

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

Tuesday, April 22, 2025

Hearing Room 201

9:00 AM

9: -

Chapter 0

#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).

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Docket 0

Tentative Ruling:

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- NONE LISTED -

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9:23-10948 Eusebia Hernandez

Chapter 13

#1.00 CONT'D Hearing re: [46] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 1004 N College Drive, Santa Maria, CA 93454

fr. 3-25-25,

Docket 46

Tentative Ruling:

March 25, 2025

Appearances are waived. The Court will grant the Motion pursuant to 11 U.S.C. § 362(d)(1) for the reasons set forth *infra*, but will deny the Motion as to its request that the Court waive Fed. R. Bankr. P. 4001(a)(3). Movant to upload a conforming order within 7 days.

Deutsche Bank Trust Company Americas, as trustee for Residential Accredit Loans, Inc., Mortgage Asset-Backed Pass-Through Certificates, Series 2007-QS7 ("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 1004 N. College Drive, Santa Maria, CA 93454 (the "Property") of Eusebia Hernandez (the "Debtor") on the grounds that the Debtor has failed to make postpetition 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, (2) at its option, offer, provide and enter into a potential forbearance agreement or other loan workout/loss mitigation agreement by contacting the Debtor, (3) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3), and (4) if relief from stay is not granted, adequate protection be ordered. See *id.*, p. 5.

Notice

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on March 3, 2025, notifying the Debtor that pursuant to this Court's

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

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." 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. 21, pp. 5-6, Class 2. Movant asserts that the Debtor defaulted on Plan payments consisting of three (3) unpaid postconfirmation payments of \$1,748.78. *See* Docket No. 46, p. 9. Including postpetition advances of \$700.00 and less a suspense account of \$68.07, Movant asserts that there is a total postconfirmation delinquency of \$5,878.27 (as of the date of the Motion) with a payment of \$1,748.78 becoming due February 1, 2025. *See id.* According to the Motion, the last monthly payment of \$1,611.30 was received by Movant on November 21, 2024. *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 three (3) postpetition/postconfirmation mortgage payments pursuant to the terms of the Plan.

As to Fed. R. Bankr. P. 4001(a)(3), "[t]he purpose of this provision is to permit a short period of time for the debtor or the party opposing relief to seek a stay pending

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an appeal of the order.'" *In re Sternitzky*, 635 B.R. 353, 361 (Bankr. W.D. Wis. 2021). "The party obtaining relief from the automatic stay may persuade the court to grant a shorter time period for the debtor to seek a stay pending appeal, or even grant no time." *Id.* No analysis has been provided to support the request to waive the application of Fed. R. Bankr. P. 4001(a)(3), and so the Court declines to do so.

Party Information

Debtor(s):

Eusebia Hernandez

Represented By
Matthew D. Resnik

Movant(s):

Deutsche Bank Trust Company

Represented By
Theron S Covey
Dane W Exnowski
Sean C Ferry

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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9:24-10269 Antonio Gabriel De La Torre, Jr.

Chapter 13

#2.00 CONT'D Hearing RE: [55] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2430 Lobelia Drive Oxnard, CA 93036

fr. 2-11-25, 3-25-25,

Docket 55

Tentative Ruling:

March 25, 2025

Appearances waived.

Counsel for Movant and the Debtor appeared at the February 11, 2025, hearing and requested a continuance to allow the parties to discuss an adequate protection agreement. No adequate protection agreement has been filed to date. The Motion is granted as provided in the Court's February 11, 2025 tentative ruling.

February 11, 2025

Appearances are waived. The Court will grant the Motion pursuant to 11 U.S.C. § 362(d)(1) for the reasons set forth *infra*, but will deny the Motion as to its request that the Court waive Fed. R. Bankr. P. 4001(a)(3). Movant to upload a conforming order within 7 days.

Selene Finance LP, as a servicer for U.S. Bank Trust National Association, not in its individual capacity but solely as owner trustee for RCF 2 Acquisition Trust c/o U.S. Bank Trust National Association ("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 2430 Lobelia Drive, Oxnard, CA 93036 (the "Property") of Antonio Gabriel De La Torre, Jr. (the "Debtor") on the grounds that the Debtor has failed to make postpetition mortgage payments as they became due under the *1st Amended Chapter 13 Plan* (the "Plan"). See Docket No. 55, *Motion for Relief from Stay Under 11 U.S.C. § 362* (the

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"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) at its option, offer, provide and enter into a potential forbearance agreement or other loan workout/loss mitigation agreement by contacting the Debtor, (3) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3), and (4) if relief from stay is not granted, adequate protection be ordered. *See id.* at p. 5.

Notice

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on January 7, 2025, 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*, 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 therefore takes the default of all non-responding parties, including the Debtor.

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." 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. 37, pp. 5-6, Class 2. Movant asserts that the Debtor defaulted on Plan payments consisting of three (3) unpaid postconfirmation payments of \$2,371.92. *See* Docket No. 55, p. 9. Including attorneys' fees in the amount of \$1,249.00, Movant asserts that there is a

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total postconfirmation delinquency of \$8,364.76 (as of the date of the Motion) with a payment of \$2,371.92 becoming due January 1, 2025. *Id.* According to the Motion, the last monthly payment of \$2,371.92 was received by Movant on October 30, 2024. *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 three (3) postpetition/postconfirmation mortgage payments pursuant to the terms of the Plan.

As to Fed. R. Bankr. P. 4001(a)(3), "[t]he purpose of this provision is to permit a short period of time for the debtor or the party opposing relief to seek a stay pending an appeal of the order." *In re Sternitzky*, 635 B.R. 353, 361 (Bankr. W.D. Wis. 2021). "The party obtaining relief from the automatic stay may persuade the court to grant a shorter time period for the debtor to seek a stay pending appeal, or even grant no time." *Id.* No analysis has been provided to support the request to waive the application of Fed. R. Bankr. P. 4001(a)(3), and so the Court declines to do so.

Party Information

Debtor(s):

Antonio Gabriel De La Torre Jr.

Represented By
Matthew D. Resnik

Movant(s):

U.S. BANK TRUST NATIONAL

Represented By
Theron S Covey
Sean C Ferry
Sarah Arlene Dooley-Lewis

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:24-10269 Antonio Gabriel De La Torre, Jr.

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#3.00 CONT'D Hearing re: [53] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY
RE: 945 Caliente Way, Oxnard, CA 93036

fr: 01-14-25, 2-25-25, 3-25-25,

Docket 53

Tentative Ruling:

March 25, 2025

Appearances waived.

Counsel for Movant and the Debtor appeared at the February 25, 2025, hearing and requested a continuance to allow the parties to discuss an adequate protection agreement. No adequate protection agreement has been filed to date. The Motion is granted in-part and denied in-part, as provided in the Court's January 14, 2025 tentative ruling.

February 25, 2025

Appearances waived.

Counsel for Movant and the Debtor appeared at the January 14, 2025, hearing and requested a continuance to allow the parties to discuss an adequate protection agreement. No adequate protection agreement has been filed to date. The Motion is granted pursuant to 11 U.S.C. § 362(d)(1) for the reasons set forth *infra*, but will deny the Motion as to its request that the Court waive Fed. R. Bankr. P. 4001(a)(3). Movant to upload a conforming order within 7 days.

January 14, 2025

Appearances are waived. The Court will grant the Motion pursuant to 11 U.S.C.

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§ 362(d)(1) for the reasons set forth *infra*, but will deny the Motion as to its request that the Court waive Fed. R. Bankr. P. 4001(a)(3). Movant to upload a conforming order within 7 days.

Deutsche Bank National Trust Company, as Trustee, on Behalf of the Holders of the WAMU Mortgage Pass-Through Certificates, Series 2005-AR2 ("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 945 Caliente Way, Oxnard, CA 93036 (the "Property") of Antonio Gabriel De La Torre, Jr. (the "Debtor") on the grounds that the Debtor has failed to make postpetition mortgage payments as they became due under the *1st Amended Chapter 13 Plan* (the "Plan"). *See* Docket No. 53, *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) at its option, offer, provide and enter into a potential forbearance agreement or other loan workout/loss mitigation agreement by contacting the Debtor, (3) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3), and (4) if relief from stay is not granted, adequate protection be ordered. *See id.* at p. 5.

Notice

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on November 27, 2024, 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*, 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 therefore takes the default of all non-responding parties, including the Debtor.

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

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CONT... **Antonio Gabriel De La Torre, Jr.** **Chapter 13**

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. 37, pp. 5-6, Class 2. Movant asserts that the Debtor defaulted on Plan payments consisting of three (3) unpaid postconfirmation payments of \$2,486.50. *See* Docket No. 53, p. 9. Less a suspense account of \$535.89, Movant asserts that there is a total postconfirmation delinquency of \$6,923.61 (as of the date of the Motion) with a payment of \$2,486.50 becoming due November 1, 2024. *Id.* According to the Motion, the last monthly payment of \$2,486.50 was received by Movant on August 29, 2024. *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 three (3) postpetition/postconfirmation mortgage payments pursuant to the terms of the Plan.

As to Fed. R. Bankr. P. 4001(a)(3), "[t]he purpose of this provision is to permit a short period of time for the debtor or the party opposing relief to seek a stay pending an appeal of the order." *In re Sternitzky*, 635 B.R. 353, 361 (Bankr. W.D. Wis. 2021). "The party obtaining relief from the automatic stay may persuade the court to grant a shorter time period for the debtor to seek a stay pending appeal, or even grant no time." *Id.* No analysis has been provided to support the request to waive the application of Fed. R. Bankr. P. 4001(a)(3), and so the Court declines to do so.

Party Information

Debtor(s):

Antonio Gabriel De La Torre Jr.

Represented By
Matthew D. Resnik

Movant(s):

Deutsche Bank National Trust

Represented By

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Antonio Gabriel De La Torre, Jr.

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Sean C Ferry

Sarah Arlene Dooley-Lewis

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:24-10269 Antonio Gabriel De La Torre, Jr.

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#4.00 CONT'D Hearing re: [60] Amended Motion (related document(s): 58 Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 3736 Orange Drive, Oxnard, CA 93036

fr. 2-25-25, 3-25-25,

Docket 60

Tentative Ruling:

March 25, 2025

Appearances waived.

Counsel for Movant and the Debtor appeared at the February 25, 2025, hearing and requested a continuance to allow the parties to discuss an adequate protection agreement. No adequate protection agreement has been filed to date. The Motion is granted in-part, and denied in-part as provided in the Court's February 25, 2025 tentative ruling.

February 25, 2025

Appearances are waived. The Court will grant the Motion pursuant to 11 U.S.C. § 362(d)(1) for the reasons set forth *infra*, but will deny the Motion as to its request that the Court waive Fed. R. Bankr. P. 4001(a)(3). Movant to upload a conforming order within 7 days.

Selene Finance LP, as a servicer for U.S. Bank Trust National Association, not in its individual capacity but solely as owner trustee for RCF 2 Acquisition Trust c/o U.S. Bank Trust National Association ("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 3736 Orange Drive, Oxnard, CA 93036 (the "Property") of Antonio Gabriel De La Torre, Jr. (the "Debtor") on the grounds that the Debtor has failed to make postpetition mortgage payments as they became due under the *1st Amended Chapter 13 Plan* (the "Plan"). See Docket No. 60, *Amended Motion for Relief from Stay Under 11 U.S.C. §*

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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) at its option, offer, provide and enter into a potential forbearance agreement or other loan workout/loss mitigation agreement by contacting the Debtor, (3) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3), and (4) if relief from stay is not granted, adequate protection be ordered. *See id.*, p. 5.

Notice

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on January 31, 2025, 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*, 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 therefore takes the default of all non-responding parties, including the Debtor.

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." 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. 37, p. 9, Class 4. Movant asserts that the Debtor defaulted on Plan payments consisting of four (4) unpaid postconfirmation payments of \$2,835.06. *See* Docket No. 60, p. 9. Including attorneys' fees in the amount of \$1,249.00 and less a suspense account of

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\$1.88, Movant asserts that there is a total postconfirmation delinquency of \$12,587.36 (as of the date of the Motion) with a payment of \$2,835.06 becoming due February 1, 2025. *See id.* According to the Motion, the last monthly payment of \$2,836.00 was received by Movant on October 30, 2024. *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 four (4) postpetition/postconfirmation mortgage payments pursuant to the terms of the Plan.

