

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

Tuesday, April 30, 2024

Hearing Room

5B

10:30 AM

8:00-00000

Chapter

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completed your appearance(s).

Docket 0

Tentative Ruling:

- NONE LISTED -

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8:24-10084 Christopher Mogelberg

Chapter 7

#1.00 Motion For Relief From The Automatic Stay (UNLAWFUL DETAINER)

**UHC 00190 ANAHEIM, LP
Vs.
DEBTOR**

Docket 19

Tentative Ruling:

Tentative for April 30, 2024
Grant as unopposed. Appearance required.

Party Information

Debtor(s):

Christopher Mogelberg

Pro Se

Movant(s):

MICHAEL BRENNAN

Represented By
Michael A Brennan

Trustee(s):

Karen S Naylor (TR)

Pro Se

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8:22-11186 Philip Gus Randazzo

Chapter 7

**#2.00 Motion for relief from the automatic stay REAL PROPERTY
(cont'd from 4-02-24)**

**WILMINGTON TRUST, NATIONAL ASSOCIATION
Vs.
DEBTOR**

Docket 206

Tentative Ruling:

Tentative for April 30, 2024
Has Trustee made a decision about attempting to administer. Status?
Appearance required.

Tentative for April 2, 2024
Nothing additional? Valuation? Grant. Appearance required.

Tentative for February 27, 2024

This motion for relief of stay is brought by the creditor Wilmington Trust, holding a claim of \$2,640,000 secured by the first deed of trust. The motion is brought under alternate theories of: 1. "cause", including lack of adequate protection [§362(d)(1)] and/or 2. no equity and not necessary for a reorganization [§362(d)(2)]. Since this is now a chapter 7 we can safely assume the property is not necessary to a reorganization. So both prongs turn on the question of value, i.e. whether there is any equity in the property or at least whether the movant's lien is senior enough such that we are concerned primarily with whether the value behind the first trust deed is sufficient to warrant delaying foreclosure because the movant is adequately

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CONT... Philip Gus Randazzo

Chapter 7

protected (at least in the absence of adequate protection payments). The evidence on the measure of that value is sketchy. We have a broker's opinion of a value @\$4,100,000. Creditor offers a valuation @\$3,580,000, taken apparently from the debtor's schedules. But even at the higher value the extent of cushion is speculative given a still slower real estate market.

The trustee's lack of any opposition can also be read as his conclusion that there is no value net of liens that could be obtained here.

Debtor offers a very vague suggestion that negotiations with the trustee to extract some value for the estate by subordinating the third deed of trust are underway. Well, maybe. More quibbles are offered having to do with a possible reduced sale commission. Again, maybe, as in the best case that only gives a percentage or two, hardly sufficient by itself for any further delay. The court is very skeptical particularly because nothing is heard from the trustee. But the burden of valuation is upon the movant and it is not carried here, at least not convincingly so, at this juncture because we lack an appraisal. Perhaps more importantly, there seems little or no bankruptcy purpose being fulfilled here in the absence of a clear and immediate deal of some kind with the trustee. But if debtor's scheme is to provide some reason for a delay it needs far more substance than we've seen so far. The court will give thirty more days, or thereabouts, which might be extended if adequate protection payments are also made to movant or some near prospect emerges of a deal. None are offered to date and, absent some reason to put greater faith in debtor's schemes than presented so far the stay is not likely much longer in duration. Also, movant can better solidify its case for next hearing with a formal valuation of the property.

Continue thirty days. Appearance required.

Party Information

Debtor(s):

Philip Gus Randazzo

Pro Se

Movant(s):

Wilmington Trust, National

Represented By
Jennifer C Wong

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Trustee(s):

Jeffrey I Golden (TR)

Pro Se

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8:23-11248 Inder Jeet Sharma and Rama Sharma

Chapter 7

#3.00 Motion for relief from the automatic stay REAL PROPERTY

JMAC LENDING, INC.

Vs.

DEBTOR

Docket 34

***** VACATED *** REASON: CONTINUED TO 7-30-24 AT 10:30 A.M.
PER ORDER APPROVING STIPULATION TO CONTINUE HEARING
ON MOTION FOR RELIEF FROM THE AUTOMATIC STAY ENTERED 4
-18-24**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Inder Jeet Sharma

Represented By
A Mina Tran

Joint Debtor(s):

Rama Sharma

Represented By
A Mina Tran

Movant(s):

JMAC Lending, Inc.

