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

Tuesday, April 23, 2024 **Hearing Room 201**

10:00 AM
9: - **Chapter**

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Docket 0

Tentative Ruling:

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

Tuesday, April 23, 2024 **Hearing Room 201**

10:00 AM

CONT... **Chapter**

- NONE LISTED -

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

Tuesday, April 23, 2024 **Hearing Room 201**

10:00 AM
9:21-10855 Patricia A Orlando **Chapter 13**

#1.00 CONT'D Hearing
RE: [49] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2185 Abraham Street, Simi Valley, CA 9306 with proof of service. (Locke, Wendy)

FR. 3-19-24

Docket 49
***** VACATED *** REASON: Case dismissed on 4/15/24 based on Debtor's Request for Dismissal.**

Tentative Ruling:

April 23, 2024

Appearances required.

On April 13, 2024, the Debtor filed *Debtor's Motion for Voluntary Dismissal of Chapter 13 Case* (the "Motion"). *See* Docket No. 54. No notice or proposed order was filed alongside the Motion.

March 19, 2024

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

PHH Mortgage Corporation ("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 2185 Abraham Street, Simi Valley, CA 93065 (the "Property") of Patricia A. Orlando (the "Debtor") on the grounds that Movant's interest in the Property is not adequately protected because the Debtor has failed to make post-confirmation property tax payments as they became due under the *Original Chapter 13 Plan* (the "Plan"). *See* Docket No. 49, *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, and (3) if relief from stay is not granted, adequate protection be granted. *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 February 23, 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 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). "[F]ailure to pay real property taxes may constitute a basis for finding lack of adequate protection." *In re Valdez*, 324 B.R. 296, 301–02 (Bankr. S.D. Tex. 2005); *In re James River Assocs*., 148 B.R. 790, 796 (E.D. Va. 1992) (failure to maintain insurance on the property, keep taxes current, or filing in bad faith solely to forestall creditors, could be independent forms of relief under § 362(d)(1)).

Under the terms of the Plan, the "Debtor must pay all required ongoing property taxes and insurance premiums for all real and personal property that secures claims paid under the Plan." *See* Docket No. 17, p. 4. Movant asserts that the Debtor defaulted

10:00 AM

CONT... Patricia A Orlando **Chapter 13**

on post-petition property taxes with respect to the Property. *See* Docket No. 49, *Attachment 4.a.(6)*. Movant asserts that it was required to advance post-petition funds totaling $37,878.73 for property taxes (as of the date of the Motion). *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 keep property taxes current pursuant to the terms of the Plan.

Party Information

Debtor(s):

Patricia A Orlando	Represented By Kenneth H J Henjum

Movant(s):

PHH Mortgage Corporation	Represented By Kelli M Brown Christina J Khil John Shelley Wendy A Locke

Trustee(s):

Elizabeth (ND) F Rojas (TR)	Pro Se

10:00 AM
9:23-10017 Adan Aureliano Lopez **Chapter 13**

#2.00 CONT'D Hearing
RE: [39] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 421-423 EAST PLEASANT VALLEY ROAD, Oxnard, CA, 9303 Under 11 U.S.C. § 362. (Exnowski, Dane).

FR. 3-5-24, 3-19-24

Docket 39
***** VACATED *** REASON: Stipulated Adequate Protection Order was Entered on 4/11/24.**

Tentative Ruling:

March 19, 2024

The parties are to appear and advise the Court if the Debtor is current on mortgage payments and/or if the parties have agreed to an adequate protection agreement.

March 5, 2024

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

U.S. Bank 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 421-423 East Pleasant Valley Road, Oxnard, CA, 93033 (the "Property") of Adan Aureliano Lopez (the "Debtor") on the grounds that: (1) Movant's interest in the Property is not adequately protected; and (2) the Debtor has failed to make post-confirmation mortgage payments as they became due under the *Original Chapter 13 Plan* (the "Plan"). *See* Docket No. 39, *Notice of Motion and Motion for Relief from Stay Under 11 U.S.C. § 362* (the "Motion"), pp. 3-4.

In addition to lifting the stay, Movant requests relief to: (1) proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property; and (2) waiver of the 14-day stay prescribed by FRBP 4001(a)(3). *See*

id. at p. 5.

Notice

The Motion was filed on January 12, 2024, and served upon the Debtor via U.S. Mail first class, postage prepaid on the same date. *See* Motion, *Proof of Service of Document*, p. 12. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be."

On February 16, 2024, the Debtor filed that *Notice of Opposition and Opposition to Motion for Relief from the Automatic Stay* (the "Opposition"). *See* Docket No. 41. In the Opposition, the Debtor asserts that (1) Movant is adequately protected by a substantial equity cushion, (2) the Debtor disagrees with Movant's accounting as to what is owed, and (3) the Debtor will catch up on post-petition payments or enter into an adequate protection agreement. *See id*. at p. 2.

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).

While the term "adequate protection" is not defined in the Code, 11 U.S.C. § 361 sets forth three non-exclusive examples of what may constitute adequate protection: 1) periodic cash payments equivalent to decrease in value, 2) an additional or replacement lien on other property, or 3) other relief that provides the indubitable equivalent. *See In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). "Equity cushion" is defined as the value in the property, above the amount owed to the creditor with a secured claim, that will shield that interest from loss due to any decrease in the value

10:00 AM

CONT... Adan Aureliano Lopez **Chapter 13**

of the property during the time the automatic stay remains in effect. *Id.* at 1397. "Equity," as opposed to "equity cushion," is the value, above all secured claims against the property that can be realized from the sale of the property for the benefit of the unsecured creditors. *Id.*

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

"'The issues of adequate protection and equity in the property are irrelevant in the face of post-confirmation payment defaults because creditors are entitled to rely upon the debtors' responsibilities to make their post-confirmation payments. The debtors are not required to remain in Chapter 13 if they cannot satisfy the obligations which they proposed as feasible and which they voluntarily assumed.'" *In re Williams*, 68 B.R. 442, 443 (Bankr. M.D. Ga. 1987)(citing *In re Davis*, 64 B.R. 358, 359-360 (Bankr. S.D.N.Y. 1986)). "Strictly speaking [], adequate protection is only intended to protect a creditor during the period between the filing of the petition and plan confirmation." *In re Dumbuya*, 428 B.R. 410, 416 (Bankr. N.D. Oh. 2009)(citing *In re Walters*, 203 B.R. 122, 123-124 (Bankr. S.D. Ill. 1996)). "Once [] a plan is confirmed by the court a creditor seeking relief from the stay, based upon a debtor's default in payment under a plan, must establish that the debtor's breach of the plan, itself, provides 'cause' to lift the stay. The issue of 'adequate protection' becomes moot." *Id.* (citing *In re Schultz*, 325 B.R. 197, 201 (Bankr. N.D. Oh. 2005)).

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. 15, pp. 5-6, Class 2. Movant asserts that the Debtor defaulted on Plan payments consisting of three (3) unpaid post-confirmation payments of $2,100.80. *See* Motion, p. 9. Less a suspense account balance of $1,947.20, Movant asserts that there is a total post-confirmation delinquency of $4,355.20 (as of the date of the Motion) with a payment of $2,112.53 becoming due February 1, 2024. *Id.* According to the Motion, the last

10:00 AM

CONT... Adan Aureliano Lopez **Chapter 13**

monthly payment of $2,101.00 was received by Movant on August 10, 2023. *Id.*

The Debtor does not dispute being delinquent on his mortgage payments. However, the Debtor contends that Movant's interest in the Property is adequately protected by an equity cushion. *See* the Response, *Declaration of Adan Aureliano Lopez*, ¶¶ 6-8. The Debtor does not address the issue of the applicability of adequate protection considering a plan default. The Debtor does not illustrate that it can cure the default in any reasonable period of time. The Court finds that even if there is sufficient equity in the Property, adequate protection is irrelevant post-confirmation. The Debtor is in material default of the Plan having missed no less than three (3) payments to Movant, and the Debtor is unable to cure that default in any reasonable period of time. The Court, therefore, finds that Movant has shown cause to lift the stay pursuant to 11 U.S.C. § 362(d)(1).

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):

Adan Aureliano Lopez	Represented By Joseph A Weber

Movant(s):

U.S. Bank National Association, as	Represented By Dane W Exnowski

Trustee(s):

Elizabeth (ND) F Rojas (TR)	Pro Se

10:00 AM
9:23-10556 Christine E. Greenberg **Chapter 13**

#3.00 HearingRE: [51] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 512 Roosevelt Ct. Simi Valley, CA 93065 . (Ferry, Sean)

Docket 51

Tentative Ruling:

April 23, 2024

Appearances required.

Selene Finance, LP, as servicer for 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 512 Roosevelt Court, Simi Valley, CA 93065 (the "Property") of Christine Greenberg (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. 51, *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) termination of the co-debtor stay of 11 U.S.C. §1301(a), (4) waiver of the 14-day stay prescribed by Fed. R. Bankr. P. 4001(a)(3), and (5) 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 and non-filing codebtor via U.S. Mail First class, postage prepaid on March 21, 2024, notifying the Debtor and non-filing codebtor 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* Motion, *Proof of Service of Document*, p. 12. The Debtor

10:00 AM

CONT... Christine E. Greenberg **Chapter 13**

did not identify a codebtor or list an address for a codebtor on her schedules. *See* Docket No. 1, *Schedule H: Your Codebtors*, p. 1. The Debtor identified a former spouse as Adam Greenberg "Separated 2021". *See id*. The Note and the Deed of Trust list Adam Greenberg as the "Borrower" with the address of the Property. *See* Motion, *Exhibit A*. The Note and Deed of Trust were executed by Mr. Greenberg on June 6, 2011. *See id.* A Loan Modification Agreement was executed by Mr. Greenberg on November 9, 2021, with the Property address. There is no evidence before the Court that Mr. Greenberg continues to receive mail at the Roosevelt Court address given that the latest document related to the Property was executed more than two and a half years ago. Therefore, the Court is unable to confirm that service upon Mr. Greenberg was proper.

Response

On March 27, 2024, the Debtor filed that *Response to Motion Regarding the Automatic Stay* (the "Response"). *See* Docket No. 55. In the Response, the Debtor asserts that (1) an appraisal of the Property was conducted on February 14, 2024, which values the Property at $1,295,000.00 as of the petition date of July 10, 2023, (2) with total debt on the Property of $934,080.00, the Movant has an equity cushion of $565,832.00 or 43%, (3) there is $360,920.00 total equity in the Property, and (4) the Debtor requests a continuance of the hearing because she has filed that *Motion by Debtor for Order to Apply for Mortgage Assistance with the California Mortgage Relief Program and Authorizing the California Mortgage Relief Program to Provide Debtor Assistance* (the "CMRP Motion"). *See id.,* pp. 2-3; *see also* Docket No. 53. **[FN 1]**

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).

While the term "adequate protection" is not defined in the Code, 11 U.S.C. § 361 sets forth three non-exclusive examples of what may constitute adequate protection: 1) periodic cash payments equivalent to decrease in value, 2) an additional or replacement lien on other property, or 3) other relief that provides the indubitable equivalent. *See In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). "Equity cushion" is defined as the value in the property, above the amount owed to the creditor with a secured claim, that will shield that interest from loss due to any decrease in the value of the property during the time the automatic stay remains in effect. *Id.* at 1397. "Equity," as opposed to "equity cushion," is the value, above all secured claims against the property that can be realized from the sale of the property for the benefit of the unsecured creditors. *Id.*

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

"[P]ost-petition defaults may constitute cause for relief from stay. *In re Delaney–Morin,* 304 B.R. 365, 369–70 (9th Cir. BAP 2003); *Ellis*, 60 B.R. at 435. However, it is not a per se rule that must be applied in a vacuum. *See In re McCollum,* 76 B.R. 797, 799 (Bankr.D.Or.1987)(post-petition default may or may not constitute cause). Typically, cause would be found where the failure to make monthly payments corresponds with the absence of an equity cushion. *In re James River Associates,* 148 B.R. 790, 797 (E.D.Va.1992). Exercising discretion in determining cause for stay relief requires the balancing of hardships and consideration of the totality of the circumstances. *In re Kennedy,* 165 B.R. 488, 490 (Bankr.W.D.Wash.1994)(support modification not per se cause). Where a creditor is adequately protected by a large equity cushion, the debtor would suffer a substantial loss in the event of foreclosure, and no economic harm to the creditor would result, relief from stay should not automatically follow a default in payment. *McCollum*, 76 B.R. at 799." *In re Avila*, 311 B.R. 81, 83–84 (Bankr. N.D. Cal. 2004).

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 eight (8) unpaid post-confirmation payments of $4,034.68. *See* Motion, p. 9. With attorneys' fees of $1,249.00, Movant asserts that there is a total postpetition delinquency of $33,526.44 (as of the date of the Motion) with a payment of $4,034.68 becoming due April 1, 2024. *Id.*

The purported equity cushion in the Property is well above the accepted equity cushion of 20% in the Ninth Circuit for adequate protection purposes. *See In re Mellor* at 1401. The fair market value of the Property is $1,295,000.00. *See* Docket No. 45, *Exhibit A*. Movant has a claim against the Property in the amount of $729,168.76, as of the date of the Motion, secured by a first deed of trust. *See* Motion, p. 7. "Rancho Madera Homeowners Assn" has a "HOA Lien" secured against the Property in the amount of $2,461.55. *See Schedule D: Creditors Who Have Claims Secured by Property.* This leaves $565,831.24 of the Property's value to pay Movant's lien. Movant enjoys a 43.69% equity cushion.

Additionally, the Debtor filed the CMRP Motion. Through the CMRP Motion, the Debtor seeks "up to $80,000 of mortgage assistance [that] would be paid directly to PNC Mortgage." *See* Docket No. 53, p. 2. **[FN 2]** If the CMRP Motion is granted and the funds are disbursed to Movant, the Debtor would be brought current on the arrears owed to Movant. In light of the substantial equity in the Property and the pending CMRP Motion, the Court is inclined to deny the Motion without prejudice.

[FN 1] In the Response, the Debtor requests the Court take judicial notice of that *Appraisal of Property Located at 512 Roosevelt Ct. Simi Valley, CA 93065; Declaration of Appraiser Jennifer Landon in Support of Motion to Avoid Judgment Lien under 11 U.S.C. § 522(f) (Real Property)* (the "Appraisal") filed on February 19, 2024. *See* Docket No. 55, p. 2. Pursuant to Fed. R. Evid. 201(b), "[t]he court may judicially notice a fact that is not subject to reasonable dispute because it: (1) is generally known within the trial court's territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned." Judicial notice may be taken "of bankruptcy records in the underlying proceeding…" *In re Tuma*, 916 F.2d 488, 491 (9th Cir.

10:00 AM

CONT... Christine E. Greenberg **Chapter 13**

1990); *see also Minden Pictures, Inc. v. Excitant Group, LLC*, 2020 WL 80525311 * 2 (C.D. Cal. December 14, 2020)("A court may take judicial notice of 'court records available to the public through the PACER system.'"). Pursuant to Fed. R. Evid. 201(e), "[o]n timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed." There has been no objection filed to the Debtor's request for the Court to take judicial notice of the Appraisal. The Court takes judicial notice of the Appraisal, solely as a record filed in this Case.

[FN 2] The CMRP Motion indicates that mortgage assistance funds would be paid to "PNC Mortgage". *See id.* However, PNC Mortgage is not the Movant and is not identified in the chain of title.

Party Information

Debtor(s):

Christine E. Greenberg	Represented By Nathan A Berneman

Movant(s):

U.S. BANK TRUST NATIONAL	Represented By Sean C Ferry

Trustee(s):

Elizabeth (ND) F Rojas (TR)	Pro Se

10:00 AM
9:23-10700 Manuel Jorge Rodrigues **Chapter 13**

#4.00 HearingRE: [33] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 398 Elisa Ct, Buellton, CA 93427-9614 with proof of service. (Delmotte, Joseph)

Docket 33

Tentative Ruling:

April 23, 2024

Appearances waived. The Motion is granted pursuant to 11 U.S.C. § 362(d)(1) for the reasons stated *infra.* The request to terminate the codebtor stay under 11 U.S.C. § 1301(a) and the request to waive Fed. R. Bankr. P. 4001(a) are denied. Movant to lodge a conforming order within 7 days.

Newrez LLC dba Shellpoint Mortgage Servicing ("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 398 Elisa Ct., Buellton, CA 93427-9614 (the "Property") of Manuel Jorge Rodrigues (the "Debtor") on the grounds that the Debtor has failed to make postpetition mortgage payments as they became due under the *Original Chapter 13 Plan* (the "Plan"). *See* Docket No. 33, *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) termination of the co-debtor stay of 11 U.S.C. §1301(a), (4) waiver of the 14-day stay prescribed by Fed. R. Bankr. P. 4001(a)(3), and (5) 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 and non-filing codebtor via U.S. Mail First class, postage prepaid on March 19, 2024, notifying the Debtor and

10:00 AM

CONT... Manuel Jorge Rodrigues **Chapter 13**

non-filing codebtor 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* Motion, *Proof of Service of Document*, p. 12. The Debtor did not identify a codebtor or list an address for a codebtor on his schedules. *See* Docket No. 9, *Schedule H: Your Codebtors*, p. 1. The Adjustable Rate Note and Deed of Trust list Diana M. Rodrigues as the "Borrower" with the address of the Property. *See* Motion, *Exhibits 1-2*. The Adjustable Rate Note and Deed of Trust were executed by Ms. Rodrigues on April 10, 2007. *See id.* A Home Affordable Modification Agreement was executed by Ms. Rodrigues on October 26, 2013, with the Property address. There is no evidence before the Court that Ms. Rodrigues continues to receive mail at the Elisa Street address given that the latest document related to the Property was executed more than ten years ago, and she was not listed as a codebtor in the Debtor's schedules. Therefore, the Court is unable to confirm that service upon Ms. Rodrigues was proper.