As to Fed. R. Bankr. P. 4001(a)(3), "[t]he purpose of this provision is to permit a short period of time for the debtor or the party opposing relief to seek a stay pending an appeal of the order." *In re Sternitzky*, 635 B.R. 353, 361 (Bankr. W.D. Wis. 2021). "The party obtaining relief from the automatic stay may persuade the court to grant a shorter time period for the debtor to seek a stay pending appeal, or even grant no time." *Id.* No analysis has been provided to support the request to waive the application of Fed. R. Bankr. P. 4001(a)(3), and so the Court declines to do so.

Party Information

Debtor(s):

Antonio Gabriel De La Torre Jr.

Represented By
Matthew D. Resnik

Movant(s):

U.S. BANK TRUST NATIONAL

Represented By
Theron S Covey
Sean C Ferry
Sarah Arlene Dooley-Lewis

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:00 AM

9:24-10640 Renan Verdugo-Ramos and Maria Guadalupe Mendoza

Chapter 13

#5.00 Hearing re: [39] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 5304 Katherine Street Simi Valley, CA 93063-4559

Docket 39

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Renan Verdugo-Ramos

Represented By
Donald Iwuchukwu

Joint Debtor(s):

Maria Guadalupe Mendoza

Represented By
Donald Iwuchukwu

Movant(s):

U.S. Bank National Association, as

Represented By
Daniel K Fujimoto
Bryan S Fairman
Joseph C Delmotte

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:00 AM

9:24-10642 Bobbie Levarr Derick Taylor

Chapter 13

#6.00 Hearing re: [28] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 521 N 6th St, Lompoc, California 93436-4827

Docket 28

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Bobbie Levarr Derick Taylor

Represented By
Rabin Pournazarian

Movant(s):

Rocket Mortgage, LLC f/k/a

Represented By
Chad L Butler

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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9:24-10658 Walter Olvis Stallings

Chapter 13

#7.00 Hearing re: [47] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 860 Big Horn Court, Camarillo, CA 93010

Docket 47

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Walter Olvis Stallings

Represented By
William E. Winfield

Movant(s):

Wells Fargo Bank, N.A.

Represented By
Kristin A Schuler-Hintz

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, April 22, 2025

Hearing Room 201

9:00 AM

9:24-10717 Joe Angus McKenna and Ruth Allison McKenna

Chapter 13

#8.00 Hearing re: [30] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 317 East Prune Avenue Lompoc CA 93436

Docket 30

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Joe Angus McKenna	Pro Se
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Joint Debtor(s):

Ruth Allison McKenna	Pro Se
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Movant(s):

Hollyvale Rental Holdings, LLC	Represented By Sam Chandra
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Trustee(s):

Elizabeth (ND) F Rojas (TR)	Pro Se
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**United States Bankruptcy Court
Central District of California
Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar**

Tuesday, April 22, 2025

Hearing Room 201

9:00 AM

9:24-11202 Jesus Rios and Abigail Rios

Chapter 13

#9.00 Hearing re: [34] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2021 HARLEY-DAVIDSON FXLRS LOW RIDER S

Docket 34

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Jesus Rios

Represented By
Rabin Pournazarian

Joint Debtor(s):

Abigail Rios

Represented By
Rabin Pournazarian

Movant(s):

Harley-Davidson Credit Corp

Represented By
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, April 22, 2025

Hearing Room 201

9:00 AM

9:24-11399 Charles Wayne Bowman

Chapter 7

#10.00 Hearing re: [44] Notice of motion and motion for relief from automatic stay with supporting declarations ACTION IN NON-BANKRUPTCY FORUM RE: Notice of Motion and Motion for Relief From the Automatic Stay Under 11 USC sec 362

Docket 44

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Charles Wayne Bowman

Represented By
Leslie A Tos

Movant(s):

Julie Bowman

Represented By
Richard E Rossi

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Northern Division
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Tuesday, April 22, 2025

Hearing Room 201

9:00 AM

9:25-10064 Netzahualcoytl Ortega and Maria Rosa Ortega

Chapter 7

#11.00 Hearing re: [27] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: N 2019 FOREST RIV 26RSC; VIN NO. 1HA6GUCG3JN002492

Docket 27

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Netzahualcoytl Ortega

Represented By
John K Rounds

Joint Debtor(s):

Maria Rosa Ortega

Represented By
John K Rounds

Movant(s):

Bank of America, N.A.

Represented By
Chad L Butler

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Northern Division
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Tuesday, April 22, 2025

Hearing Room 201

9:00 AM

9:25-10127 ReEnvision Aesthetics and Medspa, PC

Chapter 11

#12.00 Hearing re: [52] Notice of motion and motion for relief from the automatic stay
with supporting declarations PERSONAL PROPERTY RE: BTL Industries
Emsculpt Neo Workstation

Docket 52

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

ReEnvision Aesthetics and Medspa,

Represented By
Steven R Fox

Movant(s):

MMP CAPITAL, INC.

Represented By
Andrew K Alper

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Tuesday, April 22, 2025

Hearing Room 201

9:00 AM

9:25-10230 Marilyn Gallardo

Chapter 7

#13.00 Hearing re: [7] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2020 Chevrolet Traverse

Docket 7

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Marilyn Gallardo

Represented By
Todd J Mannis

Movant(s):

AmeriCredit Financial Services, Inc.

Represented By
Merdaud Jafarnia

Trustee(s):

Amy L Goldman (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, April 22, 2025

Hearing Room 201

9:00 AM

9:25-10305 Priscilla G. Fredrick and Walter M. Fredrick, Jr.

Chapter 7

#14.00 Hearing re: [9] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2020 Nissan Altima

Docket 9

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Priscilla G. Fredrick

Represented By
Karen Ware

Joint Debtor(s):

Walter M. Fredrick Jr.

Represented By
Karen Ware

Movant(s):

San Diego County Credit Union

Represented By
Lisa Yun Pruitt

Trustee(s):

Sandra McBeth (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, April 22, 2025

Hearing Room 201

1:00 PM

9:24-10493 Cindy Reyes and Horacio Garcia

Chapter 7

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

Docket 19

Tentative Ruling:

April 22, 2025

Appearances waived.

Before the Court is *Trustee's Final Report (TFR)* (the "Report"), filed by the duly appointed Chapter 7 Trustee, Sandra K. McBeth (the "Trustee"), for the bankruptcy estate of Cindy Reyes and Horacio Garcia (collectively, the "Debtors"). *See* Docket No. 19.

On March 3, 2025, that *Notice of Trustee's Final Report and Applications for Compensation* (the "Notice") was filed with the Court and served on the NEF parties. *See* Docket No. 20. On March 4, 2025, the Notice was served on the remaining creditors of the bankruptcy estate by BNC notice. *See* Docket No. 21. 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 or the 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 \$15,121.91 in cash on hand. *See* Docket No. 81, *Exhibit D*, p. 12.

Through the Report, the Trustee, *inter alia*, seeks the payment the Trustee's statutory fee of \$2,274.45 pursuant to 11 U.S.C. § 326(a) and reimbursement of expenses in the amount \$111.79. *See id.*

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CONT... Cindy Reyes and Horacio Garcia

Chapter 7

After payment to priority claims and the Trustee, the balance of cash on hand for unsecured creditors is \$0.00. *See id.*

The Court approve the Report in conformance with 11 U.S.C. § 704(9), and (2) the Trustee is awarded their statutory fee in the amount of \$2,274.45 and reimbursement of the Trustee's expenses in the amount of \$111.79.

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

Party Information

Debtor(s):

Cindy Reyes

Represented By
Kenneth H J Henjum

Joint Debtor(s):

Horacio Garcia

Represented By
Kenneth H J Henjum

Trustee(s):

Sandra McBeth (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
Northern Division
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Hearing Room 201

1:00 PM

9:23-10420 Kevin Holly and Elizabeth Holly

Chapter 7

#16.00 Hearing re: [31] Motion to (1) reopen bankruptcy case pursuant to 11 U.S.C. § 350(b); and (2) determine nondischargeability of debt pursuant to 11 U.S.C. § 523(a)(2) and § 523(a)(3)

Docket 31

Tentative Ruling:

April 22, 2025

Appearances waived.

Background

On May 30, 2023, Kevin Holly and Elizabeth Holly (collectively, the "Debtors") jointly filed that *Voluntary Petition for Individuals Filing for Bankruptcy* pursuant to Chapter 7 of Title 11 of the United States Code. See Docket No. 1. Jerry Namba was the duly appointed chapter 7 trustee (the "Trustee"), and on July 19, 2023, issued *Chapter 7 Trustee's Report of No Distribution*. See Docket Nos. 7 and 15. On October 3, 2023, the Debtors' case was closed, and the Debtors received a discharge under 11 U.S.C. § 727 on October 3, 2023. See Docket Nos. 19 and 21.

On January 29, 2025, Degarimore, Inc. (the "Movant") filed that *Notice of Motion and Motion to (1) Reopen Bankruptcy Case Pursuant to 11 U.S.C § 350(b); and (2) Determine Nondischargeability of Debt Pursuant to 11 U.S.C § 523(a)(2) and § 523(a)(3)* which was denied for improper service. See Docket Nos. 24 and 33, respectively.

On March 10, 2025, the Movant filed that *Notice of Motion and Motion to (1) Reopen Bankruptcy Case Pursuant to 11 U.S.C § 350(b); and (2) Determine Nondischargeability of Debt Pursuant to 11 U.S.C § 523(a)(2) and § 523(a)(3)* (the "Motion"). See Docket No. 31. Through the Motion, the Movant seeks to reopen the Debtors' bankruptcy case to file an 11 U.S.C. § 523 nondischargeability action based on a business loan and stipulated judgment in which the Movant claims Kevin Holly fraudulent misrepresented the purpose of the business loan. See *id.*

The Movant asserts that it was never provided notice of the Debtors' bankruptcy

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CONT... Kevin Holly and Elizabeth Holly

Chapter 7

filing. *See id.* at p. 7 lines 8-11. The Movant also asserts that it received several post-petition payments and post-discharge payments from Kevin Holly and that Kevin Holly never mentioned or provided notice of the bankruptcy case. *See id.* at p. 6 line 16 to p. 7 line 11.

Notice

Pursuant to Fed. R. Bankr. P. 5010, "[o]n the debtor's or another party in interest's motion, the court may, under § 350(b), reopen a case." Pursuant to this Court's Local Rule 5010-1(c), "[t]he movant must give notice of the motion to any former trustee in the case and the United States trustee." Pursuant to this Court's Local Rule 9013-3(b), "[p]roof of service must be made by executing court mandated form F 9013-3.1PROOF.SERVICE..."

On March 10, 2025, the Motion and notice thereof was served upon all parties-in-interest via Notice of Electronic Filing ("NEF") and U.S. mail, first class, postage prepaid. *See id.* at *Proof of Service of Document*, p. 1. 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 Motion has timely filed an opposition. The Court therefore takes the default of all non-responding parties.

Analysis

Pursuant to 11 U.S.C. § 350(b), "[a] case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause." Pursuant to Fed. R. Bankr. P. 5010, "[a] case may be reopened on motion of the debtor or other party in interest pursuant to § 350(b) of the Code." Pursuant to this Court's Local Rule ("LBR") 5010-1(e), "[a] motion to reopen may be ruled on without a hearing pursuant to LBR 9013-1(q)." For motions filed under LBR 9013-1(q), "the party submitting the motion only needs to file a motion, file a notice of motion for order without a hearing, and lodge an order." *See The Central Guide*, § 2-09: *Hearings: LBR 9013-1(p)-(q): No Hearing Unless Judge Requires*.

Pursuant to LBR 5010-1(b)(1), "[a] motion to reopen a closed bankruptcy case must be supported by a declaration establishing a reason or 'cause' to reopen. The motion must not contain a request for any other relief."

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CONT... Kevin Holly and Elizabeth Holly

Chapter 7

The burden to show cause to reopen a case lies with the moving party. *See In re Knight*, 349 B.R. 681, 685 (Bankr. D. Id. 2006).

