

**United States Bankruptcy Court
Central District of California
Santa Ana
Theodor Albert, Presiding
Courtroom 5B Calendar**

Tuesday, February 20, 2024

Hearing Room 5B

10:00 AM
8:00-00000

Chapter

#0.00 Hearings on this calendar will be conducted using ZoomGov video and audio.

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ZoomGov meeting number: 161 717 6006

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- Connect early so that you have time to check in.
- Change your Zoom name to include your calendar number, first initial and last name, and client name (*ex. 5, R. Smith, ABC Corp.*) if appearing by video. This can be done by clicking on "More" and "Rename" from the Participants list or by clicking on the three dots on your video tile.
- Mute your audio to minimize background noise unless and until it is your turn to speak. Consider turning your video off until it is your turn to appear.
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completed your appearance(s).

Docket 0

Tentative Ruling:

- NONE LISTED -

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8:24-10114 BBQATOC, Inc.

Chapter 11

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

**PELICAN INVESTMENTS #4, LLC
Vs.
DEBTOR**

Docket 15

Tentative Ruling:

Tentative for February 20, 2024

It is not at all clear that there is still a lease here to assume, since notice to quit was given in August 14, 2023 and an unlawful detainer allegedly commenced August 28, 2023. *In re Windmill Farms*, 841 F. 2d 1467, 1471 (9th Cir. 1987). But the court presumes debtor is fighting eviction in state court for alleged breaches by landlord. None of that, however, suggests that there is even a remoted possibility of a "reorganization in prospect" here which might be grounds for preserving the stay under §362(d)(2). Indeed, full schedules were as of this reading still unfiled. The close-in analysis of lease terms and whether any of that results in any monetary recovery for debtor, and/or whether the alleged First Amendment or payment plan relieved landlord of breaches, and/or whether Debtor has a viable claim for avoidance of forfeiture, is all probably best left to the Superior Court where there is a UD action pending and those issues are already raised. Since there might be a legitimate question of the length of notice of the motion given to the initially omitted eight creditors, the court will continue the hearing to February 27 at 10:30 a.m. to see if any objection is raised. In meantime landlord might also consider a motion for abstention.

Appearance required.

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CONT... BBQATOC, Inc.

Chapter 11

Debtor(s):

BBQATOC, Inc.

Represented By
Andrew S Bisom

Movant(s):

Pelican Investments #4, LLC

Represented By
Corey E Taylor

Trustee(s):

Mark M Sharf (TR)

Pro Se

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8:23-10677 Anthony Patrick Veltri

Chapter 13

#2.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**FORD MOTOR CREDIT COMPANY LLC
Vs.
DEBTOR**

Docket 50

Tentative Ruling:

Tentative for February 20, 2024
Grant as unopposed. Appearance is optional.

Party Information

Debtor(s):

Anthony Patrick Veltri

Represented By
Rex Tran

Movant(s):

Ford Motor Credit Company LLC

Represented By
Sheryl K Ith

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:23-12371 Steven Paul Oppgard

Chapter 7

#3.00 Motion for relief from the automatic stay REAL PROPERTY

**NATIONSTAR MORTGAGE LLC
Vs.
DEBTOR**

Docket 28

Tentative Ruling:

Tentative for February 20, 2024
Grant as unopposed. Appearance is optional.

Party Information

Debtor(s):

Steven Paul Oppgard

Represented By
Stephen L Burton

Movant(s):

Wells Fargo Bank, National

Represented By
Jennifer C Wong

Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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8:24-10021 Christopher B Cole

Chapter 7

#4.00 Motion for relief from the automatic stay REAL PROPERTY

**C. HAMLIN PROPERTIES, LLC
Vs.
DEBTOR**

Docket 10

Tentative Ruling:

Tentative for February 20, 2024
Grant as unopposed. Appearance is optional.

