

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

Tuesday, May 21, 2024

Hearing Room 201

10:00 AM

9: -

Chapter

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Docket 0

Tentative Ruling:

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- NONE LISTED -

United States Bankruptcy Court
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9:20-11020 Rowland W. Twisselman and Catherine A. Twisselman

Chapter 12

#1.00 Hearing

RE: [175] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 263 W. Foothill Blvd, San Luis Obispo, CA 93405 . (Gomez, Michael)

Docket 175

***** VACATED *** REASON: Continued by stipulation to 6/4/24 at 2:00PM.**

Tentative Ruling:

May 21, 2024

Appearances are waived. The Court will grant the Motion pursuant to 11 U.S.C. § 362(d)(1) including the request to waive Fed. R. Bankr. P. 4001(a)(3) for the reasons set forth *infra*, but will deny the Motion as to its request for termination of the codebtor stay pursuant to 11 U.S.C. § 1201(a). Movant to upload a conforming order within 7 days.

Pacific Premier Bank ("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 263 W. Foothill Blvd., San Luis Obispo, CA 93405 ("Alberti Ranch"), Wreden Ranch (2725 acres in the Carrizo Plan), Rector Ranch (2618 acres in the Carrizo Plain), and Miller Well (1087 acres in the Carrizo Plain) (collectively, the "Properties") of Rowland W. Twisselman and Catherine A. Twisselman (the "Debtors") on the grounds that the Debtors have failed to pay Movant in full as required under the *Chapter 12 Plan* (the "Plan"). *See* Docket No. 175, *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) termination of the co-debtor stay of 11 U.S.C. § 1201(a) on the same terms and conditions as to the Debtors, (3) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3), and (4) if relief from stay is not granted, adequate protection shall be ordered. *See id.* at p. 5; *see also* Docket No. 177.

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CONT... Rowland W. Twisselman and Catherine A. Twisselman

Chapter 12

Notice

The Motion and notice thereof were served upon the Debtors via U.S. Mail First class, postage prepaid on April 25, 2024, notifying the Debtors that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id., 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 Debtors, nor any other party served with the Motion has timely filed an opposition to the Motion as of May 7, 2024. The Court therefore takes the default of all non-responding parties, including the Debtors.

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." Confirmation of a Chapter 12 plan binds both the debtor and its creditors to the plan's provisions. 11 U.S.C. § 1227(a); *see Matter of Grogg Farms, Inc.*, 91 B.R. 482, 485 (Bankr. N.D. Ind. 1988). Once a plan has been confirmed, neither a debtor nor a creditor can assert rights which are inconsistent with its provisions. *See id.* (citing *In Re Evans*, 30 B.R. 530, 531 (9th Cir.B.A.P.1983)). A reorganized debtor's failure to make payments required by a confirmed plan may be cause for granting relief from stay. *In re Ellis*, 60 B.R. 432, 435 (9th Cir. BAP 1985).

Effective Date of the Plan

The effective date of the "Plan is 30 days after entry of an [o]rder confirming this Plan." *See* Docket No. 175, *Exhibit 5*, p. 2, line 3. That *Order Confirming Chapter 12 Plan* was entered on March 2, 2021. *See id.* at *Exhibit 6*. Therefore, the effective date of the Plan was April 1, 2021 (the "Effective Date").

Alberti Ranch

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CONT... Rowland W. Twisselman and Catherine A. Twisselman Chapter 12

Under the terms of the Plan, the Debtors are required to make adequate protection payments in the amount of \$9,140.00 per month until paid in full. *See Docket No. 77, p. 4, Class 2.* "The Class 2 claim shall be paid in full with interest at the contractual non-default interest rate less credit for adequate protection payments made through sale or refinance of one or more of the properties on or before 3 years from the effective date of the Plan." *See id.* Movant asserts that as of the date of the Motion, which is more than three (3) years after the Effective Date, its claims have not been paid in full in compliance with the terms of the Plan. *See Docket No. 175, Declaration of James Follis, p. 5, ¶ 23.*

Wreden Ranch

Under the terms of the Plan, the Debtors are required to make adequate protection payments in the amount of \$1,540.00 per month until paid in full. *See Docket No. 77, p. 4, Class 3.* "The Class 3 claim shall be paid in full with interest at the contractual non-default interest rate less credit for adequate protection payments made through sale or refinance of one or more of the properties on or before 3 years from the effective date of the Plan." *See id.* Movant asserts that as of the date of the Motion, which is more than three (3) years after the Effective Date, its claims have not been paid in full in compliance with the terms of the Plan. *See Docket No. 175, Declaration of James Follis, p. 5, ¶ 23.*

Rector Ranch

Under the terms of the Plan, the Debtors are required to make adequate protection payments in the amount of \$2,000.00 per month until paid in full. *See Docket No. 77, p. 4, Class 4.* "The Class 4 claim shall be paid in full with interest at the contractual non-default interest rate less credit for adequate protection payments made through sale or refinance of one or more of the properties on or before 3 years from the effective date of the Plan." *See id, pp. 4-5.* Movant asserts that as of the date of the Motion, which is more than three (3) years after the Effective Date, its claims have not been paid in full in compliance with the terms of the Plan. *See Docket No. 175, Declaration of James Follis, p. 5, ¶ 23.*

Miller Well

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CONT... **Rowland W. Twisselman and Catherine A. Twisselman** **Chapter 12**

Under the terms of the Plan, the Debtors are required to make adequate protection payments in the amount of \$620.00 per month until paid in full. *See Docket No. 77, p. 5, Class 5.* "The Class 5 claim shall be paid in full with interest at the contractual non-default interest rate less credit for adequate protection payments made through sale or refinance of one or more of the properties on or before 3 years from the effective date of the Plan." *See id, p. 5.* Movant asserts that as of the date of the Motion, which is more than three (3) years after the Effective Date, its claims have not been paid in full in compliance with the terms of the Plan. *See Docket No. 175, Declaration of James Follis, p. 5, ¶ 23.*

The Debtors defaulted on Plan payments regarding each of the Properties as Movant's claims have not been paid in full within three (3) years of the Effective Date. Therefore, cause has been shown sufficient to lift the automatic stay pursuant to 11 U.S.C. § 362(d)(1) due to the Debtors' failure to make payments pursuant to the terms of the Plan.

11 U.S.C. § 1201(a)

The Debtors did not identify a codebtor or list an address for a codebtor on their schedules. *See Docket No. 1, Schedule H: Your Codebtors, p. 1.* Pursuant to 11 U.S.C. § 509(a), a "codebtor" is "an entity that is liable with the debtor on, or that has secured, a claim of a creditor against the debtor" (e.g., a guarantor). The Agricultural Loan Agreements, Promissory Notes, Agricultural Security Agreements, Deed of Trusts, Assignment of Rents, and Loan Modification Agreements each identify the "Borrower", "Grantor", and "Trustor" as Rowland W. Twisselman and/or Catherine A. Twisselman. *See Motion, Exhibits 1-4.* Both Ronald W. Twisselman and Catherine A. Twisselman are debtors in this bankruptcy case. There is no evidence that any other party is liable on the debt owed to Movant. Therefore, there is no codebtor stay to waive

Party Information

Debtor(s):

Rowland W. Twisselman

Represented By
William C Beall
Carissa N Horowitz

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CONT... Rowland W. Twisselman and Catherine A. Twisselman

Chapter 12

Joint Debtor(s):

Catherine A. Twisselman

Represented By
William C Beall
Carissa N Horowitz

Movant(s):

Pacific Premier Bank

Represented By
Michael J Gomez
Gerrick Warrington

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:22-10625 Rosa Linda Cueva

Chapter 13

#2.00 HearingRE: [52] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 712 Southland Street, Nipomo, CA 93444-9186 . (Schuler-Hintz, Kristin)

Docket 52

Tentative Ruling:

May 21, 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*, but will deny the Motion as to its request that the Court waive Fed. R. Bankr. P. 4001(a)(3). Movant to upload a conforming order within 7 days.

US Bank Trust National Association, Not In Its Individual Capacity But Solely As Owner Trustee For VRMTG Asset Trust, its assignees and/or successors, by and through its servicing agent NewRez LLC d/b/a 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 712 Southland Street, Nipomo, CA 93444-9186 (the "Property") of Rosa Linda Cueva (the "Debtor") on the grounds that Movant's interest in the Property is not adequately protected and the Debtor has failed to make postpetition mortgage payments as they became due under the *2nd Amended Chapter 13 Plan* (the "Plan"). *See* Docket No. 52, *Motion for Relief from Stay Under 11 U.S.C. § 362* (the "Motion"), pp. 3-4.

In addition to lifting the stay, Movant requests relief to (1) proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the Property, (2) at its option, offer, provide and enter into a potential forbearance agreement or other loan workout/loss mitigation agreement by contacting the Debtor, (3) waiver of the 14-day stay pursuant to Fed. R. Bankr. P. 4001(a)(3), and (4) upon entry of the order, for purposes of Cal. Civ. Code § 2923.5, the Debtor is a borrower as defined in Cal. Civ. Code §2920.5(c)(2)(C). *See id.* at p. 5.

Notice

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CONT... Rosa Linda Cueva

Chapter 13

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on April 24, 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. 1. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." Neither the Debtor, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, including the Debtor.

Analysis

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

Under the terms of the Plan, the Debtor is required to make regular payments to Movant under the terms of the prepetition lending agreement. *See* Docket No. 31, pp. 5-6, Class 2. Movant asserts that the Debtor defaulted on Plan payments consisting of two (2) unpaid postconfirmation payments of \$2,017.46 and one (1) unpaid postconfirmation payment of \$2,651.07. *See* Motion, p. 9. Less a suspense account of \$279.59, Movant asserts that there is a total postconfirmation delinquency of \$6,406.40 (as of the date of the Motion) with a payment of \$2,651.07 becoming due May 1, 2024. *Id.* According to the Motion, the last monthly payment of \$4,000.00 was received by Movant on November 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 three (3) postpetition/postconfirmation mortgage payments pursuant to the terms of the Plan.

As to Fed. R. Bankr. P. 4001(a)(3), "[t]he purpose of this provision is to permit a

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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):

Rosa Linda Cueva

Represented By
Michael B Clayton

Movant(s):

US Bank Trust National Association,

Represented By
Larry Yip
Ernest A. Yazzetti Jr
Kristin A Schuler-Hintz

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:22-10983 Mansour Nejadrasool

Chapter 13

#3.00 CONT'D Hearing

RE: [60] Notice of motion and motion for relief from the automatic stay with supporting declarations REAL PROPERTY RE: 2722 Rainfield Ave, Westlake Village, CA 91362 . (Schuler-Hintz, Kristin)

FR. 2-20-24, 3-19-24

Docket 60

Tentative Ruling:

May 21, 2024

Counsel for the Debtor and Movant appeared at the March 19, 2024, hearing and requested a continuance to allow the Debtor to apply for mortgage assistance with the California Mortgage Relief Program. What is the status of the Debtor's application?

March 19, 2024

Counsel for the Debtor and Movant appeared at the February 20, 2024 hearing and requested a continuance to allow the parties to discuss an adequate protection agreement. No adequate protection agreement has been filed to date. Has the matter settled?

February 20, 2024

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

PNC 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 2722 Rainfield Ave., Westlake Village, CA 91362 (the "Property") of Mansour Nejadrasool (the "Debtor") on the grounds that the Debtor has failed to make post-confirmation

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CONT... Mansour Nejadrasool

Chapter 13

mortgage payments as they became due under the *2nd Amended Chapter 13 Plan* (the "Plan"). *See* Docket No. 60, *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) upon entry of the order, for purposes of Cal. Civ. Code § 2923.5, the Debtor is a borrower as defined in Cal. Civ. Code § 2920.05(c)(2)(C). *See id.* at p. 5.

Notice

The Motion was filed on January 30, 2024, and served upon the Debtor and the non-filing co-debtor via U.S. Mail first class, postage prepaid on the same date. *See Motion, Proof of Service of Document*, 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."

On February 7, 2024, the Debtor filed that *Response to Motion Regarding the Automatic Stay* (the "Response"). *See* Docket No. 64. In the Response, the Debtor asserts that (1) Movant is adequately protected because there is \$304,607.00 in equity in the Property, (2) the Property is necessary for reorganization because it is the Debtor's residence where he resides with his family, and (3) the Debtor requests that an adequate protection order be granted over a 12 month period so the Debtor can catch up with the mortgage payments. *See id.*, pp. 2-3.