Represented By
Nichole Glowin

Trustee(s):

Weneta M.A. Kosmala (TR)

Represented By
Ryan W Beall
Jeffrey I Golden

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8:22-11585 AB Capital, LLC, a California limited liability co

Chapter 7

#4.00 Motion To Withdraw As Attorney

Docket 756

Tentative Ruling:

Tentative for April 30, 2024
Grant. Appearance is optional.

Party Information

Debtor(s):

AB Capital, LLC, a California

Pro Se

Trustee(s):

Richard A Marshack (TR)

Represented By
D Edward Hays
Alan W Forsley
Ryan D O'Dea
Kristine A Thagard
James C Bastian Jr
Marc A Lieberman
Rika Kido

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8:23-10366 VAP Diagnostics Laboratory, Inc.

Chapter 7

#5.00 Trustee's Final Report And Applications For Compensation:

THOMAS H. CASEY, CHAPTER 7 TRUSTEE

HAHN FIFE & COMPANY, ACCOUNTANT FOR CH 7 TRUSTEE

**VAN HORN AUCTIONS & APPRAISAL GROUP LLC, AUCTIONEER FOR
TRUSTEE FEES**

FRANCHISE TAX BOARD, OTHER STATE OR LOCAL TAXES

Docket 56

Tentative Ruling:

Tentative for April 30, 2024

Allowed as prayed. Appearance is optional.

Party Information

Debtor(s):

VAP Diagnostics Laboratory, Inc.

Represented By
Edward Wu
Chris C Han

Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:21-12001 Joseph L Sanders

Chapter 7

#6.00 Motion Of Chapter 7 Trustee For Order Compelling Turnover Of Residential Real Property Pursuant to 11 U.S.C. Section 542(a) And Issuance Of A Writ Of Possession

Docket 701

Tentative Ruling:

Tentative for April 30, 2024

Trustee requests turnover of the Laguna Beach Properties. To ensure that the Trustee can undertake any necessary repairs to make the property market ready, and to appropriately inform potential buyers of the current condition of the property, the Trustee also requires all documentation in the Debtor's possession regarding the remodel work performed, including all contracts, invoices, communications with the City of Laguna Beach regarding outstanding work to be completed before a COO will be issued, and the like.

Debtor opposes turnover of the Laguna Beach Properties on several grounds. Debtor first argues that there are alternative assets available for liquidation, including the Murrieta Property and the Laguna Beach Vacant Lot, which each allegedly have equity available to generate the \$360,000 in additional funds needed. The Laguna Beach Vacant Lot reportedly consists of 4 separate lots which are vacant and allegedly worth approximately \$250,000 each (Trustee disagrees). Selling these assets instead of the Laguna Beach Property, Debtor contends, would avoid forcing Debtor to empty to move him and/or his partner out of his residence. The Murrieta Property also allegedly contains an estimated \$400,000 in equity. There is also an Umbrella Insurance policy from Farmers Insurance which may cover some of the damages incurred by the Debtor to the state court litigants and unsecured claimants. The policy has a \$1,000,000 policy limit for general liability. Debtor urges the claim should be submitted in order to recover funds for the estate and pay the unsecured claimants.

Trustee responds to Debtor's arguments regarding the Laguna Beach

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Vacant Lot, explaining that it adjoins the Laguna Beach Property and is "unbuildable". In fact, Mr. Yoshikane has investigated and can confirm that the Laguna Beach Vacant Lot also has no direct street access, with development highly unlikely; the lot is a single lot, and not four as indicated by Debtor; and he has determined that if sold separately from the Laguna Beach Property is likely to yield no more than \$25,000 to \$50,000 at best. Further, the Murrieta Property has complex encumbrances including a secured claim held by the Watchers until the compromised amount of their claim is paid in full. Sale of the Murrieta Property would also result in delay in distribution of funds until conflicting claims on the sale proceeds are determined. Thus, the Trustee is informed and believes that the sale of the Murrieta Property would not yield any more than \$200,000. Consequently, she has determined that the Laguna Beach Properties are the best subject for near sale because it would ensure sufficient funds are generated promptly to pay all claims in full.