On April 8, 2024, the Debtor filed that *Response to Motion Regarding the Automatic Stay* (the "Response"). *See* Docket No. 35. In the Response, the Debtor asserts that he is working with Movant on an adequate protection agreement. *See id.* at p. 2

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. 10, pp. 5-6, Class 2. Movant asserts that the Debtor defaulted on Plan payments consisting of five (5) unpaid postpetition payments of $2,275.38 and one (1) unpaid postconfirmation payment of $2,275.38. *See* Motion, p. 9. Less a suspense account

10:00 AM

CONT... Manuel Jorge Rodrigues **Chapter 13**

balance of $1,250.20, Movant asserts that there is a total postpetition delinquency of $12,402.08 (as of the date of the Motion) with a payment of $2,275.38 becoming due March 1, 2024. *Id.* According to the Motion, the last monthly payment of $1,250.20 was received by Movant on September 13, 2023. *Id.*

Cause has been shown sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1) due to the Debtor's failure to make no less than six (6) 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):

Manuel Jorge Rodrigues	Represented By Joshua Sternberg

Movant(s):

NewRez LLC dba Shellpoint	Represented By Joseph C Delmotte

Trustee(s):

Elizabeth (ND) F Rojas (TR)	Pro Se

10:00 AM
9:24-10239 Banessa Gutierrez **Chapter 13**

#5.00 HearingRE: [21] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 3526 Satinwood Road, Santa Maria, CA 93455 .

Docket 21

Tentative Ruling:

April 23, 2024

Appearances waived. The Motion is denied without prejudice for the reasons set forth *infra.* Movant to upload a conforming order within 7 days.

Mirko Lopez and Bonnie C. Lopez ("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 3526 Satinwood Road, Santa Maria, CA 93455 (the "Property") of Banessa Gutierrez (the "Debtor") on the grounds that (1) Movant's interest in the Property is not adequately protected, (2) the case was filed in bad faith, and (3) the Debtor has failed to make postconfirmation mortgage payments as they became due under the *Original Chapter 13 Plan* (the "Plan"). *See* Docket No. 21, *Motion for Relief from Stay Under 11 U.S.C. § 362* (the "Motion"), pp. 3-4. **[FN 1]**

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 prescribed by Fed. R. Bankr. P. 4001(a)(3), and (4) stay relief be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of Title 11 of the United States Code. *See id.* at p. 5; *Continuation Page in Support of Movant's Motion for Relief from Stay*, p. 7.

Notice

The Motion was filed on March 29, 2024, and served upon the Debtor via U.S. Mail first class, postage prepaid on the same date. *See* Motion, *Proof of Service of*

10:00 AM
CONT... Banessa Gutierrez **Chapter 13**

Document, pp. 1-2. 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).

While the term "adequate protection" is not defined in the Code, 11 U.S.C. § 361 sets forth three non-exclusive examples of what may constitute adequate protection: 1) periodic cash payments equivalent to decrease in value, 2) an additional or replacement lien on other property, or 3) other relief that provides the indubitable equivalent. *See In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). "Equity cushion" is defined as the value in the property, above the amount owed to the creditor with a secured claim, that will shield that interest from loss due to any decrease in the value of the property during the time the automatic stay remains in effect. *Id.* at 1397. "Equity," as opposed to "equity cushion," is the value, above all secured claims against the property that can be realized from the sale of the property for the benefit of the unsecured creditors. *Id.*

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

adequate protection for a secured creditor." *Id.* at 1401. (internal citations omitted).

"[P]ost-petition defaults may constitute cause for relief from stay. *In re Delaney–Morin,* 304 B.R. 365, 369–70 (9th Cir. BAP 2003); *Ellis*, 60 B.R. at 435. However, it is not a per se rule that must be applied in a vacuum. *See In re McCollum,* 76 B.R. 797, 799 (Bankr.D.Or.1987)(post-petition default may or may not constitute cause). Typically, cause would be found where the failure to make monthly payments corresponds with the absence of an equity cushion. *In re James River Associates,* 148 B.R. 790, 797 (E.D.Va.1992). Exercising discretion in determining cause for stay relief requires the balancing of hardships and consideration of the totality of the circumstances. *In re Kennedy,* 165 B.R. 488, 490 (Bankr.W.D.Wash.1994)(support modification not per se cause). Where a creditor is adequately protected by a large equity cushion, the debtor would suffer a substantial loss in the event of foreclosure, and no economic harm to the creditor would result, relief from stay should not automatically follow a default in payment. *McCollum*, 76 B.R. at 799." *In re Avila*, 311 B.R. 81, 83–84 (Bankr. N.D. Cal. 2004).

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. 10, pp. 7-8, Class 3C. Movant asserts that the Debtor "has not made any post-petition payments, which is admittedly secured by Debtor's principal residence and has equity, is in substantial default under the Note and Deed of Trust, and the Loan is set to mature during this bankruptcy case, which requires Debtor to propose and confirm a plan that pays the full secured claim with contractual interest, if Debtor intends to retain the Property." *See* Motion, *Continuation Page in Support of Movant's Motion for Relief from Stay,* p. 4.

First, the payments to Movant are required on the first day of each month. *See id.* at *Exhibit 1*. The Petition Date was March 5, 2024, and the Motion was filed on March 29, 2024. There was no post-petition amount due at the time the Motion was filed.

Second, the purported equity cushion in the Property is well above the accepted equity cushion of 20% in the Ninth Circuit for adequate protection purposes. *See In re Mellor* at 1401. The fair market value of the Property is $505,000.00. *See* Docket No. 1, *Schedule A/B: Property,* p. 1. Ocwen Loan Serving, LLC has a first deed of trust against the Property in the amount of $199,266.00 as of the Petition Date. *See*

10:00 AM

CONT... Banessa Gutierrez **Chapter 13**

id., Schedule D: Creditors Who Have Claims Secured by Property, p. 1. Movant has a second deed of trust against the Property in the amount of $80,000.00. *See id.*, p. 2. Movant contends that the current amount of its claim is $86,470.65. *See* Motion, *Continuation Page in Support of Movant's Motion for Relief from Stay*, p. 3. This leaves $305,734.00 of the Property's value to pay Movant's lien. Movant enjoys a 60.5% equity cushion.

According to the *Notice of Default and Election to Sell Under Deed of Trust*, the Debtor is delinquent $4,292.61 as of January 4, 2024. *See* Motion, *Exhibit 4.* Movant filed the Motion twenty-four (24) days after the Debtor filed for relief under Chapter 13 of title 11 of the United States Bankruptcy Code. The Debtor has yet to have a hearing on confirmation of the Plan. The first hearing on confirmation of the Debtor's Plan is currently scheduled for May 16, 2024. It appears that the Property is the Debtor's primary residence, and the Debtor resides in the Property with her four (4) minor dependents. *See* Docket No. 1, p. 2; *Schedule J*, p. 1. The Debtor would suffer a substantial loss in the event of foreclosure, and Movant has not shown economic harm to Movant would result for failure to grant the Motion.

In light of Movant's substantial equity in the Property, the failure to illustrate a post-petition delinquency, and the fact that the Debtor has not yet had a confirmation hearing on the Plan, Movant has not established a lack of adequate protection at this point in time.

As for bad faith, Movant does not seek relief under 11 U.S.C. § 362(d)(4), but under 11 U.S.C. § 362(d)(1). If the Debtor filed the Chapter 13 case in "bad faith," it is appropriate to file a motion to lift the stay before confirmation. *See In re Kinney*, 51 B.R. 840, 844 (Bankr. C.D. Cal. 1985); *see also In re Wong*, 30 B.R. 87, 88 (Bankr. C.D. Cal. 1983). A debtor's bad faith (or lack of good faith) in filing the bankruptcy case is cause for granting relief from the stay (or for dismissing the case). *See In re Arnold*, 806 F.2d 937, 939 (9th Cir. 1986). Good faith is lacking only when the debtor's actions are a clear abuse of the bankruptcy process. *See id.* Movant has not established that the Debtor filed this case in bad faith or that filing of the case was meant to deter or harass creditors. The Debtor has no known prior cases. The Debtor has net monthly income of $412.49. *See* Docket No. 1, *Schedule J,* p. 2. The Debtor's monthly expenses include $1,371.88 for the first deed of trust on the Property as well as $833.33 for Movant's deed of trust. *See id.,* pp.1-2. The Debtor

10:00 AM

CONT... Banessa Gutierrez **Chapter 13**

proposes a monthly plan payment of $410.00 for 60 months, and to pay the arrearages on the first deed of trust and on Movant's deed of trust through the Plan. *See* Docket No. 6. The Debtor has sufficient income to maintain the Plan payments. A balloon payment in the amount of $80,833.33 on Movant's note comes due November 1, 2025. *See* Motion, *Exhibit 1.* However, the Debtor has not yet had the opportunity to present her Plan to the Court or propose a sale or refinance of the Property if she so seeks.

[FN 1] The Debtor's case has not been confirmed. A plan confirmation hearing is currently scheduled for May 16, 2024. *See* Docket No. 16.

Party Information

Debtor(s):

Banessa Gutierrez	Represented By Aaron Lipton

Movant(s):

Mirko Lopez and Bonnie C. Lopez,	Represented By Arnold L Graff

Trustee(s):

Elizabeth (ND) F Rojas (TR)	Pro Se

10:00 AM
9:24-10056 Kevin Michael Intiso **Chapter 7**

#6.00 HearingRE: [10] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2018 Ram Promaster Cargo Van, VIN: 3C6TRVDG9JE160630 .

Docket 10

Tentative Ruling:

April 23, 2024

Appearances waived. The Court will grant in part, and deny in part the Motion for the reasons set forth *infra*. The request to waive Fed. R. Bankr. P. 4001(a) is denied. Movant to lodge a conforming order within 7 days.

On March 28, 2024, Consumer Portfolio Services, Inc. ("Movant") filed that *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Motion") seeking to lift the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) in relation to a 2018 Ram Promaster Cargo Van (the "Vehicle") of Kevin Michael Intiso (the "Debtor") on the grounds that (1) Movant's interest in the Vehicle is not adequately protected by an adequate equity cushion, and (2) pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtor has no equity in the Vehicle; and, pursuant to 11 U.S.C. § 362(d)(2)(B), the Vehicle is not necessary for an effective reorganization. *See* Docket No. 10, pp. 3-4.

In addition to lifting the stay, Movant requests (1) relief to proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the Vehicle, and (2) waiver of the 14-day stay prescribed by Fed. R. Bankr. P. 4001(a)(3). *See id*. at p. 5.

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on March 28, 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

10:00 AM
CONT... Kevin Michael Intiso **Chapter 7**

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

11 U.S.C. § 362(d)(2)

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

Movant asserts through the Motion that its secured claim in this matter, the Vehicle of which serves as collateral for said claim, totals $31,589.76 as of March 26, 2024. *See* Docket No. 10, p. 8. The value of the Vehicle, as set forth in the Debtors' *Schedule A/B: Property* is $10,949.00. *See* Docket No. 1, *Schedule A/B: Property*, p. 1. As there exists no equity in the Vehicle, and because the instant case is one under Chapter 7, the Motion is granted pursuant to 11 U.S.C. § 362(d)(2).

11 U.S.C. § 362(d)(1)

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay for cause, including the lack of adequate protection of an interest in property of such party in interest." Beyond the lack of adequate protection, "cause" is determined on a case-by-case basis. *See In re MacDonald*, 755 F.2d 715, 717 (9th Cir. 1985). The failure of a debtor to make post-petition payments on a secured obligation may constitute cause. *See In re Watson*, 286 B.R. 594, 604 (Bankr. D. NJ 2002).

Here, Movant asserts a secured claim against the Vehicle in the amount of $31,589.76. *See* Docket No. 10, p. 8. Movant asserts that the Debtor is in arrears in

10:00 AM

CONT... Kevin Michael Intiso **Chapter 7**

the amount of $2,670.34. *Id.* It appears that the Debtor's last monthly payment of $651.37 was received by Movant on September 26, 2023. *See id.*, p. 8.

In light of the Debtor's failure to make postpetition payments and the ever-eroding equity in the Vehicle due to the lack of payments, "cause" exists to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1).

Fed. R. Bankr. P. 4001(a)

The Court will not waive the 14-day stay under Fed. R. Bankr. P. 4001(a)(3) as no analysis has been provided by Movant as to why such relief is warranted.

Party Information

Debtor(s):

Kevin Michael Intiso	Represented By Daniel King

Movant(s):

Consumer Portfolio Services, Inc.	Represented By Kelli M Brown

Trustee(s):

Sandra McBeth (TR)	Pro Se

10:00 AM
9:24-10187 Monica Wilson **Chapter 7**

#7.00 Hearing
RE: [17] Motion for Relief from Stay; Filed by Premier Valley Bank

Docket 17

Tentative Ruling:

April 23, 2024

Appearances waived. The Motion is denied for the reasons stated *infra* as there is no stay in effect as to the non-debtor Iron Scissor Salon and Beauty Supply, LLC for the Court to lift. Movant to lodge a conforming order within 7 days.

Premier Valley Bank ("Movant") seeks a lifting of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) to proceed against Iron Scissor Salon and Beauty Supply, LLC ("IRSSBS"), an LLC which the debtor, Monica Wilson (the "Debtor"), purportedly has an interest in, in the nonbankruptcy action *Premier Valley Bank v. Monica Wilson, et al.* (22CV-0242) filed on May 6, 2022 (the "Nonbankruptcy Action"), pending before the Superior Court for the State of California, County of San Luis Obispo. *See Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum)* (the "Motion") (Docket No. 17).

Movant seeks relief from stay on the grounds that Movant seeks recovery primarily from third parties and agrees the stay will remain in effect as to enforcement of any resulting judgment against the Debtor or bankruptcy estate, except that Movant will retain the right to file a proof of claim under 11 U.S.C. § 501 and/or adversary complaint under 11 U.S.C. § 523 or § 727 in the bankruptcy case. *See* Motion, p. 3. Movant specifically "requests that the Court grant relief from the automatic stay for PVB [Movant] to proceed to enforce its judgment against the non-debtor LLC [Iron Scissor Salon and Beauty Supply, LLC] only", and for waiver of the 14-day stay prescribed by FRBP 4001(a)(3). *See* Motion, pp. 4-5; *Memorandum of Points and Authorities in Support of Motion for Relief from the Automatic Stay*, p. 2.

Notice

The Motion and notice thereof were served upon the Debtor, the Chapter 7 Trustee

10:00 AM
CONT... Monica Wilson **Chapter 7**

(the "Trustee"), and all of the Debtor's creditors via U.S. Mail First class, postage prepaid on April 2, 2024, notifying all parties that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id*., *Proof of Service of Document*, p. 9. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtor, the Trustee, 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. **[FN 1]**

Analysis

Pursuant to 11 U.S.C. § 362(a), "[e]xcept as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities, of (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title; . . ."

Automatic stay applies only to actions against debtor. *In re Censo, LLC*, 638 B.R. 416 (B.A.P. 9th Cir. 2022). "In the absence of special circumstances, stays pursuant to [§] 362(a) are limited to debtors and do not include ... non-bankrupt codefendants." *Ingersoll–Rand Fin. Corp. v. Miller Mining Co.*, 817 F.2d 1424, 1427 (9th Cir.1987). Here, "the entity defendant[ ][has] not filed for bankruptcy, and so the claims against [it] are not automatically stayed by § 362(a)." *Zurich Am. Ins. Co.*, 2011 WL 6329959, at *2; *see also Queenie, Ltd. v. Nygard Int'l*, 321 F.3d 282, 287 (2d Cir.2003) ("[A] suit against a codefendant is not automatically stayed by a debtor's bankruptcy filing."). "[U]nless a corporation is itself a bankruptcy debtor, the automatic stay afforded to an individual debtor under section 362(a) does not extend to the assets of a corporation in which the Debtor has an interest, even if the interest is 100% of the corporate stock." *In re Furlong*, 437 B.R. 712, 721 (Bankr. D. Mass. 2010), aff'd, 450 B.R. 263 (D. Mass. 2011), aff'd, 660 F.3d 81 (1st Cir. 2011). "[O]nce the sole owner of an LLC files a bankruptcy petition, the membership interests themselves become

10:00 AM
CONT... Monica Wilson **Chapter 7**

property of the owner's estate, but it does not compel the conclusion that the actual assets of the LLC are property of the owner's estate. Accordingly, the Debtor's argument that the automatic stay applied to protect ADC, a nondebtor, from the Movants' foreclosure must be rejected." *In re Penn*, No. 09-14624-WHD, 2010 WL 9445533, at *4 (Bankr. N.D. Ga. Apr. 2, 2010)

Here, the Debtor has filed for bankruptcy. *See* Docket No. 1. Accordingly, the Nonbankruptcy Action is stayed against the Debtor only under 11 U.S.C. § 362(a)(1). As far as the Court is aware, IRSSBS has not filed for bankruptcy. Therefore, the Nonbankruptcy Action is not stayed as to IRSSBS.

Conclusion

In conclusion, IRSSBS in not protected by the Debtor's automatic stay. Therefore, the Motion is denied as there is no stay to lift as to non-debtor IRSSBS.

[FN 1] The Motion was not served upon IRSSBS. However, the lack of service on IRSSBS does not impact the analysis of the Motion.

Party Information

Debtor(s):

Monica Wilson	Represented By Adele M Schneidereit

Movant(s):

Premier Valley Bank	Represented By Steven K Vote

Trustee(s):

Jeremy W. Faith (TR)	Pro Se

2:00 PM
9:19-10015 Manuel F. Contreras **Chapter 7**

#8.00 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 (hja))

Docket 53

Tentative Ruling:

April 23, 2024

Appearances waived.

Before the Court is the *Trustee's Final Report* (the "Report") filed on March 19, 2024, by the duly appointed Chapter 7 Trustee, Sandra K. McBeth (the "Trustee"), for the bankruptcy estate of Manuel F. Contreras (the "Debtor"). *See* Docket No. 53. As of the date of the filing of the Report, the Trustee had approximately $45,755.86 in cash on hand. *See id.* at p. 1. The aggregate total of the unsecured debt is $8,220.85. *See id.* at *Exhibit C*.

Through the Report, the Trustee seeks (1) the payment of the Trustee's statutory fee of $2,041.85 pursuant to 11 U.S.C. § 326(a), (2) reimbursement of incurred expenses of $545.36, (3) the payment of the previously approved flat fee of $1,000.00 related to the employment application for a tax preparer, and (4) disbursements of all remaining amounts of cash on hand to creditors and the Debtor. *See* Docket No. 53, *Exhibit D* and Docket No. 51, *Order On Trustee's Motion Under LBR 2016-2 For Authorization to Employ Paraprofessionals and/or Authorization to Pay Flat Fee to Tax Preparer*, respectively.