In deciding whether to reopen a case, courts may consider a number of factors, including (1) the length of time the case has been closed (laches), (2) whether the debtor would be entitled to relief if the case were reopened, (3) the availability of nonbankruptcy courts to entertain the claim, (4) the benefit to creditors, (5) the benefit to the debtor, (6) the prejudice to affected parties, (7) whether the estate has been fully administered, and (8) good faith. *In re Consolidated Freightways Corp.*, 553 B.R. 396, 399 (C.D. Cal. 2016). "[M]ere reopening has no impact on property of the debtor, no impact on property of the estate that was abandoned at the time of closing and does not automatically reinstate the trustee. It follows that an improvident reopening is largely victimless error." *In re Menk*, 241 B.R. 896, 914 (9th Cir. BAP 1999).

Here, although the Debtors' case was closed about a year and a half ago, the Movant, due to the lack of notice, does not appear to have delayed reopening the bankruptcy case nor has too much time passed. In fact, payments continued to be made by Kevin Holly to the Movant post-petition. Further, the Movant appears to be entitled to relief based on the alleged facts and no other court besides this Court may provide the requested relief of a debt being determined nondischargeable. Additionally, without granting the relief requested, the Movant would be highly prejudiced and moreover, the Court finds no indications of a lack of good faith.

Conclusion

The Court grants the Motion to reopen the Debtors' bankruptcy case. The Movant is to upload a conforming order within 7 days.

Party Information

Debtor(s):

Kevin Holly

Pro Se

Joint Debtor(s):

Elizabeth Holly

Pro Se

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CONT... Kevin Holly and Elizabeth Holly

Chapter 7

Movant(s):

Degarimore, Inc.

Represented By
Jake Y. Jung

Trustee(s):

Jerry Namba (TR)

Pro Se

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9:25-10114 Michelle Urbano

Chapter 7

#17.00 Hearing re: [10] Debtor's motion for authority to redeem personal property and approval of associated financing and attorney fees under 11 U.S.C. § 722

Docket 10

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Michelle Urbano

Represented By
Kevin T Simon

Movant(s):

Michelle Urbano

Represented By
Kevin T Simon

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

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9:25-10325 EDGAR FELIPE MONTELONGO AZUA

Chapter 7

#18.00 Order to show cause re: dismissal due to debtor obtained credit counseling on September 6, 2024, more than 180 days prior to the filing of the petition on March 12, 2025

Docket 10

Tentative Ruling:

April 22, 2025

Appearances required.

On March 12, 2025 (the "Petition Date"), Edgar Felipe Montelongo Azua (the "Debtor") filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code (the "Petition"). *See* Docket No. 1, p. 1. The Debtor failed to properly provide a Certificate of Credit Counseling. as required by 11 U.S.C. § 109(h)(1). *See* Docket No. 4, p. 1.

On March 24, 2025, the Court entered that *Order to Show Cause to Not Dismiss Due to Failure to Comply with § 109(h)(1)* (the "OSC"), scheduling a hearing for April 22, 2025, as to why the Court should not dismiss the case due to the Debtor's failure to obtain credit counselling prior to the Petition Date in conformance with 11 U.S.C. § 109(h). *See* Docket No. 10.

Notice

On March 15, 2025, the Debtor was given notice of the OSC via BNC notice. *See* Docket No. 11.

Analysis

Pursuant to 11 U.S.C. § 109(h)(1), "an individual may not be a debtor under this title unless such individual has, during the 180-day period ending on the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing [] that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis." The Ninth Circuit BAP has held that "[t]o us, the command of § 109(h) is clear, and unless one of the stated exceptions

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CONT... EDGAR FELIPE MONTELONGO AZUA

Chapter 7

applies, and individual ‘may not be a debtor’ unless she has received credit counseling prior to filing her bankruptcy petition." *In re Gibson*, 2011 WL 7145612 *4 (9th Cir. BAP 2011)(citing 11 U.S.C. § 109(h)(1)). The Ninth Circuit BAP indicates strict adherence to the prepetition requirements. *See id.* at *4.

Here, Section 109(h)(1) of the Bankruptcy Code required that the Debtor participate in a credit counseling course between the dates of September 13, 2024, and the Petition Date. The Debtor obtained credit counseling on September 6, 2024, more than 180 days prior to the Petition Date. *See* Docket No. 7.

The Court is inclined to dismiss this case for the Debtor’s failure to comply with 11 U.S.C. § 109(h).

Party Information

Debtor(s):

EDGAR FELIPE MONTELONGO

Represented By
Cynthia L Gonzalez

Trustee(s):

Sandra McBeth (TR)

Pro Se

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9:24-10519 Lynn Frances Souza

Chapter 7

#19.00 CONT'D Hearing re: [26] Motion to approve compromise

fr. 3-25-25,

Docket 26

Tentative Ruling:

April 22, 2025

Appearances waived.

Background

On May 9, 2024, Lynn Frances Souza (the "Debtor") filed a voluntary petition for bankruptcy under Chapter 7 (this "Case"). *See* Docket No. 1. Sanda McBeth is the duly appointed chapter 7 trustee (the "Trustee"). *See* Docket No. 2.

On November 25, 2019, the Debtor and Jon Gustafson ("Gustafson") "obtained a judgment for dissolution of marriage" (the "Dissolution Judgment"). *See* Docket No. 26, p. 1 lines 26-28. The Dissolution Judgment provided for a division of property between the Debtor and Gustafson and after, the Debtor transferred her interest in the real property located at 927 Snyder Drive, Davis, California 95616 (the "Property"), to Gustafson on August 11, 2022 (the "Transfer"). *See id.* at p. 2 lines 1-4.

The Trustee asserts that the Transfer "is subject to avoidance as a fraudulent transfer pursuant to 11 U.S.C. § 548 and California Code of Civil Procedure § 3439.04" whereas Gustafson disputes the Transfer is subject to avoidance. *See id.* at lines 7-8.

The Trustee asserts that the Property at the time of the Transfer was subject to a mortgage of \$180,000.00 and the Property was worth about \$500,000.00 with the current value of the Property at about \$719,000.00. *See* Docket No. 31.

On February 18, 2025, the Trustee and Gustafson entered into that *Settlement and Mutual Release* (the "Agreement") in which Gustafson agreed to pay the Trustee \$45,000.00 and the parties exchange mutual releases. *See* Docket No. 26, pp. 8-16.

Before the Court is that *Motion to Compromise Controversy with Points and*

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CONT... Lynn Frances Souza

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Authorities (the "Motion") in which the Trustee seeks the Court's approval of the Agreement. *See* Docket No. 26.

Notice

Pursuant to Fed. R. Bankr. P. 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 of settlement of a controversy other than approval of an agreement pursuant to Rule 4001(d), unless the court for cause shown directs that notice not be sent."

On February 28, 2025, the Trustee filed that *Notice of Motion to Compromise Controversy* (the "Notice"). *See* Docket No. 27. All creditors, the Debtor, and the Office of the U.S. Trustee were served with the Notice. *See id.* at *Proof of Service of Document*, pp. 3-4. Notice of the Motion was proper.

This Court's Local Rule 9013-1(f)(1) provides that "each interested party opposing or responding to the motion must file and serve the response [] on the moving party and the United States trustee not later than 14 days before the date designated for hearing." 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." This Court takes the default of all non-responding parties that were served with the Notice.

Analysis

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

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)

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Lynn Frances Souza

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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 In re Woodson*, 839 F.2d at 620. 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). "Each factor need not be treated in a vacuum; rather, the factors should be considered as a whole to determine whether the settlement compares favorably with the expected rewards of litigation." *In re W. Funding Inc.*, 550 B.R. 841, 851 (9th Cir. BAP 2016).

"The law favors compromise, 'and as long as the bankruptcy court amply considered the various factors that determined the reasonableness of the compromise, the court's decision should be affirmed.'" *In re Open Medicine Institute, Inc.*, 639 B.R. 169, 181 (9th Cir. BAP 2022)(citing *In re A & C Props.*, 784 F.2d at 1383)). "Moreover, '[w]hen assessing a compromise, courts need not rule upon disputed facts and questions of law, but rather only canvass the issues. A mini trial is not required.'" *Id.* (citing *In re Schmitt*, 215 B.R. 417, 423 (9th Cir. BAP 1997)).

"The bankruptcy court's decision to approve a compromise is reviewed for abuse of discretion." *Id.* at 180 (citing *In re Mickey Thompson Ent. Grp.*, 292 B.R. 415, 420 (9th Cir. BAP 2003)).

Probability of Success in Litigation

The Trustee asserts she is confident she would ultimately prevail in a fraudulent transfer claim, but states that she believes success is not certain due to the Transfer having occurred through the Dissolution Judgment. *See* Docket No. 26, *Declaration of Sandra McBeth*, ¶ 8; and Docket No. 31, *Declaration of Sandra McBeth*, ¶ 10. The Trustee also asserts that Gustafon has identified other defenses. *See id.* Due to the Trustee's belief that success is likely, the Court finds that this factor weighs against approving the Agreement.

Collectability

This factor does not appear to be at issue as the Trustee's fraudulent transfer claim seeks to avoid the Transfer and not collect. The Court finds that this factor weighs

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neither in favor nor against approving the Agreement.

Complexity, Expense, Inconvenience, and Delay Attendant to Continued Litigation

The Trustee believes that the litigation is not overly complex, but that any trial would incur significant administrative expenses for the valuation of the other debts and assets included in the Dissolution Judgment.

However, the Court is not able to determine whether this factor weighs in favor of approving the Agreement. First, the Trustee asserts that at the time of the Transfer the Debtor's interest was about \$138,000. *See* Docket No. 31, p. 2. However, Court is unable to determine the value of the Property currently to the estate if the Trustee was to avoid the Transfer. Further, the Court is unable to determine the costs of further litigation and potential increase in recovery, compares to the \$45,000 settlement amount.

It is clear, however, that litigating the matter would come with the attendant administrative expense in doing so, which may not be insubstantial.

Any litigation could also significantly delay any distribution to creditors, assuming the Trustee were successful in litigating the matter.

This factor weighs in favor of approving the Agreement.

The Interest of Creditors

The Trustee asserts that, pursuant to her business judgment, the Agreement is in the best interest of creditors, as the Agreement represents a significant recovery. The total filed claims in the Debtor's bankruptcy case are \$42,214.10. *See id.* at p. 2, line 18. The estimated administrative expenses are to total \$17,500 at the top end. *See id.* at n. 1. No creditor has opposed the Motion. The return to unsecured creditors would be 65% at the Trustee's current estimate.

This factor appears to favor approval of the Agreement.

Conclusion

The motion is granted. The Trustee is to upload a conforming order within 7 days.

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CONT... Lynn Frances Souza

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March 25, 2025

Appearances required.

Background

On May 9, 2024, Lynn Frances Souza (the "Debtor") filed a voluntary petition for bankruptcy under Chapter 7 (this "Case"). *See* Docket No. 1. Sanda McBeth is the duly appointed chapter 7 trustee (the "Trustee"). *See* Docket No. 2.

On November 25, 2019, the Debtor and Jon Gustafson ("Gustafson") "obtained a judgment for dissolution of marriage" (the "Dissolution Judgment"). *See* Docket No. 26, p. 1 lines 26-28. The Dissolution Judgment provided for a division of property between the Debtor and Gustafson and after, the Debtor transferred her interest in the real property located at 927 Snyder Drive, Davis, California 95616 (the "Property"), to Gustafson on August 11, 2022 (the "Transfer"). *See id.* at p. 2 lines 1-4.

The Trustee asserts that the Transfer "is subject to avoidance as a fraudulent transfer pursuant to 11 U.S.C. § 548 and California Code of Civil Procedure § 3439.04" whereas Gustafson disputes the Transfer is subject to avoidance. *See id.* at lines 7-8.

On February 18, 2025, the Trustee and Gustafson entered into that *Settlement and Mutual Release* (the "Agreement") in which Gustafson agreed to pay the Trustee \$45,000.00 and the parties exchange mutual releases. *See id.* at pp. 8-16.

Before the Court is that *Motion to Compromise Controversy with Points and Authorities* (the "Motion") in which the Trustee seeks the Court's approval of the Agreement. *See* Docket No. 26.

Notice

Pursuant to Fed. R. Bankr. P. 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 of settlement of a controversy other than approval of an agreement pursuant to Rule

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4001(d), unless the court for cause shown directs that notice not be sent."

