 13

Pursuant to 11 U.S.C. § 522(f)(1), "the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is a judicial lien []." Pursuant to 11 U.S.C. § 522(f)(2), "a lien shall be considered to impair an exemption to the extent that the sum of (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens."

A prima facie presumption is that a claimed exemption is correct. *See In re Ciotta*, 222 B.R. 626, 651 (Bankr. C.D. Cal. 1998). Federal Rule of Bankruptcy Procedure 4003 provides, "[t]he trustee or any creditor may file objections to the list of property claimed as exempt within 30 days after the conclusion of the meeting of creditors held pursuant to Rule 2003(a) or the filing of any amendment to the list unless, within such period, further time is granted by the court." *See* Fed. R. Bankr. 4003(b). The 341(a) meeting of creditors was scheduled to take place on September 13, 2023. *See* Docket No. 8. However, it is not completely clear to the Court whether the Debtors' meeting of creditors has been concluded. The deadline to file objections to the Debtors' claimed exemptions expired on October 13, 2023. Portfolio has failed to file a timely objection to the claimed exemption, or file a request to extend the deadline to object to the claimed exemption. Therefore, the Debtors' claimed homestead exemption on the Property is deemed allowed, unless the Debtor's meeting of creditors has not yet been concluded by the Trustee.

Pursuant to the Declaration, the Debtors "believe the Property to be valued at \$1,728,800.00 based on [their] knowledge of the area and comparable sales." *See* the Declaration, p. 1, ¶ 3. The Debtors provide no further explanation to account for their valuation of \$1,728,800.00. Nevertheless, homeowners are considered competent to render an opinion on the value of their property. *See Universal Pictures Co. Inc. v. Harold Lloyd Corp.*, 162 F.2d 354, 369 (9th Cir. 1947).

The Debtors claim a homestead property exemption of \$678,391.00 (the "Exemption") under California Code of Civil Procedure § 704.730. *See* Docket No. 1 at p. 21. The Debtors further attest in the Declaration that they acquired the Property in 1995 with two other married individuals, with the Debtors owing 50 percent

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

CONT... Todd Merritt Richardson and Stephanie Beverlee Chapter 13

interest in the Property while the Brittain's own the other 50 percent interest. *See* the Declaration, p. 1, ¶ 4. Thus, the Debtors allege that the fair market value of the Property claimed exempt is \$864,400.00. *See* the Motion, p. 2, ¶ 9. Pursuant to *Schedule D*, there is a lien on the Property held by Chase Bank in the amount of \$482,373.06, which was incurred in 2007 and has since reduced from the original lien amount of \$620,000.00. *See* the Motion, p. 2; *see also* Docket No. 1 at p. 23. Therefore, using the Debtors' valuation of \$1,728,800.00, there is no equity in the Property over the Debtors' claimed Exemption.

In accordance with 11 U.S.C. § 522(f), the Motion is granted. Debtors shall upload a conforming order within seven (7) days.

November 7, 2023

Appearances required. The Motion is denied without prejudice for the reasons stated *infra*. Movant to upload a conforming order within seven (7) days.

Background

On August 15, 2023, Todd Merritt Richardson and Stephanie Beverlee Richardson (the "Debtors") filed a voluntary Chapter 13 petition (this "Case"). *See* Docket No. 1. Pursuant to *Schedule A/B*, the Debtors have an ownership interest in a single-family home located at 2684 Painted Cave Road, Santa Barbara, CA 93105 (the "Property"). *See* Docket No. 1, p. 14. According to what the Debtors describe as "comparables in the area," the current value of the Property is \$1,728,800.00, of which they own \$864,400.00 in fee simple. *See id.* The Debtors further assert that they possess a fifty percent interest in the Property, while The Brittain Family Trust (the "Trust") owns the other fifty percent. *See id.* The Debtors claim a homestead property exemption of \$678,391.00 (the "Exemption") under California Code of Civil Procedure § 704.730. *See id.*, p. 21. Pursuant to *Schedule D*, there is a lien on the Property held by Chase Bank ("Chase") in the amount of \$482,373.06 (the "First Lien"), which was incurred in 2007 and has since reduced from the original lien amount of \$620,000.00. *See id.*, p. 23; *see also* Docket No. 15, p. 2.

On September 12, 2023, the Debtors filed that *Motion to Avoid Judicial Lien* (the "Motion"), seeking to avoid the judicial lien held by Portfolio Recovery Associates

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room

201

2:00 PM

CONT...