Party Information

Debtor(s):

Christopher B Cole

Represented By
A Mina Tran

Movant(s):

C. Hamlin Properties LLC

Represented By
Ronald Appel

Trustee(s):

Richard A Marshack (TR)

Pro Se

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8:23-12431 Brenda Stanfield

Chapter 13

#5.00 Motion for relief from automatic stay ACTION IN NON-BANKRUPTCY FORUM

**MICHELLE McKINNEY
Vs.
DEBTOR**

Docket 20

Tentative Ruling:

Tentative for February 20, 2024

Grant so as to allow process against third parties and/or liquidation of the claim as against debtor. Not relieved as to any levies of process against property of the estate or debtor. Appearance is optional.

Party Information

Debtor(s):

Brenda Stanfield

Represented By
Andy C Warshaw

Movant(s):

Michelle McKinney

Represented By
Brandon J. Iskander
Robert P Goe

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:18-10486 Ron S Arad

Chapter 7

Adv#: 8:18-01080 Arad v. DEPARTMENT OF THE TREASURY, INTERNAL REVENUE

**#6.00 TRIAL RE: Complaint
(set from mtn to amend pretrial order hrg held on 8-10-23)
(cont'd from 10-05-23 per court's own mtn)
(set from s/c hrg held on 10-12-23)**

Docket 1

***** VACATED *** REASON: CONTINUED TO 5-13-24 AT 10:00 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE TRIAL
ENTERED 1-31-24**

Tentative Ruling:

Tentative for October 12, 2023
Assign trial date. Appearance required.

Tentative for 8/10/23:
Status? This was continued to accommodate, supposedly, an amended pretrial order but nothing has been filed. Why is this still on calendar?
Dismiss?

Appearance: required

Tentative for 3/23/23:
The court cannot tell if this is properly on calendar, but nothing has been filed in a long time. To the extent it requests additional relief, that request is denied.

Tentative for 1/26/23:

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Settled?**

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Tentative for 12/1/22:
See #13.

Tentative for 10/13/22:
See #8 and 9.

Tentative for 9/15/22:
In view of settlement what is the purpose here?

Tentative for 8/25/22:
In view of settlement what is the purpose here?

Tentative for 5/26/22:
This is the Motion To Amend Pretrial Order brought by Chapter 7 trustee, Weneta Kosmala (Trustee) . The motion is joined by the debtor, Ron S. Arad. The Internal Revenue Service ("IRS") filed a response opposing the motion.

Federal Rule of Civil Procedure ("FRCP") 16, as incorporated by Federal Rule of Bankruptcy Procedure ("FRBP") 7016, states that the "court may modify the order issued after a final pretrial conference only to prevent manifest injustice." FRCP 16(e). Generally, courts should allow amendments of pre-trial orders when "no substantial injury will be occasioned to the opposing party, the refusal to allow the amendment might result in injustice to the movant, and the inconvenience to the court is slight." *Angle v. Sky Chef*,

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Inc., 535 F.2d 492, 495 (9th Cir. 1976) (quoting *Sherman v. United States*, 462 F.2d 577, 579 (5th Cir. 1972).

1. Background.

Trustee argues that amendment to the pretrial order is necessary to prevent manifest injustice because it contains materially incorrect and/or disputed information. This occurred because the IRS filed a unilateral pretrial stipulation on January 13, 2022 that went unopposed by Debtor, and as a result, the unilateral pretrial stipulation was adopted by the court. After the order adopting the unilateral pretrial stipulation, the case was converted to chapter 7, and Trustee entered the case on February 11, 2022. Upon review of the pretrial order, Trustee flagged several issues of fact that are either allegedly incorrect or at least disputed despite Debtor's earlier failure to challenge those facts. Specifically, Trustee takes issue with the following statements:

A) The IRS lien attaches to 1/3 (33.33%) of the proceeds of La Habra. Pretrial Stipulation p. 11.

Trustee asserts that this legal conclusion is disputed since it is predicated upon the title presumption relating to the La Habra property, but the title presumption can, and should be, overcome by a review of the evidence and intent of the parties who owned the property.

B) The IRS is entitled to receive an additional \$209,612.46 (\$246,602.89) (less the \$36,990.43 already paid) from the sale of La Habra. Pretrial Stipulation p. 11.

Trustee asserts that this is disputed because it is a conclusion predicated upon the finding that the title presumption applies, however the title presumption can, and should be, overcome by a review of the evidence and intent of the parties who owned the property.