On February 28, 2025, the Trustee filed that *Notice of Motion to Compromise Controversy* (the "Notice"). See Docket No. 27. All creditors, the Debtor, and the Office of the U.S. Trustee were served with the Notice. See *id.* at *Proof of Service of Document*, pp. 3-4. Notice of the Motion was proper.

This Court's Local Rule 9013-1(f)(1) provides that "each interested party opposing or responding to the motion must file and serve the response [] on the moving party and the United States trustee not later than 14 days before the date designated for hearing." 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." This Court takes the default of all non-responding parties that were served with the Notice.

Analysis

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

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 *In re Woodson*, 839 F.2d at 620. 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). "Each factor need not be treated in a vacuum; rather, the factors should be considered as a whole to determine whether the settlement compares favorably with the expected rewards of litigation." *In re W.*

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Funding Inc., 550 B.R. 841, 851 (9th Cir. BAP 2016).

"The law favors compromise, 'and as long as the bankruptcy court amply considered the various factors that determined the reasonableness of the compromise, the court's decision should be affirmed.'" *In re Open Medicine Institute, Inc.*, 639 B.R. 169, 181 (9th Cir. BAP 2022)(citing *In re A & C Props.*, 784 F.2d at 1383)). "Moreover, '[w]hen assessing a compromise, courts need not rule upon disputed facts and questions of law, but rather only canvass the issues. A mini trial is not required.'" *Id.* (citing *In re Schmitt*, 215 B.R. 417, 423 (9th Cir. BAP 1997)).

"The bankruptcy court's decision to approve a compromise is reviewed for abuse of discretion." *Id.* at 180 (citing *In re Mickey Thompson Ent. Grp.*, 292 B.R. 415, 420 (9th Cir. BAP 2003)).

Probability of Success in Litigation

The Trustee asserts she is confident she would ultimately prevail in a fraudulent transfer claim, but states that she believes success is not certain due to the Transfer having occurred through the Dissolution Judgment. *See* Docket No. 26, *Declaration of Sandra McBeth*, ¶ 8. The Trustee also asserts that Gustafon has identified other defenses. *See id.* Due to the Trustee's belief that success is likely, the Court finds that this factor weighs against approving the Agreement.

Collectability

This factor does not appear to be at issue as the Trustee's fraudulent transfer claim seeks to avoid the Transfer and not collect. The Court finds that this factor weighs neither in favor nor against approving the Agreement.

Complexity, Expense, Inconvenience, and Delay Attendant to Continued Litigation

The Trustee believes that the litigation is not overly complex, but that any trial would incur significant administrative expenses for the valuation of the other debts and assets included in the Dissolution Judgment.

However, the Court is not able to determine whether this factor weighs in favor of approving the Agreement. First, the Court is unable to determine the value of the

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Property or how further litigation, including the costs and potential increase in recovery, compares to the \$45,000 settlement amount. If this is, at bottom, a cost-benefit analysis, the Court requires some form of input from the cost-perspective (and, in the end, net up-side) to make the requisite findings under *A & C Props.*

The Interest of Creditors

The Trustee asserts that, pursuant to her business judgment, the Agreement is in the best interest of creditors, as the Agreement represents a significant recovery. However, again the Court is unable to determine whether this factor weighs in favor of approving the Agreement. The Court has no information on the value of the interest the Trustee would be able to obtain through judgment. Further, the Trustee does not assert that the Agreement provides for full payment of administrative costs and claims.

Conclusion

The Court is not inclined to approve the Agreement. The Court is unable to determine the full value of the Trustee's potential fraudulent transfer claim against Gustafson and whether the \$45,000 settlement amount is (1) a reasonable exercise of the Trustee's business judgment, (2) fair and equitable, and (3) in the best interest of creditors.

Party Information

Debtor(s):

Lynn Frances Souza

Represented By
William C Beall

Movant(s):

Sandra McBeth (TR)

Represented By
William C Beall
Ryan W Beall

Trustee(s):

Sandra McBeth (TR)

Represented By
William C Beall
Ryan W Beall

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9:24-10572 Thomas Anthony Ferro

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#20.00 CONT'D (as a Status Conference) Hearing RE: [9] Motion to
Avoid Lien Judicial Lien with Cal-West Equities, Inc.

fr: 9-10-24; 01-14-25, 3-25-25,

Docket 9

Tentative Ruling:

March 25, 2025

Appearances required.

The Court has reviewed that *Joint Status Report*. See Docket No. 93. The Court maintains some confusion about where this matter stands. What precisely is ripe for determination, and what must be decided through an evidentiary hearing?

January 14, 2025

Appearances required.

Background

On May 22, 2024, Thomas Anthony Ferro (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the U.S. Code. See Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*. On July 3, 2024, the Debtor filed *Debtor's Notice of Motion and Motion to Avoid Lien Under 11 U.S.C. § 522(f)* (the "Motion"). See Docket No. 9. Through the Motion, the Debtor seeks to avoid the judgment lien assigned to Cal-West Equities, Inc. ("Cal-West") pursuant to 11 U.S.C. § 522(f) as impairing the Debtor's homestead exemption in a parcel of real property located at 23448 W. Moon Shadows Drive, Malibu, CA 90265 (the "Property"). See *id.*

On July 17, 2024, Cal-West filed that *Notice of Opposition and Request for a Hearing* (the "Opposition"). See Docket No. 18. Through the Opposition, Cal-West argues that the Motion must be denied in that (1) the Debtor's spouse's joint tenancy interest

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in the Property must be included in the Debtor's estate as community property, (2) Cal-West must first conduct discovery as to other alleged consensual liens on the Property, which liens may be inferior to that of Cal-West's lien, (3) the Debtor's homestead exemption should be reduced to \$175,000 based on the Debtor's bad faith, and (4) Cal-West's lien cannot be avoided because its underlying claim is non-dischargeable. *See id.*

On September 3, 2024, the Debtor filed *Debtor's Reply to Opposition of Cal-West Equities, Inc.'s to [sic] Motion to Avoid Judicial Lien Pursuant to 11 U.S.C. § 522(f)*. *See* Docket No. 40.

The Non-Dischargeability of Cal-West's Claim

Cal-West argues that the hearing on the Motion should be continued to "allow a determination of nondischargeability to be made..." *See* Docket No. 18. The Court does not follow. "Courts have routinely held that the avoidability of a lien is not affected by the dischargeability of the underlying debt." *In re Hunnicutt*, 457 B.R. 463, 464 (Bankr. D.S.C. 2011)(internal citations omitted). "Lien avoidance and dischargeability of debts are not dependent on each other." *In re Sirikanjanachai*, 628 B.R. 562, 570 (1st Cir. BAP 2021)(citations omitted). "The 'avoidance of a lien does not destroy the underlying debt but rather changes the status of a creditor from a secured creditors to an unsecured position.'" *Id.* at 569. "Thus, a creditor whose judgment lien has been avoided under § 522(f), but whose claim is nondischargeable, may seek to recover from non-exempt property after the debtor's discharge." *Id.*

Cal-West seems to agree that a determination of the dischargeability of its claim by this Court has no bearing on the Debtor's ability to avoid Cal-West's lien under 11 U.S.C. § 522(f). *See* Docket No. 18, fn 6. Cal-West, however, argues that "equity demands that the Court not allow Debtor to avoid the Cal-West lien." *Id.* Again, the Court does not follow. "[E]quitable considerations do not allow a bankruptcy court to contravene express provisions of the Bankruptcy Code." *In re Betterroads Asphalt, LLC*, 594 B.R. 516, 560 (Bankr. D. P.R. 2018)(citing *Law v. Siegel*, 571 U.S. 415 (2014)).

The Court will inquire with Cal-West about the authority this Court has to contravene the auspices of 11 U.S.C. § 522(f) based on what Cal-West believes to be the non-dischargeable nature of its claims against the Debtor under 11 U.S.C. §§ 523(a)(2)(A)

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and (a)(6). See Docket No. 21.

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The Debtor's Claimed Exemption

"When a debtor files for bankruptcy, it creates an estate that includes virtually all the debtor's assets." *In re Masingale*, 108 F.4th 1195, 1197 (9th Cir. 2024)(internal citations omitted). "But to help debtors get back on their feet, the Bankruptcy Code permits them to exempt interests in specified property from the estate..." *Id.* "The debtor 'shall file a list of property that the debtor claims as exempt' under § 522(b), and '[u]nless a party in interest objects, the property claimed as exempt on such list is exempt.'" *Id.* "The effect of an exemption is that the debtor's interest in the property is withdrawn from the estate (and hence from the creditors) for the benefit of the debtor." *Id.* "Under the Bankruptcy Rules, a party in interest (such as a trustee or creditor) has thirty days from the date of the creditors' meeting to object to the claimed homestead exemption." *Id.* at 1198; *see also* Fed. R. Bankr. P. 4003(b)(1) ("a party in interest may file an objection to the list of property claimed as exempt 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 the instant case, the Debtor claimed as exempt, \$699,426 in the Property pursuant to Cal. Code of Civ. P. § 704.730. See Docket No. 1, *Schedule C: The Property You Claim as Exempt*. The meeting of creditors under 11 U.S.C. § 341(a) is to take place on February 24, 2025. See Docket No. 66. The deadline for parties-in-interest to object to the Debtor's claimed exemption has not yet lapsed. At the moment, the Debtor has a valid exemption in the Property, but subject to any objection to the claimed exemption.

The Nature of the Debtor's Interest in the Property

"As a general principle, a debtor's property rights that become part of the bankruptcy estate under § 541 are determined by applicable nonbankruptcy law." *In re Khalil*, 2015 WL 2213696 *6 (9th Cir. BAP 2015).

"California is a community property state, which characterizes marital property as either community property or separate property." *In re Brace*, 908 F.3d 531, 536 (9th Cir. 2018)(internal citations omitted). Pursuant to Cal. Fam. Code § 760, "[e]xcept as otherwise provided by statute, all property, real or personal, wherever situated,

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acquired by a married person during the marriage while domiciled in this state is community property." "Property that a spouse acquired before the marriage is that spouse's separate property." *Id.* at 537. "[F]or property acquired on or after January 1, 1985, married persons may change – i.e., transmute – the character of property from community to separate, or vice versa, if the transmutation is 'made in writing by an express declaration that is made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected.'" *In re Brace*, 470 P.3d 15, 20 (2020); *see also* Cal. Fam. Code § 852(a). "[A] valid transmutation under Family Code 852, subdivision (a), can be divided into two basic components: (1) a writing that satisfies the statute of frauds; and (2) an expression of intent to transfer a property interest." *In re Bibb*, 87 Cal.App.4th 461, 468 (2001). Specifically, Cal. Fam. Code. § 852(a) "require(s) that a writing effecting a transmutation of property contain on its face a clear and unambiguous expression of intent to transfer an interest in the property, independent of extrinsic evidence." *Id.* A grant deed signed by the party adversely affected by the purported transmutation constitutes a writing "made, joined in, consented to, or accepted by the spouse whose interest in the property is adversely affected." *Id.* A deed that purports to transmute separate property of one spouse into the separate property of both spouses as joint tenants is satisfied when the deed reads, "[Separate Property Holding Spouse] hereby grant(s) to [themselves and their spouse], as joint tenants the following described real property..." *Id.* Use of the word "grant" in the deed "satisfies the express declaration requirement of section 852, subdivision (a)." *Id.*

Under California law, as to real property, "[i]f the debtor holds property in joint tenancy, only his one-half joint interest becomes part of the bankruptcy estate." *In re Brace*, 979 F.3d 1228, 1230 (9th Cir. 2020)(citing *In re Reed*, 940 F.2d 1317, 1332 (9th Cir. 1991)); *see also In re Brace*, 470 P.3d at 21 ("joint tenants typically have separate property interests in the property.").

Here, the deed of the Property reads, "THOMAS FERRO, A MARRIED MAN WHO ACQUIRED TITLE AS THOMAS FERRO, AND UNMARRIED MAN hereby GRANT(S) to THOMAS FERRO AND ROSA FERRO, HUSBAND AND WIFE AS JOINT TENANTS." *See* Docket No. 9, *Exhibit B*. The Debtor testified that he "acquired title to [the Property] in 1986," "as an unmarried man," and then, after his 2006 marriage to Rosa Ferro, conveyed a joint tenancy interest in the Property to he and his wife, Rosa Ferro, recording a grant deed regarding the same in 2012. *See*

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Docket No. 9, p. 7, lines 6-15. Ergo, the Property was separate property of the Debtor, and then conveyed by the Debtor to he and his spouse as joint tenants. This conveyance effected a valid transmutation of the Property.