Todd Merritt Richardson and Stephanie Beverlee

Chapter 13

("Portfolio") under 11 U.S.C. § 522(f). *See* Docket No. 15. The Debtors claim that their entitlement to the homestead exemption is impaired by a judicial lien in the amount of \$3,176.43 (the "Judicial Lien"), resulting from a Santa Barbara Superior Court judgment that was entered on February 8, 2011, in the case of *Portfolio Recovery Associates, LLC v. Todd M. Richardson*, docket number 1343519. *See id.*, p. 2. The Judicial Lien was recorded on March 16, 2011, at the Santa Barbara County Clerk-Recorder's Office under instrument number 11-16151. *See id.*

Notice

Pursuant to this Court's Local Bankruptcy Rule ("LBR") 4003-2(c)(1), in the context of a motion to avoid a lien, "[t]he motion, notice, and supporting documents must be served on the holder of the lien to be avoided in the same manner as a summons and complaint under FRBP 7004." *See* LBR 4003-2(c)(1). On September 12, 2023, the Debtors served Portfolio via United States first class mail, postage prepaid, to the attention of one of its officers in accordance with FRBP 7004(b)(3). *See* Docket No. 15, p. 11, *Proof of Service Document*.

LBR 4003-2(c)(2) provides that "[t]he motion, notice, and supporting documents also must be served on any other holder of a lien or encumbrance against the subject property." LBR 4003-2(c)(2). Here, it appears the Motion and Notice thereof were not served upon Chase, the holder of the First Lien against the Property. *See id.* However, the Ninth Circuit BAP has held that defective service on an unaffected senior lienholder is not fatal to a motion to avoid a junior lien. *See In re Laskin*, 222 B.R. 872, 874 (9th Cir. BAP 1998) (defective service of a motion to avoid junior lien upon senior lienholder was "not fatal, as no relief was sought against that entity").

Analysis

As a threshold issue, the Motion is not accompanied by a declaration or any evidence establishing the fair market value of the property as required under LBR 4003-2(d)(2). Here, the Debtors provide no explanation to account for their valuation of \$1,728,800.00.

Homeowners are considered competent to render an opinion on the value of their

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room

201

2:00 PM

CONT...

Todd Merritt Richardson and Stephanie Beverlee

Chapter 13

property. *See Universal Pictures Co. Inc. v. Harold Lloyd Corp.*, 162 F.2d 354, 369 (9th Cir. 1947). However, in this case, the Court finds the Debtors have failed to provide a declaration and failed to provide sufficient evidence to establish the fair market value of the Property.

Therefore, the Court will deny the Motion without prejudice for failure to comply with LBR 4003-2.

Party Information

Debtor(s):

Todd Merritt Richardson

Represented By
Christian J Younger

Joint Debtor(s):

Stephanie Beverlee Richardson

Represented By
Christian J Younger

Movant(s):

Todd Merritt Richardson

Represented By
Christian J Younger

Stephanie Beverlee Richardson

Represented By
Christian J Younger
Christian J Younger
Christian J Younger

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

9:23-10061 South Bay Property Homes LLC

Chapter 11

#30.00 HearingRE: [103] Motion RE: Objection to Claim Number by Claimant Thomas Block.

Docket 103

Tentative Ruling:

January 9, 2023

Appearances waived.

Background

On January 30, 2023, South Bay Property Homes LLC (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code. *See* Docket No. 1. Thomas Block was scheduled by the Debtor as having a disputed secured claim as against 27009 Sea Vista Drive, Malibu, CA 90265 (the "Property") in the amount of \$350,000. *See* Docket No. 25, *Schedule D: Creditors Who Have Claims Secured by Property*, p. 3. Pursuant to that *Scheduling Order After Chapter 11 Status Conference* (the "Scheduling Order"), "[t]he deadline for secured creditors, unsecured creditors, and equity security holders to file proofs of claim in this bankruptcy case is June 30, 2023." *See* Docket No. 29, ¶ 1. "The Debtor shall serve notice of the deadline to file claims on all creditors by April 3, 2023." *See id.* at ¶ 3. The Scheduling Order was served on Thomas Block on March 27, 2023, at PO Box 1398, Augora Hills, CA 91376-1398. *See* Docket No. 31, *Proof of Service/Notice of Entered Order and Service List, re: Scheduling Order After Chapter 11 Status Conference*. No proof of claim was timely filed by Thomas Block.