On March 19, 2024, that *Notice of Trustee's Final Report and Applications for Compensation and Deadline for Compensation and Deadline to Object (NFR)* (the "Notice") was filed with the Court and served on the Notice of Electronic Filing (the "NEF") parties. *See* Docket No. 54. On March 22, 2024, the Notice was served on the non-NEF noticed creditors through electronic transmission by the Bankruptcy Noticing Center (the "BNC"). *See* Docket No. 55.

2:00 PM

CONT... Manuel F. Contreras **Chapter 7**

Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." No party served with the Notice has timely filed an opposition to the Report. The Court therefore takes the default of all non-responding parties.

Pursuant to 11 U.S.C. § 326(a), "in a case under chapter 7 or 11, [], the court may allow reasonable compensation under section 330 of this title of the trustee for the trustee's services, payable after the trustee renders such services, not to exceed 25 percent on the first $5,000 or less, 10 percent on any amount in excess of $5,000 but not in excess of $50,000, 5 percent on any amount in excess of $50,000 but not in excess of $1,000,000[], upon all moneys disbursed or turned over in the case by the trustee to parties in interest, excluding the debtor, but including holders of secured claims."

Pursuant to 11 U.S.C. § 330 (1)(a), "[] the court may award to a trustee, [] or a professional person employed under section 327 or 1103, (1) reasonable compensation for actual, necessary services rendered by the trustee, examiner, ombudsman, professional person, or attorney and by any paraprofessional person employed by any such person; and (2) reimbursement for actual, necessary expenses."

After paying the Trustee's statutory fee, the Trustee's expenses, and the tax preparer's flat fee, the balance of cash on hand for unsecured creditors is $43,168.65. *See* Docket No. 53. This amount is sufficient to pay allowed unsecured claims in full. *See id.*

Pursuant to 11 U.S.C. § 330, the Court allows the flat fee of $1,000.00 to Jefferey Sumpter, Esq. The Court approves the Report in conformance with 11 U.S.C. § 704(9), including the Trustee's statutory fee in the amount of $2,041.85, and the reimbursement of the Trustee's expenses in the amount of $545.36.

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

Party Information

Debtor(s):

Manuel F. Contreras — Represented By
Nathan A Berneman

2:00 PM

CONT... Manuel F. Contreras **Chapter 7**

Trustee(s):

Sandra McBeth (TR) Represented By
Jeffrey L Sumpter

2:00 PM
9:20-11123 Peter James Compton **Chapter 7**

#9.00 CONT'D Hearing
RE: [359] Motion to Approve Compromise Under Rule 9019 Amended 352 Motion to Approve Compromise Under Rule 9019

FR. 1-9-24, 2-6-24, 3-19-24

Docket 359
***** VACATED *** REASON: Continued by stipulation to 5/7/2024 at 2:00PM.**

Tentative Ruling:

February 6, 2024

Appearances required. To be called alongside Calendar Item 14.

Background

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

On August 10, 2021, Nutrien Ag Solutions, Inc. ("Nutrien") filed in this Bankruptcy Case that *First Amended Complaint to Determine Dischargeability of Claim* (the "Complaint"). *See* Case No. 9:21-ap-01017-RC, Docket No. 17. The Complaint seeks to deny the Debtor's discharge in accordance with eighteen (18) causes of action, all pursuant to 11 U.S.C. §§ 727(a)(2), (4), (6) and/or (7). *See id.*

Succeeding two (2) years of litigation, the Debtor and Nutrien resolved the Complaint through that *Settlement Agreement* (the "Agreement"). *See* Docket No. 354, *Exhibit A*. The Agreement provides in relevant part:

> Settlement Payment. In full satisfaction of any claims raised against [the Debtor] as alleged in [the Complaint], [the Debtor] individually and by and through his guardian ad litem, agrees to pay the total sum of one hundred fifty thousand dollars ($150,000) ("Settlement Payment"). Payment shall be due upon

2:00 PM

CONT... Peter James Compton **Chapter 7**

approval by the Bankruptcy Court of [the Agreement] but [Nutrien] agrees to forebear collection of the Settlement Payment for 24 months from the date that the approval by the Bankruptcy Court is obtained.

Dismissal of Adversary Complaint. Within fourteen calendar days of entry of a Final Order approving this Agreement, [Nutrien] shall prepare and file a notice of dismissal of the Adversary Proceeding.

See Docket No. 354, *Exhibit A*.

On November 22, 2023, Nutrien filed that *Notice of Motion and Motion to Approve Compromise Under FRBP 9019* (the "Motion"), together with that *Memorandum of Points and Authorities In Support of Motion to Approve Compromise Under FRBP 9019* (the Memorandum") and that *Declaration of Steven Stoker* (the "Declaration"). *See* Docket Nos. 352, 353 and 354, respectively. The Motion seeks this Court's approval of the Agreement pursuant to Fed. R. Bankr. P. 9019. *See* Docket No. 352, p. 4.

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." The Ninth Circuit has held that "[i]n determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) [t]he 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; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises." *In re A & C Properties*, 784 F.2d 1377, 1381 (1986) (internal citations omitted). "Although the bankruptcy court has 'great latitude' in authorizing a compromise, it may only approve a proposal that is 'fair and equitable' to the creditors." *In re Mickey Thompson Entertainment Group, Inc.*, 292 B.R. 415, 420 (9th Cir. BAP 2003) (internal citations omitted).

Section "727 is a blanket prohibition against a debtor's discharge, that protects the rights of all creditors of the debtor at issue." *In re de Armond*, 240 B.R. 51, 55 (Bankr. C.D. Cal. 1999)(citing *In re Chalasani*, 92 F.3d 1300, 1309 (2d Cir. 1996)).

2:00 PM

CONT... Peter James Compton **Chapter 7**

"The underlying purpose of § 727 is to protect the integrity of the bankruptcy system by denying a bankruptcy discharge to a debtor who engages in certain specified objectionable conduct that is of a magnitude broader than injury to a single creditor." *Id.* (citing *In re Taylor*, 190 B.R. 413, 416 (Bankr. D. Colo. 1995)). "The denial of a discharge under § 727 benefits all the creditors of the bankruptcy estate equally." *Id.* "[T]he majority view, hold that any settlement of a § 727 claim is limited to those circumstances where the terms of the settlement are fair and equitable and in the best interest of the estate." *Id.* at 56 (citing *In re Mavrode*, 205 B.R. 716, 720 (Bankr. D.N.J. 1997); (*In re Taylor*, 190 B.R. at 416-417); *In re Speece*, 159 B.R. 314, 317 (Bankr. E.D. Cal. 1993)). "If a § 727 adversary proceeding is successful, it provides a benefit to all creditors in the case, because the debtor's discharge is denied in full. In consequence, a creditor who commences an adversary proceeding under § 727 becomes, in that respect, a fiduciary on behalf of all creditors." *Id.* at 57 (citing *In re Chalasani*, 92 F.3d 1300, 1310 (2d Cir. 1996); *In re Joseph*, 121 B.R. 679, 682 (Bankr. N.D.N.Y. 1990); *In re Drenckhahn*, 77 B.R. 697, 701 (Bankr. D. Minn. 1987); *In re Bates*, 211 B.R. 338, 346 (Bankr. D. Minn. 1997)). "The dismissal of such a complaint necessarily affects all creditors of the debtor." *Id.* "[T]he fiduciary duties that a creditor assumes in making a § 727 claim must be reflected in the form of settlement. The settlement of such claims belongs to all creditors." *Id.* at 58; *see also In re Djili*, 2012 WL 5246510 *6 (Bankr. N.D. Cal. 2012)("The Court hereby determines that in order for the settlement to be fair and equitable, the settlement amount must benefit the estate and all creditors….the Court refuses to approve a settlement that benefits one creditor and only that creditor."). "[T]he discharge of plaintiff's fiduciaries in this case requires that settlement be shared with the parties to whom the fiduciary are owed. Thus, the settlement must be shared with the other creditors in this case." *Id.* "[T]he plaintiff's fiduciary duties require the plaintiff to turn over the settlement proceeds to the chapter 7 trustee for distribution among the creditors according to the priorities established by § 726. This remedy removes the taint from the compromise and satisfies the plaintiff's fiduciary duties to the creditors on the § 727 claims." *Id.* at 53.

In the case at bar, the Court finds that the probability of success of Nutrien on the Complaint remains uncertain. Nutrien was unsuccessful at the summary judgment stage, and the matter must be litigated to completion at this juncture absent a settlement. The collection prospects on any judgment is not at issue here in that the Complaint seeks a judgment deeming the Debtor's pre-petition obligations excepted

2:00 PM

CONT... Peter James Compton **Chapter 7**

from his discharge rather than a money judgment. Nutrien provides no analysis as to the remaining *A & C Props.* factors.

The Court, however, pauses to contemplate "the paramount interest of the creditors" factor. With the above-cited authorities in mind, the Court highlights that the Agreement provides that the Debtor is to pay $150,000 to Nutrien in exchange for dismissal of the Complaint. Again, the Complaint is comprised solely of causes of action under 11 U.S.C. § 727(a). How then, the Court queries, does the Court approve the Agreement and the Motion where all creditors of the Debtor other than Nutrien take nought? It seems to the Court that as a preliminary point, the Motion must be amended to provide an analysis of the *A & C Props.* factors wholly, as the Motion and Memorandum are bare in their examination. Additionally, if the Court were to approve the Agreement through the Motion, any settlement proceeds, it seems to the Court, should be turned over to the Chapter 7 Trustee for distribution to all creditors of the Debtor's estate in conformance with the priority scheme of 11 U.S.C. § 726.

The Court will inquire with the parties on the aforementioned issues.

2:00 PM
9:20-11123 Peter James Compton **Chapter 7**
Adv#: 9:21-01017 Nutrien Ag Solutions, Inc. v. Compton

#10.00 Status Hearing
RE: [1] Adversary case 9:21-ap-01017. Complaint by Nutrien Ag Solutions, Inc. against Peter James Compton.

FR. 11-30-22, 1-11-23, 8-2-23, 10-2-23, 10-11-23, 11-22-23, 1-24-24, 2-6-24, 3-19-24

Docket 1

Tentative Ruling:

April 23, 2024

Appearances waived.

This matter is continued to May 7, 2024, at 2:00 p.m. to be heard alongside that *Motion to Approve Compromise*.

March 19, 2024

Appearances waived.

On March 1, 2024, the Court entered that *Order Continuing the Hearing on the Motion to Approve Compromise*. *See* Case No. 9:20-bk-11123-RC, Docket No. 377. This continued hearing relates to that *Motion to Approve Compromise*, which Motion's aim is to resolve the instant adversary proceeding. The Court continues the status conference to April 23, 2024, at 2:00 p.m. to be heard alongside the Motion.

February 6, 2024

Appearances required.

January 24, 2024

2:00 PM

CONT... Peter James Compton **Chapter 7**

Appearances waived.

This matter has been settled. *See* Case No. 9:20-bk-11123-RC, Docket No. 359. The Court will continue the status conference to be heard alongside the continued hearing on the 9019 Motion on February 6, 2024, at 2:00 p.m.

November 22, 2023

Appearances waived.

It appears this matter has settled, and a motion to approve the settlement has been filed. The status conference is continued to January 24, 2024, at 10:00 a.m.

October 11, 2023

Appearances waived.

The Court has reviewed that *Joint Status Report* and *Plaintiff's Supplement to Joint Status Report*. *See* Docket Nos. 142 and 143, respectively. The Court will continue the status conference to November 22, 2023, at 10:00 a.m. to allow the parties to document and obtain approval of the underlying settlement.

October 2, 2023

Appearances waived.

On June 29, 2023, the Court entered that *Order Approving Stipulation for Continuance of Trial* (the "Order"). *See* Docket No. 139. Among other things, the Order required the parties "to file a Joint Status Report on or before September 18, 2023 informing the Court of the status of settlement." *See id.* at p. 2. The Court has reviewed the late filed *Plaintiff's Unilateral Status Report*. *See* Docket No. 141. The Court has not located a status report from Defendant as required by the Order.

The Court continues the status conference to October 11, 2023, at 10:00 a.m. A "joint" status report is to be filed on or before October 2, 2023.

2:00 PM
CONT... Peter James Compton **Chapter 7**
November 30, 2022

No appearances required.

This matter is continued to January 11, 2023, at 10:00 a.m.

Party Information

Debtor(s):

Peter James Compton	Represented By Reed H Olmstead

Defendant(s):

Peter James Compton	Represented By Reed H Olmstead

Movant(s):

Nutrien Ag Solutions, Inc.	Represented By Steven R Stoker

Plaintiff(s):

Nutrien Ag Solutions, Inc.	Represented By Steven R Stoker

Trustee(s):

Jerry Namba (TR)	Represented By D Edward Hays Laila Masud

2:00 PM

9:18-11413 James Ross Root and Tamara Ducate Root **Chapter 13**

#11.00 CONT'D Hearing
RE: [59] Motion Notice of Motion and Motion for Exception re Financial Management Course and Domestic Support Obligation Certification; Request for Discharge of Chapter 13 for Joint Debtor

FR. 2-20-24

Docket 59

Tentative Ruling:

April 23, 2024

Appearances required.

Background

Tamara Ducate Root ("Ms. Root") and James Ross Root ("Mr. Root," and with Ms. Root, the "Roots") filed this joint Chapter 13 case on August 28, 2018. *See* Docket No. 1. On March 19, 2019, the Roots' *1st Amended Chapter 13 Plan* (the "Plan") was confirmed by this Court. *See* Docket No. 23, *Order Confirming Chapter 13 Plan*.

Ms. Root passed away on January 10, 2023, prior to completion of the payments under the Plan. *See* Docket No. 58, *Notice of Death of Joint Debtor; Redacted Certificate of Death Attached Hereto*, p. 1. Lines 21-22.

On September 27, 2023, the last payment under the Plan was received by the Chapter 13 Trustee, and on November 15, 2023, the Chapter 13 Trustee filed that *Notice of Intent to File Trustee's Final Report and Account, Obtain Discharge of Debtor and Close Case*. *See* Docket No. 47.

On December 28, 2023, the Court entered that *Order of Discharge – Chapter 13* (the "Discharge"), granting each of the Roots a discharge pursuant to 11 U.S.C. § 1328(a). *See* Docket No. 53.

2:00 PM

CONT... James Ross Root and Tamara Ducate Root **Chapter 13**

On January 22, 2024, Mr. Root and counsel to the Roots notified the Court of Ms. Root's passing on January 10, 2023. *See* Docket No. 58. On that same date, counsel to Ms. Root informed the Court through that *Notice of Motion and Motion For Exception Re Financial Management Course and Domestic Support Obligation Certification; Request for Discharge of Chapter 13 For Joint Debtor* (the "Motion Confirming Discharge") that Ms. Root did not prior to entry of the Discharge complete the personal financial management course required under 11 U.S.C. § 1328(g) or provide the Court with a certification of compliance with payment of all domestic support obligations in accordance with 11 U.S.C. § 1328(a). *See* Docket No. 59, p. 3; *see also* Local Rule 3015-1(t)(1).

Ms. Root, by her counsel, and through the Motion Confirming Discharge, requested this Court to reaffirm the Discharge while also excusing Ms. Root from the outstanding requirements of 11 U.S.C. § 1328. *See* Docket No. 59, p. 2, lines 1-7.

On February 13, 2024, Ms. Root's discharge was vacated due to clerical error. *See* Docket No. 63, *Notice and Order Vacating Discharge*.

On February 20, 2024, a hearing on the Motion Confirming Discharge was held and continued to April 23, 2024. *See* Docket No. 65. At the hearing, the Court inquired how the Motion Confirming Discharge could be advanced without Ms. Root or an authorized representative of Ms. Root providing counsel with direction.

On April 1, 2024, Mr. Root filed that *Notice of Application and Application that Debtor James Ross Root be Recognized as the Personal Representative of the Deceased Joint Debtor Tamara Ducate Root, For Purposes of These Bankruptcy Proceedings* (the "Personal Representative Motion"). *See* Docket No. 67. The Personal Representative Motion seeks to have Mr. Root appointed as Ms. Root's personal representative for the purposes of this bankruptcy case. *See id.*

On April 1, 2024, Mr. Root, expecting to be named Ms. Root's personal representative, filed that *Supplement to Motion for Exception Re Financial Management Course and Domestic Support Obligation Certification; Request for Discharge of Chapter 13 for Joint Debtor* (the "Supplement Motion"), seeking to have a discharge issued in favor of Ms. Root. *See* Docket No. 70.

2:00 PM

CONT... James Ross Root and Tamara Ducate Root **Chapter 13**

On April 9, 2024, the Chapter 13 Trustee filed that *Notice of Unclaimed Dividend(s)* in which there are $280.47 of undistributed funds due to an undeliverable check. *See* Docket No. 71.

Analysis

Notification of Death of Debtor

The Court begins with a discussion of the notification by counsel of Ms. Root's death. As previously cited by the Court, "upon 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 designation of an appropriate person to act on the debtor's behalf." (emphasis added) *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). A delay in notice to the bankruptcy court of "the debtor's death may, in some circumstances, be an appropriate factor in denying waivers necessary for discharge…" *In re Fogel*, 550 B.R. 532 n.4 (D. Col. 2015).

The Supplement Motion does nothing to address the issue regarding the delay in anyone, counsel to the Debtor or the joint-debtor included, informing this Court of Ms. Root's passing so that this Court could perform the required analysis under Fed. R. Bankr. P. 1016. The Court was not informed of Ms. Root's passing until a year later, and only because of the requirement that Ms. Root comply with 11 U.S.C. § 1328, which is not possible now with her death. The Court is left with a conundrum of sorts. On one hand, Ms. Root's creditors under the Plan were paid 100% of their claims. On the other hand, this Court sitting by idly while Fed. R. Bankr. P. 1016 is disregarded sets a disagreeable precedent. If this Court approves the Supplement Motion, why should not all heirs and/or spouses to deceased Chapter 13 debtors simply ignore Fed. R. Bankr. P. 1016 until the end of the case so long as it suits them? No facts have been provided as to why the Court was never informed of Ms. Root's death until the end of the case, or any analysis as to why the failure to make such disclosure in this case should result in anything other than dismissal.