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

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CONT... Mansour Nejadrasool Chapter 13

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).

"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

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CONT... Mansour Nejadrasool Chapter 13

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. 25, pp. 5-6, Class 2. Movant asserts that the Debtor defaulted on Plan payments consisting of two (2) unpaid post-confirmation payments of \$8,632.53 and one (1) unpaid post-confirmation payment of \$8,664.92. *See* Motion, p. 9. With attorneys' fees of \$1,249.00 and less a suspense account balance of \$406.77, Movant asserts that there is a total post-confirmation delinquency of \$26,772.21 (as of the date of the Motion) with a payment of \$8,664.92 becoming due February 1, 2024. *Id.* According to the Motion, the last monthly payment of \$8,768.12 was received by Movant on November 16, 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 a 19.5% or \$304,607.00 equity cushion. *See* the Response, *Declaration of Mansour Nejadrasool*, ¶ 2.

First, the purported equity cushion in the Property is below the accepted equity cushion of 20% in the Ninth Circuit for purposes of adequate protection. *See In re Mellor* at 1401. Second, 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, but appears to seek a twelve (12) month repayment period of the post-petition default. 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

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CONT... Mansour Nejadrasool

Chapter 13

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):

Mansour Nejadrasool

Represented By
Nathan A Berneman

Movant(s):

PNC Bank, National Association

Represented By
Holly R Shilliday
Christine Kinderdine
Kristin A Schuler-Hintz

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:23-10700 Manuel Jorge Rodrigues

Chapter 13

#4.00 CONT'D Hearing

RE: [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)

FR. 4-23-24

Docket 33

Tentative Ruling:

May 21, 2024

Appearances required.

The parties are to appear to discuss whether the Court is to rule on the Motion at this juncture, now more than two (2) months after the Motion was filed.

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

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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 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

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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 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

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Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:24-10067 PC&J Joint Ventures LLC

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#5.00 Hearing RE: [33] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 156 Broadway Street, Ste. B, Orcutt, CA 93455 .

Docket 33

Tentative Ruling:

May 21, 2024

Appearances waived. The Motion is granted pursuant to 11 U.S.C. §§ 362(d)(1) and (2). The request to waive Fed. R. Bankr. P. 4001(a) is denied. Movant to lodge a conforming order within 7 days.

Tri-M Rental Group, LLC ("Movant") seeks relief as to the premises of the nonresidential property located at 156 Broadway Street, Unit B, Orcutt, CA 93455 (the "Premises") through an order pursuant to 11 U.S.C. §§ 362(d)(1) and 362(d)(2) on the grounds that 'cause' exists as the debtor PC&J Joint Ventures, LLC (the "Debtor") has no right to continued occupancy of the Premises. *See Motion for Relief from the Automatic Stay or for An Order Confirming That Automatic Stay Does Not Apply Under 11 U.S.C. § 362(l)* (the "Motion") (Docket No. 33).

Under 11 U.S.C. § 362(d)(1), Movant contends that (1) the Debtor's right to possession of the Premises should be terminated because lease payments have not been made after the filing of the bankruptcy petition, and (2) pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtor has no equity in the Premises, and pursuant to 11 U.S.C. § 362(d)(2)(B), the Premises are not necessary for reorganization. *See id.*, 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 Premises, (2) the 14-day stay prescribed by FRBP 4001(a)(3) be waived, (3) the order be binding and effective in any bankruptcy case commenced by or against any debtor who claims an interest in the Premises for a period of 180 days from the hearing of this Motion without further notice, and (4) the order be binding and effective in any bankruptcy case commenced by or against the Debtor for a period of 180 days, so that no further automatic stay shall arise in that case as to the Premises.

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Id. at 5.

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Notice

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on April 17, 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. 11. 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.

The Request for Judicial Notice

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. 1990); *see also Lee v. City of Los Angeles*, 250 F.3d 668, 688-689 (9th Cir. 2001)("[A] court may take judicial notice of 'matters of public record.'"); *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.'"); *Neylon v. County of Inyo*, 2016 WL 6834097 *2 (E.D. Cal. November 21, 2016)("Federal courts may take judicial notice of orders and proceedings in other courts, including transcripts").

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."

On April 17, 2024, Movant filed that *Request for Judicial Notice in Support of Motions for Relief from Stay* (the "RJN"). *See* Docket No. 39. Through the RJN, Movant requests that this Court take judicial notice of that *Grant Deed* dated August 27, 2021, wherein Broadway & Union Mercantile LLC grants its interest in 156 South Broadway, Santa Maria, CA 93455 to Movant. *See id.* There has been no objection

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filed to Movant's RJN, and the documents that the RJN seeks judicial notice of are those that fall within the types of documents that qualify for such notice. The Court takes judicial notice of Exhibit 1 attached to Movant's RJN.

Analysis

11 U.S.C. § 362(d)(1)

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay for cause, including the lack of adequate protection of an interest in property of such party in interest." 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).

As to "cause" under 11 U.S.C. § 362, Movant asserts that the Debtor has not paid monthly rent of \$2,149.12 beginning on December 1, 2023, prior to filing the petition on January 21, 2024. *See Motion*, p. 7. Schedule G does not identify the lease agreement with Movant. *See Schedule G*, pp. 1-2. Schedule G identifies a "commercial lease" agreement with Broadway and Union Mercantile, LLC that is "to be rejected". *See id.* No address for the "commercial lease" is provided, but presumably it refers to the lease that is the subject of this Motion. *See id.* Therefore, it appears that the Debtor does not intend to assume the lease associated with the Premises. The failure to pay post-petition lease payments on real property lease may constitute cause to lift the stay under 11 U.S.C. § 362(d)(1). *See In re Rocchio*, 125 B.R. 345, 347 (Bankr. D. RI 1991); *see also In re Toulioumis*, 170 B.R. 825 (Bankr. S.D.N.Y. 1994); 11 U.S.C. § 365(d)(3)(A).

As the Debtor has failed to make lease payments to Movant post-petition, the Motion is granted pursuant to 11 U.S.C. § 362(d)(1).

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

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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).

As there exists no equity in the Property for the Debtor, and because the instant case is one under Chapter 7, the Motion is granted pursuant to 11 U.S.C. § 362(d)(2).

4001(a)(3) Waiver

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):

PC&J Joint Ventures LLC

Represented By
Bert Briones

Movant(s):

Tri-M Rental Group, LLC

Represented By
Paul F Ready

Trustee(s):

Jeremy W. Faith (TR)

Represented By
Meghann A Triplett

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#6.00 Hearing RE: [34] Notice of motion and motion for relief from the automatic stay with supporting declarations UNLAWFUL DETAINER RE: 156 Broadway Street, Ste. B Patio Area, Orcutt, CA 93455 .

Docket 34

Tentative Ruling:

May 21, 2024

Appearances waived. The Motion is granted pursuant to 11 U.S.C. §§ 362(d)(1) and (2). The request to waive Fed. R. Bankr. P. 4001(a) is denied. Movant to lodge a conforming order within 7 days.

Tri-M Rental Group, LLC ("Movant") seeks relief as to the premises of the nonresidential property located at 156 Broadway Street, Unit B Patio Area, Orcutt, CA 93455 (the "Premises") through an order pursuant to 11 U.S.C. §§ 362(d)(1) and 362(d)(2) on the grounds that 'cause' exists as the debtor PC&J Joint Ventures, LLC (the "Debtor") has no right to continued occupancy of the Premises. *See Motion for Relief from the Automatic Stay or for An Order Confirming That Automatic Stay Does Not Apply Under 11 U.S.C. § 362(l)* (the "Motion") (Docket No. 34).

Under 11 U.S.C. § 362(d)(1), Movant contends that (1) the Debtor's right to possession of the Premises should be terminated because lease payments have not been made after the filing of the bankruptcy petition, and (2) pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtor has no equity in the Premises, and pursuant to 11 U.S.C. § 362(d)(2)(B), the Premises are not necessary for reorganization. *See id.*, 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 Premises, (2) the 14-day stay prescribed by FRBP 4001(a)(3) be waived, (3) the order be binding and effective in any bankruptcy case commenced by or against any debtor who claims an interest in the Premises for a period of 180 days from the hearing of this Motion without further notice, and (4) the order be binding and effective in any bankruptcy case commenced by or against the Debtor for a period of 180 days, so that no further automatic stay shall arise in that case as to the Premises.

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Id. at 5.

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Notice

The Motion and notice thereof were served upon the Debtor via U.S. Mail First class, postage prepaid on April 17, 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. 11. 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.

The Request for Judicial Notice

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. 1990); *see also Lee v. City of Los Angeles*, 250 F.3d 668, 688-689 (9th Cir. 2001)("[A] court may take judicial notice of 'matters of public record.'"); *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.'"); *Neylon v. County of Inyo*, 2016 WL 6834097 *2 (E.D. Cal. November 21, 2016)("Federal courts may take judicial notice of orders and proceedings in other courts, including transcripts").

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."

On April 17, 2024, Movant filed that *Request for Judicial Notice in Support of Motions for Relief from Stay* (the "RJN"). See Docket No. 39. Through the RJN, Movant requests that this Court take judicial notice of that *Grant Deed* dated August 27, 2021, wherein Broadway & Union Mercantile LLC grants its interest in 156 South Broadway, Santa Maria, CA 93455 to Movant. *See id.* There has been no objection

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filed to Movant's RJN, and the documents that the RJN seeks judicial notice of are those that fall within the types of documents that qualify for such notice. The Court takes judicial notice of Exhibit 1 attached to Movant's RJN.

Analysis

11 U.S.C. § 362(d)(1)

Pursuant to 11 U.S.C. § 362(d)(1), "[o]n request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay for cause, including the lack of adequate protection of an interest in property of such party in interest." 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).

As to "cause" under 11 U.S.C. § 362, Movant asserts that the Debtor has not paid monthly rent of \$900.83 beginning on December 1, 2023, prior to filing the petition on January 21, 2024, and \$932.36 beginning on April 1, 2024. *See Motion*, p. 7. Schedule G does not identify the lease agreement with Movant. *See Schedule G*, pp. 1-2. Schedule G identifies a "commercial lease" agreement with Broadway and Union Mercantile, LLC that is "to be rejected". *See id.* No address for the "commercial lease" is provided, but presumably it refers to the lease that is the subject of this Motion. *See id.* Therefore, it appears that the Debtor does not intend to assume the lease associated with the Premises. The failure to pay post-petition lease payments on real property lease may constitute cause to lift the stay under 11 U.S.C. § 362(d)(1). *See In re Rocchio*, 125 B.R. 345, 347 (Bankr. D. RI 1991); *see also In re Touloumis*, 170 B.R. 825 (Bankr. S.D.N.Y. 1994); 11 U.S.C. § 365(d)(3)(A).

As the Debtor has failed to make lease payments to Movant post-petition, the Motion is granted pursuant to 11 U.S.C. § 362(d)(1).

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

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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).

As there exists no equity in the Property for the Debtor, and because the instant case is one under Chapter 7, the Motion is granted pursuant to 11 U.S.C. § 362(d)(2).

4001(a)(3) Waiver

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):

PC&J Joint Ventures LLC

Represented By
Bert Briones

Movant(s):

Tri-M Rental Group, LLC

Represented By
Paul F Ready

Trustee(s):

Jeremy W. Faith (TR)

Represented By
Meghann A Triplett

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9:24-10192 Felicia Rae Wyrick and Christopher Ted Michaelson

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#7.00 Hearing RE: [13] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 2015 HYUNDAI SONATA VIN: 5NPE24AA2FH172217. (Martinez, Kirsten)

Docket 13

Tentative Ruling:

May 21, 2024

Appearances waived. The Motion is granted pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2). Movant has provided no analysis as to why the Court may waive Fed. R. Bankr. P. 4001(a), and so that relief is denied. Movant to lodge a conforming order within 7 days.

Felicia Rae Wyrick and Christopher Ted Michaelson Wyrick (the "Debtors") filed that *Voluntary Petition for Individuals Filing for Bankruptcy* under Chapter 7 of the Bankruptcy Code on November 27, 2023. *See* Case No. 9:23-bk-11117-RC, Docket No. 1. On December 15, 2023, the Court entered that *Order and Notice of Dismissal for Failure to File Schedules, Statement and/or Plan*, dismissing the First Case. *See id.* at Docket No. 19. On February 22, 2024, the Debtors filed that *Voluntary Petition for Individuals Filing for Bankruptcy* under Chapter 7 of the Bankruptcy Code ("this Case"). *See* Docket No. 9:24-bk-10192-RC, Docket No. 1.