C) As stipulated on the record, Citizens Bank is owed \$89,760.00. Pretrial Stipulation p. 12.

Trustee asserts that regardless of the statements in open Court, there

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is no evidence of any agreement by Citizens Bank to reduce its claim amount against the sales proceeds to \$89,760.00. Absent such an agreement, Trustee argues, the court may not simply reduce Citizens claim to the sales proceeds based upon an unopposed pretrial stipulation in a matter in which Citizens is not a party. Therefore, this “fact” is simply incorrect.

D) After the payment of Citizens Bank’s lien, the IRS is entitled to receive 25% of the net sale proceeds from the Yorba Linda property. Pretrial Stipulation p. 12.

Trustee argues that this is either a misstated fact or a disputed conclusion. Trustee points out that the order approving the sale of the Yorba Linda property states that the “IRS will be paid a total of twelve and one half percent (12 1/2%) of the remaining funds, if any, toward its tax liens which are claims only against the interest that Reuven Arad has in the Property” See Dkt. 297. As a result, Trustee argues, there is no basis for the statement that the IRS is entitled to receive 25% of the net sale proceeds (or approximately twice the amount included in the sale order)from the Yorba Linda property after payment to Citizens Bank.

E) The IRS is entitled to receive an additional \$169,956.01 from the sale of Yorba Linda. Pretrial Stipulation p. 12.

Trustee asserts that this is a conclusion predicated upon the incorrect facts/disputed conclusions listed above.

2. Would Manifest Injustice Follow If The Pretrial Order Remains?

Trustee concedes that Debtor’s failure to oppose or even respond to the IRS’s unilateral pretrial stipulation is what caused the court to adopt the statements of fact contained in that pretrial stipulation. However, Trustee strenuously argues that if the pretrial order is not appropriately amended, manifest injustice is sure to follow. Specifically, Trustee argues, if the IRS’ Motion for Summary Judgment was granted based upon the Pretrial Order, the IRS would be entitled to receive more than \$80,000 from the sale proceeds, and yet there would still be no effect on Citizens lien, which would require additional payment from the sales proceeds. Therefore, even though the motion to sell the property and the order contemplate that the IRS will

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take after Citizens on the portion of funds that is the interest of Reuven Arad, the IRS' payment would come solely at the expense of the estate and the Debtor's creditors and would significantly reduce the funds in the estate by jumping ahead of Citizens, which would still require full payment on its claims from the portion of the sales proceeds that is the interest of Reuven Arad. Thus, Trustee argues, the Debtor's estate will be irreparably harmed by the acceptance and adoption of provably false conclusions or assertions including that Citizens Bank has reduced its claim against the sales proceeds.

Trustee also asks that this court take into consideration the alleged Tenancy In Common Agreement ("TIC Agreement") that purports to create a 10% undivided interest between Reuven and Sara Arad in the La Habra property, with the remaining 90% ownership vested in Debtor. Another document Trustee wishes the court to consider is a purported settlement agreement accompanying the judgment of dissolution between Sara and Reuven, suggesting that Sara and Reuven own a 10% undivided interest in the La Habra property as a result of the TIC Agreement.

But none of this is new information to the court. At the hearing on May 5, the court heard these same arguments and was still persuaded that summary judgment as to the La Habra property was still warranted in the IRS's favor. In the court's view, the motion is essentially a broad appeal to equity. The problem is that equity does not necessarily favor Debtor, and by extension Trustee, in all respects. The court is mindful of how long this adversary proceeding has dragged out and the impetus for this motion was created by Debtor's own egregious neglect. Not only that, but Debtor was at all times represented by counsel when these issues manifested, but these issues were nevertheless allowed to persist. The court is somewhat more sympathetic to the predicament facing the Trustee, who was brought in after much of the damage was done, but even she cannot avoid blame entirely. For example, no timely appeal was taken of the order on the unilateral pretrial stipulation. Surely she must have been made aware of the estate's perilous position on this crucial issue. Moreover, the rules including the LBRs are not mere suggestions. They are intended to have real teeth so as to encourage parties in adversary proceedings to observe the rules of litigation strictly. It cannot or at least should not be the law that a trustee automatically catches a