The Supplement Motion also only paints a portion of the case's historical picture. In

2:00 PM

CONT... James Ross Root and Tamara Ducate Root **Chapter 13**

reviewing the Supplement Motion, the reader is led to believe that there has been no effect on creditors, and that Ms. Root's Chapter 13 case did nothing but benefit creditors. It is argued that the Supplement Motion is but a perfunctory step in Ms. Root's Chapter 13 case.

At the time of Ms. Root's death, pending before the Court was *Trustee's Motion to Dismiss Chapter 13 Case Due to Material Default of the Plan Pursuant to § 1307(c)(6) Failure to Submit All Tax Returns and/or Tax Refunds* (the "Motion to Dismiss") related to Ms. Root's failure to provide the Chapter 13 Trustee with her "2020, 2021 Federal and State Tax Returns and, if applicable, [] all required tax refunds for the same years" in conformance with this Court's Local Rule 3015-1(o) and the Plan. *See* Docket No. 32. Ms. Root filed that *Opposition to Trustee's Motion to Dismiss Chapter 13 Case Due to Material Default of the Plan Pursuant to Section §1307(c)(6) Failure to Submit All Tax Returns and/or Refunds*, not opposing the Motion to Dismiss, but explaining how Ms. Root intended on coming back into compliance with the terms of the Plan. *See* Docket No. 35.

On June 22, 2023, six (6) months after Ms. Root's death, that *Stipulation to Increase the Percentage to the Unsecured Creditors to 100%* (the "Stipulation") was filed. *See* Docket No. 39. The Roots sold an asset during the term of the Plan, and failed to turnover the nonexempt portions of that sale, $172,415, to the Chapter 13 Trustee, which the Chapter 13 Trustee argued was a default under the Plan. *See id.* Counsel to Ms. Root, signing for a deceased Ms. Root, and under some unknown authority, but perhaps that of Mr. Root, executed the Stipulation, remedying the Motion to Dismiss and the failure of Ms. Root to turnover the $172,415 to the Chapter 13 Trustee.

The point here being that at the time of Ms. Root's death, had the Court been promptly notified, it is unlikely that the Court would have done anything other than dismiss Ms. Root's case given her material default of the terms of the Plan. Ms. Root had not been providing tax returns and refunds to the Chapter 13 Trustee as required under the Plan, but had also sold an asset and retained $172,415 in nonexempt equity that the Chapter 13 Trustee believed should have been paid to creditors under the terms of the Plan. This Court, and Ms. Root's creditors were deprived of this analysis. The Supplement Motion ignore these facts.

Still, the issue remains, why, under these facts, should the Court apply Fed. R. Bankr.

P. 1016 to this case more than a year after it should have been applied?

Ms. Root's Legal Representative

As to Fed. R. Bankr. P. 1016, some courts have held that "an appropriate person may represent a debtor after his or her death." *In re Fogel*, 550 B.R. at 536. The question, of course, is who or what comprises that appropriate person? Generally, bankruptcy courts have found that a personal representative appointed by the state's respective probate court satisfies this question. *See In re Higgins*, 2023 Bankr.LEXIS 2987, at & 14-15 (Bankr.E.D.Wis. 2023); *In re Stewart*, 2024 Bankr.LEXIS 306, at *1-2 (Bankr.E.D.Mich. 2024); *In re Pack*, 634 B.R. 738, 739 (Bankr.E.D. Mich. 2021); *In re Hamilton*, 274 B.R. 266, 267 (W.D.Tex 2001); *In re Seitz*, 430 B.R. 761, 762-63 (Bankr.N.D.Tex. 2010); *In re Oliver*, 279 B.R. 69 (Bankr.W.D.N.Y. 2002); and *In re Haun*, 2020 Bankr.LEXIS 1682, at *3-4 (Bankr.N.D.Ohio 2020).

The Supplement Motion cited Cal. Prob. Code § 13100. *See* Docket No. 70, p. 6, lines 11-20. California law permits the successor of a decedent, "without procuring letters of administration or awaiting probate of the will," to "(a) [c]ollect any particular item of property that is money due the decedent[;] (b) [r]eceive any particular item of property that is tangible personal property of the decedent[; and] (c) [h]ave any particular item of property that is evidence of a debt, obligation, interest, right, security, or chose in action belonging to the decedent transferred, whether or not secured by a lien on real property" if 40 days have elapsed since death and the value of the decedent's real and personal property in California is less than $166,250 or as adjusted periodically.

"To collect money, receive tangible personal property, or [take any of the decedents personal property], an affidavit or declaration under penalty of perjury under the laws of [California] shall be furnished…stating all of the following:

(3) 'At least 40 days have elapsed since the death of the decedent…'
(6) A description of the property of the decedent that is to be paid, transferred, or delivered to the affiant or declarant.
[]
(8) Either of the following, as appropriate: (A) 'The affiant or declarant is the successor of the decedent (as defined in Section 13006 of the California Probate Code) to the decedent's interest in the described property.' [or] (B)

2:00 PM

CONT... James Ross Root and Tamara Ducate Root **Chapter 13**

'The affiant or declarant is authorized under Section 13051 […]'
(9) 'No other person has a superior right to the interest of the decedent in the described property'
(10) 'The affiant or declarant request that the described property be paid, delivered, or transferred to the affiant or declarant'"

Cal. Prob. Code §13101.

Only if Cal. Prob. Code §§13100-13104 are satisfied is the declarant entitled to the "property described in the affidavit or declaration." Cal. Prob. Code §13105. Yet, if a party does not satisfy these requirements including full compliance with all the requirements of the declaration, then the party is not entitled to any of the decedent's property. *See In re Rodriguez*, 488 B.R. 675, 679-680 (Bankr.E.D.Cal. 2013) (finding the decedent's successor was not yet entitled to the property because his affidavit did not comply with §13101(a)(4), (5), (6), and (9)). *See also Di Angelo v. Wells Fargo, N.A.*, 151 F.Supp.3d 741, 744 (S.D.Tex) (citing Cal Prob. Code §13101 and stating the declaration requires the heir to "promise that 'no other person has a superior right to the interest of the decedent in the described property.'"

Here, the Court does not comprehend how Cal. Prob. Code § 13101 assists the analysis. Further, Mr. Root's declaration is deficient and does not comply with Cal. Prob. Code § 13101 fully. *See* Docket No. 67, *Declaration of James Ross Root*, pp. 7-9. First, the declaration does not state the place of death, nor does the declaration state 40 days have passed since the death. Nevertheless, the death certificate is attached as an exhibit. *See id*. at p. 9. Even if these errors are inconsequential, the declaration does not describe the property of Ms. Root that Mr. Root is taking or has taken possession of. Further, the declaration does not state that "[n]o other person has a superior right to the interest of the decedent in the described property" nor does the declaration "request that the described property be paid, delivered, or transferred" to Mr. Root. Cal Prob. Code §13101(a)(9-10).

Additionally, "once [Mr. Root] establishes the requirements under California Probate Code §§ 13100 to 13104 inclusive, the court 'may rely in good faith on the statements in the affidavit…and has no duty to inquire into the truth of any statement in the affidavit.'" *In re Rodriguez, supra,* at 349. However, based on the record before the Court, the Court must ask how Mr. Root can state under penalty of perjury that he has

2:00 PM

CONT... James Ross Root and Tamara Ducate Root **Chapter 13**

a superior claim to Ms. Root's separate property and a superior claim to Ms. Root's one-half share of what was once community property? Do Ms. Root's creditor not have a superior claim to such property and monies? And if the creditor's do not have a superior claim, then why does Ms. Root's discharge matter considering Mr. Root himself has received a discharge?

February 20, 2024

Appearances required.

Notice

On January 22, 2024, that *Notice of Motion for: Motion for Exception re Financial Management Course and Domestic Support Obligation Certification; Request for Discharge of Chapter 13 for Joint Debtor* (the "Notice") and the *Notice of Motion and Motion for Exemption re Financial Management Course and Domestic Support Obligation Certification; Request for Discharge of Chapter 13 for Joint Debtor* (the "Motion") were served upon all creditors via U.S. Mail First-Class, postage prepaid, and on the Chapter 13 Trustee and the Office of the U.S. Trustee via NEF. *See* Docket No. 60, *Proof of Service of Document* and Docket No. 59, *Proof of Service of Document*, respectively. The Notice provides, pursuant to this Court's Local Rule 9013-1(d), that any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing date on the Motion. *See* Docket No. 60, p. 2.

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 or Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties served with the Notice and/or Motion.

Background

Tamara Ducate Root ("Ms. Root") and James Ross Root ("Mr. Root," and with Ms. Root, the "Roots") filed this joint Chapter 13 case on August 28, 2018. *See* Docket No. 1. On March 19, 2019, the Roots' *1st Amended Chapter 13 Plan* (the "Plan") was

2:00 PM

CONT... James Ross Root and Tamara Ducate Root **Chapter 13**

confirmed by this Court. *See* Docket No. 23, *Order Confirming Chapter 13 Plan*.

Ms. Root passed away on January 10, 2023, prior to completion of the payments under the Plan. *See* Docket No. 58, *Notice of Death of Joint Debtor; Redacted Certificate of Death Attached Hereto*, p. 1. Lines 21-22.

On September 27, 2023, the last payment under the Plan was received by the Chapter 13 Trustee, and on November 15, 2023, the Chapter 13 Trustee filed that *Notice of Intent to File Trustee's Final Report and Account, Obtain Discharge of Debtor and Close Case*. *See* Docket No. 47.

On December 28, 2023, the Court entered that *Order of Discharge – Chapter 13* (the "Discharge"), granting each of the Roots a discharge pursuant to 11 U.S.C. § 1328(a). *See* Docket No. 53.

On January 22, 2024, Mr. Root and counsel to the Roots notified the Court of Ms. Root's passing on January 10, 2023. *See* Docket No. 58. On that same date, counsel to Ms. Root informed the Court through the Motion that Ms. Root did not prior to entry of the Discharge complete the personal financial management course required under 11 U.S.C. § 1328(g) or provide the Court with a certification of compliance with payment of all domestic support obligations in accordance with 11 U.S.C. § 1328(a). *See* Docket No. 59, p. 3; *see also* Local Rule 3015-1(t)(1).

Ms. Root, by her counsel, and through the Motion, requests this Court to reaffirm the Discharge while also excusing Ms. Root from the outstanding requirements of 11 U.S.C. § 1328. *See* Docket No. 59, p. 2, lines 1-7.

Legal Analysis

Bankruptcy Rule 1016

Pursuant to Fed. R. Bankr. P. 1016, upon the death of a debtor in a pending Chapter 13 case, "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 thought the death or incompetency had not occurred."

2:00 PM

CONT... James Ross Root and Tamara Ducate Root **Chapter 13**

"[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 designation of an appropriate person to act on the debtor's behalf." (emphasis added) *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).

Although dismissal is not automatic, "[g]iven the structure of the [c]hapter 13 process, it should not be surprising that the normal default presumption upon death is dismissal." *In re Waring*, 555 B.R. 754, 761 (Bankr. D. Colo. 2016). Chapter 13 is an "altogether different process in which the debtor plays a central and ongoing role, from the filing of the petition through discharge some three to five years later." *Id*. However, "[a]s a practical matter, in most chapter 13 cases, the death of a debtor will result in dismissal of the case because there is no future income from which to fund the debtor's plan." *In re Lizzi*, 2015 WL 1576513, at *4 (Bankr. N.D.N.Y. Apr. 3, 2015).

Courts are divided as to which parties must benefit from further administration of the case. Many courts consider the interests of all parties who may be affected by further administration or dismissal—not just the debtor, creditors, and trustee. *See*, *e.g.*, *In re Inyard*, 532 B.R. at 371-72 (considering pre-petition and post-petition creditors, the trustee, and deceased debtor); *In re Conn*, 2015 WL 3777958, at *2-3 (Bankr. N.D. Ohio June 12, 2015) (considering creditors and surviving spouse); *In re Lizzi*, 2015 WL 1576513, at *5-6 (considering creditors, deceased debtors, and public policy); *In re Bond*, 36 B.R. 49, 51 (Bankr. E.D.N.C. 1984) (considering deceased debtor and debtor's minor children); *but see In re Sales*, 2006 WL 2668465, at *3 (Bankr. N.D. Ohio Sept. 15, 2015) (considering debtor's estate and creditors); *In re Hennessy*, 2013 WL 3939886, at *1-2 (Bankr. N.D. Cal. July 29, 2013); *In re Miller*, 526 B.R. at 859-60.

As a starting point, it is unclear to the Court of counsel's standing to advance the Motion. The Motion was brought by counsel to Ms. Root on Ms. Root's behalf. *See* Docket No. 59, p. 2, lines 1-7; *see also id.* at lines 10-12. Counsel to Ms. Root is not taking direction from anyone, seemingly. The Court's initial inquiry for counsel is how the Motion, and this case for that matter, can advance without Ms. Root or an

2:00 PM

CONT... James Ross Root and Tamara Ducate Root **Chapter 13**

authorized representative of Ms. Root providing counsel with direction?

What is more, Ms. Root passed more than a year prior to counsel to Ms. Root informing the Court of Ms. Root's passing. This was not a "prompt" notification to the Court. The Court was therefore unable, after hearing from the Chapter 13 Trustee and creditors, to make the required determination regarding the status of the case under Fed. R. Bankr. P. 1016. Counsel to Ms. Root was engaged in the case after Ms. Root's death, having entered into that *Stipulation to Increase the Percentage to the Unsecured Creditors to 100%* on June 22, 2023. *See* Docket No. 39. Yet, the case proceeded with parties-in-interest and this Court oblivious of Ms. Root's death. It seems to the Court that it is being placed in the position of awarding *nunc pro tunc* or *post facto* relief, as this determination, being whether the case should proceed or be dismissed, was to be made many months ago. No authority has been cited as to why this Court may provide a *nunc pro tunc* or *post facto* order under these circumstances.

As to whether further administration is in the best interest of creditors, the response is essentially that what has been done, has been done. The "case has been fully administered at 100% of filed claims." This does not answer why it is in the best interest of all parties that the Court enter an order granting the Motion under, at least in part, Fed. R. Bankr. P. 1016. If Ms. Root has now passed, why would the Court not (1) vacate the Discharge as to Ms. Root, and (2) dismiss the case? This is the inquiry that the Motion does not address. Why is it in the best interest of creditors that the Motion be granted?

Conclusion

The Court's inclination is to deny the Motion, vacate the Discharge as to Ms. Root, and dismiss this case as to Ms. Root.

Party Information

Debtor(s):

James Ross Root — Represented By James C Ames

Joint Debtor(s):

Tamara Ducate Root — Represented By

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

Tuesday, April 23, 2024 **Hearing Room 201**

2:00 PM

CONT... James Ross Root and Tamara Ducate Root **Chapter 13**

James C Ames

Movant(s):

James Ross Root	Represented By James C Ames
Tamara Ducate Root	Represented By James C Ames

Trustee(s):

Elizabeth (ND) F Rojas (TR)	Pro Se

2:00 PM

9:18-11413 James Ross Root and Tamara Ducate Root **Chapter 13**

#12.00 HearingRE: [67] Application Application that Debtor James Ross Root be Recognized as the Personal Representative of the Deceased Joint Debtor, Tamara Ducate Root, for Purposes of These Bankruptcy Proceedings; Declaration of Debtor, James Ross Root, in Support Thereof

Docket 67

Tentative Ruling:

April 23, 2024

See Calendar Item 11.

Party Information

Debtor(s):

James Ross Root — Represented By James C Ames

Joint Debtor(s):

Tamara Ducate Root — Represented By James C Ames

Movant(s):

James Ross Root — Represented By James C Ames

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 23, 2024 **Hearing Room 201**

2:00 PM

9:23-10145 Michael McQueen and Flavia McQueen **Chapter 13**

#13.00 HearingRE: [74] Application for Compensation for Joshua Sternberg, Debtor's Attorney, Period: 2/28/2023 to 2/8/2024, Fee: $3845.00, Expenses: $0.

Docket 74

Tentative Ruling:

April 23, 2024

Appearances required.

On February 13, 2024, Sternberg Law Group ("Applicant") filed that *Application of Attorney for Debtor for Allowance of Fees and Expenses Following Dismissal or Conversion of Chapter 13 Case Subject To A Rights and Responsibilities Agreement* (the "Application"). *See* Docket No. 74. According to the Application, Applicant agreed to accept a flat rate of $5,000 for certain services in the case. *See id.* at p. 1. The Application seeks allowance and payment of $3,845.00. *See id.* at pp. 1-2. The Application provides that Applicant was previously paid $2,500 for basic services. *See id.* at p. 2. The Application further provides that Applicant previously applied for additional fees in the amount of $1,260. *See id.* The invoice attached to the Application contains a total of $5,085 in time, all of which appears to relate to the basis services covered under the RARA, and which were capped at $5,000. *See id.* at pp. 7-8. The Application is puzzling. It is not clear what has been paid as between the RARA and previously awarded additional fees, and what amounts are being requested through the Application that are covered by the capped RARA fee.