On April 10, 2024, Global Lending Services, LLC ("Movant") filed in this Case 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 2015 Hyundai Sonata (the "Vehicle") of the Debtors on the grounds that (1) Movant's interest in the Vehicle is not adequately protected by an adequate equity cushion and the fair market value of the Vehicle is declining, (2) proof of insurance regarding the Vehicle has not been provided to Movant, despite the Debtors' obligation to insure the collateral under the terms of Movant's contract with the Debtors, and (3) pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtors have 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. 13, pp. 3-4.

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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 Debtors via U.S. Mail First class, postage prepaid on April 10, 2024, notifying the Debtors that pursuant to this Court's Local Rule 9013-1(d), any opposition to the Motion must be filed and served no less than fourteen (14) days prior to the hearing on the Motion. *See id.*, *Proof of Service of Document*. 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 Debtors, nor any other party served with the Motion has timely filed an opposition to the Motion. The Court therefore takes the default of all non-responding parties, including the Debtors.

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."

Courts have held that the failure of a debtor to maintain insurance over a secured creditor's collateral works as a failure to adequately protect the secured creditor in said collateral, and such lack of adequate protection constitutes cause to lift the stay. *See In re El Patio, Ltd.*, 6 BR 518, 522 (Bankr. C.D. Cal. 1980); *see also In re DB Capital Holdings, LLC*, 454 B.R. 804, 817 (Bankr. Colo. 2011); *In re Olayer*, 577 B.R. 464, 472 (Bankr. W.D. Pa. 2017) ("The failure to maintain adequate insurance to protect the value of estate assets is a breach of the debtor's fundamental obligations, needlessly expenses the estate to the risk of a catastrophic loss, and may constitute sufficient cause for stay relief."). The Debtors' failure to provide proof of insurance of the Vehicle, the Court rules, constitutes cause for this Court to grant the Motion under 11 U.S.C. § 362(d)(1).

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CONT... **Felicia Rae Wyrick and Christopher Ted Michaelson** Chapter 7

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 issue is whether there is equity in the property." *In re Preuss*, 15 B.R. 896, 897 (9th Cir. BAP 1981).

Here, Movant asserts that the Vehicle has a value of \$8,025, and its lien against the Vehicle totals \$13,111.03, leaving the Debtors with no equity in the Vehicle. *See* Docket No. 13, pp. 8-9. This Case is a Chapter 7 case. Cause exists to lift the stay pursuant to 11 U.S.C. § 362(d)(2).

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):

Felicia Rae Wyrick Pro Se

Joint Debtor(s):

Christopher Ted Michaelson Wyrick Pro Se

Movant(s):

Global Lending Services LLC Represented By
Kirsten Martinez

Trustee(s):

Jerry Namba (TR) Pro Se

**United States Bankruptcy Court
Central District of California
Northern Division
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Courtroom 201 Calendar**

Tuesday, May 21, 2024

Hearing Room 201

10:00 AM

9:24-10303 Michael Anthony John and Sharianne Mildred John

Chapter 7

#8.00 Hearing RE: [19] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 1343-1343A Higuera Street, San Luis Obispo, CA 93401-3121 .

Docket 19

Tentative Ruling:

May 21, 2024

**Appearances waived. The Motion is denied for the reasons stated *infra*.
Movant to lodge a conforming order within 7 days.**

On April 19, 2024, Douglas C. Littlejohn ("Movant") filed that *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Personal Property)* (the "Motion") seeking to lift the automatic stay pursuant to 11 U.S.C. §§ 362(d)(1) and (d)(2) in relation to "Real Property Interest. Movant- former owner. Property is located at 1342-1343A Higuera Street, San Luis Obispo, CA 93401-3121. Debt is currently in litigation in SLO Superior Court Action No. 22CV-0379" (the "Property") of Michael Anthony John and Sharianne Mildred John (the "Debtors") on the grounds that (1) the bankruptcy case was filed in bad faith, (2) pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtors have no equity in the Property; and, pursuant to 11 U.S.C. § 362(d)(2)(B), the Property is not necessary for effective reorganization. *See* Docket No. 19, pp. 3-4.

In addition to lifting the stay, Movant requests (1) confirmation that no stay is in effect, (2) the stay be annulled retroactively to the petition date, and (3) if relief is not granted, the court orders adequate protection. *See id.* at p. 5.

Notice

Pursuant to this Court's Local Rule 4001-1(c)(1)(C)(i), a lift stay motion must be served by the moving party upon "[t]he debtor and debtor's attorney (if any)." The Motion was filed and served on April 17, 2024, upon the Debtors' counsel. *See Proof of Service*, p. 12. The Debtors are not listed as recipients via NEF, nor does the Motion list their real property address on the *Proof of Service of Document* as having

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CONT... Michael Anthony John and Sharianne Mildred John

Chapter 7

been served via U.S. Mail first class, postage prepaid. Therefore, notice of the Motion was improper.

On May 7, 2024, the Debtor filed that *Opposition to Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362* (the "Opposition"). See Docket No. 26.

Analysis

Movant filed the improper form of motion as Movant does not appear to be seeking to lift the automatic stay as to the Debtors' personal property. Rather, it appears that Movant seeks relief from stay to proceed with ongoing litigation before the San Luis Obispo Superior Court, Action No. 22CV-0379 (the "Nonbankruptcy Action"). In order to properly move the Court for relief from stay to proceed with the Nonbankruptcy Action, Movant must file the mandatory Court approved *Notice of Motion and Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Action in Nonbankruptcy Forum)*, F 4001-1.RFS.NONBK.MOTION.

Party Information

Debtor(s):

Michael Anthony John

Represented By
Reed H Olmstead

Joint Debtor(s):

Sharianne Mildred John

Represented By
Reed H Olmstead

Movant(s):

Douglas C. Littlejohn

Pro Se

Trustee(s):

Sandra McBeth (TR)

Pro Se

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Hearing Room 201

10:00 AM

9:24-10044 FRINJ Coffee, Incorporated.

Chapter 11

#9.00 Hearing RE: [63] Notice of motion and motion for relief from the automatic stay with supporting declarations PERSONAL PROPERTY RE: 827.8 pounds of coffee with proof of service. Two) (Beall, William)

Docket 63

Tentative Ruling:

May 21, 2024

Appearances required.

On April 15, 2024, SUN BZL, LLC ("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 827.8 pounds of coffee (the "Property") in the possession of Frinj Coffee, Inc. (the "Debtor") on the grounds that (1) Movant's interest in the Property is not adequately protected by an adequate equity cushion, (2) pursuant to 11 U.S.C. § 362(d)(2)(A), the Debtor has no equity in the Property; and, pursuant to 11 U.S.C. § 362(d)(2)(B), the Property is not necessary for an effective reorganization. *See* Docket No. 63, pp. 3-4. [FN 1]

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 Property, (2) waiver of the 14-day stay prescribed by Fed. R. Bankr. P. 4001(a)(3), (3) relief to "pick up" the Property, and (4) if relief from stay is not granted, the Court orders adequate protection. *See id.* at pp. 5, 12.

The Motion and notice thereof were served upon the Debtor and the Debtor's 20 largest unsecured creditors via U.S. Mail First class, postage prepaid on April 15, 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*.

On May 7, 2024, the Debtor filed that *Response to Motion Regarding the Automatic Stay* (the "Response"). *See* Docket No. 83. In the Response, the Debtor asserts that 1)

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CONT... FRINJ Coffee, Incorporated.

Chapter 11

the Debtor wishes to continue to do business with Movant, 2) the Debtor historically makes payments for coffee beans on a quarterly basis and only the 1st quarter of 2024 has come due since filing the petition, 3) the Debtor sent Movant a check in the amount of \$3,322.45 on May 7, 2024, 4) the Debtor is holding 218 pounds of Movant's coffee and stores the coffee beans using a technique to ensure the product stays fresh, 5) the Debtor's method of storage and quarterly payments to Movant provides adequate protection to Movant, and 6) if Movant no longer wishes to work with the Movant, Movant can pick up the coffee beans and the Debtor will charge Movant for relevant milling, processing, and sorting costs. *See id.*, pp. 2-3.

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." 11 U.S.C. § 362(d)(1). While the term "adequate protection" is not defined in the Code, 11 U.S.C. § 361 sets forth three non-exclusive examples of what may constitute adequate protection: 1) periodic cash payments equivalent to decrease in value, 2) an additional or replacement lien on other property, or 3) other relief that provides the indubitable equivalent. *See In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). "Equity cushion" is defined as the value in the property, above the amount owed to the creditor with a secured claim, that will shield that interest from loss due to any decrease in the value of the property during the time the automatic stay remains in effect. *Id.* at 1397. "Equity," as opposed to "equity cushion," is the value, above all secured claims against the property that can be realized from the sale of the property for the benefit of the unsecured creditors. *Id.*

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

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CONT... FRINJ Coffee, Incorporated.

Chapter 11

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."

The starting point here is the Court's confusion as to Movant's and the Debtor's interests in the Property. Movant asserts that it has a "perfected security interest in the Property." *See* Docket No. 63, p. 3. Based on its security interest, Movant argues that it is not protected by an adequate equity cushion. *See id.* Movant also asserts that the Debtor has no equity in the Property, and that the Property is not necessary for a reorganization. *See id.* at p. 4. If Movant has a security interest in the Property as it states, what is that security interest, and how was it perfected? Further, under the Motion, what is the value of the Property and what are the amounts owed to Movant on the Property?

Movant also asserts through that *Personal Property Declaration* that the Debtor has but a possessory interest in the Property. *See id.* at p. 7. The Debtor appears to agree with the Movant's assertion that the Property is owned solely by the Movant. *See* Docket No. 83, p. 2 ("As of today, the Debtor is holding approximately 218 pounds of coffee that belongs to Movant.").

It is not clear if the dealings between the Movant and the Debtor are sales subject to a security interest, true consignments, or something else. It is not clear if the Debtor is selling the Property as its own goods, subject to Movant's purported security interest, or on a consignment basis for the Movant.

On March 28, 2024, Movant appears to have received a \$1,557.00 payment from the Debtor. *Id.* at *Exhibit C*, p. 29. The payment appears to relate to sales for the harvest years 2022-2023. *Id.* at *Exhibit C*, pp. 30-31. The SOFA does not specify what harvest year(s) the Property is yielded from. *Id.* at *Exhibit A*, p. 19. The Debtor appears to have sent Movant an additional payment of \$3,322.45 for "22/23 throug [sic] 4/30/24". *See* Docket No. 83, *Exhibit 1*. It is unclear if the Debtor asserts that this makes the Debtor current. It is also unclear whether the postpetition payments are being made on account of a prepetition debt.

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CONT... FRINJ Coffee, Incorporated.

Chapter 11

[FN 1] The Motion was not properly completed. First, the Movant field was left blank. *See id.*, p. 1. Second, that *Personal Property Declaration* was not dated. *Id.*, p. 11. Third, that *Supplemental Declaration of Christopher McCausland* was not dated. *Id.*, *Supplemental Declaration of Christopher McCausland*, p. 13.

Party Information

Debtor(s):

FRINJ Coffee, Incorporated.

Represented By
Michael Jay Berger

Movant(s):

SUN BZL, LLC

Represented By
William C Beall

Trustee(s):

Mark M Sharf (TR)

Pro Se

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Hearing Room 201

2:00 PM

9:19-10135 Charolette D.W. Iverson

Chapter 7

#10.00 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 50

Tentative Ruling:

May 21, 2024

Appearances required.

Before the Court is the *Trustee's Final Report* (the "Report") filed by the duly appointed Chapter 7 Trustee, Sandra K. McBeth (the "Trustee"), for the bankruptcy estate of Charolette D.W. Iverson on April 8, 2024. *See* Docket No. 50.

On February 2, 2024, the Law Offices of Larry D. Simons ("LOLS"), in its capacity as counsel to the Trustee, filed that *First and Final Fee Application of Law Offices of Larry D. Simons, Attorney for Chapter 7 Trustee* (the "Application"), covering the Period from February 28, 2019, through January 31, 2024, through which LOLS requested allowance on a final basis of fees of \$27,107.50 and reimbursement of expenses in the amount of \$367.59. *See* Docket No. 49.

On March 21, 2023, the Court through that *Order on Trustee's Motion Under LBR 2016-2 For Authorization to Employ Paraprofessionals and/or Authorization to Pay Flat Fee to Tax Preparer* approved M. Kathleen Klein, CPA as a tax preparer, and to be paid \$1,000.00. *See* Docket No. 44.