On December 7, 2023, the Debtor filed that *Motion Objecting to Claim of Thomas Block and to Avoid Lien* (the "Motion"). *See* Docket No. 103. As its title infers, the aim of the Motion is the disallowance of the scheduled claim of Thomas Block, and the avoidance of a lien Thomas Block recorded against the Property in that "there is no basis for [Thomas Block's] claim or lien recorded against [the Property], as the assignment of the lien to [Thomas Block] occurred after the prior holder of the lien agreed to reconvey the lien on the Property based on a settlement of the underlying debt..." *See id.* at p. 2, lines 7-13.

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room

201

2:00 PM

CONT... South Bay Property Homes LLC

Chapter 11

Analysis

"When a debtor files a bankruptcy petition, creditors may file a 'proof of claim.'" *See In re Adams*, 502 B.R. 645, 646 (Bankr. N.D. Ga. 2013)(citing 11 U.S.C. § 501(a)). Pursuant to Fed. R. Bankr. P. 3002(a), "[a] secured creditor [] must file a proof of claim [] for the claim [] to be allowed..." "A lien that secured a claim against the debtor is not void due only to the failure of any entity to file a proof of claim." *Id.* Pursuant to Fed. R. Bankr. P. 3003(2), "[a]ny creditor [] whose claim [] is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim [] within the time prescribed by subdivision (c)(3) of this rule; any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution." Pursuant to 11 U.S.C. § 1111(a), "[a] proof of claim or interest is deemed filed under section 501 of this title for any claim or interest that appears in the schedules filed under section 521(a)(1) or 1106(a)(2) of this title, except a claim or interest that is scheduled as disputed, contingent, or unliquidated." "Once a proof of claim is filed it will be deemed allowed, unless a party in interest objects to such claim." *In re Adams*, 502 B.R. at 646 (citing 11 U.S.C. § 502(a)).

Pursuant to Fed. R. Bankr. P. 7001(2), an adversary proceeding is required to "determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d)." *See also In re Commercial Western Finance Corp.*, 761 F.2d 1329, 1337-1338 (9th Cir. 1985).

In this case, Thomas Block has no allowed claim against the Debtor to object to. Thomas Block did not file a proof of claim prior to the claims bar date, and the Debtor scheduled Thomas Block as having a disputed claim. At best, the Motion is moot as to its request that the Court disallow a claim that was never an allowed claim.

As to the validity of the lien, such relief must be sought through an adversary proceeding. The Motion does not suffice as the proper procedural vehicle to void a lien pursuant to Ninth Circuit law and Fed. R. Bankr. P. 7001(2).

Conclusion

The Motion is denied on the claim objection request as being moot, and denied as to the request that the Court invalidate Thomas Block's lien for the Debtor's failure to bring the request through an adversary proceeding.

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

CONT... South Bay Property Homes LLC

Chapter 11

The Debtor is to upload a conforming order within 7 days.

Party Information

Debtor(s):

South Bay Property Homes LLC

Represented By
Leslie A Cohen

Movant(s):

South Bay Property Homes LLC

Represented By
Leslie A Cohen

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

9:23-10061 South Bay Property Homes LLC

Chapter 11

#31.00 HearingRE: [105] Motion RE: Objection to Claim Number by Claimant Labor Commissioners Office, Department of Industrial Relations, Division of Labor Standards Enforcement for the State of California.

Docket 105

Tentative Ruling:

January 9, 2023

Appearances waived.

Background

On January 30, 2023, South Bay Property Homes LLC (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code. *See* Docket No. 1. Thomas Block was scheduled by the Debtor as having a disputed secured claim as against 27009 Sea Vista Drive, Malibu, CA 90265 (the "Property") in the amount of \$350,000. *See* Docket No. 25, *Schedule D: Creditors Who Have Claims Secured by Property*, p. 3. Pursuant to that *Scheduling Order After Chapter 11 Status Conference* (the "Scheduling Order"), "[t]he deadline for secured creditors, unsecured creditors, and equity security holders to file proofs of claim in this bankruptcy case is June 30, 2023." *See* Docket No. 29, ¶ 1. "The Debtor shall serve notice of the deadline to file claims on all creditors by April 3, 2023." *See id.* at ¶ 3. The Scheduling Order was never served on the State of California Department of Industrial Relations Labor Commissioner's Office Division of Labor Standards Enforcement, Garrett Crook, Ekaterina Koplenko, or Vehanoush Ghookasian. *See* Docket No. 31, *Proof of Service/Notice of Entered Order and Service List, re: Scheduling Order After Chapter 11 Status Conference*. No proof of claim was timely filed by State of California Department of Industrial Relations Labor Commissioner's Office Division of Labor Standards Enforcement, Garrett Crook, Ekaterina Koplenko, or Vehanoush Ghookasian.