Party Information

Debtor(s):

Michael McQueen — Represented By Joshua Sternberg

Joint Debtor(s):

Flavia McQueen — Represented By Joshua Sternberg

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

Tuesday, April 23, 2024 **Hearing Room 201**

2:00 PM

CONT... Michael McQueen and Flavia McQueen **Chapter 13**

Movant(s):

Michael McQueen	Represented By Joshua Sternberg
Flavia McQueen	Represented By Joshua Sternberg

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 23, 2024 **Hearing Room 201**

2:00 PM

9:24-10107 Wayne Carl Fulton and Linda Scanlin Fulton **Chapter 13**

#14.00 Hearing
RE: [28] Motion, and [30] Objection to Claimed Exemption (Horowitz, Carissa)

Docket 28

***** VACATED *** REASON: Continued to May 7, 2024 at 2:00 p.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Wayne Carl Fulton — Represented By Jenny L Doling

Joint Debtor(s):

Linda Scanlin Fulton — Represented By Jenny L Doling

Movant(s):

Kevin Eldredge — Represented By Carissa N Horowitz

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 23, 2024 **Hearing Room 201**

2:00 PM

9:24-10107 Wayne Carl Fulton and Linda Scanlin Fulton **Chapter 13**

#15.00 Hearing
RE: [33] Motion to Dismiss Debtor Chapter 13 for Cause or in the alternative Dismiss motion to Avoid Lien (Horowitz, Carissa)

Docket 33

***** VACATED *** REASON: Continued to May 7, 2024 at 2:00 p.m.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Wayne Carl Fulton — Represented By Jenny L Doling

Joint Debtor(s):

Linda Scanlin Fulton — Represented By Jenny L Doling

Movant(s):

Kevin Eldredge — Represented By Carissa N Horowitz

Trustee(s):

Elizabeth (ND) F Rojas (TR) — Pro Se

2:00 PM

9:22-10622 Alcaraz Catering, Inc. **Chapter 11**

#16.00 CONT'D Hearing RE: Post-Confirmation Status Conference

FR. 9-12-23, 10-10-23, 12-12-23, 1-10-24, 3-6-24, 3-14-24

Docket 181

Tentative Ruling:

April 23, 2024

Appearances required.

March 14, 2024

See Calendar Item 44.

March 6, 2024

Appearances required.

January 10, 2024

See calendar item 34.

December 12, 2023

Appearances required.

October 10, 2023

See Matter No. 16.

September 12, 2023

2:00 PM

CONT... Alcaraz Catering, Inc. **Chapter 11**

Appearances required.

On May 8, 2023, the Debtor's third amended chapter 11 plan of reorganization (the "Plan") was confirmed. Docket Nos. 149 and 175, respectively. On May 25, 2023, that *Notice of Post Confirmation Status Conference* (the "Notice"), set to be held on September 12, 2023 was filed. Docket No. 181. The Notice indicated that the Debtor must file a Status Report 14 days prior to the Status Conference. *Id*.

On August 29, 2023, the Subchapter V Trustee Susan Seflin (the "Trustee") filed that *Subchapter V Trustee's Post Confirmation Status Report* (the "Trustee's Report"). *See* Docket No. 210. Through the Trustee's Report, the Trustee indicates that the Debtor has not paid the Trustee's Fees awarded by the Court on July 26, 2023. *See id.* at p. 2, lines 10-19. The Trustee's Report further indicates that, if the Debtor does not provide the Trustee with evidence that the Debtor is complying with its Plan obligations, then the Trustee expects that she will confer with the Office of the United States Trustee as to whether a motion to convert the case to chapter 7 is appropriate. *See id.* at lines 20-22.

On August 31, 2023, counsel for the Debtor, Kenneth Henjum ("Henjum"), filed that *Post Confirmation Status Conference: Declaration of Kenneth H.J. Henjum* (the "Henjum Declaration"). *See* Docket No. 211. Through the Henjum Declaration, Henjum attests that he "has lost communication with his client [Debtor].. [o]ver the past six weeks his emails, texts and phone calls have not been returned". *Id.* at p. 1, lines 23-28. Henjum further attests that "the telephone number does not have an active voicemail attached to it..[o]ur office sent a letter via U.S. Mail and it was returned to our office. *Id.* at lines 26-28.

Pursuant to 11 U.S.C. § 1112(b)(4)(N) "on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interest of creditors and the estate, for cause..." and cause includes any "material default by the debtor with respect to a confirmed plan." *See also In re Baroni*, 36 F4th 958, 967 (9th Cir. 2022). The "bankruptcy court can convert a case sua sponte under § 105(a) if cause exists to do so." *See In re Kenney G. Enterprises, LLC*, 2014 WL 4100429 *9 (9th Cir. BAP 2014)(internal citations omitted).

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

Tuesday, April 23, 2024 **Hearing Room 201**

2:00 PM

CONT... Alcaraz Catering, Inc. **Chapter 11**

The Court will issue an order to show cause why this case should not be converted to Chapter 7 or dismissed for the Debtor's material breach of Article 7 of that *Third Amended Plan of Reorganization for Small Business Under Chapter 11*.

Party Information

Debtor(s):

Alcaraz Catering, Inc.	Represented By Kenneth H J Henjum William C Beall

Trustee(s):

Susan K Seflin (TR)	Pro Se

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

Tuesday, April 23, 2024 **Hearing Room 201**

2:00 PM

9:23-10061 South Bay Property Homes LLC **Chapter 11**

#17.00 HearingRE: [166] Ex parte application Notice of Motion and Ex Parte Motion To Extend Deadline to File Chapter 11 Plan

Docket 166

Tentative Ruling:

April 23, 2024

Appearances required.

Party Information

Debtor(s):

South Bay Property Homes LLC — Represented By Leslie A Cohen

Movant(s):

South Bay Property Homes LLC — Represented By Leslie A Cohen

2:00 PM

9:23-10607 Beacon Coffee Company, Inc. **Chapter 11**

#18.00 CONT'D Hearing RE: Chapter 11 Status Conference
(RE Chapter 11 Subchapter V Non-Individual)

FR. 9-13-23, 11-8-23, 11-22-23, 12-13-23

Docket 1

Tentative Ruling:

April 23, 2024

Appearances required.

The Court has reviewed that *Status Report*. *See* Docket No. 132.

December 13, 2023

Appearances required.

November 22, 2023

Appearances waived.

The Court has reviewed the *Subchapter V Status Report*. *See* Docket No. 88. The Court will continue the status conference to December 13, 2023, at 2:00 p.m.

November 8, 2023

Appearances waived.

The Court has reviewed the *Status Report* (the "Report"). *See* Docket No. 73. The Report does not comply with the *Order Setting Initial Status Conference* (the "Order"). *See* Docket No. 11. The status conference is continued to November 22, 2023, at 2:00 p.m. to allow the Debtor to file a status conference report in conformance with the Order.

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

Tuesday, April 23, 2024 **Hearing Room 201**

2:00 PM
CONT... Beacon Coffee Company, Inc. **Chapter 11**

September 13, 2023

Appearances required.

Party Information

Debtor(s):

Beacon Coffee Company, Inc. Represented By
William C Beall

2:00 PM
9:24-10044 FRINJ Coffee, Incorporated. **Chapter 11**

#19.00 CONT'D Hearing
RE: [20] Motion to Use Cash Collateral Debtors Motion For Order Authorizing Use Of Cash Collateral; Memorandum Of Points And Authorities; Declaration Of John A. Ruskey III In Support Thereo

FR. 1-26-24, 2-6-24

Docket 20

Tentative Ruling:

April 23, 2024

Appearances required.

The Court has reviewed *Debtor's Motion for Order Authorizing Continued Use of Cash Collateral* (the "Motion"). *See* Docket No. 56. The Debtor also filed that *Plan of Reorganization for Small Business Under Chapter 11* (the "Plan") on April 15, 2024. *See* Docket No. 68. The Court intends on setting a confirmation hearing at the May 7, 2024 status conference. In reviewing the budget attached to the Motion, it appears the Debtor is requesting authority to use cash collateral through October 2024, or the date the Court confirms the Plan. The Court will inquire with the Small Business Administration (the "SBA") regarding the *Stipulation for Adequate Protection and Use of Cash Collateral* (the "Stipulation"), and whether the SBA is consenting to the Debtor's use of cash collateral through October 2024, or plan confirmation, pursuant to the terms of the Stipulation.

February 6, 2024

Appearances required.

January 26, 2024

2:00 PM

CONT... FRINJ Coffee, Incorporated. **Chapter 11**

Appearances required.

Before the Court is *Debtor's Motion for Order Authorizing Use of Cash Collateral* (the "Motion") filed by Frinj Coffee, Incorporated (the "Debtor"). *See* Docket No. 20. The Motion, among other things, seeks approval of that *Stipulation for Adequate Protection and Use of Cash Collateral* (the "Stipulation"). *See* Docket No. 21.

The Court at the hearing will discuss with the Debtor the following:

As to the "Legal/Prof Fees" line item in the budget, does this include the fees and expenses of the SubChapter V Trustee? Are the amounts sufficient to encompass all legal/professional fees and costs forecasted for the time period that the budget covers?

Do the agreements between the Debtor and the SBA regarding the validity, priority and extent of the SBA's liens in the Stipulation bind any other party-in-interest?

The Default section of the Stipulation provides that conversion of the instant case to Chapter 7 constitutes an event of default, "entitling SBA to seek an Order for Relief from Stay, without a hearing, to exercise its rights and remedies against the Personal Property Collateral." *See* Docket No. 21, p. 5, lines 4-12. The Court is unclear here. Is the stay terminated upon default? The same section provides that the SBA may seek a lifting of the stay upon dismissal of the instant case, but, of course, there would be no stay to lift.

Party Information

Debtor(s):

FRINJ Coffee, Incorporated.	Represented By Michael Jay Berger

Movant(s):

FRINJ Coffee, Incorporated.	Represented By Michael Jay Berger Michael Jay Berger

Trustee(s):

Mark M Sharf (TR)	Pro Se

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

Tuesday, April 23, 2024 **Hearing Room 201**

2:00 PM

9:24-10051 Gabriel Contreras Cardenas and Jovita Contreras **Chapter 11**

#20.00 Hearing
RE: [43] Objection to Debtor's Claim of Exemptions with proof of service

Docket 43

***** VACATED *** REASON: Continued by stipulation to 5/21/24 at 2:00PM.**

Tentative Ruling:

April 23, 2024

Appearances waived. The Objection is overruled. Movant is to lodge a conforming order within 7 days.

On March 21, 2024, HACL, Packaging, LLC ("Movant") filed that *Objection to Claimed Exemption* (the "Objection"), objecting to an exemption in a bank account by Gabriel and Jovita Contreras (the "Debtors"). *See* Docket No. 43. The Objection was not served on the Debtors. *See id.* at *Proof of Service of Document*. On March 21, 2024, Movant filed that *Notice of Objection to Claimed Exemption* (the "Notice"). *See* Docket No. 44. As with the Objection, the Notice was not served on the Debtors. *See id.* at *Proof of Service of Document*.

Pursuant to Fed. R. Bankr. P. 4003(4), "[a] copy of any objection [to a claim of exemption] shall be delivered or mailed to the trustee, the debtor and the debtor's attorney, and the person filing the list and that person's attorney." *See also* California Practice Guide: Bankruptcy, 7:277 (The Rutter Group 2023); *In re Hilmoe*, 56 B.R. 262, 263 (Bankr. D. S.D. 1985)("The Trustee's failure to promptly serve the debtor and his attorney derogates the requirements of the Rules and undermines the purpose of limiting the time when an objection may be made.").

Here, the Objection was not served on the Debtors, and thus, the Objection fails for lack of compliance with Fed. R. Bankr. P. 4003(b)(4).

Party Information

Debtor(s):

Gabriel Contreras Cardenas Represented By

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

Tuesday, April 23, 2024 **Hearing Room 201**

2:00 PM

CONT... Gabriel Contreras Cardenas and Jovita Contreras **Chapter 11**

Reed H Olmstead

Joint Debtor(s):

Jovita Contreras — Represented By
Reed H Olmstead

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

Tuesday, April 23, 2024 **Hearing Room 201**

2:00 PM

9:23-10517 Global Premier Regency Palms Colton, LP **Chapter 11**

#21.00 CONT'D Hearing - AS STATUS CONFERENCE
RE: [41] and [42] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 839 Fairway Avenue, Colton, California 92324 .

FR. 9-12-23, 11-14-23, 2-6-24, 2-22-24, 3-19-24

Docket 41

Tentative Ruling:

April 23, 2024

Appearances required.

March 19, 2024

Appearances required.

September 12, 2023

Appearances required.

Party Information

Debtor(s):

Global Premier Regency Palms — Represented By
Garrick A Hollander
Matthew J Stockl

Movant(s):

iBorrow REIT, L.P., a Delaware — Represented By
Daniel H Reiss

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

Tuesday, April 23, 2024 **Hearing Room 201**

2:00 PM

9:23-10517 Global Premier Regency Palms Colton, LP **Chapter 11**

#22.00 CONT'D Hearing - AS STATUS CONFERENCE
RE: [55] Motion Debtors Motion For Order Authorizing Post-Petition Secured Loan Pursuant To 11 U.S.C. §§ 364(C)(1), (2), (3) AND (D)(1) On All Assets; Memorandum Of Points And Authorities

FR. 9-1-23, 9-12-23, 11-14-23, 2-6-24, 2-22-24, 3-19-24

Docket 55

Tentative Ruling:

April 23, 2024

Appearances required.

March 19, 2024

Appearances required.

September 12, 2023

Appearances required.

September 1, 2023

Appearances required.

Party Information

Debtor(s):

Global Premier Regency Palms — Represented By
Garrick A Hollander
Matthew J Stockl

2:00 PM

CONT... Global Premier Regency Palms Colton, LP **Chapter 11**

Movant(s):

Global Premier Regency Palms — Represented By
Garrick A Hollander
Matthew J Stockl

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

Tuesday, April 23, 2024 **Hearing Room 201**

2:00 PM

9:23-10517 Global Premier Regency Palms Colton, LP **Chapter 11**

#23.00 CONT'D Hearing - AS STATUS CONFERENCE
RE: [172] and [176] Motion for Relief from Stay Debtors Motion For Order Confirming Applicability Of The Automatic Stay And Implicit Waiver Of 11 U.S.C. Section 362(e), Or, Alternatively, For Continuation Of The Automatic Stay; Memorandum Of Points And Authorities.

FR. 1-23-24, 3-19-24

Docket 172

Tentative Ruling:

April 23, 2024

Appearances required.

March 19, 2024

Appearances required.

Party Information

Debtor(s):

Global Premier Regency Palms — Represented By
Garrick A Hollander
Matthew J Stockl
Peter W Lianides

Movant(s):

Global Premier Regency Palms — Represented By
Garrick A Hollander
Matthew J Stockl
Peter W Lianides

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

Tuesday, April 23, 2024 **Hearing Room 201**

2:00 PM

9:23-10517 Global Premier Regency Palms Colton, LP **Chapter 11**

#24.00 Hearing - CONT'D AS STATUS CONFERENCE
RE: [185] Motion to Disallow Claims Debtors Motion For Order Disallowing Usurious Interest Re Claim By iBorrow REIT, L.P.; Memorandum Of Points And Authorities

FR. 2-6-24, 3-19-24

Docket 185

Tentative Ruling:

April 23, 2024

Appearances required.

March 19, 2024

Appearances required.

Party Information

Debtor(s):

Global Premier Regency Palms — Represented By
Garrick A Hollander
Matthew J Stockl
Peter W Lianides

Movant(s):

Global Premier Regency Palms — Represented By
Garrick A Hollander
Matthew J Stockl
Peter W Lianides

2:00 PM
9:23-10517 Global Premier Regency Palms Colton, LP **Chapter 11**

#25.00 CONT'D Hearing (FINAL HEARING)
RE: [241] Motion Debtors Motion For Order Authorizing Post-Petition Secured Loan Pursuant To 11 U.S.C. §§ 364(c)(1), (2) And (d)(1) On All Assets; Memorandum Of Points And Authorities

FR. 3-26-24

Docket 241

Tentative Ruling:

April 23, 2024

Appearances required.

March 26, 2024

Appearances required.

Before the Court is *Debtor's Motion for Order Authorizing Post-Petition Secured Loan Pursuant to 11 U.S.C. §§364(c)(1), (2) and (d)(1) on All Assets* (the "Motion") filed by Global Premier Regency Palms Colton, LP (the "Debtor"). *See* Docket No. 241. Through the Motion, the Debtor seeks, *inter alia*, approval of that *DIP Loan and Security Agreement* (the "DIP Agreement") with Legalist DIP Fund II, LP (the "Lender") to provide the Debtor with post-petition, secured financing (the "DIP Facility"). *See id.* at p. 2, lines 7-19. The DIP Facility is to be advanced first on an interim basis in the amount of $9,702,104 to allow the Debtor to pay a reduced claim of its current senior secured creditor, iBorrow, real property taxes, closing costs, and the Lender's legal costs. *See id.* at p. 5, lines 9-12. The balance of the DIP Facility, up to $23.39 million may be obtained by the Debtor from Lender after a final hearing on the Motion, and through several delineated terms. *See id.* at pp. 11-12. Under the settlement agreement with iBorrow, the Debtor has until April 5, 2024 to pay iBorrow $9.45 million, or its main asset, a parcel of real property, will be provided to iBorrow pursuant to a sale this Court has previously approved.

2:00 PM

CONT... Global Premier Regency Palms Colton, LP **Chapter 11**

With the DIP Facility, the Debtor asserts that it will be able to complete construction of its real property over approximately a year and a half, thereby increasing its value from $13.5 million to between $31.2 and $34.7 million. *See id.* at pp. 10-11.

The DIP Facility is to accrue interest at the prime rate plus 8% for the first year, the prime rate plus 9.5% for months 13-18, and the prime rate plus 9.54% for months 19-24. *See id.* at *Exhibit 2*, Bates stamped p. 11. If the DIP Facility is approved, the Lender would be due a "commitment fee" of $233,900 and "underwriting fee" of $233,900, a monthly fee of .3125% based on the difference between the "daily average unpaid principal balance of the [DIP Facility] during the respective month and [the DIP Facility] as of the beginning of such month, and a "monthly loan monitoring fee" of $14,618.75. *See id.* The Debtor is to pay Lender's legal expenses, of which just $75,000 is disclosed in the Motion and related pleadings. *See* Docket No. 242, *Declaration of Christine Hanna in Support of Debtor's Motion for Order Authorizing Post-Petition Secured Loan Pursuant to 11 U.S.C. §§ 364(c)(1), (2), and (d)(1) On All Assets* (the "Hanna Declaration"), *Exhibit 1*, Bates stamped p. 2. Lender is also granted "not less than 20% of equity interest in [the Debtor]." *See* Docket No. 242, *Exhibit 2*, Bates stamped p. 25.