On April 8, 2024, that *Notice of Trustee's Final Report and Application for Compensation and Deadline to Object (NFR)* (the "Notice") was filed with the Court and served on the NEF parties, and on April 10, 2023, the Notice was served on the non-NEF noticed creditors of the bankruptcy estate by U.S. Mail. *See* Docket Nos. 51 and 52. 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

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CONT... Charolette D.W. Iverson

Chapter 7

of the motion, as the case may be." No party served with the Notice has timely filed an opposition to the Report or the Application. The Court therefore takes the default of all non-responding parties.

As of the date of the filing of the Report, the Trustee had approximately \$57,948.85 in cash on hand. *See* Docket No. 50, p. 1.

Through the Report, the Trustee, *inter alia*, seeks the payment of the Trustee's statutory fee of \$6,250.00 pursuant to 11 U.S.C. § 326(a) and reimbursement of expenses incurred of \$367.59. *See* Docket No. 50, p. 13.

After payment on the Application, the \$1,000 to the tax preparer, and the Trustee's statutory fee, the balance of cash on hand for unsecured creditors is \$23,433.99. *See id.* This amount is sufficient to pay allowed unsecured claims a *pro-rata* distribution of approximately 15.807%. *See id.* at pp. 13-14.

The Court pauses regarding the Application. Pursuant to that *Application by Trustee to Employ General Counsel* (the "Employment Application"), the hourly rate of Larry D. Simons was \$425 as of March 4, 2019. *See* Docket No. 11, *Exhibit 1*. The very first time entry in *Exhibit 1* to the Application dated March 1, 2019, for "LDS" provides for "0.30 hours at \$475.00 per hour." *See* Docket No. 49, *Exhibit 1*, p. 13. That *Notice of Increased Hourly Rates Charged by Law Offices of Larry D. Simons* (the "Notice of Increase") filed on January 6, 2022, provided that the "PRESENT RATE" for Larry D. Simons was \$425.00, with an increased rate of \$475.00 as of January 1, 2022. *See* Docket No. 28, p. 1. The first time entry in the invoices attached to the Application appears to utilize the 2022 hourly rates for time incurred during 2019, counter to the Employment Application and the Notice of Increase. Given this discrepancy, the Court has not reviewed the balance of the invoice, but will inquire with the LOLS regarding this and any other inaccuracy in the Application.

Party Information

Debtor(s):

Charolette D.W. Iverson

Represented By
Jeremy Faith

Trustee(s):

Sandra McBeth (TR)

Represented By

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CONT... Charolette D.W. Iverson

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Larry D Simons

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2:00 PM

9:21-11079 Scott Eugene Worley and Kim Evite Worley

Chapter 7

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

Docket 58

Tentative Ruling:

May 21, 2024

Appearances waived.

Before the Court is the *Trustee's Final Report (TFR)* (the "Report") filed by the duly appointed Chapter 7 Trustee, Jeremy W. Faith (the "Trustee"), for the joint bankruptcy estate of Scott Eugene Worley and Kim Evite Worley on April 19, 2024. *See* Docket No. 58.

On March 7, 2024, Hahn Fife & Company, LLP filed that *First and Final Fee Application of Hahn Fife & Company for Allowance of Fees & Expenses from November 27, 2023 Through March 4, 2024* (the "Application") seeking allowance and payment of fees for services provided to the Trustee in the amount of \$2,591.00, and reimbursement of costs in the amount of \$367.40. *See* Docket No. 55, p. 4.

On April 19, 2024, that *Notice of Trustee's Final Report and Application for Compensation and Deadline to Object (NFR)* (the "Notice") was filed with the Court and served on the NEF parties, and on April 24, 2023, the Notice was served on the non-NEF noticed creditors of the bankruptcy estate by U.S. Mail. *See* Docket Nos. 59 and 60. Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be." No party served with the Notice has timely filed an opposition to the Report or the Application. The Court therefore takes the default of all non-responding parties.

As of the date of the filing of the Report, the Trustee had approximately \$43,490.86 in cash on hand. *See* Docket No. 58, p. 1.

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CONT... Scott Eugene Worley and Kim Evite Worley Chapter 7

Through the Report, the Trustee, *inter alia*, seeks the payment of the Trustee's statutory fee of \$6,820.08 pursuant to 11 U.S.C. § 326(a) and reimbursement of expenses incurred of \$172.12. *See Docket No. 58, p. 10.*

After payment on the Application, and the Trustee's statutory fee and reimbursement of costs, the balance of cash on hand for unsecured creditors is \$33,531.26. *See id.* This amount is sufficient to pay allowed unsecured claims a *pro-rata* distribution of approximately 100% and leaving a surplus balance of \$16,329.40 to be returned to the debtors. *See id.* at pp. 11-12.

Pursuant to 11 U.S.C. § 330, the Court allows Hahn Fife & Company, LLP, on a final basis, fees in the amount of \$2,591.00 and reimbursement of costs in the amount of \$367.40. This affects the Report, as the Report incorrectly provides for payment of expenses to Hahn Fife & Company, LLC in the amount of \$376.40. *See id.* at p. 10. The amounts to be disbursed to unsecured creditors and the Debtor should increase by \$9.00.

The Court approves the Report in conformance with 11 U.S.C. § 704(9), including the Trustee's statutory fee in the amount of \$6,820.08, and the reimbursement of the Trustee's unreimbursed expenses in the amount of \$172.12, as modified by the Court's comments herein as to the amounts to be disbursed to Hahn Fife & Company, LLC related to its expense reimbursement.

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

Party Information

Debtor(s):

Scott Eugene Worley

Represented By
Karen L Grant

Joint Debtor(s):

Kim Evite Worley

Represented By
Karen L Grant

Trustee(s):

Jeremy W. Faith (TR)

Pro Se

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9:24-10152 Lizette Rubio

Chapter 7

#12.00 ORDER TO SHOW CAUSE WHY CASE SHOULD NOT BE DISMISSED FOR
FAILURE TO PAY FILING FEE IN INSTALLMENTS AS ORDERED BY COURT

Docket 17

*** VACATED *** REASON: Third and final installments paid 4/14/2024

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lizette Rubio Pro Se

Trustee(s):

Jerry Namba (TR) Pro Se

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9:23-10057 Unlikely Heroes, Inc.

Chapter 7

#13.00 CONT'D Hearing

RE: [60] Motion For Contempt or Issuance of Order To Show Cause As To Why Erica Greve, Robert Hazlett, And Richard Towne, Should Not Be Held In Contempt And/Or Sanctioned For Failure To Comply With The Court's Rule 2004 Order [Dkt. 30]

FR. 7-11-23, 8-22-23, 10-10-23, 12-12-23, 2-6-24, 4-9-24

Docket 60

Tentative Ruling:

May 21, 2024

Appearances waived.

This matter is continued to June 18, 2024, at 1:00 p.m.

April 9, 2024

Appearances waived.

This matter is continued to May 21, 2024 at 2:00 p.m.

February 6, 2024

Appearances required.

December 12, 2023

Appearances required.

Pursuant to that *Scheduling Order re: (1) Motion of Human Investment Foundation for Issuance of Order to Show Cause as to Why Erica Greve, Robert Hazlett, and Richard Towne, Should Not be Held in Contempt for Failure to Comply with the*

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CONT... Unlikely Heroes, Inc.

Chapter 7

Court's Rule 2004 Order, (2) Court's Order to Show Cause, and (3) Erica Greve Hazlett and Robert Hazlett's Motion to Quash Subpoenas and for Sanctions, the parties are to attend mediation if the matter is not resolved on or before November 30, 2023. The Court will inquire with the parties as to whether the matter has settled, and if not, the timeline for mediation.

October 10, 2023

Appearances required.

On September 11, 2023, that *Human Investment Foundation's Notice of Examination Under Fed. R. Bankr. P. 2004 of Erica Greve Hazlett, Individually and as Corporate Representative of the Debtor* (the "Notice") was filed. See Docket No. 130. Pursuant to the Notice, the Rule 2004 Examination of Erica Greve Hazlett was to be taken by the Human Investment Foundation on September 18, 2023. *Id.* at p. 2. Has this matter been resolved?

August 22, 2023

Appearances required.

On July 11, 2023, the Court held hearings on the Court's Order to Show Cause regarding compliance with the Court's prior Rule 2004 Order, and the witnesses' Motions to Quash, and related relief (collectively, the "Discovery Hearings"). At the Discovery Hearings, the Court ordered the parties to confer and comply with the following deadlines: (a) all counsel must meet and confer by July 25, 2023 via video and (b) a Joint Status Report of the parties' conference status shall be filed by August 8, 2023. See Docket No. 115. The Discovery Hearings were continued to August 22, 2023 at 2:00 p.m. See Docket No. 116.

The Joint Status Report

On August 8, 2023, that *Joint Status Report Regarding Show-Cause Order and Motions to Quash* (the "Joint Status Report") was filed. See Docket No. 126. The Joint Status Report indicates that the parties intend that at the August 22, 2023

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2:00 PM

CONT... **Unlikely Heroes, Inc.**

Chapter 7

hearing they will be able to report that (a) the Trustee production has been produced to the Foundation; (b) any remaining document requests have been satisfied or narrowed, and (c) the now single and remote late- September 2004 examination has been scheduled. *Id.* p. 3.

The Court will inquire with the parties as to what remains for the Court to decide.

Party Information

Debtor(s):

Unlikely Heroes, Inc.

Represented By
Richard P Towne

Movant(s):

Human Investment Foundation

Represented By
Wayne R Terry
Jacqueline L James

Trustee(s):

Sandra McBeth (TR)

Represented By
William C Beall

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9:23-10057 Unlikely Heroes, Inc.

Chapter 7

#14.00 CONT'D Hearing

RE: [78] Motion to Quash NON-PARTIES ERICA GREVE HAZLETT AND ROBERT HAZLETT MEMORANDUM (1) IN RESPONSE TO ORDER TO SHOW CAUSE AND (2) IN SUPPORT OF MOTION TO QUASH SUBPOENAS AND FOR SANCTIONS

FR. 7-11-23, 8-22-23, 10-10-23, 12-12-23, 2-6-24, 4-9-24

Docket 78

Tentative Ruling:

May 21, 2024

Appearances waived.

This matter is continued to June 18, 2024, at 1:00 p.m.

April 9, 2024

Appearances waived.

This matter is continued to May 21, 2024 at 2:00 p.m.

February 6, 2024

Appearances required.

December 12, 2023

Appearances required.

Pursuant to that *Scheduling Order re: (1) Motion of Human Investment Foundation for Issuance of Order to Show Cause as to Why Erica Greve, Robert Hazlett, and Richard Towne, Should Not be Held in Contempt for Failure to Comply with the*

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CONT... **Unlikely Heroes, Inc.**

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Court's Rule 2004 Order, (2) Court's Order to Show Cause, and (3) Erica Greve Hazlett and Robert Hazlett's Motion to Quash Subpoenas and for Sanctions, the parties are to attend mediation if the matter is not resolved on or before November 30, 2023. The Court will inquire with the parties as to whether the matter has settled, and if not, the timeline for mediation.

October 10, 2023

Appearances required.

See Matter No. 7.

August 22, 2023

Appearances required.

Party Information

Debtor(s):

Unlikely Heroes, Inc.	Represented By Richard P Towne
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Movant(s):

Robert Hazlett	Represented By David J Richardson Brian Troyer
Erica Greve Hazlett	Represented By David J Richardson Brian Troyer

Trustee(s):

Sandra McBeth (TR)	Represented By William C Beall
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2:00 PM

9:23-10174 Jonathan Alan Stein

Chapter 7

#15.00 Hearing

RE: [194] Motion to Abandon 1% Remainderman Interests in Golden Chose In Actions. Jonathan)

Docket 194

*** VACATED *** REASON: Continued by stipulation to 6/18/2024 at 1:00PM.

Tentative Ruling:

May 21, 2024

Appearances waived. This matter is continued to June 18, 2024, at 1:00 p.m. by stipulation

Party Information

Debtor(s):

Jonathan Alan Stein	Represented By Jonathan Stein
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Movant(s):

Jonathan Alan Stein	Represented By Jonathan Stein Jonathan Stein
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Trustee(s):

Jerry Namba (TR)	Represented By Laila Masud Sarah Rose Hasselberger D Edward Hays Sarah Cate Hays
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Northern Division
Ronald A Clifford III, Presiding
Courtroom 201 Calendar

Tuesday, May 21, 2024

Hearing Room 201

2:00 PM

9:23-10601 Ampersand Publishing, LLC

Chapter 7

#16.00 HearingRE: [59] Motion For Contempt Trustee's Notice Of Motion And Motion For Issuance Of Order To Show Cause Why Wendy McCaw Should Not Be Held In Contempt For Violating The Automatic Stay; Memorandum Of Points And Authorities, Declaration Of Michael G. DALba, And Request For Judicial Notice In Support Thereof with Proof of Service (D'Alba, Michael)

Docket 59

Tentative Ruling:

May 21, 2024

Appearances required.