On December 7, 2023, the Debtor filed that *Motion Objecting to Claims of the Department of Industrial Relations and to Avoid Liens* (the "Motion"). *See* Docket No. 105. The aim of the Motion is the disallowance of the unscheduled and unfiled

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room

201

2:00 PM

CONT...

South Bay Property Homes LLC

Chapter 11

claims of the State of California Department of Industrial Relations Labor Commissioner's Office Division of Labor Standards Enforcement, Garrett Crook, Ekaterina Koplenko, and/or Vehanoush Ghookasian, and the avoidance of liens filed by State of California Department of Industrial Relations Labor Commissioner's Office Division of Labor Standards Enforcement, Garrett Crook, Ekaterina Koplenko, and/or Vehanoush Ghookasian recorded against the Property in that "the liens recorded by the DIR were improperly recorded against the Property..." *See id.* at p. 2, lines 8-16.

Analysis

"When a debtor files a bankruptcy petition, creditors may file a 'proof of claim.'" *See In re Adams*, 502 B.R. 645, 646 (Bankr. N.D. Ga. 2013)(citing 11 U.S.C. § 501(a)). Pursuant to Fed. R. Bankr. P. 3002(a), "[a] secured creditor [] must file a proof of claim [] for the claim [] to be allowed..." "A lien that secured a claim against the debtor is not void due only to the failure of any entity to file a proof of claim." *Id.* Pursuant to Fed. R. Bankr. P. 3003(2), "[a]ny creditor [] whose claim [] is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim [] within the time prescribed by subdivision (c)(3) of this rule; any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution." Pursuant to 11 U.S.C. § 1111(a), "[a] proof of claim or interest is deemed filed under section 501 of this title for any claim or interest that appears in the schedules filed under section 521(a)(1) or 1106(a)(2) of this title, except a claim or interest that is scheduled as disputed, contingent, or unliquidated." "Once a proof of claim is filed it will be deemed allowed, unless a party in interest objects to such claim." *In re Adams*, 502 B.R. at 646 (citing 11 U.S.C. § 502(a)).

Pursuant to Fed. R. Bankr. P. 7001(2), an adversary proceeding is required to "determine the validity, priority, or extent of a lien or other interest in property, but not a proceeding under Rule 3012 or Rule 4003(d)." *See also In re Commercial Western Finance Corp.*, 761 F.2d 1329, 1337-1338 (9th Cir. 1985).

In this case, neither the State of California Department of Industrial Relations Labor Commissioner's Office Division of Labor Standards Enforcement, Garrett Crook, Ekaterina Koplenko, nor Vehanoush Ghookasian has an allowed claim against the Debtor to object to. Neither the State of California Department of Industrial Relations

**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, January 9, 2024

Hearing Room 201

2:00 PM

CONT... South Bay Property Homes LLC

Chapter 11

Labor Commissioner's Office Division of Labor Standards Enforcement, Garrett Crook, Ekaterina Koplenko, nor Vehanoush Ghookasian filed a proof of claim prior to the claims bar date, and the Debtor did not schedule the State of California Department of Industrial Relations Labor Commissioner's Office Division of Labor Standards Enforcement, Garrett Crook, Ekaterina Koplenko, or Vehanoush Ghookasian as having a claim. At best, the Motion is moot as to its request that the Court disallow claims that were never allowed claims.

As to the validity of the liens, such relief must be sought through an adversary proceeding. The Motion does not suffice as the proper procedural vehicle to void liens pursuant to Ninth Circuit law and Fed. R. Bankr. P. 7001(2).

Conclusion

The Motion is denied on the claim objection request as being moot, and denied as to the request that the Court invalidate the liens of the State of California Department of Industrial Relations Labor Commissioner's Office Division of Labor Standards Enforcement, Garrett Crook, Ekaterina Koplenko, and/or Vehanoush Ghookasian for the Debtor's failure to bring the request through an adversary proceeding.

The Debtor is to upload a conforming order within 7 days.

Party Information

Debtor(s):

South Bay Property Homes LLC

Represented By
Leslie A Cohen

Movant(s):

South Bay Property Homes LLC

Represented By
Leslie A Cohen