Finally, Trustee is very familiar with Debtors' Farmers Insurance "umbrella policy" referenced by the Debtor in the response and indicates that The Umbrella Policy currently in place provides "general liability" coverage with a limit of \$2,000,000 per occurrence. The policy provides supplemental coverage for the Laguna Beach and Murrieta Properties. The Trustee has reviewed the umbrella policy information obtained from the Debtor's broker and is unaware of any claims that might be asserted for coverage relating to the OCSC actions of the Watchers and Ms. Shohat against the Debtor. Umbrella policies do not provide coverage for contract claims or claims arising out of intentional acts.

While the opposing views are interesting the simple analysis is that these decisions on the order of liquidation of property of the estate are not Debtor's decisions to make. That is explicitly entrusted under the Code to the Trustee. 11 U.S.C. §542 and 704(a)(1). No authority is cited for the proposition that the Trustee must liquidate debtor's residence last for his ease and convenience. But even were that not the law, Trustee has persuasively refuted all of Debtor's arguments and agrees that the immediate sale of the Laguna Beach Properties as a whole is in the immediate best interests of the estate, and may raise sufficient funds to close out the case, which is the main purpose of the bankruptcy. Once sufficient proceeds are raised Debtor can

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avail himself of the unsold properties for his purposes, and unless all remaining equity gets consumed by pointless litigation (included needless hearings caused by his lack of cooperation), he might still depart in the end with something after creditors are paid. But debtor's pleas of hardship are not persuasive since this case has already been pending way too long and have become extended partly because of his lack of cooperation. As Trustee indicates, Debtor is not rendered homeless but can relocate to the Murietta Property, where apparently a substantial number of Debtor's personal belongings already reside.

A. Procedures for Turnover of the Property

Debtor's partner, Cesar Vallarta, reportedly visits or occupies the Laguna Beach Property, and maintains certain of his personal property at the premises. Thus, because Trustee has the rights of a *bona fide* purchaser under Section 544(a)(3), Trustee requests that any turnover over be directed at Debtor *and any/all other occupants*. If Debtor or occupants fail to comply with the order and turnover possession and control of the Laguna Beach Properties within thirty days after entry of the order granting the motion, the court may further authorize a writ of assistance so that the U.S. Marshal can effectuate an eviction. Bankruptcy courts have the power to authorize the issuance of a writ of execution of assistance authorizing and directing the Marshals to compel the surrender of real property. See Fed. R. Civ. P. § 70 (made applicable to adversary proceedings by FRBP 7070).

At this stage, the court will grant the motion, and Debtor and Mr. Vallarta (and any other occupants) will be ordered to turnover possession and control of the Laguna Beach Property to Trustee within 30 days of entry of the order. Should Debtor fail to comply with the court's order, a writ of assistance may be the next step forward but will not be authorized at this time. Rather, the court requests that the Trustee separately bring a motion for that assistance, if necessary. The Debtor is admonished to cooperate as further needless costs (not to mention possible sanctions) will come out of and thus diminish his remaining share.

Grant order of turnover. Ancillary enforcement provisions, if necessary, are to

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be the subject of further proceedings.

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Appearance required.

Party Information

Debtor(s):

Joseph L Sanders

Represented By
Todd J Cleary

Trustee(s):

Karen S Naylor (TR)

Represented By
Nanette D Sanders
Nathan F Smith
Ashley M Teesdale

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8:24-10235 Matias Franco and Maria Fernanda Rocca

Chapter 7

#7.00 Objection To Debtor's Claim Of Exemption

Docket 13

Tentative Ruling:

Tentative for April 30, 2024

The Chapter 7 Trustee objects to Debtors' claim of homestead exemption.

The facts are undisputed. On January 31, 2024, Debtors filed their voluntary chapter 7 bankruptcy petition. According to Debtors' statement of financial affairs, they received \$410,990.17 on September 30, 2021 from the sale of their prior residence located at 24882 Rivendell Drive, Lake Forest, CA 92360. Of that amount, \$274,208.83 was used toward downpayment on their new home at 31871 Via Pavo Real, Trabuco Canyon, California 92679 ("Property") with a stated value of \$1,450,000 and a lien in the amount of \$904,476. The remaining \$136,781.34 of the Rivendell transaction was paid to Debtors and does not figure in these discussions. Debtors claim an exemption in the Property in the amount of \$699,421 pursuant to C.C.P. § 704.730 (although Debtors now claims \$652,303.83). At the § 341(a) meeting of creditors, Trustee apparently did not raise any issue or objection to Debtors' claim of homestead exemption prior to or during the hearing (but this objection was nevertheless timely).