Cal-West argues, citing *In re Brace*, that as to "real property [] acquired after January 1, 1975, the form of title does not govern the character of the property; instead, the general community property presumption applies." See Docket No. 18, p. 14, lines 24-26. Cal-West also argues, citing *In re Bibb*, that "a grant deed signed by a husband conveying separate real property to himself and his wife as 'joint tenants' meets the express declaration requirement for transmitting [sic] the property from separate property to community property." See *id.* at p. 15, lines 8-18. Cal-West then argues that the aforementioned deed of trust transmuted the Property to community property. See *id.* at lines 19-21. Lastly, Cal-West argues, citing *In re Bibb*, that since Rosa Ferro obtained her interest in the Property after the marriage, her interest is presumed to be community property, and because there was no written transmutation, the Property is in-fact community property. See *id.* at lines 21-24. The Court disagrees.

The Court in *In re Bibb* held just the opposite from Cal-West's final conclusion. There, a spouse that held separate property, transmuted their separate property to them and their spouse as joint tenants. This was held to meet the strictures of Cal. Fam. Code. § 852(a). This same analysis applies to the instant case, as Cal-West seems to agree, at least in part. The Debtor transmuted their separate property to them and their spouse as joint tenants. The Ninth Circuit has held that "[u]nder California law, if the property at issue is held in joint tenancy, only the debtor's one-half joint interest becomes part of the bankruptcy estate." *In re Brace*, 908 F.3d at 537. Cal-West appears to be arguing that after the Debtor executed the deed of trust titling the Property into a joint tenancy, the spouse's interest in-fact became community property, presumptively, and a further writing would need to be produced proving that the Property was transmuted into the Debtor's spouse's separate property as a joint tenant. This appears to the Court to cut against the *In re Bibb* holding.

In the *In re Brace* matter, the monies used to purchase the property after the marriage were community property. Title in the property was taken as a joint tenancy. The California Supreme Court held that "when a married couple uses community funds to acquire property with joint tenancy title on or after January 1, 1975, the property is

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presumptively community property under Family Code section 760 in a dispute between the couple and a bankruptcy trustee." *In re Brace*, 470 P.3d at 18. This factual scenario would partially support Cal-West's argument. That is not the factual scenario here. Here, this was separate property of the Debtor, obtained prior to the marriage, and transmuted to the spouses as joint tenants after the marriage. The California Supreme Court specifically held that "we do not address interspousal deeds by which one spouse conveys his or her separate property to both spouses as joint tenants, as in *Bibb*." *See id.* at 936.

Cal-West has failed to advance a valid argument illustrating that the Property is not owned by the Debtor and Rosa Ferro as joint tenants, and thus only the Debtor's interest in the Property constitutes property of the Debtor's bankruptcy estate.

Value of the Property

On August 27, 2024, Cal-West filed that *Supplemental Opposition to Debtor's Motion to Avoid Lien of Cal-West Equities, Inc. Under 11 U.S.C. 525(f)* (the "Supplement"). *See* Docket No. 38. Through the Supplement, Cal-West argues that the Property's value is \$2.6 million instead of \$2.3 million. Unless one or more of the consensual liens on the Property is avoided, the increased valuation matters not.

Next Steps

With the above analysis in mind, the Court will meet with the parties about next steps regarding the resolution of the Motion.

Party Information

Debtor(s):

Thomas Anthony Ferro

Represented By
Robert M Yaspan
Debra Brand
Joseph G McCarty

Movant(s):

Thomas Anthony Ferro

Represented By
Robert M Yaspan
Robert M Yaspan

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Debra Brand
Debra Brand
Joseph G McCarty
Joseph G McCarty

Trustee(s):

Jerry Namba (TR)

Represented By
Timothy J Yoo

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#21.00 Hearing re: [86] Motion for order authorizing global settlement
of claims and compromise of controversy

Docket 86

Tentative Ruling:

April 22, 2025

Appearances required.

Background

On October 22, 2023, John Charles Thomas (the "Debtor") filed a voluntary petition for relief under Chapter 7 of Title 11 of the United States Code. *See* Docket No. 1. [FN1] Jerry Namba (the "Trustee") is the duly appointed chapter 7 trustee.

On April 29, 2024, Steve Saint (the "Creditor") filed that *Complaint to Determine Nondischargeability of Debt Pursuant to 11 U.S.C. § 523* (the "Complaint") against the Debtor seeking a non-dischargeability determination of a default state court judgment in the Superior Court of the County of Santa Clara, title *Saint v. Thomas, Case No-CV362880*, for \$2,730,601.94 (the "Judgment"). *See* Case No. 9:24-ap-01017-RC (the "Adversary Case"), Docket No. 1. The Adversary Case is solely between the Debtor and Creditor.

On April 12, 2024, the Creditor filed that *Proof of Claim Number 2* for the Judgment.

On February 26, 2025, the Debtor, the Creditor, and the Trustee participated in mediation and entered into that *Settlement Agreement and Mutual Release* (the "Agreement"). *See* Docket No. 86, pp.13-26, *Exhibit A*.

Before the Court is that *Motion for Order Authorizing Global Settlement of Claims and Compromise of Controversy* (the "Motion") filed by the Trustee seeking the Court's approval the Agreement. *See* Docket No. 86.

Through the Agreement, the Debtor shall pay the Trustee \$150,000 for the benefit of the bankruptcy estate, and the Debtor shall pay the Creditor a total \$400,000 consisting of monthly payments of \$6,250 and a lump sum of \$300,000 on or before

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September 1, 2026. *See* Docket No. 86, pp.13-26, *Exhibit A*. Additionally, the Debtor and the Creditor agreed to enter into a stipulated judgment in which the entirety of the Judgment will be determined nondischargeable pursuant to 11 U.S.C. § 523(a)(6) should the Debtor breach the Agreement, and the Creditor agreed to forebear any collection actions provided all payments under the Agreement are made timely by the Debtor. *See id.*

Further, the Agreement resolves and finalizes any pending motions in the state court litigation. And lastly, all parties to the Agreement – the Trustee, the Debtor, and the Creditor – provide mutual releases to each other. *See id.*

Notice

Pursuant to Fed. R. Bankr. P. 2002(a)(2) and (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: [] a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice."

This Court's Local Rule 9013-1(f)(1) provides that "each interested party opposing or responding to the motion must file and serve the response [] on the moving party and the United States trustee not later than 14 days before the date designated for hearing."

On April 1, 2025, the Motion and that *Amended Proof of Service of: Notice of Motion for: Motion for Order Authorizing Global Settlement of Claims and Compromise of Controversy* (the "Notice") were served on the Debtor, Debtor's counsel, all creditors, and the Office of the U.S. Trustee via Notice of Electronic Filing ("NEF") and U.S. mail first class, postage prepaid. *See* Docket No. 86, *Proof of Service Document*, pp. 32-33; and Docket No. 90, *Proof of Service of Document*, pp. 2-4.

Analysis

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

The bankruptcy court has great latitude in approving settlement agreements. *See In re*

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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 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 law favors compromise, 'and as long as the bankruptcy court amply considered the various factors that determined the reasonableness of the compromise, the court's decision should be affirmed.'" *In re Open Medicine Institute, Inc.*, 639 B.R. 169, 181 (9th Cir. BAP 2022)(citing *In re A & C Props.*, 784 F.2d at 1383)). "Moreover, '[w]hen assessing a compromise, courts need not rule upon disputed facts and questions of law, but rather only canvass the issues. A mini trial is not required.'" *Id.* (citing *In re Schmitt*, 215 B.R. 417, 423 (9th Cir. BAP 1997)).

"The bankruptcy court's decision to approve a compromise is reviewed for abuse of discretion." *Id.* at 180 (citing *In re Mickey Thompson Ent. Grp.*, 292 B.R. 415, 420 (9th Cir. BAP 2003)).

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. at 420.

Probability of Success in Litigation

The Trustee is settling any challenges to the Debtor's homestead exemption and transfers by the Debtor to third parties under 11 U.S.C. § 544, 547, and 548. *See* Docket No. 86, pp. 3-4. There is no analysis provided by the Trustee as to their probability of success on any of these potential causes of action.

However, and as will be relevant throughout the *A & C Props.* analysis, all creditors

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are to be paid in full through the Agreement with the exception of the Creditor, and the Creditor supports the Agreement. *See id.* at *Exhibit A*; *see also* Docket No. 92, *Creditor Steve Saint's Joinder in Chapter 7 Trustee's Motion for Order Authorizing Global Settlement of Claims and Compromise of Controversy*.

This factor favors approval of the Agreement.

Collectability

Again, no analysis is provided by the Trustee as to the fraudulent transfers and homestead exemption challenge, but, as noted *supra*, all creditors are either being paid in full, or have agreed to their treatment through the Agreement.

The factor favors approval of the Motion.

Complexity, Expense, Inconvenience, and Delay Attendant to Continued Litigation

Again, no analysis is provided by the Trustee as to the fraudulent transfers and homestead exemption challenge, but, as noted *supra*, all creditors are either being paid in full, or have agreed to their treatment through the Agreement.

The factor favors approval of the Motion.

The Interest of Creditors

Here, the Agreement provides resolution for all pending litigation and claims in the bankruptcy case. Further, the Agreement provides \$150,000 to the estate for payment of administrative claims and creditors. As such, this factor favors approval of the Agreement.

Conclusion

In weighing the *A & C Props.* factors, the Court is inclined to approve the Agreement. However, the Court will inquire with the parties whether the Court is to enter the attached stipulated judgment and whether the Adversary Case is to remain open until all payments are made.

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

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Unless otherwise noted, all citations to the docket refer to case 9:23-bk-10968-RC.

Party Information

Debtor(s):

John Charles Thomas

Represented By
John D Faucher

Movant(s):

Jerry Namba (TR)

Represented By
Jeremy Faith
Meghann A Triplett

Trustee(s):

Jerry Namba (TR)

Represented By
Jeremy Faith
Meghann A Triplett

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9:21-11124 Catherine Luinstra-Uster and Fred Curtis Uster

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#22.00 CONT'D Hearing re: [74] Motion for waiver to file application for discharge for debtor, Fred Curtis Uster

fr. 3-20-25,

Docket 74

Tentative Ruling:

April 22, 2025

Appearances required.

On November 10, 2021, Catherine and Fred Uster (the "Debtors") filed a voluntary petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*. On June 9, 2022, the Court entered that *Order Confirming Chapter 13 Plan*, confirming the Debtors' *2nd Amended Chapter 13 Plan* (the "Plan"). *See* Docket Nos. 51 and 39, respectively. Under the terms of the Plan, there were to be 60 plan payments through and including December 2026. *See* Docket No. 51, p. 1.

Before the Court is that *Motion for Waiver to File Application for Discharge for Debtor, Fred Curtis Uster* (the "Motion"). *See* Docket No. 74. According to the Motion, "Fred Curtis Uster passed away in February, 2024, and his Chapter 13 plan had been fully paid at 100% to the general unsecured creditors by his wife..." *See id.* at p. 1, lines 25-27. The Debtors now move through the Motion to waive Fred Uster's requirement to file an application for Fred Uster's discharge, which would also require that this Court waive 11 U.S.C. § 1307(g).

Federal Rule of Bankruptcy Procedure 1016 ("Rule 1016") provides in pertinent part that, upon the death of a debtor, "[i]f a reorganization . . . case is pending under . . . chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bankr. P. 1016. "[U]pon the death of a debtor, counsel for a deceased debtor should ordinarily promptly notify the Court of the debtor's death and file a motion for

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designation of an appropriate person to act on the debtor's behalf." *In re Vetter*, 2012 WL 1597378, at *2 (Bankr. D. S.C. May 7, 2012). "Although Rule 1016 is silent on the point, effective implementation of the rule necessitates a conclusion that all parties in interest have a duty to inform the court of the fact of death." *In re Eads*, 135 B.R. 387, 390 n.4 (Bankr. E.D. Cal. 1991).