Background

On July 21, 2023, Ampersand Publishing, LLC (the "Debtor") filed a voluntary petition for relief pursuant to Chapter 7 of Title 11 of the United States Code. *See* Docket No. 1, *Voluntary Petition for Non-Individuals Filing for Bankruptcy*. Jerry Namba (the "Trustee") is the duly appointed Chapter 7 trustee for the bankruptcy estate of the Debtor.

Wendy McCaw ("McCaw") is the managing member of the Debtor. *See* Docket No. 10, *Statement of Financial Affairs for Non-Individuals Filing for Bankruptcy*, p. 7. The Debtor's principal place of business had been 725 South Kellogg Avenue, Goleta, California 93117 (the "Kellogg Premises"). *See* Docket No. 1, p. 1. The Trustee asserts that "[t]he Debtor also used 715 Anacapa Street, Santa Barbara, California [the "Anacapa Premises," and together with the Kellogg Premises, the "Premises"] during the three years before the Petition Date." *See* Docket No. 59, *Trustee's Notice of Motion and Motion for Issuance of Order to Show Cause Why Wendy McCaw Should Not Be Held In Contempt for Violating the Automatic Stay* (the "Motion"), pp. 6-7. Both the Premises are owned by limited liability companies wholly owned by McCaw. *See id.* at *Request for Judicial Notice*, Bates stamped pp. 49-50. The Trustee now seeks to sell certain assets of the Debtor that are located at the Premises. *See id.* at p. 7, lines 13-14.

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The Trustee asserts that his access to the Premises has been limited by McCaw through advanced notice requirements, cancellations, and requests that parties that gain access to the Premises execute confidentiality agreements. *See id.* at p. 9, lines 1-9. After a period of communications between representatives for the Trustee and McCaw regarding the Trustee's access to the Premises, McCaw, according to the Trustee, demanded "some sort of lease agreement whereby the debtor and/or trustee agrees to pay market rent for the time needed to conduct the auction, and will be responsible for the utilities and all liabilities associated with that time period." *See id.* at *Exhibit 5*, p. 41. The Trustee's response was a proposal to move forward with an auction of the Debtor's property at the Premises, "preserving the issue" of rent. *See id.* It appears that this is where things between the Trustee and McCaw regarding the Trustee's access to the Premises in order to sell the Debtor's property located therein left off.

On March 25, 2024, the Trustee filed the Motion, requesting that this Court enter an order requiring McCaw to show cause why they should not be held in contempt of this Court's order for violation of the automatic stay pursuant to 11 U.S.C. § 362(a). *See* Docket No. 59. The Trustee asserts that he, "as representative of the bankruptcy estate owns the right to access [the Premises] without having to pay rent..." *See id.* at pp. 13-14. The demand for such rent, argues the Trustee, where no rent was required for the Debtor's access to the Premises pre-petition, constitutes a stay violation in the form of McCaw's exercising of control over property of the Debtor's estate. *See id.* at p. 14, lines 10-19; *see also* p. 15, lines 1-2. The Trustee further argues that the automatic stay has been violated by McCaw's access to the Premises, through construction crews, that may expose the Debtor's assets "to damage from the construction process," and those construction efforts "may also include pieces of equipment and tools that will be used by McCaw to complete the renovations [of the Premises], or for other purposes." *See id.* at lines 24-27.

On April 1, 2024, McCaw filed that *Opposition to Trustee's Motion for Issuance of Order to Show Cause Why Wendy McCaw Should Not Be Held In Contempt for Violating the Automatic Stay* (the "Opposition"). *See* Docket No. 61. Through the Opposition, McCaw paints a different picture than that of the Trustee regarding the Trustee's access to the Premises. First, McCaw asserts that the legal entities that own the Premises "have both tendered all of the debtor's property to the Trustee and

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proposed that the Trustee take possession of it." *See id.* at p. 1, lines 25-27. This seems to suggest that McCaw has no opposition to the Trustee removing all the Debtor's estate's property from the Premises. McCaw asserts that the Trustee, however, is not interested in removing the Debtor's estate's property from the Premises, but rather occupying the Premises "over the course of six-plus weeks, operat[ing] heavy machinery on the premises, rearrang[ing] the premises, and allow[ing] dozens, if not hundreds of workers and potential buyers to and from the property." *See id.* at p. 2, lines 24-28. McCaw also asserts that the Trustee has not provided sufficient insurance related to personal and real property damage outside of the Debtor's estate's property, and that the Trustee seeks to have the legal entities that own the Premises pay for the utility expenses while the Trustee and his professionals occupy the Premises. *See id.* at p. 3, lines 1-7. The market rent request, says McCaw, was to compensate the legal entities that own the Premises "[i]n light of these entirely new obligations the Trustee sought to impose on the Landlords..." *See id.* at lines 8-10. McCaw, through the legal entities that own the Premises seeks this compensation in the form of market rent, paid either in cash, or "by way of a stipulation or non-opposition to an administrative claim." *See id.* at lines 9-10. McCaw insists that there is no construction work ongoing at the Anacapa Premises, and that "no debtor property has been damaged." *See id.* at p. 6, lines 18-24.

The Trustee filed that *Reply Memorandum of Points and Authorities In Further Support of Trustee's Motion for Issuance of Order to Show Cause Why Wendy McCaw Should Not Be Held In Contempt for Violating the Automatic Stay* on May 14, 2024. *See* Docket No. 77.

Discussion

It seems to the Court that the parties are largely speaking past each other.

In terms of access to the Premises, McCaw asserts that "[t]he Landlords remain available to open either or both properties for the Trustee's use at a mutually-agreeable time." *See id.* at p. 7, lines 19-20. The parties point fingers in the Motion and Opposition as to why access has been delayed or infrequent, but neither party denies that access to the Premises should be had.

Regarding the request for rent, the Trustee asserts that "[i]t might also be acceptable to make a request for administrative rent, and the Trustee actually attempted to get a

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written proposal and later on agreed that the issue of rent could be preserved." *See* Docket No. 59, p. 14, lines 7-9. From the Trustee's vantage point, it seems that the availability of cash to pay rent is the greater problem here. McCaw similarly suggests that rent, "by way of a stipulation or non-opposition to an administrative claim" would satisfy the entities that own the Premises. *See* Docket No. 61, p. 3, lines 8-10. In fact, if the Court understands the Opposition, the rent is actually in place of insurance and utility costs. Both parties appear agreeable to rent, and both parties appear agreeable to rent in the form of an administrative expense claim. The Court is uncertain about where the dispute lies.

At bottom, the Trustee requires access to the Premises to sell/remove the Debtor's property located therein, and the landlords of the Premises agree that the property should be removed. The only issues are (1) a schedule of access to the Premises, (2) a schedule and procedures for an auction/removal of the Debtor's property, and (3) what compensation the landlords will receive for the utilities at the Premises and insurance, which is being proposed in the form of an administrative expense rent claim.

These should not be issues that require this Court's resources to work out. The parties are to meet and confer prior to the hearing so that there is a proposal to resolve these issues at the hearing.

Party Information

Debtor(s):

Ampersand Publishing, LLC

Represented By
Anthony A. Friedman

Movant(s):

Jerry Namba (TR)

Represented By
Brad Krasnoff
Michael G D'Alba
Eric P Israel

Trustee(s):

Jerry Namba (TR)

Represented By
Brad Krasnoff
Michael G D'Alba

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Eric P Israel

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9:18-11413 James Ross Root and Tamara Docate Root

Chapter 13

#17.00 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, 4-23-24

Docket 59

Tentative Ruling:

May 21, 2024

Appearances waived.

Background

Tamara Docate 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.*

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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.*

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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

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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.

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P. 1016 to this case more than a year after it should have been applied? The Court finds no reason to do so, and declines to do so.

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

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Probate Code) to the decedent's interest in the described property.' [or] (B)
'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

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Court, the Court must ask how Mr. Root can state under penalty of perjury that he has 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?

Both motions are denied. Movant is to upload conforming orders attaching this tentative ruling within 7 days.

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

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Chapter 13

Tamara Docate 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.*

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

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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 though the death or incompetency had not occurred."

"[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

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CONT... James Ross Root and Tamara Docate Root

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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 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

**United States Bankruptcy Court
Central District of California
Northern Division**

Tuesday, May 21, 2024

Hearing Room 201

2:00 PM

CONT... James Ross Root and Tamara Ducate Root

Chapter 13

James C Ames

Joint Debtor(s):

Tamara Ducate Root

Represented By
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

United States Bankruptcy Court
Central District of California
Northern Division
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Courtroom 201 Calendar

Tuesday, May 21, 2024

Hearing Room 201

2:00 PM

9:18-11413 James Ross Root and Tamara Ducate Root

Chapter 13

#18.00 CONT'D Hearing

RE: [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

FR. 4-23-24

Docket 67

Tentative Ruling:

May 21, 2024

Appearances waived.

See Calendar Item 17.

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

**United States Bankruptcy Court
Central District of California
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CONT... James Ross Root and Tamara Duce Root

Chapter 13

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

United States Bankruptcy Court
Central District of California
Northern Division
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Courtroom 201 Calendar

Tuesday, May 21, 2024

Hearing Room 201

2:00 PM

9:23-10318 Michael Moore and Marlena Moore

Chapter 13

#19.00 Hearing

RE: [83] Application for Compensation for Anthony James Francisco I, Debtor's Attorney, Period: 4/26/2023 to 10/10/2023, Fee: \$33720.71, Expenses: \$0.

FR. 10-24-23, 2-6-24

Docket 83

*** VACATED *** REASON: Continued to August 20, 2024, at 1:00 p.m.

Tentative Ruling:

February 6, 2024

Appearances waived.

Before the Court is that *Application of Attorney for Debtor for Additional Fees and Related Expenses in a Pending Chapter 13 Case Subject to a Rights and Responsibilities Agreement (RARA)* (the "Application"), filed on September 23, 2023, by Anthony J. Francisco ("Counsel"), attorney of record for the debtors in this Case. *See* Docket No. 83. Through the Application, Counsel requests hourly fees for additional services at the rate of \$383.63 for a total of 87.9 billed hours, amounting to \$33,720.71. *See* Application, p. 3. The Debtors and Counsel entered into that *Rights and Responsibilities Agreement* ("RARA"), wherein Counsel agreed to charge a base fee of \$5,000.00, excluding the petition filing fee, and a rate of \$500.00 per hour for additional services. *See* Docket No. 1, p. 72. According to the Application, the Debtors have agreed to allow Counsel to sell the Property and Counsel requests that the fees and expenses be paid from the proceeds of the subsequent sale, along with the Debtors' creditors pursuant to the absolute priority rule. *See* Application, p. 4, ¶ 11.

On January 18, 2023, that *Stipulation to Continue Hearing* was filed by the parties requesting that the Application be continued from February 6, 2023 to May 21, 204 at 2:00 p.m. *See* Docket No. 111, p. 2.

Party Information

Debtor(s):

Michael Moore

Represented By

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CONT... Michael Moore and Marlena Moore

Chapter 13

Anthony James Francisco I

Joint Debtor(s):

Marlena Moore

Represented By
Anthony James Francisco I

Movant(s):

Michael Moore

Represented By
Anthony James Francisco I

Trustee(s):

Elizabeth (ND) F Rojas (TR)

Pro Se

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9:23-10061 South Bay Property Homes LLC

Chapter 11

#20.00 CONT'D Hearing
RE: [156] Motion to Dismiss Debtor

FR. 4-9-24

Docket 156

Tentative Ruling:

May 21, 2024

Appearances required.

Background

On January 30, 2023, South Bay Properties Homes LLC (the "Debtor") filed a voluntary petition for relief under Chapter 11 of title 11 of the U.S. Code. *See* Docket No. 1.