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break because the mistake was only made during the administration by the DIP. No, the better theory is that the trustee steps into the debtor's shoes, both for good and for bad, but she possesses no magic wand that absolves of all earlier errors. After all, LBRs 7016-1(f) & (g) are clear about the potential consequences of neglecting to participate in pretrial conferences. Those local rules state:

(f) Sanctions for Failure to Comply with Rule. In addition to the sanctions authorized by F.R.Civ.P. 16(f), if a status conference statement or a joint proposed pretrial stipulation is not filed or lodged within the times set forth in subsections (a), (b), or (e), respectively, of this rule, the court may order one or more of the following:

- (1) A continuance of the trial date, if no prejudice is involved to the party who is not at fault;
- (2) Entry of a pretrial order based conforming party's proposed description of the facts and law;
- (3) An award of monetary sanctions including attorneys' fees against the party at fault and/or counsel, payable to the party not at fault; and/or
- (4) An award of non-monetary sanctions against the party at fault including entry of judgment of dismissal or the entry of an order striking the answer and entering a default.

(g) Failure to Appear at Hearing or Prepare for Trial. The failure of a party's counsel (or the party, if not represented by counsel) to appear before the court at the status conference or pretrial conference, or to complete the necessary preparations therefor, or to appear at or to be prepared for trial may be considered an abandonment or failure to prosecute or defend diligently, and judgment may be entered against the defaulting party either with respect to a specific issue or as to the entire proceeding, or the proceeding may be dismissed.

But there are a few points that appear to be just plain calculation mistakes, which the court always preserves the right to correct. An example of this is described at paragraph 12 of the Yorba Linda sale order which confines the percentage at 12.5% going to IRS as discussed at ¶¶ D. above. The sale order came first so it should control over contradictory recitals in the pretrial stipulation absent some compelling reason, none of which is offered

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here. This might not matter a lot, however, because of the larger issue concerning Citizen Bank's lien discussed at ¶¶C above. The Trustee is right that even if the adopted pretrial order can govern as between the parties to the adversary proceeding, it cannot logically or legally govern the rights of a non-signatory third party like Citizens. So, to correct manifest injustice and to more properly accord with the existing record, those amendments should be allowed. But the other questions go to interpretation of unauthenticated and extraneous agreements between the debtor, Reuven and Sara Arad such as the TIC Agreement or documents in Sara and Reuven's divorce. These might or might not be genuine, and might or might not be persuasive, but they were central to the adversary proceeding and should have been certainly addressed in the Pretrial Stipulation. So, unless the LBRs are to be ignored, those questions as determined by the order adopting the unilateral pretrial stipulation will stand.

The court remains concerned about the draining of funds that have occurred during the pendency of this adversary proceeding particularly and the bankruptcy case generally, and the extraordinary time it took to resolve it to little good effect from the estate's viewpoint. But the court is also obliged to, whenever possible, decide a given case on its merits, and obvious miscalculations and misstatements of the record should be corrected. Debtor has been procedurally neglectful and it could also be credibly argued that the IRS's claim of prejudice due to undue delay caused by Debtor should be given some weight. That must be balanced against the asserted harm to the estate. But also in this mix is the court's strong feeling that the LBRs should be obeyed and the failure to do so here, particularly after the delays already experienced in prosecution of the adversary proceeding, cannot be without consequence. Therefore, the motion can be granted to correct some issues, as discussed above, in the interest of justice, but others not. The court cannot discern whether this decision must necessarily cause a revisiting of the summary judgment, but it is intended instead primarily to correct disposition of proceeds more in accord with the record, as described above.

Grant in part, deny in part, as above.

Appearance: required

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Debtor(s):

Ron S Arad

Represented By
G Bryan Brannan

Defendant(s):

DEPARTMENT OF THE

Represented By
Jolene Tanner
Angela Gill

UNITED STATES OF AMERICA

Represented By
Jolene Tanner
Angela Gill

Plaintiff(s):

Ron S Arad

Represented By
G Bryan Brannan

Trustee(s):

Weneta M.A. Kosmala (TR)

Represented By
Ryan W Beall
Jeffrey I Golden