Under Rule 1016, courts must determine (1) if further administration of the case is possible; (2) if such administration is "in the best interest of the parties;" and (3) if the case may proceed and be concluded in the same manner as though the debtor was not deceased. *See In re Sanford*, 619 B.R. 380, 392 (Bankr. E.D. Mich. 2020). "The burden to satisfy the requirements of [Rule 1016] is on the party seeking to further the administration of the bankruptcy case." *In re Goldston*, 627 B.R. 841, 865 (Bankr. D.S.C. 2021) (internal quotations omitted).

"Any determination of whether further administration of a deceased debtor's [c]hapter 13 case is possible and in the best interest of the parties under Rule 1016 is fact specific and must be made on a case-by-case basis, regardless of whether there is a creditor objection or the [c]hapter 13 Trustee consents to the relief requested . . ." *In re Inyard*, 532 B.R. at 369. "The Bankruptcy Code and the Bankruptcy Rules do not define further administration. Nor do the Advisory Committee Notes to Rule 1016 explain what the phrase means in the context of the rule." *In re Sanford*, 619 B.R. at 387 (Bankr. E.D. Mich. 2020).

The exact burden to satisfy the "further administration" prong is not set forth by Rule 1016. Courts find the burden is satisfied if the case has proceeded to a late stage; for example, few, if any, plan payments and/or steps remain in order to complete the plan and conclude the case. *See In re Kosinski*, 2015 WL 1177691, at *1 (Bankr. N.D. Ill. Mar. 5, 2015); *see also In re Hoover*, 2015 WL 1407241 (Bankr. N.D. Cal. Mar. 24, 2015) (permitting further administration in case of debtor deceased at month 59 of the 60-month plan); *see also In re Waring*, 555 B.R. at 763 (addressing the "proper course for a post-petition but pre-confirmation death in a [c]hapter 13 case."); *see also In re Fogel*, 550 B.R. 532, 534 (D. Colo. 2015) (permitting further administration in light of deceased debtor having completed all plan payments).

Here, the Court does not have a Rule 1016(b) motion confronting it. By the Court's reading of Rule 1016(b), and the case law that has developed around Rule 1016(b),

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the Court, the Chapter 13 trustee and creditors are to be notified promptly of the passing of a debtor-in-possession. The Court is then to perform an analysis under Rule 1016(b) regarding the feasibility of further administration of the case. What occurs then when the Court, the Chapter 13 trustee and creditors are not informed of the debtor-in-possession's passing for over a year, and where there is no motion under Rule 1016(b) made? What authority does Catherine Uster have to request legal action on the part of their late partner? How does 11 U.S.C. § 1328(g) affect the Motion's requested relief? The Motion merely requests waiver, without any cited legal authority to allow the Court to waive the 11 U.S.C. § 1328(a) requirement, and without any discussion of the interplay between the Motion and Rule 1016(b).

Party Information

Debtor(s):

Catherine Luinstra-Uster

Represented By
Nathan A Berneman

Joint Debtor(s):

Fred Curtis Uster

Represented By
Nathan A Berneman

Movant(s):

Catherine Luinstra-Uster

Represented By
Nathan A Berneman

Fred Curtis Uster

Represented By
Nathan A Berneman

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:25-10183 Gloria Joyce Rodvold

Chapter 13

#23.00 Hearing re: [40] Motion to dismiss chapter 13 case

Docket 40

Tentative Ruling:

April 22, 2025

Appearances required.

Background

On February 14, 2025, Gloria Joyce Rodvold (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 13 of Title 11 of the United States Code. *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*.

On March 28, 2025, Nancy Sylvia Garcia (the "Movant"), a secured creditor of the Debtor's, filed that *Notice of Motion and Motion to Dismiss Chapter 13 Case* (the "Motion"), seeking dismissal of the Debtor's bankruptcy case pursuant to 11 U.S.C. § 1307(c). *See* Docket No. 40. The Movant, through the Motion, argues that the Debtor filed the instant bankruptcy case in bad faith, that the Debtor failed to schedule certain secured creditors, and that the Debtor has insufficient income to fund a plan of reorganization. *See id.* at p. 2, lines 6-11.

The Debtor asserts that her home is valued at \$1.3 million. *See* Docket No. 25, p. 7, *Schedule A/B: Property*. The Debtor claims a homestead exemption in her home of \$722,000. *See id.* at p. 17, *Schedule C: The Property You Claim as Exempt*. The Debtor scheduled three (3) secured liens that predate the Movant's lien, with those liens totaling \$620,000, and the Movant's lien in the amount of \$131,000. *See* Docket No. 44, *Schedule D: Creditors Who Have Claims Secured by Property*, pp. 5-6. The Debtor disputes the liens against her home, including the Movant's lien, with the exception of Fay Servicing in the amount of \$461,000. *See id.*

On April 8, 2025, the Debtor filed *Debtor's Response to Motion to Dismiss*. *See* Docket No. 45.

Analysis

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Chapter 13

Pursuant to 11 U.S.C. § 1307(c), "after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause..." As to "cause," 11 U.S.C. § 1307(c) contains a non-exhaustive list. A Chapter 13 case filed in bad faith may be dismissed or converted as "cause" under 11 U.S.C. § 1307(c). *See In re Ellsworth*, 455 B.R. 904, 915 (9th Cir. BAP 2011). "To determine if a petition has been filed in bad faith courts are guided by the standards used to evaluate whether a plan has been proposed in bad faith." *Id.* at 917. In considering whether a case was filed in bad faith, court consider the totality of the circumstances, including: (1) whether the debtor misrepresented facts in the petition or unfairly manipulated the Code; (2) the debtor's history of filings and dismissals; (3) whether the debtor intended to defeat state court litigation; and (4) whether egregious behavior is present. *Id.* at 917-918.

"The decision to dismiss a chapter 13 case under § 1307(c) is a discretionary decision of the trial court." *In re Schlegel*, 526 B.R. 333, 339 (9th Cir. BAP 2015). A trial court's "dismissal of a chapter 13 bankruptcy case under any of the enumerated paragraphs of § 1307(c) [is reviewed] for abuse of discretion." *Id.* at 338.

Misrepresentations in the Petition

The Motion mentions the Debtor's failure to schedule certain secured claims. *See* Docket No. 40-4, p. 5, lines 20-21. True, the Debtor did not appropriately schedule all of the secured liens against her home. The Debtor filed her schedules when she was still acting in *pro per*. *See* Docket No. 38, *Substitution of Attorney*. The Debtor has since retained counsel in the instant case. *See id.* The Debtor is also a social security recipient. The Debtor has since amended her schedules to include, *inter alia*, the liens highlighted in the Motion. *See* Docket No. 44, pp. 5-6. While the Debtor did in-fact file schedules that were inaccurate, her newly retained counsel appears now to be correcting those issues, and the Court does not find on the record before it that the schedules initially submitted by the Debtor omitted certain secured claim in bad faith.

History of Filings and Dismissals

The Debtor has no prior history of bankruptcy filings.

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Gloria Joyce Rodvold

Chapter 13

Whether Debtor Intended to Defeat State Court Litigation

The Debtor did not intend to defeat state court litigation. It appears that the Debtor filed the bankruptcy petition to prevent the foreclosure sale of her home.

Egregious Behavior

The Court does not here find egregious behavior by the Debtor. The Motion largely argues the impossibility that the Debtor can confirm a plan. The Debtor's bankruptcy case is two (2) months old, and the Debtor has had counsel less than a month. The confirmation hearing is not until May 15, 2025. *See* Docket No. 4. Either the Debtor can confirm a plan, or she cannot. But the Court will afford the Debtor an opportunity to do so.

Conclusion

Based on the totality of the circumstances, and weighing the *Ellsworth* factors, the Court does not find bad faith, and so will deny the Motion without prejudice to the Movant re-filing the Motion should facts warrant the same in the future.

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

Party Information

Debtor(s):

Gloria Joyce Rodvold

Represented By
Chris Gautschi

Movant(s):

Nancy Sylvia Garcia

Represented By
John J Thyne III

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:22-10340 Michael H. Lesseos

Chapter 13

#24.00 Hearing re: [132] Application for compensation for Michael F Chekian, attorney for debtor, for the period of 5/7/2024 to 2/25/2025

Fees: \$5,023.50; Expenses: \$29.60

Docket 132

Tentative Ruling:

April 22, 2025

Appearances waived.

Before the Court is that *Application of Attorney for Debtor for Additional Fees and Related Expenses in a Pending Chapter 13 Case Subject To a Rights and Responsibilities Agreement (RARA)* (the "Application"), as supplemented by that *Application of Attorney for Debtor for Additional Fees and Related Expenses Signed by Debtor Michael Lesseos*. See Docket Nos. 132 and 138, respectively. Through the Application, Chekian Law Office, Inc. ("Applicant") seeks reimbursement of additional fees of \$5,053.10 and reimbursement of expenses of \$29.60.

The Application is approved, as the Court finds the fees and expenses incurred by Applicant to have benefited the Debtor and the Debtor's bankruptcy estate.

Applicant is to upload a conforming order within 7 days.

Party Information

Debtor(s):

Michael H. Lesseos

Represented By
Michael F Chekian

Movant(s):

Michael H. Lesseos

Represented By
Michael F Chekian
Michael F Chekian
Michael F Chekian

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Michael H. Lesseos

Michael F Chekian

Chapter 13

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:25-10101 Carlos Alejandro Martinez and Sonia C Martinez

Chapter 13

#25.00 Hearing re: Objection to claim #7 by claimant Franchise Tax Board
in the amount of \$7,829.56

Docket 14

Tentative Ruling:

April 22, 2025

Appearances required.

Background

On January 30, 2025, Carlos Alejandro and Sonia C. Martinez filed a voluntary petition for relief under Chapter 13 of Title 11 of the United States Code. *See* Docket No. 1, *Voluntary Petition for Individuals Filing for Bankruptcy*.

On February 24, 2025, the Franchise Tax Board (the "FTB") filed proof of claim 7 in the Debtors' bankruptcy case in the amount of \$7,829.56 (the "Claim"). *See* Claim No. 7. The Claim relates to taxes owed for tax years 2022 and 2023, plus penalties, interest and costs. *See id.* at p. 4.

On March 18, 2025, the Debtors filed that *Notice of Objection to Claim* (the "Objection"), objecting to the Claim on the basis that an amended tax return filed on March 3, 2025, results in a tax refund to the Debtors, and not any amounts owed to the FTB. *See* Docket No. 14.

On April 8, 2025, the FTB filed *Franchise Tax Board's Response and Opposition to Debtors' Objection to Claim No. 7* (the "Response"). *See* Docket No. 16. The FTB, through the Response, argues that the Objection should be overruled in that other than submitting an amended tax return, the Debtors have not carried their burden to rebut the presumptive validity of the Claim. *See id.*

Analysis

"A claim or interest, proof of which is filed under section 501 of this title, is deemed allowed, unless a party in interest [] objects." *See* 11 U.S.C. § 501(a). "There is an evidentiary presumption that a correctly prepared proof of claim is valid as to liability

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and amount." *In re Garner*, 246 B.R. 617, 620 (9th Cir. BAP 2000). "A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim." *See* Fed. R. Bankr. P. 3001(f). "The presumption treating the proof of claim as prima facie evidence of validity and amount operates to create a mere rebuttable presumption." *In re Garner*, 246 B.R. at 622. "The mechanics of what it takes to rebut the presumption are driven by the nature of the presumption as 'prima facie' evidence of the claim's validity." *Id.* at 623. The proof of claim is more than 'some' evidence; it is, unless rebutted, 'prima facie' evidence." *Id.* "One rebuts evidence with counter-evidence." *Id.*

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."

Here, the Claim has been filed by the FTB, which includes amounts owed related to certain tax periods. The Debtors, through the Objection, include tax returns recently filed, with nothing more. At some point the FTB will receive the tax returns if they were indeed filed, and either correct the Claim, or stand firm. At this juncture, the Court is inclined to continue the Objection to allow the FTB time to review any tax returns submitted by the Debtors.

Party Information

Debtor(s):

Carlos Alejandro Martinez

Represented By
Shawn S White

Joint Debtor(s):

Sonia C Martinez

Represented By
Shawn S White

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Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:24-10909 Ramiro S Silva

Chapter 11

#26.00 Hearing re: [122] Application to employ Knapp, Petersen & Clarke, P.C. as
special litigation counsel

Docket 122

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ramiro S Silva

Represented By
Jeremy Faith
Samuel Mushegh Boyamian
Jonathan Serrano

Movant(s):

Ramiro S Silva

Represented By
Jeremy Faith
Samuel Mushegh Boyamian
Jonathan Serrano

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9:24-10191 AC Fabrication, Inc.