Under the DIP Agreement, the Lender receives a senior priority lien over all other secured creditors of the Debtor, and its lien would extend to pre- and post-petition assets of the Debtor and its estate, including "the proceeds of any Avoidance Actions." *See id.* at p. 18. The DIP Agreement provides that the Debtor "shall not" "sell, transfer, lease, encumber or otherwise transfer any interest in the Project or other DIP Collateral without Lender's prior written consent and in Approved form…" *See id.* at p. 22. Upon default the interest rate of the DIP Facility increases to the prime rate, plus the contract rate, plus 4.750%. *See id.* at p. 12. By the Court's math, the default rate would be 21.25% if the Debtor defaults on the DIP Agreement in the first year. Further, after five (5) days' notice of default to certain parties, not including this Court, and without hearing, the automatic stay is lifted. *See id.* at p. 36.

Analysis

Pursuant to 11 U.S.C. § 364(c), "[i]f the trustee is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of

debtor (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title; (2) secured by a lien on property of the estate that is not otherwise subject to a lien; or (3) secured by a junior lien on property of the estate that is subject to a lien."

Pursuant to 11 U.S.C. § 364(d)(1), "[t]he court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if (A) the trustee is unable to obtain such credit otherwise; and (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted."

"Debtors in possession generally enjoy little negotiating power with a proposed lender, particularly when the lender has a prepetition lien on cash collateral. As a result, lenders often exact favorable terms that harm the estate and creditors." *In re Defender Drug Stores, Inc.*, 145 B.R. 312, 317 (9th Cir. BAP 1992)(citing *In re Ames Department Stores, Inc.*, 115 B.R. 34, 38 (Bankr. S.D.N.Y. 1990) and *In re Tenney Village Co.*, 104 B.R. 562, 567-570 (Bankr. D. N.H. 1989)). "While certain favorable terms may be permitted as a reasonable exercise of the debtor's business judgment, bankruptcy courts do not allow terms in financing arrangements that convert the bankruptcy process from one designed to benefit all creditors to one designed for the unwarranted benefit of the postpetition lender. *Id.* Thus, courts look to whether the proposed terms would prejudice the powers and rights that the Code confers for the benefit of all creditors and leverage the Chapter 11 process by granting the lender excessive control over the debtor or its assets as to unduly prejudice the rights of other parties in interest." *Id.*

Some courts have applied generally accepted factors in considering financing requests, including:

(1) That the proposed financing is an exercise of sound and reasonable business judgment;

(2) That the financing is in the best interests of the estate and its creditors;

(3) That the credit transaction is necessary to preserve the assets of the estate, and is necessary, essential, and appropriate for the continued operation of the

2:00 PM

CONT... Global Premier Regency Palms Colton, LP **Chapter 11**

Debtor's business;

(4) That the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender; and

(5) That the financing agreement was negotiated in good faith and at arm's length between the Debtors, on the one hand, and…the Lenders, on the other hand.

In re Sterling Min. Co., 2009 WL 2514167 *3 (Bankr. D. Id. 2009) (citing *In re Farmland Indust., Inc.*, 294 B.R. 855 (Bankr. W.D. Mo. 2003)).

The Court here focuses on the fourth of the above-referenced *Sterling Min. Co.* factors, that the terms of the transaction be fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender. The Court cannot find such fairness, reasonableness and adequacy on the record before it. To start, the Motion is incomplete. The budget is not attached to the Motion, and as of 5:45 p.m. the day prior to the hearing on the Motion, none has been filed with the Court and served on creditors. The Court and parties-in-interest have no understanding of what is contained in the budget. What is more, all the "milestones" that are critical to the Debtor's funding requests, and mentioned in the DIP Agreement, are not included under the referenced exhibit tab. The Court has before it, on shortened time, an incomplete Motion, missing critical documents that parties, including the Debtor, require to understand fully the terms of the proposed financing.

Second, the Court finds it inappropriate for the estate's avoidance actions to serve as collateral for the Lender, and, at this juncture, the Court is not inclined to approve such a provision.

Third, the "equity grant" is not a term this Court would approve on the record before it, if ever. The Court is aware of courts that have approved of dip facilities that included collateral enhancements similar in nature to the "equity grant." *See Defender Drug Stores, Inc.*, 145 B.R at 312. The Court does not find the "equity grant" appropriate in this circumstance, and struggles to define a set of facts where it would ever be appropriate. Through the DIP Agreement, the Lender is to be secured by a senior lien in all the Debtor's assets, including avoidance actions, paid no less than 16.5% interest, and paid hundreds of thousands of dollars in various loan related fees. By the Debtor's own liquidation valuation, regarding the interim financing portion of

2:00 PM

CONT... Global Premier Regency Palms Colton, LP **Chapter 11**

the DIP Facility, the Lender would be oversecured by 28% on the real property alone. Presumably, based on further advances being tied to construction milestones, the Lender maintains equity in its collateral base throughout the life of the DIP Facility, or so it presumably projects. The Lender receives a priority administrative expense claim over all other administrative claims other than the purported carve-out, and controls when and how the Debtor may sell its assets. Upon default the interest rate on the DIP Facility exceeds 21%, and upon five (5) days' notice, without a hearing, the Lender is granted relief from the stay. The operating company that has been established to manage the Debtor's operations may not now manage the Debtor's operations, at least not without the Lender's consent. The Lender must consent to leases of the Debtor's property. The Court's point being, the "equity grant" overreaches to the extent it is to serve as a portion of the collateral package for the DIP Facility. What is more, in this Court's view, purchases/exchanges of equity in Chapter 11 matters should be completed through a confirmed Chapter 11 plan of reorganization, and not through emergency noticed financing motions as is the case present.

While there is a credible interest of the Debtor in completing the build of its facility and finally starting its operations, the cost to do so here comes at a cost that the Court understands to be unreasonable, lacking in fairness to the estate, and with inadequate information. The Court is inclined to deny the Motion.

Party Information

Debtor(s):

Global Premier Regency Palms	Represented By Garrick A Hollander Matthew J Stockl Peter W Lianides

Movant(s):

Global Premier Regency Palms	Represented By Garrick A Hollander Matthew J Stockl Peter W Lianides

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

Tuesday, April 23, 2024 **Hearing Room 201**

2:00 PM

9:23-10517 Global Premier Regency Palms Colton, LP **Chapter 11**

#26.00 CONT'D Chapter 11 Status Conference

FR. 8-23-23, 9-12-23, 11-14-23, 2-22-24, 3-19-24

Docket 1

Tentative Ruling:

April 23, 2024

Appearances required.

March 19, 2024

Appearances required.

February 22, 2023

Continued to March 19, 2024 at 2:00 p.m.

September 12, 2023

Appearances required.

Party Information

Debtor(s):

Global Premier Regency Palms — Represented By
Garrick A Hollander

2:00 PM

9:23-11112 Diversified Panels Systems, Inc. **Chapter 11**

#27.00 CONT'D Hearing
RE: [4] Motion to Use Cash Collateral

FR. 11-29-23, 12-13-23, 1-10-24, 1-23-24, 2-7-24, 2-20-24, 3-5-24

Docket 4

***** VACATED *** REASON: Case 9:23-bk-11112-RC dismissed 3/27/2024.**

Tentative Ruling:

March 5, 2024

Appearances required.

February 20, 2024

See Calendar Item No. 42.

February 7, 2024

Appearances required.

January 23, 2024

Appearances required.

January 10, 2024

Appearances required.

December 13, 2023

Appearances required. The Debtor's counsel is to appear in-person.

The Court has reviewed *Debtor's Augmentation in Support of Emergency Motion for*

2:00 PM

CONT... Diversified Panels Systems, Inc. **Chapter 11**

Authority to Use Cash Collateral on an Interim and Final Basis. *See* Docket No. 30. The Court's inquiry remains as to the appropriateness of making adequate protection payments to oversecured creditors whose collateral base is projected to improve over the life of the Budget. The Court's questions as to the collateral position of the secured creditors throughout the time of the Debtor's use of cash collateral remain. While a projection of state court counsel's fees are to be determined, the costs of insolvency counsel should be able to be projected.

The Court further notes that the mandatory form F 4001.2.STMT.FINANCE was not filed and served in accordance with this Court's *Order Granting in Part, and Denying in Part Debtor's Emergency Motion for Authority to Use Cash Collateral on an Interim and Final Basis* (the "Order"). *See* Docket No. 29. The required form was filed on December 1, 2023, instead of November 30, 2023, as required by the Order. *See* Docket No. 34.

November 29, 2023

Appearances required.

On November 22, 2023, Diversified Panels Systems, Inc. (the "Debtor") filed that *Emergency Motion for Authority To Use Cash Collateral On An Interim and Final Basis* (the "Motion"). *See* Docket No. 4. In support of the Motion the Debtor filed that *Declaration of Richard Bell in Support of Debtor's First Day Motions* (the "Bell Declaration"). *See* Docket No. 7. Through the Motion, the Debtor seeks interim, and ultimately final approval for the use of cash collateral.

Local Rule 4001-2(a)

Pursuant to this Court's Local Rule 4001-2(a), "[e]ach motion [] to approve the use of cash collateral [] under 11 U.S.C. §§ 363 or 364 [] must be accompanied by mandatory court-approved form F_4001.2.STMT.FINANCE." As set forth in the aforementioned Local Rule, and as the local form itself provides, "[t]his form is mandatory." *See* F_4001-2.STMT.FINANCE. The mandatory form was not included with the Motion, and so the Motion therefore fails to comply with this Court's Local Rules.

2:00 PM

CONT... Diversified Panels Systems, Inc. **Chapter 11**

Adequate Protection

Pursuant to 11 U.S.C. § 1108, "[u]nless the court, on request of a party in interest and after notice and a hearing, orders otherwise, the trustee may operate the debtor's business." As set forth in 11 U.S.C. § 363(c)(1), "[i]f the business of the debtor is authorized to be operated under [11 U.S.C. § 1108] 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." Bankruptcy Code Section 363(c)(2) provides that the "trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless (A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section." Pursuant to 11 U.S.C. § 363(e), "at any time, on request of an entity that has an interest in property used, sold, or leased, or proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale, or lease as is necessary to provide adequate protection of such interest."

"While the term 'adequate protection' is not defined in the Code, 11 U.S.C. § 361 sets forth three non-exclusive examples of what may constitute adequate protection: 1) periodic cash payments equivalent to decrease in value, 2) an additional or replacement lien on other property, or 3) other relief that provides the indubitable equivalent." *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984).

The Debtor asserts through the Motion that "[t]he debts owed to secured creditors appear to be fully secured." *See* Docket No. 4, p. 6, lines 24-25. This assertion is based on assets totaling $12,533,166.79, and secured claims totaling $1,704,181.32 ($256,857.42 for Pacific Western Bank, $517,323.90 for JPMorgan Chase, and $930,000 for Assn Company). *See id.* at pp. 5-6. The Motion, however, describes secured claims totaling $13,704,181.30 when the Plan B lien is taken into account. *See id.* at p. 5, lines 13-16. Ergo, the liens of Pacific Western Bank, JPMorgan Chase and Assn Company are oversecured, but Plan B is undersecured based on the asset values of the Debtor as set forth in the Motion.

As Pacific Western Bank, JPMorgan Chase and Assn Company each enjoy an equity cushion by a margin far greater than 20%, the Court fails to appreciate why the Debtor

"proposes to continue servicing debt per the contract terms as adequate protection." *See* Motion p. 8, lines 7-10. In the first twelve weeks of the case these payments are forecasted to total $448,186.53. *See* Docket No. 7, *Exhibit F*, p. 8. Unless the Debtor forecasts a deterioration of the collateral position of these secured creditors, they are all adequately protected by the equity cushions they each enjoy. The Court is therefore disinclined to approve of any post-petition payments to Pacific Western Bank, JPMorgan Chase, or Assn Company under the theory of adequate protection.

Plan B is altogether different, however. Plan B is undersecured. Yet, no adequate protection is provided for Plan B. The Debtor argues that it "disputes [Plan B's] judgment," and will avoid Plan B's judgment lien. The Court will inquire with the Debtor regarding Plan B's collateral position post-petition. The Debtor forecasts that "[n]et cash flow and the value of assets on hand will increase during the initial period," but there is no projected balance sheet to inform the Court of the Debtor's forecasted collateral position of Plan B or any of the other secured creditors.

Material Terms Omitted from the Motion

The Motion lacks many of the material terms that are in the Bell Declaration. First, the Bell Declaration contains a request that the Debtor be able to vary from the budgeted use of cash collateral by 20% for any category, and that it be allowed to exceed the 20% variance upon notice "to the hard money lenders" alone. *See* Docket No. 7, p. 8, lines 21-28. These variance procedures are found nowhere in the Motion.

The Bell Declaration provides that "[i]f Debtor's sales exceed projections, Debtor requests that it be able to apply up to seventy-five percent (75%) of the overage in gross revenues to costs of goods sold in order to complete additional work." *See id.* at p. 9, lines 1-4. Again, this is found nowhere in the Motion.

The Bell Declaration discusses the Debtor's need to "roll forward in the projections unspent expenses." *See id.* at lines 5-10. These carryforwards are not included in the aforementioned 20% variance procedure. *See id.* at lines 11-13. This too is not discussed in the Motion.

As to the use of cash collateral on a final basis, the Bell Declaration discusses the Debtor operating under no budget. *See id.* at p. 8, lines 7-8.

The Court will inquire with the Debtor regarding the approval of a Motion with terms

2:00 PM

CONT... Diversified Panels Systems, Inc. **Chapter 11**

that are not disclosed in the Motion, but rather only in an accompanying declaration.

The Budget

Attached to the Bell Declaration is a 12-week budget. *See* Docket No. 7, *Exhibit F*. The budget includes no monies for legal fees. *See id.* at p. 3. Yet, the Debtor has already "filed a motion for a new trial" in the Plan B litigation, and the Plan B litigation has to date cost the Debtor "millions of dollars in attorney's fees." *See* Docket No. 4, p. 5. Albeit a separate issue, the Court raises here the topic of which law firm will advance the Plan B litigation post-petition.

It is also unclear if "Sales" in the budget include the collection of pre-petition accounts receivable. The Debtor had $6,490,424.32 in accounts receivable as of November 7, 2023. *See* Docket No. 7, *Exhibit D*. If "Sales" in the budget includes the collection of accounts receivable, the Court is interested in how that affects the secured creditors' collateral base. If "Sales" do not include accounts receivable, the Court will inquire with the Debtor about whether the pre-petition accounts receivable being collected post-petition are accounted for at all in the budget.

Party Information

Debtor(s):

Diversified Panels Systems, Inc. Represented By
William E. Winfield

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

Tuesday, April 23, 2024 **Hearing Room 201**

2:00 PM

9:23-11112 Diversified Panels Systems, Inc. **Chapter 11**

#28.00 CONT'D Hearing
RE: [109] Application to Employ James R. Calandra, Jr. and Capstone Partners as CRO and Financial Advisor (Re-Filed Along with Application for Order Setting Hearing on Shortened Notice)

FR. 2-20-24, 3-5-24

Docket 109

***** VACATED *** REASON: Case 9:23-bk-11112-RC dismissed 3/27/2024.**

Tentative Ruling:

March 5, 2024

Appearances required.

February 20, 2024

See Calendar Item No. 42.

Party Information

Debtor(s):

Diversified Panels Systems, Inc. — Represented By
William E. Winfield

Movant(s):

Diversified Panels Systems, Inc. — Represented By
William E. Winfield
William E. Winfield

2:00 PM
9:23-11112 Diversified Panels Systems, Inc. **Chapter 11**

#29.00 CONT'D Hearing
RE: [98] Motion to Dismiss Case for Abuse and Notice of Motion (BNC)

FR. 3-5-24

Docket 98
***** VACATED *** REASON: Case 9:23-bk-11112-RC dismissed 3/27/2024.**

Tentative Ruling:

March 5, 2024

Appearances required.

Background

On November 22, 2023, Diversified Panels Systems, Inc. (the "Debtor") filed that voluntary petition for relief under Chapter 11 of Title 11 of the United States Code. *See* Docket No. 1, *Voluntary Petition for Non-Individuals Filing for Bankruptcy*. The Debtor "manufactures EPS insulated metal panels focusing specifically on cold storage and agricultural facilities," and "are utilized in the agricultural and food retail industries, and more recently, in the cannabis growing industry." *See* Docket No. 71, p. 2, lines 7-13; *see also* Docket No. 7, *Declaration of Richard Bell in Support of Debtor's First Day Motions*, pp. 3-4.

On January 10, 2024, the Debtor filed *Debtor's Initial Chapter 11 Status Conference Report* (the "Status Report"). *See* Docket No. 71. In the Status Report, the Debtor asserted that "ten percent (10%) of Debtor's current gross sales are from cold storage work and ninety (90%) are from panels built for use in the cannabis industry." *See id.* at p. 2, lines 19-20.

On January 12, 2024, the Debtor filed against Plan B Management, Inc. ("Plan B"), Bryan Edward Mitchell, and Jon Falcone that *Complaint: (1) To Avoid Judicial Lien; (2) To Avoid Lien; (3) For Breach of Implied Covenant of Good Faith and Fair Dealing; (4) For Equitable Subordination of Claim; (5) To Disallow Claim; (6) For Violation of the Automatic Stay (11 U.S.C. § 362); (7) For Unfair Business Practice*

2:00 PM

CONT... Diversified Panels Systems, Inc. **Chapter 11**

(Cal. Bus. Prof. Code § 17200); and (8) For Declaratory Relief (the "Adversary Complaint"). *See* Docket No. 86. In the Adversary Complaint, the Debtor alleges, among other things, in paragraphs 7, 8, and 10 respectively, that:

> 7. "Debtor's panels, refrigerators, and freezers for cold storage are utilized in the agricultural and food retail industries, and more recently, in the cannabis growing industry."
>
> 8. "…twenty-five percent (25%) of Debtor's historical gross sales is from panels built for use in cannabis growing facilities. Due to changes in state regulations, ten percent (10%) of Debtor's current gross sales are from cold storage work and ninety percent (90%) are from panels built for use in the cannabis industry"
>
> 10. "In July 2016, after the legalization of recreational cannabis, Debtor's vice president of sales, Patrick McGuire, met Bryan Mitchell of Green Gadget Labs, Inc. and they started discussing starting a company that Debtor would supply with panels, the panels would then be distributed by the company to the cannabis industry."