The Debtor scheduled \$11,368,063.20 in claims, \$11,253,075.20 of which, or nearly 99%, ran with, and are secured by a parcel of real property located at 27009 Sea Vista Drive, Malibu, CA 90265 (the "Property"). *See* Docket No. 25, *Schedule D: Creditors Who Have Claims Secured by Property* and *Schedule E/F: Creditors Who Have Unsecured Claims*. Additionally, after creditor JP Morgan Chase Bank, N.A. ("JP Morgan"), the senior lienholder on the Property, sought relief from stay regarding the Property, the Debtor and JP Morgan reached a settlement that was approved by this Court. *See* Docket No. 43, 147, and 165. The settlement provided that JP Morgan would be paid \$4,235,000.00 within thirty (30) days of the Court approving the settlement, and, if the payment is not timely made, JP Morgan is granted relief from the stay to foreclose on the Property. *See* Docket No. 147, pp. 18-21. On March 27, 2024, the Court entered that *Order Granting Motion to Approve Compromise with JP Morgan Chase N.A. Pursuant to Federal Rule of Bankruptcy Procedure 9019*. *See* Docket No. 165. This left April 26, 2024 as the deadline for the Debtor to pay the settlement amount to JP Morgan. No such financing motion was filed, and the Debtor withdrew its *Motion by Debtor: (1) To Approve Sale of Real Property; (2) For*

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CONT... South Bay Property Homes LLC Chapter 11

Authority to Sell Real Property Free and Clear of All Liens, Claims, and Interests; (3) For Determination of the Buyer To Be A 'Good Faith' Purchaser Within the Meaning of Bankruptcy Code § 363(m) Protection; (4) Authorize Payment of Commission and Other Sale-Related Expenses; and (5) Waiver of 14-Day Stay Periods Set Forth in Bankruptcy Rule 6004(h). See Docket Nos. 175 and 178.

On August 11, 2023, the Debtor filed that *Objection to Claim Number 5 by Claimant Lewis Landau*. See Docket No. 67. The Court sustained the Debtor's objection to Claim No. 5 filed by Lewis Landau. See Docket No. 133, *Order Granting Motion Objecting to Claim of Lewis Landau*. On February 7, 2024, Mr. Landau filed that *Notice of Appeal and Statement of Election to Bankruptcy Appellate Panel* appealing the Court's disallowance of Claim No. 5. See Docket No. 139.

On March 19, 2024, the Debtor filed that *Notice of Motion and Motion by Debtor in Possession to Dismiss Chapter 11 Case* (the "Motion"). See Docket No. 156.

Through the Motion, the Debtor contends there is cause to dismiss this case under 11 U.S.C. § 1112(b). *See id.* at p. 7, lines 13-18. The Debtor argues that but for a number of "nominal creditors," all of the Debtor's creditors are secured creditors, with the Property serving as their collateral. *See id.* at pp. 6-7. Creditors, argues the Debtor, will be paid, or their claims resolved "in the ordinary course following dismissal." *See id.* at p. 7, lines 7-11. The Debtor also asserts that all administrative claims will be paid prior to dismissal of the instant case. *See id.* lines 10-11.

On March 26, 2024, Mr. Landau filed that *Opposition to Motion to Dismiss Chapter 11 Case* (the "Opposition"). See Docket No. 164. Through the Opposition, Mr. Landau contends that dismissal of this case is improper in that dismissal could render moot the pending appeal regarding Claim No. 5. *See id.*

On April 2, 2024, the Debtor filed that *Reply in Support of Motion by Debtor in Possession to Dismiss Chapter 11 Case* (the "Reply"). See Docket No. 173. The Debtor argues through the Reply that Mr. Landau lacks standing to object to the Motion given the disallowance of Claim No. 5, and that Mr. Landau has not established that dismissal will moot the pending appeal of the disallowance of Claim No. 5. *See id.* Further, the Debtor argues that dismissal is in the best interest of creditors. *See id.*

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**CONT... South Bay Property Homes LLC
Notice**

Chapter 11

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 March 19, 2024, the Debtor served all creditors with the Motion via U.S. Mail first class, postage prepaid. *See Docket No. 156, Proof of Service of Document*, pp. 11-12. On March 19, 2024, the Debtor served the U.S. Trustee the Motion via Notice of Electronic Filing [NEF]. *See id.* 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." The Court therefore takes the default of all non-responding parties, and takes their lack of opposition as consent to the Motion.

Analysis

11 U.S.C. § 1112(b)

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." "The bankruptcy court has broad discretion in determining what constitutes 'cause' under section 1112(b). *In re Sullivan*, 522 B.R. 604, 614 (9th Cir. BAP 2014) (citing *In re Chu*, 253 B.R. 92, 95

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CONT... South Bay Property Homes LLC Chapter 11

(S.D. Cal. 2000)). *See In re Ditter*, 13 F.App'x 686, 687 (9th Cir. 2001) ("We review for abuse of discretion the bankruptcy court's grant of a voluntary motion for dismissal" (citing *In re Int'l Airport Inn P'ship*, 517 F.2d 510, 511 (9th Cir. 1975))).

Here, the Court finds cause to dismiss the instant case. The Debtor has not paid JP Morgan under the settlement agreement approved by this Court, and so JP Morgan will have relief from stay to initiate foreclosure proceedings against the Debtor's only asset, the Property. What is more, the Debtor has been in Chapter 11 for more than a year, and without proposing a plan. As of March 31, 2024, the Debtor disclosed that it held \$111 in cash, and had no income. *See Docket No. 179, Monthly Operating Report*. Now, with JP Morgan able to foreclose on the Debtor's sole asset, and given the Debtor's lack of any income, it seems unlikely to this Court that the Debtor has any ability to reorganize. Even if the Debtor had the ability to retain the Property, the Property is in disrepair, and the Debtor has not shown an ability to repair the Property so that it may be sold. There is nothing more that the Debtor can accomplish in Chapter 11.

What is more, no creditor of the Debtor with an allowed claim has opposed the Motion. Mr. Landau is the sole objector, whose claim the Court has disallowed, and which claim, even if allowed, would comprise a fraction of 1% of currently allowed claims.

Having found cause, the next step in the analysis under 11 U.S.C. § 1112(b) is for the Court to determine whether the instant case should be converted to Chapter 7 or dismissed, based on the best interest of creditors and the Debtor's estate. The Court finds dismissal to be in the best interest of creditors of the Debtor and the Debtor's bankruptcy estate. The Debtor has no assets other than the Property, and the Property is subject to JP Morgan's foreclosure rights under the settlement agreement with the Debtor. There is nothing more for a Chapter 7 trustee to do.

Pending Appeal

A bankruptcy case may be dismissed while an appeal from the bankruptcy court's determination of a claim objection is pending. *See In re Desert Springs Financial, LLC*, 2017 WL 1434403 *4 (9th Cir. BAP 2017); *see also In re Koo*, 2013 WL 5460138 (9th Cir. BAP 2013).

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CONT... South Bay Property Homes LLC

Chapter 11

Conclusion

The Motion is granted. The instant case is dismissed. The Debtor is to upload an order attaching this tentative ruling within 7 days.

April 9, 2024

Appearances waived.

This matter is continued to May 21, 2024, at 2:00 p.m.

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

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9:23-10061 South Bay Property Homes LLC

Chapter 11

#21.00 CONT'D Chapter 11 Status Conference

FR. 3-22-23, 6-14-23, 9-27-23, 11-22-23, 1-24-24, 4-10-24

Docket 1

Tentative Ruling:

May 21, 2024

Appearances required.

April 10, 2024

Appearances waived.

This matter is continued to May 21, 2024, at 2:00 p.m.

January 24, 2024

Appearances waived.

The Court has reviewed the *Chapter 11 Status Report*. See Docket No. 120. The Court continues the status conference to April 10, 2024, at 2:00 p.m. The Court sets March 31, 2024 as the deadline for the Debtor to file a plan of reorganization. The Debtor is to upload a scheduling order with these dates.

November 22, 2022

Appearances required.

The Court has reviewed the *Chapter 11 Status Report*. See Docket No. 94. The Court will confer with the Office of the United States Trustee as to the *Debtor's compliance with Guidelines and Requirements for Chapter 11 Debtors in Possession*. Pending any compliance issues, the Court is inclined to continue the status conference to

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CONT... South Bay Property Homes LLC
January 24, 2024, at 2:00 p.m.

Chapter 11

September 27, 2023

Appearances required.

South Bay Property Homes LLC (the "Debtor") filed a voluntary petition for relief on January 30, 2023. *See* Docket No. 1. The Debtor has no operations, and its only asset is a parcel of real property located at 27009 Sea Vista Drive, Malibu, CA 90265, that is in disrepair (the "Property"). *See* Docket No. 86, p. 5, lines 11-16. It appears that the Debtor is unable to insure the Property, and that it is the Debtor's secured creditors that are insuring the Property, presumably through force-placed insurance. *See id.* The Court is concerned about the time the Debtor has spent in Chapter 11 without proposing a plan of reorganization, and its ability to exit Chapter 11 through a confirmed plan of reorganization. The Court is inclined to issue an order to show cause regarding dismissal or conversion of the instant case.

June 14, 2023

Appearances required.

March 22, 2023

Appearance required.

The Court has reviewed the *Chapter 11 Status Report*. *See* Docket No. 22. The Court will set a bar date for secured creditors, unsecured creditors, and equity security holders to file proofs of claim as June 30, 2023, and July 31, 2023 for governmental units. The Debtor is to upload an order setting the bar date, and is to serve the bar date on or before April 3, 2023, using the court's Local Form F 3003-1.NOTICE.BARDATE.

At the status conference, the Court will inquire with the United States Trustee regarding the Debtor's compliance with the *Guidelines and Requirements for Chapter 11 Debtors in Possession*.

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CONT... South Bay Property Homes LLC Chapter 11

Party Information

Debtor(s):

South Bay Property Homes LLC

Represented By
Leslie A Cohen

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9:23-10314 Concrete Solutions & Supply

Chapter 11

#22.00 Hearing

RE: [163] Fourth Supplement To Original Motion To Use Cash Collateral
(Docket #3); Filed by Debtor

Docket 3

Tentative Ruling:

May 21, 2024

Appearances required.

Party Information

Debtor(s):

Concrete Solutions & Supply

Represented By
Steven R Fox

Movant(s):

Concrete Solutions & Supply

Represented By
Steven R Fox
Steven R Fox

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2:00 PM

9:24-10051 Gabriel Contreras Cardenas and Jovita Contreras

Chapter 11

#23.00 Hearing
RE: [43] Objection to Debtor's Claim of Exemptions with proof of service
FR. 4-23-24

Docket 43
*** VACATED *** REASON: Continued by stipulation to 7/9/2024 at 1:00PM.

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

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CONT... Gabriel Contreras Cardenas and Jovita Contreras

Chapter 11

Debtor(s):

Gabriel Contreras Cardenas

Represented By
Reed H Olmstead

Joint Debtor(s):

Jovita Contreras

Represented By
Reed H Olmstead

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9:24-10051 Gabriel Contreras Cardenas and Jovita Contreras

Chapter 11

#24.00 HearingRE: [55] Motion to Approve Compromise Under Rule 9019 MOTION FOR ORDER AUTHORIZING DEBTORS TO ENTER INTO SETTLEMENT AGREEMENT & MUTUAL RELEASE; MEMORANDUM OF POINTS AND AUTHORITIES; SUPPORTING DECLARATION OF GABRIEL CONTRERAS CARDENAS

Docket 55

Tentative Ruling:

May 21, 2024

Appearances required.

Background

On January 18, 2024 (the "Petition Date"), Gabriel Contreras and Jovita Contreras (the "Debtors") filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code. *See Docket No. 1, Voluntary Petition for Individuals Filing for Bankruptcy.* The Debtors scheduled two (2) parcels of real property: (1) 1912 N. Arriba Way, Santa Maria, CA 93458; and (2) Indiana Way, Nipomo, CA 93444 (the "Nipomo Property"). *See Docket No. 18, Schedule A/B: Property*, pp. 1-2. The Debtors further listed "[c]auses of action as alleged in cross-complaint against HACL Packaging, LLC and Supreme Berry Farms, LLC for unfair business practices and other wrongdoing." *Id.* at p. 5.