Chapter 11

#27.00 Hearing re: [122] Final application by RHM LAW LLP, general bankruptcy counsel for the debtor, for allowance of fees and reimbursement of costs for the period November 23, 2024, through March 14, 2025

Fees: \$17,543.00; Expenses: \$399.75

Docket 122

Tentative Ruling:

April 22, 2025

Appearances waived.

Background

On February 22, 2024, AC Fabrication, Inc. (the "Debtor"), filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the U.S. Code. *See* Docket No. 1. On April 9, 2024, the Court entered that *Order Authorizing Debtor to Employ RMH LLP as Its General Bankruptcy Counsel* (the "Order"). *See* Docket No. 26.

On February 5, 2025, the Court issued that *Order on Application for Payment of: Interim Fees and/or Expenses (11 U.S.C. § 331)* (the "Interim Order") in which the Court approved, on an interim basis, fees in the amount of \$63,068.00 and costs in the amount of \$1,302.86 for RHM Law LLP, general bankruptcy counsel for the Debtor ("Applicant"), for the period of February 22, 2024, through November 22, 2024. *See* Docket No. 117.

Before the Court is that *Final Application by RHM Law LLP, General Bankruptcy Counsel for the Debtor, for Allowance of Fees and Reimbursement of Costs for the Period November 23, 2024, Through March 14, 2025* (the "Application") filed by Applicant on April 1, 2025, seeking, on a final basis, allowance of fees in amount of \$17,543.00 and expenses in the amount of \$399.75 for the time between of November 23, 2024, through March 14, 2025, and approval of the previously approved interim fees of \$63,068 and expenses of \$1,302.86 on a final basis. *See* Docket No. 122.

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Chapter 11

Notice

Pursuant to Fed. R. Bankr. P. 2002(a)(6), Applicant "shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of [] a hearing on any entity's request for compensation or reimbursement of expenses if the request exceeds \$1,000." This Court's Local Rule 2016-1(a)(2)(B) provides that "Applicant must serve not less than 21 days notice of the hearing on the debtor or debtor in possession, the trustee (if any), the creditors' committee or the 20 largest unsecured creditors if no committee has been appointed, any other committee appointed in the case, counsel for any of the foregoing, the United States trustee, and any other party in interest entitled to notice under FRBP 2002."

Here, that *Notice of Hearing on Final Application by RHM Law LLP, General Bankruptcy Counsel for the Debtor, for Allowance of Fees and Reimbursement of Costs for the Period November 23, 2024, Through March 12, 2025* (the "Notice") provides notice of the Application and was served on the Office of the U.S. Trustee, the Subchapter V Trustee, the and all creditors. *See* Docket No. 123, *Proof of Service of Document*, pp. 3-6.

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 Application. The Court therefore takes the default of all non-responding parties served with the Notice.

11 U.S.C. § 330

Sections 330(a)(1)(A) and (B) of the Bankruptcy Code provide that the Court may award a professional person "reasonable compensation for actual, necessary services rendered by the [professional person], and "reimbursement for actual, necessary expenses." *See* 11 U.S.C. §§ 330(a)(1)(A) and (B). Section 330(a)(3) of the Bankruptcy Code provides that "[i]n determining the amount of reasonable compensation to be awarded to [a professional person], the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors...". *See* 11 U.S.C. § 330(a)(3). "A bankruptcy court also must examine the circumstances and the manner in which services are performed and the results

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Chapter 11

achieved in order to arrive at a determination of a reasonable fee allowance. Such examination, in general, should include the following questions: First, were the services authorized? Second, were the services necessary or beneficial to the administration of the estate at the time they were rendered? Third, are the services adequately documented? Fourth, are the fees requested reasonable, taking into consideration the factors set forth in § 330(a)(3)." *In re Mednet*, 251 B.R. 103, 108 (9th Cir. BAP 2000)(internal citations omitted).

In the present case, Applicant's employment by the Debtor as its general insolvency counsel was approved through the Order. *See* Docket No. 26. In reviewing the invoices attached to the Application, the Court finds, on a final basis, that the services performed by Applicant on behalf of the Debtor were necessary and beneficial to the administration of the estate, were properly documented, and are reasonable considering the factors found in 11 U.S.C. § 330(a)(3). The Court approves the Application and all prior fee applications, on a final basis, pursuant to 11 U.S.C. §§ 330, allowing Applicant additional fees in the amount of \$17,543.00 and expenses in the amount of \$399.75.

Conclusion

The Court approves the Application. On a final basis, Applicant is allowed, pursuant to 11 U.S.C. §330, fees in the amount of \$80,611.00 and expenses of \$1,702.61, which are to be paid pursuant to the Debtor's plan of reorganization.

Applicant is to upload a conforming order within 7 days.

Party Information

Debtor(s):

AC Fabrication, Inc.

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

Movant(s):

AC Fabrication, Inc.

Represented By
Matthew D. Resnik
Roksana D. Moradi-Brovia

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Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

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9:25-10156 Puremedy, Inc.

Chapter 11

#28.00 Hearing re: [43] United States Trustee's motion under 11 U.S.C. § 1112(b) to dismiss or, in the alternative, to convert

Docket 43

Tentative Ruling:

April 22, 2025

Appearances required.

Before the Court is *United States Trustee's Notice of Motion and Motion Under 11 U.S.C. § 1112(b) to Dismiss or, in the Alternative, to Convert Case* (the "Motion"). See Docket No. 43. On April 8, 2025, Puremedy, Inc. (the "Debtor") filed *Debtor's Response to United States Trustee's Motion to Under 11 U.S.C. § 1112(b) to Dismiss, or in the Alternative, to Convert Case* in which the Debtor asserts it is in full compliance. The Court will inquire if the Debtor is in-fact in full compliance. If the Debtor is not in full compliance, the Court is inclined to grant the Motion.

Party Information

Debtor(s):

Puremedy, Inc.

Represented By
William C Beall
Ryan W Beall

Movant(s):

United States Trustee (ND)

Represented By
Brian David Fittipaldi

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

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9:23-10945 Jeffrey Dennis Peppard

Chapter 11

#29.00 Hearing re: [170] Motion for order (1) approving real estate purchase agreement (2) approving lease agreement (3) approving overbid procedures (4) approving sale to buyer, successful bidder, and backup bidder (if applicable) as good faith purchasers (5) waiving the stay of rule 6004(h)

Docket 170

Tentative Ruling:

April 22, 2025

Appearances required.

Background

On October 14, 2023, Jeffrey Dennis Peppard (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code. *See* Docket No. 1. On March 28, 2025, the Debtor filed that *Motion for Order: (1) Approving Real Estate Purchase Agreement; (2) Approving Lease Agreement; (3) Approving Overbid Procedures; (4) Approving Sale to Buyer, Successful Bidder, and Backup Bidder (if Applicable) as Good-Faith Purchasers; & (5) Waiving the Stay of Rule 6004(h)* (the "Sale Motion"). *See* Docket No. 170.

Through the Sale Motion, the Debtor seeks to sell certain property of the Debtor's bankruptcy estate consisting of real property located at 7 Ashley Avenue, Santa Barbara, California (the "Property") to Richard Wax (the "Buyer") for \$1,000,000 (the "Purchase Price") with a \$70,000 credit from the Debtor to the Buyer at closing to pay for a new roof and HVAC system. *See id.* at p. 4. The sale of the Property is "as-is," "where-is," and is free and clear of any liens, interests, and encumbrances. *See id.* at p. 7. The Buyer has waived all contingencies. *See id.* The sale is subject to overbid with the Property being sold free and clear of all liens and encumbrances. *See* Docket No. 170, p. 8. Pursuant to the proposed overbid procedures, any party wishing to overbid must provide a \$30,000 deposit and demonstrate the financial ability to pay the full amount of any overbid under the same terms and conditions as the Buyer. *See id.* A party's initial overbid must be no less than \$1,010,000 with each bid in \$1,000 increments. *See id.* at p. 9.

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CONT... Jeffrey Dennis Peppard

Chapter 11

After payment of all costs and broker fees and all non-Internal Revenue Service (the "IRS") liens, the sale is estimated to net \$762,505.78 to be paid entirely to the IRS.

Additionally, through the Sale Motion, the Debtor and the Buyer seek to enter into a triple net, five (5) year real estate lease for the Property for \$15,000 per quarter and annual increases of the greater of 3% or the percentage increase in the consumer price index. *See id.*

The Property has been subject to sale since December 2024 and the Debtor employed Hayes Commercial Group, Inc. and real estate agent Dan Ferrick (collectively, the "Brokers") who listed the Property on the Multiple Listing Service, Costar, LoopNet, and the Brokers' website. *See id.* at p. 6. Since December 2024, the Brokers have fielded multiple inquiries, conducted showings, and received a few offers. *See id.*

Attached to the Sale Motion is a preliminary title report which lists (1) two deeds of trusts held by Nancy Bull and Miles T Goldrick respectively, (2) five liens for property taxes from the years of 2011, 2012, 2019-2023, 2024-2025, and 2025-2026, (3) a lien for taxes owed to the Franchise Tax Board, (4) two liens held by State of California Employment Development department, and (5) six liens held by the IRS totaling \$2,073,196.81. *See id.* at *Exhibit 3*, pp. 49-76.

Lastly, the Debtor requests that the Buyer, and if applicable, the successful overbidder, and back-up bidder are found to be "good faith purchasers" pursuant to 11 U.S.C. § 363(m), and that Fed. R. Bankr. P. 6004(h) be waived. *See id.* at pp. 2-3.

Notice

Pursuant to Fed. R. Bankr. P. 2002(a)(2), a "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 [] a proposed use, sale, or lease of property of the estate other than in the ordinary course of business..." Pursuant to this Court's Local Rule 6004-1(c)(1), "an order authorizing the sale of estate property other than in the ordinary course of business may be obtained upon motion of the trustee [] after notice and a hearing pursuant to LBR 9013-1(d)..." 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."

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On March 28, 2025, the Debtor filed that *Notice of Motion for: Motion for Order 1. Approving Real Estate Purchase; Agreement 2. Approving Lease; Agreement 3. Approving Overbid Procedures; 4. Approving Sale to Buyer, Successful Bidder, and Backup Bidder (if applicable) as Good Faith Purchasers; 5. Waiving the Stay of Rule 6004(h) (the "Notice").* See Docket 170. The Notice was served on the creditors and the Office of the U.S. Trustee via Notice of Electronic Filing ("NEF") and U.S. mail first class, postage prepaid. See *id.*, *Proof of Service Document*, pp. 81-85.

No party served with the Notice filed a response or opposition to the Sale Motion. The Court therefore takes the default of all parties served with the Notice.

Analysis

Overbid Procedures

"Although there is a strong argument in support of prior court approval of bid procedures, and in most circumstances such approval is appropriate, there is no section under the Bankruptcy Code that requires the Court to establish bid procedures under Section 363." *In re President Casinos, Inc.*, 314 B.R. 784, 786 (Bankr. E.D. Mo. 2004). "Structured bid procedures should provide a vehicle to enhance the bid process and should not be a mechanism to chill prospective bidders' interests." *Id.* The aim of the auction process is to obtain the "highest and best" offer for the assets, which in turn maximizes the proceeds to the estate. *In re Abbots Dairies of PA, Inc.*, 788 F.2d 143, 149 (3d Cir. 1986).

Here, as listed above, the proposed bidding procedures require any overbidder to overbid the Purchase Price by 10,000, which is 1% of the Purchase Price, with subsequent overbids in \$1,000 increments, and providing an initial deposit in the amount of \$30,000. See Docket No. 170, p. 8. The Court finds the proposed bidding procedures to be appropriate under the circumstances. That is, the proposed bidding procedures would encourage, rather than chill, any potential bidding. The bidding procedures are approved.