See id. at pp. 2-3.

On January 22, 2024, Plan B filed that *Motion of Plan B Management, Inc. to Dismiss Chapter 11 Case* (the "Motion"). *See* Docket No. 98. Plan B contends that the Debtor's case should be dismissed pursuant to 11 U.S.C § 1112(b) because "[t]he Debtor's connections to the cannabis industry constitute continuing violations of federal law, namely the federal Controlled Substances Act, 21 U.S.C. §§ 801-904…" *See id.* at p. 1, lines 1-9; *see also* lines 21-23.

On February 9, 2024, Plan B filed that *Notice of Hearing re Plan B Management, Inc.'s Motion to Dismiss Chapter 11 Case*. *See* Docket No. 131.

On February 20, 2024, the Debtor filed *Debtor's Opposition to Motion of Plan B Management, Inc. to Dismiss Chapter 11 Case* (the "Opposition"). *See* Docket No. 142. Through the Opposition, the Debtor contends the Motion construes the Controlled Substances Act ("CSA") (21 U.S.C. §801 et. seq.) "overly broad,"

2:00 PM

CONT... Diversified Panels Systems, Inc. **Chapter 11**

contends it is not involved in operations that violate federal law, contends it is able to sever all connections to the cannabis industry, and that its bankruptcy case should not be dismissed. *See id*. at p. 2.

Notice

Pursuant to Fed. R. Bankr. P. 2002(a)(4), "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 the dismissal of the case or the conversion of the case to another chapter…"

On February 11, 2024, the Court's Clerk's Office filed that *Certificate of Notice*, which provided notice of a "Motion for dismissal of Chapter 7 case under 11 U.S.C. 707(b) due to a substantial abuse of the Bankruptcy System." *See* Docket No. 136. This case is a Chapter 11 case, and the motion is made pursuant to 11 U.S.C. § 1112(b). The notice served by the Court's Clerk's Office should have referenced Chapter 11 and 11 U.S.C. § 1112(b).

Notice of the Motion has not been properly served on all creditors.

Analysis

Pursuant to 11 U.S.C. § 1112(b)(1),

> "[e]xcept as provided in paragraph (2) and subsection (c), on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause…"

A motion to dismiss or convert a Chapter 11 case under 11 U.S.C. § 1112(b) normally requires a two-step analysis: (1) determine whether "cause" exists to dismiss or convert; and (2) then determine which option is in the best interest of creditors and the estate. *See* 11 U.S.C. § 1112(b); *see also In re Marciano,* 459 B.R. 27, 48 (9th Cir. BAP 2011).

The burden of establishing "cause" for dismissal under 11 U.S.C. § 1112(b) rests with

the party seeking dismissal. *See In re Rosenblum*, 608 B.R. 529, 536 (Bankr. D. Nev 2019). The movant must show "cause" by a "preponderance of the evidence." *In re Woodbrook Assocs.*, 19 F.3d 317 (7th Cir. 1994).

Section 1112(b)(4) of the Bankruptcy Code sets forth a non-exhaustive list of sixteen (16) circumstances amounting to "cause." *See* 11 U.S.C. § 1112(b)(4)(A-P).

Violating the CSA Under Federal Law

The starting point here is marijuana's legality under federal law. "Marijuana [is] a Schedule 1 controlled substance under the [CSA]." *Id.* at 637. Pursuant to 21 U.S.C. § 843(a)(7), it is a federal crime "to manufacture, distribute, export, or import … any equipment, [], product, or material which may be used to manufacture a controlled substance [], knowing, intending, or having reasonable cause to believe, that it will be used to manufacture a controlled substance…" *In re Way to Grow, Inc.*, 610 B.R. at 344.

To violate 21 U.S.C. § 843(a)(7), a person must have (1) knowingly or intentionally distributed any product or material which was used to manufacture a controlled substance, and (2) acted knowingly, intentionally, or with reasonable cause to believe that the product or material would be used to manufacture a controlled substance. *See U.S. v. Nhu Nguyen*, 1999 WL 1220761 at *6 (E.D. La. 1999). The scienter of "having reasonable cause to believe" has been held to include both a subjective and objective standard in which the trier of fact must determine what the particular defendant knew and what the particular defendant had reasonable cause to believe. *See U.S. v. Kaur,* 382 F.3d 1155, 1156 (9th Cir. 2004) ("to have knowledge of facts which, although not amounting to direct knowledge, would cause a reasonable person knowing the same facts, to reasonably conclude that the [product or material] would be used to manufacture a controlled substance"); *U.S. v. Nguyen,* 502 Fed.Appx. 678 (9th Cir. 2012) (same); *States v. Munguia*, 704 F.3d 596, 603 (9th Cir. 2012) (jury must consider the knowledge and sophistication of the particular defendant and not a hypothetical reasonable person); *see also In re Way to Grow*, 597 B.R. 111 (Bankr.D.Colo. 2018) (While the debtors are not violating the CSA through complicity in their marijuana growing customers' crimes, another provision of the CSA produces violations based upon a lesser *mens rea* of simply knowing how debtors' products will be used).

The CSA also provides that it is unlawful to sell drug paraphernalia, which is "any equipment, product, or material of any kind which is primarily intended or designed for use in manufacturing, compounding, converting, concealing, producing, processing, preparing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance, possession of which is unlawful under the Controlled Substances Act." 21 U.S.C. § 863. In determining if a product is paraphernalia, the court considers, among other factors, the advertising, instructions, and description of the product. *Id*.

Effect of Violations of the CSA on a Bankruptcy Case

In the framework of motions to dismiss bankruptcy cases, there is no *per se* rule in the Ninth Circuit regarding the dismissal of cases where there is the presence of marijuana, and courts around the country have continued to develop the law as states have legalized certain uses of marijuana and other controlled substances.

"Several courts have held that a bankruptcy case must be dismissed if the continuation of the case would require the court, trustee, or debtor in possession to administer assets that are illegal under the CSA or that constitute proceeds of activity criminalized by the CSA." (internal citations omitted). *Id.* at 638; *see also In re Arenas*, 535 B.R. 845 (10th Cir. BAP 2015) (dismissed because the only potential feasible plan included continued violation with marijuana related monies, and it would be a crime for the trustee to administer the monies).

"[S]ome courts have held that a bankruptcy filing or a plan of reorganization proposed by a debtor who is involved in an illegal enterprise is not in good faith, even where the debtor does not have a subjective bad motive, is in legitimate need of bankruptcy relief, and there are no other indicia of an attempt to abuse the bankruptcy process." *In re Burton*, 610 B.R. 633, 638 (9th Cir. BAP 2020); *see also In re Way to Grow, Inc.*, 610 B.R. 338, 346 (D. Colo. 2019)("…the Court holds that, as long as marijuana remains a Schedule 1 controlled substance, a Chapter 11 debtor cannot propose a good-faith reorganization plan that relies on knowingly profiting from the marijuana industry. And, in turn, inability to propose a good-faith reorganization plan is cause for dismissal under 11 U.S.C. § 1112(b)(1).").

2:00 PM

CONT... Diversified Panels Systems, Inc. **Chapter 11**

Courts have held that dismissal is appropriate when there is a continuing violation of the CSA post-petition. The court in *In re Mayer*, 2022 WL 18715955 (Bankr. D. Az. 2022) dismissed the debtor's case because he continued to violate the CSA post-petition. Moreover, the assets of the estate were derived directly from CSA violations. *Id*. at *6; *see also*; *In re Rent-Rite Super Kegs W. Ltd*, 484 B.R. 799 (Bankr. D. Colo. 2012) (dismissal because there was continuing violation as debtor received 25% of its revenues from rent from a grower of marijuana) **[FN2]**; *In re Medpoint Mgmt.*, 528 B.R. 178 (Bankr. D. Az. 2015)(reversed on other grounds) (dismissal because debtor was a medical marijuana dispensary and could not stop its illegal activities); *In re Olson*, 2018 WL 989263 (9th Cir. BAP 2018).

"Since the language parallels the chapter 11 conversion and dismissal provision, decisions under Bankruptcy Code § 1112(b) inform the analysis of § 1307(c)." *In re Nelson*, 343 B.R. 671, 674 (9th Cir. BAP 2006). The Ninth Circuit BAP, in the context of 11 U.S.C. § 1307(c), has stated that it "believe[s] that the stated reluctance in the Circuit to adopt per se bright line rules requiring the immediate disposition of bankruptcy cases in which marijuana activity is present, and the flexible cause standard under § 1307(c), coupled with the abuse of discretion standard of review on appeal, give bankruptcy courts appropriate latitude to deal with these variations." *In re Burton*, 610 Br. at 639. "[T]he mere presence of marijuana near a bankruptcy case does not automatically prohibit a debtor from bankruptcy relief." *Id.* at 637.

However, in dismissing a bankruptcy case based on the presence of marijuana, "a bankruptcy court must be explicit in articulating its legal and factual bases for dismissal in cases involving marijuana." *Id.* at 638.

In the bankruptcy context, after determining the presence of a CSA violation, the court then may, in its discretion, consider if the debtor can successfully sever itself from the illegal activity. For example, the court in *In re Johnson,* 532 B.R. 53 (Bankr. W.D. Mich. 2015) permitted the continuation of a plan if the debtor ceased operating his marijuana business. The court reasoned that "if the Debtor was not engaged in post-petition criminal activity, there would likely be no controversy about his eligibility for relief …The Debtor [] must choose between conducting his medical marijuana business and pursuing relief." *Id.* at 57-58; *see also In re Arm Ventures, LLC*, 564 B.R. 77 (Bankr. S.D. Fla. 2017) (ordering that debtor had fourteen days to file a plan that did not depend on marijuana as source of income, and if not the case could be

converted); *In re McGinnis,* 453 BR 770, 773 (Bankr. D. Or. 2011)(finding if debtor proposed amended plan that did not rely on CSA violations the court would confirm such a plan); *but see In re Burton*, 610 B.R. 633 (9th Cir. BAP 2020) (The debtors maintained and prosecuted state court litigation based on marijuana related contracts. The debtors' case was dismissed because they "failed to demonstrate that their ties would not result in proceeds of an illegal business becoming part of the bankruptcy estate. The debtors needed to provide sufficient evidence that the potential [] proceeds would not materialize as [it] would require the court and trustee to become involved in illegal conduct.").

Even when a debtor expresses a desire and a possibility to sever itself from illegal conduct, the debtor must show it is feasible to stop violating the CSA and feasible to confirm a plan without the support of illicit conduct. *See In re Way to Grow, Inc.*, 597 B.R. 111 (Bankr. D.Colo. 2018). Despite the debtor, a seller of hydroponic equipment, continuing to violate 21 U.S.C. § 846(a)(7), the court considered whether "post-petition changes to the debtor's business could cure [the] ongoing violations of federal law…" *Id.* at 132. The court found that the debtor could not survive if it was to sever all ties to its marijuana customers as 65%-95% of its business came from cannabis related purchasers. *Id*. Moreover, the court found that ordering the debtor to stop violating 21 U.S.C. § 843(a)(7) or changing its business model was not possible. *Id*. The debtor had tailored its business to cater to marijuana needs and created a reputation for hydroponic marijuana growing having consistently attended cannabis trade shows and "grow-offs." *Id.* at 130-131. The court concluded it was difficult to imagine how the debtor could prevent cannabis customers from continuing to buy its products due its reputation. *Id*. at 132.

Where a debtor severs ties to the cannabis industry, if it stands to receive post-petition profits from the prior operating of a business that is illegal under federal law, at least one (1) court has held that such profits, as property of the estate, require the debtor or trustee to become involved in administering "tainted proceeds," and thus, the case was dismissed. *See In re Burton*, 610 B.R. at 639. The debtor need not be "actively engaged in growing or selling marijuana." *Id.*

The Debtor's Violations of the CSA

21 U.S.C. § 863

Here, despite Plan B having the burden to prove each CSA violation, Plan B does not offer any evidence for its claim that the Debtor is violating the CSA under 21 U.S.C. § 863 for selling drug paraphernalia. Plan B only makes cursory reference to drug paraphernalia and the applicable code section. Moreover, the Debtor provides in *Exhibit A* of the Opposition copies some of its advertising and product description material which do not make explicit references to any controlled substance.

Th Court declines to dismiss the case under 21 U.S.C. § 863 on the record before it.

21 U.S.C. § 843

Plan B contends that the Debtor is violating the CSA by manufacturing and distributing its panels which are used in the production of marijuana while knowing or having reason to believe that the panels will be used in such production. *See* Docket No. 98, p. 10, lines 3-7. Plan B offers two (2) admissions by the Debtor to show that the Debtor is violating 21 U.S.C. § 843.

Plan B first points to the Status Report in which the Debtor states:

> 25% of debtor’s historical gross sales is from panels built for use in cannabis growing facilities. Due to changes in state regulations, ten percent (10%) of debtor’s current gross sales are from cold storage work and ninety percent (90%) are from panels built for use in the cannabis industry.

See Docket No. 71, p. 2 lines 17-21. Plan B also points to the Adversary Complaint in which the Debtor alleges:

> Debtor's panels, refrigerators, and freezers for cold storage are utilized in the agricultural and food retail industries, and more recently, in the cannabis growing industry." *See* Adversary Docket No. 1 p. 2 line 23-26).;
>
> [T]wenty-five percent (25%) of Debtor's historical gross sales is from panels built for use in cannabis growing facilities. Due to changes in state regulations, ten percent (10%) of Debtor's current gross sales are from cold storage work and ninety percent (90%) are from panels built for use in the cannabis industry.

2:00 PM

CONT... Diversified Panels Systems, Inc. **Chapter 11**

See id. at p. 3 lines 2-6.; and

> In July 2016, after the legalization of recreational cannabis, Debtor's vice president of sales, Patrick McGuire, met Bryan Mitchell of Green Gadget Labs, Inc. and they started discussing starting a company that Debtor would supply with panels, the panels would then be distributed by the company to the cannabis industry. *See id*. at lines 9-13.

In the Opposition, the Debtor begins its argument by stating that Plan B employs an overly broad interpretation of 21 U.S.C. § 843. *See* Docket No. 142, p. 2, lines 8-11. The Debtor argues that the mere selling of its panels is not illegal, and to hold as much would mean that home improvement stores, utility providers, laboratory equipment manufacturers, medical supply manufacturers and many other manufactures are in violation of the CSA. *See id.* The Debtor now attempts to partially walk back prior statements by arguing that its products are "sometimes" used in marijuana grow rooms. *See id.* at p. 2, lines 19-21. The mere fact that some of its products are used in the cannabis industry, the Debtor argues, does not mean that it "is involved in the cannabis industry." *Id.* The Debtor also argues that in its 31-year history, about $50 million of its $300 million in sales "may have been used in cannabis related purposes. *See id.* at lines 12-19.

The Court disagrees with the Debtor here. The Debtor has admitted on no less than two (2) occasions that "currently" 90% of its business comes from the cannabis industry. Again, while "industry" is used by the Debtor, it is clear from the Debtor's prior statements that its panels are used in "marijuana grow rooms," meaning that the panels are used in the manufacturing of marijuana. The Debtor manufactures panels, 90% of which are sold to customers in the cannabis industry. Historically, the Debtor did sell 75% of its panels outside of the cannabis industry, but as the Debtor's principal has testified, "[w]hen cannabis was legalized in California, Debtor began to manufacture panels for use in the medical marijuana industry." *See* Docket No. 4, p. 4, lines 12-13. By its own admission, the Debtor's business is so reliant on the cannabis industry that since "[t]he cannabis industry has slowed down [in 2017, the Debtor's principal has] been trying to sell the business…" *See* Docket No. 7, p. 5, *Declaration of Richard Bell in Support of Debtor's First Day Motions*, lines 8-10. The Debtor now asserts that perhaps it is not 90% of its business that is related to the cannabis industry, but this assertion cuts across the testimony of its own principal on

more than one occasion. *See* Docket No. 142, p. 2, lines 22-24.

This is not the situation of a big box home improvement store selling panels broadly, nationwide, and that a portion of its customers utilize in the cannabis industry. It is also not the situation of a small manufacturer of multi-use panels that sells, albeit unknowingly, to some manufacturers of cannabis. Knowingly, the Debtor sells its products primarily to manufacturers of cannabis, and has for years. Fully, 90% of the Debtor's business comes from the cannabis industry. In fact, the Debtor through a purported supply agreement with Plan B, where the Debtor would supply a new venture with panels, intended on expanding its business by selling the new venture "panels [that] would then be distributed by the company to the cannabis industry." *See id.* at p. 4, lines 23-25.

The Debtor argues that "[m]ost of the occasions where the panels may be used in the cannabis industry, the Debtor doesn't receive money directly from the cannabis industry end users of the products but from the contractors or others who purchased the panels from [the Debtor]." *See* Docket No. 142, p. 2, lines 25-28. In 2022, the Debtor had gross sales of more than $30 million. *See* Docket no. 7, *Exhibit B*. By the Debtor's measure, 90% of those sales were related to the cannabis industry, or $27 million. Even if 99% of these sales were to "contractors" and not "end users," and assuming the Court bought into this difference, the Debtor still sold hundreds of thousands of dollars in panels, knowingly, to end users that utilize the panels to manufacture cannabis.

The Court finds that the Debtor's business, or at least 90% of its business, falls squarely within the definition of 21 U.S.C. § 843. The Debtor's knowledge that it is selling goods for the use in the manufacturing of cannabis, coupled with the millions of dollars in business that the Debtor has done over the years, and continues to do with the cannabis industry, meets the requirements of 21 U.S.C. § 843, and, therefore, under federal law the Debtor has been, and continues to conduct an illegal business.