The bar date for filing claims in the instant case was April 15, 2024. *See Docket No. 29, Order in Individual Chapter 11 Case Setting Bar Date to File Proofs of Claim.* Altogether, \$1,165,531.46 in general unsecured claims were filed, \$3,329,517.57 in secured claims were filed, and a priority claim in the amount of \$37,800 was filed. *See* Claim Nos. 1-11. HACL Packaging, LLC ("HACL") filed Claim No. 8, alleging a secured claim of \$3.1 million secured by the crops of Savino Farms, Inc. ("Savino") and the Nipomo Property. The Nipomo Property lien was provided through that *Stipulation Regarding Issuance of Right to Attach Order*, issued by the Superior Court of the State of California, County of Santa Barbara, within the 90 days preceding the

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CONT... Gabriel Contreras Cardenas and Jovita Contreras

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Petition Date. *See* Claim No. 8.

On April 30, 2024, the Debtors filed that *Motion for Order Authorizing Debtors to Enter Into Settlement Agreement & Mutual Release* (the "Motion"). *See* Docket No. 55. The Motion seeks this Court's approval of that *Settlement Agreement & Mutual Release* (the "Agreement") between HACL, Savino and the Debtors, whereunder the Debtors are to sell to HACL the Nipomo Property in exchange for the release of Claim No. 5 and a further \$500,000 from HACL to the Debtors, and the parties are to exchange releases. *See id.* at *Exhibit A*. The sell of the Nipomo Property to HACL is subject to overbid. *See* Docket No. 55, p. 5, lines 7-13.

Notice

Pursuant to Fed. R. Bankr. P. 2002(a)(2) "the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of: [] a proposed use, sale, or lease of property of the estate other than in the ordinary course of business, unless the court for cause shown shortens the time or directs another method of giving notice." Pursuant to Fed. R. Bankr. P. 2002(a)(3), "the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees at least 21 days' notice by mail of: [] the hearing on approval of the compromise or settlement of a controversy other than approval of an agreement pursuant to Rule 4001(d), unless the court for cause shown directs that notice not be sent."

This Court's Local Rule 9013-1(f)(1) provides that "each interested party opposing or responding to the motion must file and serve the response [] on the moving party and the United States trustee not later than 14 days before the date designated for hearing." Pursuant to this Court's Local Rule 9013-1(h), "if a party does not timely file and serve documents, the court may deem this to be consent to the granting or denial of the motion, as the case may be."

All creditors, the Debtors, and the Office of the U.S. Trustee were served with that *Notice of Motion for Order Authorizing Debtors to Enter Into Settlement Agreement & Mutual Release* (the "Notice"). *See* Docket No. 56, *Proof of Service of Document*, pp. 4-6.

However, the Debtors have not filed that notice of sale on form F

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

6004-2.NOTICE.SALE pursuant to this Court's Local Rule 6004-1(f), nor has such a notice of sale been posted to the Court's website.

No party has filed an opposition or objection to the Motion. As such, the Court takes the default of all properly served, non-responding parties.

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

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

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

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The Ninth Circuit BAP has "relied on *Berkely Delaware Court* for the proposition that the bankruptcy court has discretion to apply § 363 to the compromise of claims." *Id.* at 181-182 (citing *In re Isom*, 2020 WL 1950905 *9 (9th Cir. BAP 2020)) ("Whether to impose formal sale procedures, however, is ultimately a matter of discretion that depends on the dynamics of the particular situation...[T]he court need not implement bidding procedures and an auction if the case does not call for it."). "[T]he purpose of the *Mickey Thompson* rule is to maximize estate assets by requiring trustees and bankruptcy courts to consider 'whether there is a more attractive solution than that which the trustee has negotiated.'" *Id.* at 182 (citing *In re Mickey Thompson Ent. Grp.*, 292 B.R. 415, 421 (9th Cir. BAP 2003)).

The so-called *Mickey Thompson* rule is narrow and does not apply in all circumstances. The rule is applicable when the settlement of litigation claims run in only one direction. *In re Open Med. Inst.*, 639 B.R. 169, 181-82 (9th Cir. BAP 2022) ("Because this settlement resolved mutual claims [of some value], it was not a one-way sale requiring scrutiny under § 363"). *See also In re Worldpoint Interactive, Inc.*, 335F. App'x 699, 670 (9th Cir. 2009) ("because both parties [] released claims" the *Mickey Thompson* rule did not apply); *In re Isom*, 2020 WL 1950905, at *10 ("[U]nlike *Mickey Thompson*, there were actual 'compromise' aspects to the settlement agreement; it was not merely a sale of an estate asset to the settling party disguised as a compromise"); *In re Morris*, 2016 WL 1254357, at *7 (9th Cir. BAP 2016) ("[B]oth parties released claims, rendering the settlement a mutual compromise, rather than a sale. Accordingly, the court did not need to analyze the proposed settlement under § 363").

Here, the Motion and the Agreement provide for more than the mere compromise of claims, but includes the sale of the Nipomo Property, and as such, the Agreement may be analyzed under 11 U.S.C. §363 for sale of estate property.

Probability of Success in Litigation

The Debtors seek to settle two (2) issues involving HACL. First, "[t]he Debtors contend that they could avoid the HACL lien" pursuant to 11 U.S.C. § 547. *See* Docket No. 55, p. 7, lines 1-9. "The Debtors also scheduled counterclaims against HACL as an asset with an unknown value, but they estimate the value to be significant if successful." *See id.* at p. 4, lines 9-10. So, the Court must analyze the

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probability of success both with the preference action and the counterclaims against HACL. Both issues are being resolved through the Motion and Agreement. The Debtors assert that they would be successful in the litigation against HACL, both as to the extent of any secured lien, and as to the counterclaims against HACL. While the Debtors provide some of the defenses they anticipate regarding any preference action against HACL, no analysis is provided as to any defenses to the counterclaims.

Given the lack of any analysis as to the counterclaims, and as the value of the counterclaims is "significant," the Court finds this factor to weigh against granting the Motion.

Collectability

The Debtors state that "[c]ollection is not an issue in this case." *See Docket No. 55, p. 8, lines 4-5.* The Court disagrees. The avoidance claim is not the only property of the estate at issue in the Agreement. The Debtors are also releasing the counterclaims, which the Debtors assert have significant value. Yet, there is no evidence in front of the Court as to the impediments to collection on any judgment on the counterclaims.

Given the lack of any analysis as to the impediments to collection on the counterclaims, the Court finds this factor to weigh against granting the Motion.

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

The Debtors assert that "the cost of [] litigation would be removed from the pot for distribution," and thus, "the litigation strategy is even less attractive for the estate than it appears." *See Docket No. 55, p. 8, lines 7-12.* The Court has no understanding of the complexity, expense, inconvenience or delay associated with the counterclaims against HACL, as no analysis is provided in the Motion. As the release of the significantly valuable counterclaims is a material part of the Agreement, the failure to provide any analysis as to the complexity, expense, inconvenience and delay in litigating that matter to conclusion is fatal to this factor.

The Court finds that this factor weighs against granting the Motion.

The Interest of Creditors

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The Debtors assert that the Agreement is in the best interest of the estate's creditors.

See id. at lines 14-16. By the Debtors' calculation, the Motion will result in unsecured creditors being paid in full. This conclusion rests on a number of unknown factors.

First, it is stated that the Internal Revenue Service will withdraw its claim, or the claim will be objected to. *See id.* at p. 3, lines 19-22. This has yet to happen.

Second, the claim of Planasa, LLC would have to be successfully objected to. *See id.* at lines 23-24. No claim objection has been filed. It is unknown what it would cost to bring the claims litigation, or to file and confirm a plan of reorganization. It is unknown whether there are any tax consequences of selling the Nipomo Property that the Debtors' estate would be responsible for. As noted *supra*, it is not clear what the value of the counterclaims against HACL are valued at, other than the value is "significant." It is not clear what the Nipomo Property is worth other than by reviewing the Debtors' schedules. The Court has not approved the employment of a real property broker. The Nipomo Property has not been listed on the Court's webpage.

Given the dearth of information in the Motion, this factor weighs against granting the Motion.

Sale

Even were the Court inclined to grant the Motion based solely on the *A & C Props.* factors, the sale procedures are lacking. The Motion calls for overbids, but provides no overbid procedures. Parties are left guessing as to what form a bid is to take, and how any auction will operate. Without a real property broker, which, again, the Court has not approved employment of, how will the Debtors know how to review offers, and approve potential buyers for any auction? The Court is also unclear about the marketing efforts that have taken place regarding the Nipomo Property, and the efforts that are to take place.

Conclusion

The Court will deny the Motion for the reasons set forth herein. It seems to the Court as if this case is ripe for conversion. The Court will advance the status conference to June 18, 2024, at 1:00 p.m., and issue an order to show cause why the instant case should not be converted to Chapter 7.

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Chapter 11

Party Information

Debtor(s):

Gabriel Contreras Cardenas	Represented By Reed H Olmstead
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Joint Debtor(s):

Jovita Contreras	Represented By Reed H Olmstead
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Movant(s):

Gabriel Contreras Cardenas	Represented By Reed H Olmstead
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Jovita Contreras	Represented By Reed H Olmstead Reed H Olmstead
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9:24-10090 Edward Ned Li

Chapter 11

#25.00 Objection to Debtor's Claim of Exemptions Filed by Creditors CSS Enterprises, Inc., C. Shawn Skillern. (Winthrop, Rebecca)

Docket 30

*** VACATED *** REASON: Continued to July 23, 2024, at 1:00 p.m.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Edward Ned Li

Represented By
Stella A Havkin

Trustee(s):

Mark M Sharf (TR)

Pro Se

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9:24-10090 Edward Ned Li

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#26.00 CONT'D Chapter 11 Status Conference

FR. 3-19-24

Docket 1

*** VACATED *** REASON: Continued to July 23, 2024, at 1:00 p.m.

Tentative Ruling:

March 19, 2024

Appearances required.

The Court has reviewed that *Subchapter V Status Report*. See Docket No. 25. The Court will inquire with the U.S. Trustee regarding the Debtor's compliance with *Guidelines and Requirements for Chapter 11 Debtors in Possession*.

Party Information

Debtor(s):

Edward Ned Li

Represented By
Stella A Havkin

Trustee(s):

Mark M Sharf (TR)

Pro Se

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

Chapter 11

#27.00 CONT'D Hearing (Continued as a Status Conference)
RE: [90] Motion RE: Objection to Claim Number 2 by Claimant Blue Jay 180,
LLC, a California limited liability company. Objection to Claim No. 2-1 of Blue
Jay 180, LLC, a California Limited Liability Company; Memorandum of Points
and Authorities; Declarations of Kailey Wright and Roye Zur in Support Thereof

FR. 12-12-23, 5-7-24

Docket 90

Tentative Ruling:

May 21, 2024

Appearances required.

The Court finds no status report as promised by the parties. Has this matter settled?

May 7, 2024

Appearances required.

December 12, 2023

Appearances required.

On November 10, 2023, S&W Blue Jay Way, LLC (the "Debtor") filed that *Objection to Claim No. 2-1 of Blue Jay 180, LLC, A California Limited Liability Company* (the "Objection"). *See* Docket No. 90. At bottom, the Objection requests two (2) forms of relief: (1) disallowance of Claim No. 2-1 (the "Claim") filed by Blue Jay 180, LLC (the "Claimant") due to the implication of California's usury laws; and (2) an awarding of "Debtor's attorneys' fees in accordance with applicable California law." *See id.* at p. 4, lines 2-6.

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On November 28, 2023, the Claimant filed *Blue Jay 180, LLC's Opposition to Objection to Claim No. 2-1 of Blue Jay, LLC, A California Limited Liability Company* (the "Opposition"). See Docket No. 105. The Claimant through the Opposition, argues, *inter alia*, that the Objection is procedurally defective in that it fails to comply with Fed. R. Bankr. P. 3007(b).

Analysis

The Form of Objection is Proper

As a threshold issue, pursuant to Fed. R. Bankr. P. 3007(b), "[a] party in interest shall not include a demand for relief of a kind specified in Rule 7001 in an objection to the allowance of a claim, but may include the objection in an adversary proceeding."