The Sale

Pursuant to 11 U.S.C. § 363(b), "[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate..." "For a § 363(b)(1) sale to be approved, the trustee must establish: (1) a sound

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business purpose exists for the sale; (2) the sale is in the best interest of the estate. i.e., the sale price is fair and reasonable; (3) creditors received proper notice; and (4) the sale was properly negotiated and proposed in good faith." *In re Hernandez*, 2023 WL 8453137 *4 (9th Cir. BAP 2023)(internal citations omitted). "Bankruptcy courts typically review a transaction proposed under section 363(b)(1) using a 'business judgment' standard. The trustee has the burden to prove these elements. *Id.* This is a 'deferential' standard pursuant to which a 'bankruptcy court will generally approve' a reasoned decision by the debtor." *In re Claar Cellars LLC*, 2020 WL 1238924 *4 (Bankr. E.D. Wash. 2020)(internal citations omitted). "The court's obligation in § 363(b) sales is to assure that optimal value is realized by the estate under the circumstances." *In re Lahijani*, 325 B.R. 282, 288 (9th Cir. BAP 2005).

Here, there is a sound business purpose for the proposed sale. The Debtor provides that the Purchase Agreement is "contemplated by the Debtor's Plan, has a legitimate business justification, is fair and reasonable, and is in the best interests of the estate and creditors." *See id.* at p. 10. The Debtor seeks to pay the claims secured by the property in order of priority through escrow from the sale proceeds. *See id.* at p. 6. The Debtor further provides that the proposed sale will pay down a substantial portion of the Debtor's pre-petition obligations to the IRS, thus leaving a "manageable" amount to be paid through a Chapter 11 plan. *See id.* The Debtor estimates that the net proceeds for the estate after subtracting the maximum possible capital gains tax and transfer taxes is \$762,505.78. *See id.* at p 8.

The Lease

Pursuant to 11 U.S.C. § 363(c), "[i]f the business of the debtor is authorized to be operated under section [] 1108 [] of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing." "[N]either the Bankruptcy Code nor the legislative history of section 363(c) offers guidance as to what constitutes 'ordinary course of business;' however, courts interpreting the term have established guidelines which are helpful and persuasive here." *In re Dant & Russell, Inc.*, 853 F.2d 700, 704 (9th Cir. 1988)(internal citations omitted). "Two tests emerge to aid in assessing whether the postpetition leases were executed in the ordinary course of business: (1) vertical dimension or creditor's

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expectation test and (2) horizontal dimension test." *Id.* "The horizontal dimension test [] may be described as involving an industry-wide perspective in which the debtor's business is compared to other like businesses. In this comparison, the test is whether the postpetition transaction is of a type that other similar businesses would engage in as ordinary business." *Id.* "The vertical dimension, or creditor's expectation test, views the disputed transaction 'from the vantage point of a hypothetical creditor and inquires whether the transaction subjects a creditor to economic risks of a nature different from those he accepted when he decided to extend credit.'" *Id.* at 705.

It seems to the Court, that under the vertical or horizontal dimension tests, the proposed lease is within the Debtor's ordinary course of business. Businesses often lease commercial space to operate from, and the Debtor's dental office would be no different. What is more, the lease cannot be viewed in isolation. The lease accompanies a \$1 million asset sale. That \$1 million is to be used to pay down a significant portion of the Debtor's debt, arguably improving the Debtor's balance sheet, and paving the way towards confirmation and repayment of the Debtor's creditors. Given the lack of an opposition to the Sale Motion, creditors appear to view the lease as being in their, and the Debtor's estate's best interest.

The lease does not require this Court's approval, as it is in the Debtor's ordinary course of business.

Good Faith

The Ninth Circuit BAP has held that "the following factors are relevant to the good faith determination: (1) compliance with approved sale procedures; (2) arms-length negotiations, leading to a sale reflecting a purchase price at or near the market value of the property; [(3)] opportunity for competitive bidding; (4) knowledge in advance of the sale of who the proposed purchaser is; and (5) the absence of any evidence of fraud, collusion or grossly unfair advantage over other bidders." *In re Zuercher Trust of 1999*, 2016 WL 721485 *9 (9th Cir. BAP 2016)(internal citations omitted).

The Court is inclined to approve the proposed bidding procedures, and so long as

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those procedures are followed, compliance with those procedures will have been shown, and the Court will find that there will have been the opportunity for competitive bidding.

The Debtor and the Brokers declared that the proposed sale was "negotiated at arms' length" through each party's respective brokers. *See* Docket No. 170, p. 10. The Debtor states that "other than the instant transaction, [he] has no connection to the buyer." *See id.*, *Declaration of Jeffrey D. Peppard*, p. 2. Because there is no declaration from the Buyer, the Court will want to hear from the Buyer at the hearing.

The Sale Motion and notice thereof informs parties-in-interest of the Buyer, and there is no evidence of fraud, collusion or unfair advantage for the Buyer over any potential overbidders. The Court finds that the Buyer is a good faith purchaser pursuant to 11 U.S.C. § 363(m).

The Debtor also seeks a finding that, "if applicable, the successful overbidder, and back-up bidder are 'good faith' purchaser pursuant to 11 U.S.C. § 363(m)." *See* Docket No. 170, p. 1. If applicable, the Court will hear from any qualifying bidder and make a good faith determination at the hearing.

11 U.S.C. § 363(f)(2)

Pursuant to 11 U.S.C. § 363(f)(2), "[t]he trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if [] such entity consents."

The Debtor argues through the Sale Motion that it expects the consent of the lienholders of the Property; however, the Ninth Circuit BAP has cited cases for the proposition that consent under 11 U.S.C. § 363(f)(2) "requires unequivocal manifestation of the lienholder's affirmation." *See In re East Airport Development, LLC*, 443 B.R. 823, 831 (9th Cir. BAP 2011); see also *In re Smith*, 2014 WL 738784 *1 (Bankr. D. Or. 2014) ("This is consistent with [*In re East Airport Development, LLC*], wherein the court determined that a lack of objection did not constitute consent for purposes of § 363(f)(2)..."). Absent affirmative consent of the junior lienholders (i.e the IRS), which is not present, the Court denies the Sale Motion as to a finding under 11 U.S.C. § 363(f)(2).

11 U.S.C. § 363(f)(3)

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Pursuant to 11 U.S.C. § 363(f)(3), "[t]he trustee may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if [] such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property."

The Debtor asserts that the Purchase Price is sufficient to pay off the secured lienholders, however, this is clearly not the case. The Purchase Price may be sufficient to pay off all liens and encumbrances on the Property other than the IRS's liens, yet there are several state tax liens subsequent in time to the IRS's lien valued at over \$1,400,000.

The Debtor argues tautologically that value of the liens on the Property can only be worth the Purchases Price especially considering 11 U.S.C. § 506 and the Debtor's ability to bifurcate liens into secured and unsecured portions. However, here the value of the liens clearly exceed the Purchase Price and the Debtor has yet to seek to bifurcate any liens. In short, it is not clear to the Court how the sale proceeds will be sufficient to pay the liens in full.

Fed. R. Bankr. P. 6004

The Court is inclined to waive Fed. R. Bankr. P. 6004(h) for the reason provided in the Sale Motion.

Conclusion

The Court is inclined to approve the bidding procedures, the sale, the lease, make a good faith finding, and waive Fed. R. Bankr. P. 6004(h); however, the Court is unable to provide a finding that the sale of the Property is to be free and clear of all liens and encumbrances on the record in front of it.

Party Information

Debtor(s):

Jeffrey Dennis Peppard

Represented By
Jeffrey S Shinbrot

Movant(s):

Jeffrey Dennis Peppard

Represented By
Jeffrey S Shinbrot

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Jeffrey Dennis Peppard

Jeffrey S Shinbrot

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9:24-10954 Ronald E. Sweeney

Chapter 11

#30.00 Hearing re: [71] Debtors motion and second motion for entry
of an order extending exclusivity periods for debtor to file a
plan of reorganization and obtain acceptances thereof

Docket 71

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ronald E. Sweeney

Represented By
David B Zolkin
James R Selth

Movant(s):

Ronald E. Sweeney

Represented By
David B Zolkin
David B Zolkin
David B Zolkin
James R Selth
James R Selth
James R Selth

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9:24-10954 Ronald E. Sweeney

Chapter 11

#31.00 Hearing re: [77] Motion for order authorizing (1) sale of certain artwork free and clear of liens, claims, and interests pursuant to 11 U.S.C. sections 363(b) and (f); and (2) payment of undisputed liens

Docket 77

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ronald E. Sweeney

Represented By
David B Zolkin
James R Selth

Movant(s):

Ronald E. Sweeney

Represented By
David B Zolkin
David B Zolkin
David B Zolkin
James R Selth
James R Selth
James R Selth

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9:23-10672 S&W Blue Jay Way, LLC

Chapter 11

#32.00 Pretrial Conference re: [90] Objection to Claim Number 2 by Claimant Blue Jay 180, LLC, a California limited liability company. Objection to Claim No. 2-1 of Blue Jay 180, LLC, a California Limited Liability Company; Memorandum of Points and Authorities; Declarations of Kailey Wright and Roye Zur in Support Thereof Filed by Debtor S&W Blue Jay Way, LLC

Docket 90

Tentative Ruling:

April 22, 2025

Appearances required.

Before the Court is that *Objection to Claim No. 2-1 of Blue Jay 180, LLC, a California Limited Liability Company* (the "Objection") filed by S&W Blue Jay Way, LLC (the "Debtor") as to Claim No. 2 (the "Claim") filed by Blue Jay 180, LLC. *See* Docket No. 90. The hearing on the Objection was initially continued to May 7, 2024, then continued to May 21, 2024. *See* Docket No. 179. At the May 21, 2024 hearing on the Objection, the Court set an evidentiary hearing to take place on January 16, 2025. *See* Docket No. 186. The Court then continued the evidentiary hearing to take place on May 8, 2025. *See* Docket No. 227. A pretrial conference was set for April 22, 2025, with a joint pretrial stipulation and proposed order to be filed according to this Court's Local Rules on or before April 8, 2025. *See id.*; *see also* Docket No. 234, *Status Conference and Scheduling Order Pursuant to LBR 7016-1(a)(4)*, p. 2.

The Court finds no pretrial stipulation or proposed form of order related to the Objection. Pursuant to this Court's Local Rule 7016-1(b)(1)(A), in a contested matter, "attorney for the parties [] must prepare a written pretrial stipulation approved by counsel for all parties." That stipulation, pursuant to this Court's Local Rule 7016-1(b)(1)(B), "must be filed or lodged [] and served not less than 14 days before the date set for the pretrial conference [] or trial." Pursuant to this Court's Local Rule 7016-1(e), when the plaintiff "does not receive a timely response from the other parties," the plaintiff "must file or lodge [] and serve a proposed pretrial stipulation at least 14 days before the pretrial conference [] or trial." This Court's Local Rule 7016-1(f) provides that "[i]n addition to the sanctions authorized by F.R.Civ.P. 16(f),

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if a ☐ joint proposed pretrial stipulation is not filed or lodged within the times set forth in subsections (a), (b), or (e), respectively, of this rule, the court may ☐ award ☐ monetary sanctions including attorneys' fees against the party at fault and/or counsel, payable to the party not at fault; and/or ☐ award ☐ non-monetary sanctions against the party at fault including entry of judgment of dismissal or the entry of an order striking the answer and entering a default."

It appears to the Court that this matter has either been resolved, or the Debtor has abandoned the Objection as it relates to the Claim. The Court is inclined to dismiss/overrule the Objection given what appears to be a lack of prosecution in preparing the Court for the pretrial conference.

Party Information

Debtor(s):

S&W Blue Jay Way, LLC

Represented By
Roye Zur

Movant(s):

S&W Blue Jay Way, LLC

Represented By
Roye Zur

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9:24-11404 Island View Ranch, LLC

Chapter 11

#33.00 CONT'D Hearing re: [68] United States Trustee's motion under
11 U.S.C. § 1112(b) to dismiss or, in the alternative,
to convert case

fr. 4-8-25,

Docket 68

Tentative Ruling:

April 8, 2025

Appearances required.

Before the Court is *United States Trustee's Notice of Motion and Motion Under 11 U.S.C. § 1112(b) to Dismiss or, in the Alternative, to Convert Case* (the "Motion"). See Docket No. 68. The Court will inquire if the Debtor is in compliance. If the Debtor is not in compliance, the Court is inclined to dismiss or convert the matter.

Party Information

Debtor(s):

Island View Ranch, LLC

Represented By
John K Rounds

Movant(s):

United States Trustee (ND)

Represented By
Brian David Fittipaldi
Eryk R Escobar