The Court's analysis would also not change if the Debtor decided to now cease selling its goods to customers that use the Debtor's goods for cannabis production. The Debtor has millions of dollars in receivables that are linked to goods sold to those in the cannabis industry for the production of cannabis, which the Debtor would be collecting post-petition, and perhaps post-confirmation. As of November 7, 2023, the

2:00 PM

CONT... Diversified Panels Systems, Inc. **Chapter 11**

Debtor had $6.490 million in receivables. *See* Docket No. 7, *Exhibit D*. As of January 31, 2024, the Debtor had receivables of $4,497,724. *See* Docket No. 151, *Monthly Operating Report*, p. 2. These receivables, or a portion of them, are "tainted as proceeds of an illegal business," constitute property of the Debtor's estate, and therefore must be administered by the Debtor, under the supervision of this Court. The Debtor is unable to confirm a plan that does not include the administration and/or distribution of profits from illegal activity, and therefore a plan could only be proposed in bad faith.

The Debtor argues that it could "sever all ties to the cannabis related customers and operate profitably as it did for more than 20 years before." *See* Docket No. 142, p. 3, lines 13-16. This, of course, ignores the collection of millions of dollars of receivables, some of which, and likely most of which relate to sales to cannabis manufacturers. What is more, no plan, and no projections have been filed to support this statement. In 2023, the Debtor operated at a net loss of $2,213,050.39. *See* Docket No. 150, *Exhibit AA*. Further, the Debtor's exit strategy is not to operate, but to sell its assets. *See* Docket No. 71, p. 6, lines 4-7. The Debtor, while confusingly describing two (2) exit strategies, asserts that "the plan proposes to pay debts through legally obtained proceeds from the sale of the Debtor which are not derived from CSA violations." *See* Docket No. 142, p. 7, lines 17-18. No plan has been filed, so this statement refers not to an actual filed reorganization plan, but the Debtor's intended exit. Even if the operating assets are liquidated, and even if the Court believed that the sale did not constitute a sale of assets that are violative of the CSA, there remain receivables to liquidate that relate to sales violative of the CSA.

Unusual circumstances

The Debtor has made no showing or argument under the unusual circumstances exception. More importantly, this Court does not believe the unusual circumstances exception can redeem a debtor who is actively violating the CSA.

Conclusion

The Court is inclined to continue this matter as it has not been properly served on all creditors. Further, upon notice to all creditors, this Court is inclined to dismiss this matter for "cause" under 11 U.S.C. § 1112(b) as the Debtor is actively in violation of

2:00 PM

CONT... Diversified Panels Systems, Inc. **Chapter 11**

21 U.S.C. § 843, and ceasing business with the cannabis industry would do nothing to remedy its issues.

[FN1] – "Related to the good faith analysis, some courts have concluded that a debtor engaged in an illegal business who seeks bankruptcy relief comes into court with unclean hands and is not eligible for relief." *In re Burton, supra,* at 752 (citing *In re Rent-Rite Super Kegs W. Ltd.,* 484 B.R. 799, 807 (Bankr.D.Colo. 2012 and *In re Medpoint Mgmt., LLC,* 528 B.R. 178, 186-87 (Bankr.D.Ariz 2015)).

[FN2] – 21 U.S.C. §856 makes it illegal to receive rents from a marijuana business.

Party Information

Debtor(s):

Diversified Panels Systems, Inc. — Represented By
William E. Winfield

Movant(s):

Plan B Management, Inc. — Represented By
Jay M Spillane
Alan Braunstein

2:00 PM
9:23-11112 Diversified Panels Systems, Inc. **Chapter 11**

#30.00 CONT'D Chapter 11 Status Conference

FR. 1-24-24, 2-7-24, 2-20-24, 3-5-24

Docket 1
***** VACATED *** REASON: Case 9:23-bk-11112-RC dismissed 3/27/2024.**

Tentative Ruling:

March 5, 2024

Appearances required.

February 20, 2024

Appearances required.

Before the Court are: (1) *Application of Debtor and Debtor-In-Possession for Authority to Employ (I) James R. Calandra, Jr. as Chief Restructuring Officer and (II) Capstone Partners as Financial Advisor* (the "Employment Application"); (2) the Court's *Order to Show Cause Why Chapter 11 Trustee Should Not be Appointed Pursuant to 11 U.S.C. § 1104(a)* (the "OSC"); (3) *Debtor's Supplement to Third Augmentation in Support of Motion for Authority to Use Cash Collateral on an Interim Basis* (the "Cash Collateral Motion"); and (4) the continued status conference.

Scheduled to be heard on March 5, 2024, at 2:00 p.m., is that *Motion of Plan B Management, Inc. to Dismiss Chapter 11 Case* (the "Motion to Dismiss"). *See* Docket Nos. 98 and 133.

Critical, it seems to the Court, is that a ruling be made on the Motion to Dismiss. If the Court grants the Motion to Dismiss, the remaining pending motions are mooted. If the Motion to Dismiss is denied, the balance of the pending motions will be ripe for decision.

With a hearing just two (2) weeks away, and with no opposition to the Cash Collateral Motion, the Court is inclined to grant the Cash Collateral Motion through March 5,

2:00 PM

CONT... Diversified Panels Systems, Inc. **Chapter 11**

2024 on the same terms as previously granted, and continuing the Employment Application, the OSC, the status conference, and the Cash Collateral Motion to March 5, 2024. The Court, however, is unclear of the budget that relates to the Cash Collateral Motion given the inaccuracies of prior budgets.

February 7, 2024

Appearances required.

January 24, 2024

Appearances waived.

The Court continues the status conference to February 7, 2024, at 2:00 p.m.

Party Information

Debtor(s):

Diversified Panels Systems, Inc.	Represented By William E. Winfield

Movant(s):

Diversified Panels Systems, Inc.	Represented By William E. Winfield William E. Winfield

2:00 PM
9:24-10279 Damian Joseph Nieman **Chapter 11**

#31.00 Hearing
RE: [15] Application to Employ Chris Gautschi as general insolvency counsel

Docket 15

Tentative Ruling:

April 23, 2024

Appearances required.

Before the Court is that *Motion in Individual Chapter 11 Case for Order Authorizing Debtor in Possession To Employ General Bankruptcy Counsel* (the "Application") whereby Damian Nieman (the "Debtor") seeks to employ Chris Gautschi ("Counsel") as general insolvency counsel for their Chapter 11 case (this "Case"). *See* Docket No. 15. On April 8, 2024, the Court entered that *Order Setting Motion in Individual Chapter 11 Case To Authorize Debtor-in-Possession To Employ General Counsel for Hearing* (the "Order"). *See* Docket No. 29. Through the Order, the Court set the Application for hearing to discuss with Counsel several issues related to the Application.

First, the Debtor through the Application seeks to employ Counsel pursuant to 11 U.S.C. § 327(a). *See* Docket No. 15, p. 3. Pursuant to 11 U.S.C. § 327(a), "the trustee, with the court's approval, may employ one or more attorneys [] that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title." The term "disinterested persons" means "a person that [] is not a creditor…" *See* 11 U.S.C. § 101(14). The term "creditor" means an "entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor." *See* 11 U.S.C. § 101(10)(A). The Application provides that the Debtor agreed pre-petition to pay Counsel "a flat fee of $7,500 for all pre-petition and work through March 18, 2024 [the petition date] and thereafter $600 per hour." *See* Docket No. 15, p. 6. It appears that the "pre-petition" work related, at least in part, to Counsel's preparation of the filings for this Case. *See* Docket No. 42, *Declaration of Damian Nieman* (the "Declaration"), pp. 2-3. The question for Counsel, then, is whether the

2:00 PM

CONT... Damian Joseph Nieman **Chapter 11**

amounts owed for pre-petition work make Counsel a pre-petition creditor of the Debtor, and therefore not disinterested? If the Court were to authorize employment of Counsel absent a waiver of Counsel's pre-petition claim, is the pre-petition claim to be treated as a general unsecured, non-priority claim? The Court is also unclear about the amounts owed to Counsel from any monies being held by the Chapter 13 Trustee.

Second, the Application contained some disclosure issues, but it appears to the Court that Counsel has remedied those disclosure issues through the Declaration and that *Statement of Disinterestedness for Employment of Professional Person Under FRBP 2014*. *See* Docket Nos. 42 and 43, respectively.

Party Information

Debtor(s):

Damian Joseph Nieman — Represented By Chris Gautschi

Movant(s):

Damian Joseph Nieman — Represented By Chris Gautschi

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

Tuesday, April 23, 2024 **Hearing Room 201**

2:00 PM
9:23-11060 Damian Joseph Nieman **Chapter 13**

#32.00 Hearing
RE: [39] Application for Compensation for Chris Gautschi, Debtor's Attorney, Period: 11/12/2023 to 3/15/2024, Fee: $5000, Expenses: $0.

Docket 39

Tentative Ruling:

April 23, 2024

Appearances required.

Before the Court is that *Application of Attorney for Debtor for Allowance of Fees and Expenses Following Dismissal or Conversion of Chapter 13 Case Subject To A Rights and Responsibilities Agreement* (the "Application"). *See* Docket No. 39. It appears that through the Application, Chris Gautschi is requesting allowance of fees in the amount of $5,000, and payment of $560 in representing Damian Nieman (the "Debtor") in his Chapter 13 case. *See id.* at pp. 1-3. The Court is unclear as to why Counsel is to be paid the $560. The Debtor has now filed a Chapter 11 case. *See* Case No. 9:24-bk-10279-RC. If Counsel is a pre-petition creditor of the Debtor in the Chapter 11 case based on amounts owed from this Chapter 13 case, why are those amounts not to be paid through a Chapter 11 plan as a pre-petition claim with all other pre-petition claims?

Party Information

Debtor(s):

Damian Joseph Nieman	Represented By Chris Gautschi

Movant(s):

Damian Joseph Nieman	Represented By Chris Gautschi

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 23, 2024 **Hearing Room 201**

2:00 PM
9:19-11547 Douglas Joseph Castell and Joan Cathey Castell **Chapter 7**

#33.00 CONT'D Hearing
RE: [106] Notice of Motion and Motion for Relief and Order Entitlement to Distribution of Surplus Funds Proceeds; Memorandum of Points and Authorities in Support Thereof

FR. 4-9-24

Docket 106

Tentative Ruling:

April 23, 2024

Appearances required.

April 9, 2024

Appearances required. The Motion is denied. The Debtors are to lodge a conforming order within 7 days. The Court will inquire with the Debtors regarding the purported contempt topic.

Background

On September 12, 2019, Douglas Joseph and Joan Cathey Castell (collective, hereinafter, the "Castells") filed with this Court a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the United States Code (the "Petition"). *See* Docket No. 1. The Petition listed Mar[y] Florence ("Florence") in the *Verification of Master Mailing List of Creditors*. *Id.* at p. 59. *Schedule E/F* attached to the Petition listed Florence with a "[d]isputed" "[p]otential [c]laim." *Id.* at *Schedule E/F" Creditors Who Have Unsecured Claims*, p. 6. On January 6, 2020, the Court entered that *Order of Discharge – Chapter 7* (the "Discharge"), granting the Castells a discharge pursuant to 11 U.S.C. § 727. *See* Docket No. 23. The Castells' bankruptcy case was closed on January 30, 2020. *See* Docket No. 26.

On December 12, 2022, Florence filed that *Motion to Reopen Chapter 7 Bankruptcy*

2:00 PM

CONT... Douglas Joseph Castell and Joan Cathey Castell **Chapter 7**

Case to Determine Dischargeability for Fraud (the "First Motion"). *See* Docket No. 27. Through the First Motion, Florence petitioned the Court to reopen the Castells' bankruptcy case pursuant to 11 U.S.C. § 350(b) so that she may to file a complaint pursuant to 11 U.S.C. §§ 523(a)(2), (4), and (6), excepting from the Discharge her prepetition claims against the Castells. *See id.*

On December 30, 2022, the Castells filed that *Notice of Opposition and Request for a Hearing* (the "First Opposition"). *See* Docket No. 29. Through the First Opposition, the Castells argued, *inter alia*, that any attempt by Florence to collect on Florence's prepetition claim against the Castells personally is barred by the discharge injunction provided for under 11 U.S.C. § 524(a). *See* Docket No. 29, p. 3, lines 12-26. On January 13, 2023, Florence filed that *Reply to Debtor's Opposition*. *See* Docket No. 31.

On April 11, 2023, the Court entered that *Order Denying Motion to Reopen Chapter 7 Bankruptcy Case to Determine Dischargeability for Fraud*. *See Docket No. 46.*

On May 1, 2023, Florence filed that *Motion to Reopen Closed Bankruptcy Case* (the "Second Motion"). *See* Docket No. 48. Through the Second Motion, Florence petitioned the Court to reopen the Castells' bankruptcy case pursuant to 11 U.S.C. § 350(b) so that she may file a complaint pursuant to 11 U.S.C. §§ 523(a)(2), (4), and (6), excepting from the Discharge her prepetition claims against the Castells. *See id.*

On May 15, 2023, the Castells filed that *Notice of Opposition to Motion to Reopen Chapter 7 Case* (the "Second Opposition"). *See* Docket No. 50. Through the Second Opposition, the Castells again argued, *inter alia*, that any attempt by Florence to collect on her prepetition claims against the Castells personally is barred by the discharge injunction pursuant to 11 U.S.C. § 524(a). *See* Docket No. 50, p. 4. The Castells further requested that the Court issue an order to show cause regarding civil contempt for Florence's ongoing and willful post-discharge attempts to collect or recover on a debt as a personal liability of the Castells that was properly disclosed in the Petition and schedules, and properly noticed to Florence. *Id.* at p. 2.

On June 5, 2023, the Court entered that *Order Denying Motion to Reopen*. *See* Docket No 55.

On November 27, 2023, Florence filed that *Notice of Motion and Motion for Relief and Order Entitlement to Distribution of Surplus Funds Proceeds* (the "First Surplus

2:00 PM

CONT... Douglas Joseph Castell and Joan Cathey Castell **Chapter 7**

Motion") seeking to recover funds from the sale of a property listed in the Petition and abandoned by the Chapter 7 Trustee (i.e., 7380 Palomar Ave., Yucca Valley, CA 92284, the "Property"). *See* Docket No. 99; *see also* Docket No. 1, *Schedule A/B: Property*, p. 1; Docket No. 25. The First Surplus Motion was denied on February 20, 2024, for lack of appropriate notice. *See* Docket No. 105.

On February 22, 2024, Florence filed that *Notice of Motion and Motion for Relief and Order Entitlement to Distribution of Surplus Funds Proceeds* (the "Second Surplus Motion"). *See* Docket No. 106. Florence, through the Second Surplus Motion, asserted that she is an unsecured creditor of the Castells, and should therefore receive "at least half of the surplus funds amount of approximately $75,000, as compensation for her losses arising from [the Castells'] breaches of the partnership agreement and failure to properly account for the partnership's interest in real property converted and sold through the bankruptcy process." *See id.* at p. 2, lines 1-7. Florence argued that the Property is "property of the bankruptcy estate," and moves under 11 U.S.C. §§ 547 and 726(a) for the requested relief. *See id.* at pp. 5-6.

On March 26, 2024, the Castells filed that *Opposition to Movant's Notice of Motion for Relief and Order Entitlement to Distribution of Surplus Funds Proceeds*. *See* Docket No. 109. The Castells also filed that *Request for Judicial Notice in Support of Debtors' Opposition to Movants Motion for Relief and Order of Entitlement to Distribution of Surplus Funds*. *See* Docket No. 110. The Castells contended that the Second Surplus Motion has no merit, but is instead an attempt to collect debts from the Castells, again, in violation of the discharge injunction. *See* Docket No. 109. Further, the Castells contended that Florence should be sanctioned and held in contempt for her violation of the discharge injunction. *See id.*

Analysis

Pursuant to 11 U.S.C. § 554(c), "[u]nless the court orders otherwise, any property scheduled under section 521(a)(1) of this title not otherwise administered at the time of the closing of a case is abandoned to the debtor and administered for purposes of section 350 of this title." This is colloquially referred to as "technical abandonment." *See In re Menk*, 241 B.R. 896, 911 (9th Cir. BAP 1999). The mere reopening of a case does not automatically reel back in property that has been technically abandoned under 11 U.S.C. § 554(c). *See id.* at 914.

2:00 PM
CONT... Douglas Joseph Castell and Joan Cathey Castell **Chapter 7**

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 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."

In the case at bar, it seems that Florence is moving this Court to administer what she believes to property of the estate, the Property. To this end, the Motion is denied. The Castells' bankruptcy case must be reopened for such relief, and, pursuant to this Court's Local Rules, a motion to reopen the case, without any further relief requested, must first be filed. No motion to reopen the Castells' case has been filed apart from the First Motion and Second Motion, both of which this Court has denied.

What is more, the Property was abandoned to the Castells under 11 U.S.C. § 554(c). The Property is not property that is to be further administered by this Court. The Motion is baseless. So, even had Florence filed a motion to reopen the Castells' bankruptcy case prior to filing the Motion, such motion would be denied.

Lastly, the Discharge released the Castells from personal liability on all debts subject to the Discharge. *See* 11 U.S.C. § 727(a). Pursuant to 11 U.S.C. § 727(b), "a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter…" Pursuant to 11 U.S.C. § 524(a)(2), "[a] discharge in a case under this title [] operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived." Any attempt to collect on a discharged debt as a personal liability against a debtor is the basis for civil contempt proceedings, including compensatory damages, emotional distress damages, and punitive damages. *See Walls v. Wells Fargo Bank, N.A.*, 276 F3d 910, 915 (9th Cir. 2002); *see also In re Marino*, 577 B.R. 772, 787-788 (9th Cir. BAP 2017). "[A]s a creditor," Florence's claim against the Castells was discharged many years ago. The Court has twice denied Florence's attempts to reopen the Castells' bankruptcy case to challenge the Discharge. It may not in-fact be necessary for the Castells' case to be

2:00 PM

CONT... Douglas Joseph Castell and Joan Cathey Castell **Chapter 7**

reopened for the Court to determine a motion for contempt. *See In re Menk, 241 B.R. at 910*. However, to the extent the Castells desire to have the Court determine whether Florence has violated their discharge injunction violation, the Court is inclined to require the Castells to file a separate motion requesting the same.

Party Information

Debtor(s):

Douglas Joseph Castell	Represented By Nicholas M Wajda Nathan Fransen

Joint Debtor(s):

Joan Cathey Castell	Represented By Nicholas M Wajda Nathan Fransen

Movant(s):

Mari Florence	Pro Se

Trustee(s):

Jeremy W. Faith (TR)	Pro Se