Fed. R. Bankr. P. 7001(1)

Pursuant to Fed. R. Bankr. P. 7001(1), an adversary proceeding includes "a proceeding to recover money or property." "[T]he word 'recover' by itself could have at least one of two primary meanings in this legal context: a) to get back or regain; or b) to gain by legal process." *See In re Ballard*, 502 B.R. 311, 317 (Bankr. S.D. Oh. 2013)(citing *Black's Law Dictionary* 1389 (9th ed. 2009)). "Rule 7001(1) describes a proceeding to exert dominion and control over money or physical property." *Id.* "Thus, the term 'to recover money or property' in the context of Rule 7001(1) refers to a proceeding involving the exercise of dominion or control over money or property that may be property of the estate." *Id.* at 317-318. "'Bankruptcy Rule 7001(1), has been applied in the context of replevin actions to recover money or property, motions to avoid post-petition transfers and actions for the turnover of collateral.'" *Id.* at 318 (citing *In re Charter Co.*, 876 F.2d 866, 874 (11th Cir. 1989)). "Rule 7001 does not govern requests for attorneys fees." *In re Chambers*, 140 B.R. 233 (N.D. Ill. 1992). "The request for attorneys' fees in connection with the objection to [] claim was property brought by motion." *In re Chambers*, 131 B.R. 818, 822 (Bankr. N.D. Ill. 1991)(partially rev'd on other grounds).

The Debtor is seeking an order from this Court, should the Court sustain the Objection, requiring the Claimant to pay the Debtor's attorneys' fees as the "prevailing party," arguing that the attorneys' fees clause in the underlying contract should be reciprocally applied under California law. *See* Docket No. 90, pp. 19-20.

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The Claimant argues that "the Objection must be overruled as procedurally defective and improperly before this Court under Rule 3007(b), as it attacks the validity of [the Claimant's] lien while also seeking money damages. These issues must be adjudicated by way of an adversary case with a fair evidentiary process, not a claim objection." *See Docket No. 105, p. 12, lines 18-20.*

The Court agrees with the Debtor that a request for attorneys' fees in conjunction with a claim objection is procedurally proper, and the attorneys' fees request need not be brought through an adversary action.

Fed. R. Bankr. P. 7001(2)

As set forth in Fed. R. Bankr. P. 7001(2), an adversary proceeding includes "a proceeding to determine the validity, priority, or extent of a lien or other interest in property..." "'Extent,' as used in Rule 7001(2), does not refer to collateral valuation, but rather concerns identification of the collateral to which the lien attaches." *In re Bennett*, 312 B.R. 843, 847 (Bankr. W.D. Ky. 2004)(internal citations omitted).

The Debtor also seeks to reduce the amount of the Claim, a secured claim, under the California usury laws. As noted, the Claimant retorts that "the Objection must be overruled as procedurally defective and improperly before this Court under Rule 3007(b), as it attacks the validity of [the Claimant's] lien while also seeking money damages. These issues must be adjudicated by way of an adversary case with a fair evidentiary process, not a claim objection." *See Docket No. 105, p. 12, lines 18-20.*

As of now, the Debtor is solely seeking to reduce the amount of the Claim under California's usury laws. The Debtor is not seeking: (1) to identify any of the collateral securing the Claim; (2) a determination of the Claim's order in priority as to other secured claims; or (3) a determination as to whether the Claim is secured by a valid lien.

The Court is inclined to agree with the Debtor that the amount of the Claim may be determined through the Objection.

The Discovery Request

"Claim objections [] initiate contested matters." *In re Rosebud Farm, Inc.*, 619 B.R. 202, 209 (Bankr. E.D. Ill. 2020)(citing Fed. R. Bankr. P. 3007). "In contested matters,

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some, but not all, of the Federal Rules of Bankruptcy Procedure [] regarding adversary proceedings apply." *Id.* "The rules automatically applicable to contested matters include Bankruptcy Rule 7026, except for Fed. R. Civ. P. 26(a)(1)-(3) and (f), and Bankruptcy Rules 7027 to 7037." *Id.* "The court has discretion to apply the other Bankruptcy Rules applicable to adversary proceedings to contested matters." *Id.* (citing Fed. R. Bankr. P. 9014(c)). Pursuant to this Court's Local Rule 3007-1(b)(5), "[i]f the claimant timely files and serves a response, the court, in its discretion, may treat the initial hearing as a status conference if it determines that the claim objection involves disputed fact issues or will require substantial time for presentation of evidence or argument."

The Claimant argues that the Objection deprives it of an opportunity to conduct discovery. *See* Docket No. 105, p. 12, lines 14-17.

The Objection appears to the Court to be complicated, although it is not clear that substantial discovery is required. The Court is inclined to continue the hearing to allow some discovery to be taken, and to take live evidence at an evidentiary hearing.

Party Information

Debtor(s):

S&W Blue Jay Way, LLC	Represented By Roy Zur
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Movant(s):

S&W Blue Jay Way, LLC	Represented By Roy Zur
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9:22-10673 Carole D King

Chapter 7

#28.00 CONT'D Hearing
RE: [170] Motion for Damages Pursuant to 11 U.S.C. 303(i) with proof of service
(Beall, William)

FR. 5-7-24

Docket 170

Tentative Ruling:

May 7, 2024

In-person appearances required. No remote appearances will be allowed.

Party Information

Debtor(s):

Carole D King

Represented By
William C Beall
Carissa N Horowitz

Movant(s):

Carole D King

Represented By
William C Beall
Carissa N Horowitz

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9:22-10674 John E King

Chapter 7

#29.00 CONT'D Hearing
RE: [245] Motion for damages pursuant to 11 U. S. C. 303(i) with proof of service (Beall, William)

FR. 5-7-24

Docket 245

Tentative Ruling:

May 7, 2024

In-person appearances required. No remote appearances will be allowed.

Background

On August 31, 2022 (the "Petition Date"), Wolverine Endeavors VIII, LLC, a California limited liability company ("Wolverine") filed an *Involuntary Petition Against an Individual* (the "Initial Petition") under Chapter 7 of the Bankruptcy Code as against each John E. King ("John") and Carole D. King ("Carole") (collectively, the "Kings"). *See* Case Nos. 9:22-bk-10674-RC, Docket No. 1 and 9:22-bk-10673-RC, Docket No. 1, respectively. [FN1]

On May 12, 2023, Insurance Company of the West ("ICW") filed that *Joinder to Involuntary Petition by Additional Petitioning Creditor* (the "ICW Joinder"). *See* Docket No. 78. Through the ICW Joinder, ICW "joins [the Amended Petition] filed by [Wolverine]" pursuant to 11 U.S.C. § 303(c) and Rule 1003(b). *Id.* at p. 1. On May 12, 2023, Fence Factory, Inc. ("Fence Factory") filed that *Joinder to Involuntary Petition by Additional Petitioning Creditor* (the "Fence Factory Joinder"). *See* Docket No. 82. Through the Fence Factory Joinder, Fence Factory "joins [the Amended Petition] filed by [Wolverine]" pursuant to 11 U.S.C. § 303(c) and Rule 1003(b). *Id.* at p. 1. On September 7, 2023, Fence Factory filed that *Withdrawal of Joinder to Involuntary Petition* (the "Withdrawal") seeking to "withdraw its Joinder [as it] no longer wishes to participate in the instant involuntary bankruptcy." *See* Docket No. 139, p. 1. On September 14, 2023, that *Joinder to Involuntary Petition by Additional*

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Petitioning Creditor East West Bank (the "EWB Joinder") was filed by East West Bank ("EWB"). *See* Docket No. 155. Through the EWB Joinder, EWB "joins this case in support of the amended involuntary petition [] filed by [Wolverine]" pursuant to 11 U.S.C. § 303(c). *Id.* at p. 1.

On January 8, 2024, the Court issued that *Order on Motion to Dismiss Involuntary Petition* in which the Court dismissed the petition for its lack of numerosity (the "Dismissal Order"). *See* Docket No. 207, p. 22.

On April 4, 2024, John filed that *Motion for Damages Pursuant to 11 U.S.C 303(i)* (the "Motion") seeking costs and attorney's fees against all petitioning creditors as well as a finding of bad faith for compensatory damages and punitive damages against EWB, Wolverine, and Fence Factory. *See* Docket No. 245.

On April 23, 2024, EWB filed that *Opposition of East West Bank to Alleged Debtor John E. King's Motion for Damages Pursuant to 11 U.S.C. §303(i)* (the "EWB Opposition"); Fence Factory filed that *Opposition to Alleged Debtor's Motion for Damages Pursuant to 11 U.S.C. 303(i)* (the "Fence Factory Opposition"); ICW filed *Petitioning Creditor Insurance Company of the West's Objection to John and Carole King's Motions for Fees Pursuant to Section 303(i)(1)* (the "ICW Opposition"); and Wolverine filed *Petitioning Creditor Wolverine Endeavors VIII, LLC's Opposition to Motion for Damages Pursuant to 11 U.S.C § 303(i)* (the "Wolverine Opposition"). *See* Dockets No. 249, 250, 251, and 252 respectively.

On April 29, 2024, the Kings filed that *Omnibus Reply Brief RE Motion for Damages Pursuant to 11 U.S.C. 303(i)* (the "Reply"). *See* Docket No. 255.

Analysis

Court's Jurisdiction to Award Damages under 11 U.S.C. § 303

Citing *In re Bialac*, 694 F.2d 625, 627 (9th Cir. 1982), Wolverine through the Wolverine Opposition argues that this "Court has been divested of jurisdiction on this issue," given the appeal of the Dismissal Order. *See* Docket No. 252, p. 7, lines 15-24.

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"When a proper notice of appeal has been timely filed, the general rule is that jurisdiction over any matters involved in the appeal is immediately transferred from the district court to the court of appeals." *In re Thorp*, 655 F.2d 997, 998 (9th Cir. 1981)(internal citations omitted). "The district court is divested of authority to proceed further with respect to such matters, except in aid of the appeal, or to correct clerical mistakes, or in aid of execution of a judgment that has not been superseded, until the mandate has been issued by the court of appeals." *Id.* (internal citations omitted). "It is equally established, however, that while an appeal of an order is pending, the trial court retains jurisdiction to implement or enforce the order. This is true because in implementing an appealed order, the court does not disrupt the appellate process so long as its decision remains intact for the appellate court to review." *In re Marino*, 234 B.R. 767, 769-770 (9th Cir. BAP 1999)(internal citation omitted).

Pursuant to Fed. R. Bankr. P. 8007(a)(1)(A), "[o]rdinarily, a party must move first in the bankruptcy court for [] a stay of a judgment, order, or decree of the bankruptcy court pending appeal."

In considering costs and fees pursuant to 11 U.S.C. § 303(i), "this court is not interfering with the order on appeal but is implementing the dismissal order." *In re Allen-Main Assocs., Ltd. P'shp*, 243 B.R. 606, 608-609 (Bankr. D. Conn. 1998). Absent appellant's motion to stay implementation of a dismissal order under Fed. R. Bankr. P. 8007, "[t]he dismissal order [] is in full force and effect and permits [the named debtor] to assert its rights under § 303(i)(1)." *Id.* at 609 (citing *N.L.R.B. v. Cinn. Bronze, Inc.*, 829 F.2d 585, 588 (6th Cir. 1987).

In the case at bar, Wolverine has not moved this Court for a stay pending appeal, pursuant to Fed. R. Bankr. P. 8007. Ergo, this Court may enter orders pursuant to 11 U.S.C. § 303(i).

Proper Procedural Vehicle

Wolverine argues through the Wolverine Opposition that "because section 303 mandates that any award be within the confines of a judgment, King cannot obtain this relief by simple motion." *See* Docket No. 252, p. 8, lines 13-14.

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"A § 303(i) proceeding begins with a motion following dismissal of the case without consent of all petitioners and the debtor and without a debtor's waiver of the 'right to judgment.'" *In re Linton*, 631 B.R. 882, 892 (9th Cir. BAP 2021). "The end of a § 303(i) proceeding is the 'judgment' awarding fees, costs, and—perhaps—actual and punitive damages." *Id.* "Since Federal Rule of Bankruptcy Procedure 7001 does not require an adversary proceeding to determine issues under § 303(i), such a proceeding is a Rule 9014 'contested matter.'" *Id.* "The discovery rules apply, and evidence is taken in the same manner as in an adversary proceeding." *Id.* "The court makes findings of fact and conclusions of law." *Id.* "The judgment, default, and summary judgment rules apply, as do rules for post-judgment motions." *Id.* (citing Fed. R. Bankr. P. 9014(c)).

The Court does not completely follow Wolverine's argument here. If Wolverine is seeking to take discovery, one would presume such discovery has already been served, and is nearing completion, if not already completed. The Court lacks certainty as to where "the myriad procedural issues" lie.

[FN1]

All following citations refer to the docket in Case Nos. 9:22-bk10674-RC unless otherwise indicated.

Party Information

Debtor(s):

John E King

Represented By
William C Beall
Carissa N Horowitz

Movant(s):

John E King

Represented By
William C Beall
Carissa N Horowitz