A. Governing Statutes

The maximum statutory amount available for homestead exemption is \$699,421 under CCP 704. 730. 11 U.S.C. § 522(p) of the Bankruptcy Code provides that "a debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate \$189,050 in value in— real or personal property that the debtor or dependent of the debtor claims as a homestead." 11 U.S.C. § 522(p)(1)(d). "For purposes of paragraph (1), any amount of such interest does not include any interest transferred from a

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debtor's previous principal residence (which was acquired prior to the beginning of such 1215-day period) into the debtor's current principal residence if the debtor's previous and current residences are located in the same State." 11 U.S.C. § 522(p)(2)(B). Under Section 522(m), this statute applies to each debtor in a joint case. 11 U.S.C. § 522(m).

B. Homestead Exemption Under Section 522(p)

It is undisputed that Section 522(p)(1) applies because the Property was acquired on or about September 2021, within the 1215-day period. It is also undisputed that the exception under Section 522(p)(2)(B) also applies, as the down payment for the Property in the amount of \$274,208.83 was obtained from the sale of Debtors' previous residence also located in California.

What is in dispute is how Section 522(p)(2)(B) should be interpreted. The case law in the 9th Circuit, in California, is thin on this issue. Debtors interpret the subsection to mean that they are entitled to not only the \$189,050 exemption cap, but also that the \$275,208.83 equity amount from the previous Rivendell Residence is simply not part of the calculation (so long as the ultimate aggregate number does not exceed the state's exemption amount). See *In re Summers*, 344 B.R. 108, 113 (Bankr. D. Ariz. 2006) ("[T]he Debtors in this case are entitled, pursuant to § 522(p)(1) to a claim of \$125,000 homestead exemption. Additionally, because the Debtors rolled over equity from their previous Arizona homestead purchased more than 1,215 days prior to the filing of their bankruptcy petition, they may claim the rolled-over equity subject to the \$150,000 homestead cap of A.R.S. § 33-1101"). The *Summers* court refers to this as the "Safe Harbor" exception, where a debtor can claim the statutory homestead cap and the equity rollover, with the total amount subject to the state's homestead cap. Thus, Debtors submit that the total amount of the exemption should be \$463,258.33 (prior to the additional Section 522(m) application).

Trustee seems to interpret Section 522(p)(2)(B) to mean that Debtors are not limited by the \$189,050 statutory cap and may claim the full rolled over down payment amount of \$274,208.83, but not both. A similar case cited by the court in *Summers* states that "a debtor is not subject to the homestead

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cap if he takes the proceeds of his first residence and reinvests them in a second residence even within the prescribed period of section 522(p)." *In re Blair*, 334 B.R. 374, 377 (2005) [emphasis added]. While the *Summers* court may interpret the cap to be a "minimum amount", the Texas court in *Blair* seems to interpret the cap to be a "limitation" that can be disregarded if the exception applies.

The Trustee's analysis makes no sense to the court. This derives largely from consideration of why the cap enacted as part of BAPCPA appears in the first place. The legislative comments in BAPCPA state that the amended Section 522(p) restricts the "mansion loophole." HR Rep. 109-31(I), 109th Cong., 1st Sess. 2005, 2005 WL 832198 *15-16 (2005). 2005 U.S. Code Cong. Admin. News 2005, pp. 88, 102. Congress briefly explains:

Under current bankruptcy law, debtors living in certain states can shield from their creditors virtually all of the equity in their homes. In light of this, some debtors actually relocate to these states just to take advantage of their mansion loophole laws. S.256 [BAPCPA] closes this loophole for abuse by requiring a debtor to be a domiciliary in the state for at least two years before he or she can claim that state's homestead exemption; the current requirement can be as little as 91 days.

But the point was to keep wily debtors from *moving* to a state with a liberal homestead just to take advantage of the more liberal exemption at the expense of their creditors; this was characterized as the 'mansion loophole.' as described above. See e.g., *Blair*, 334 B.R. at 377-78; *Summers*, 344 B.R. at 112-13. Obviously, §522(p)(1) was enacted to catch debtors who had so moved within 1215 days *from another state*, but in §522(p)(2)(B) Congress recognized that debtors who simply sold their residence in the same state and rolled over some or all of the equity, were not the target of Congress, and hence that value from the earlier transaction was simply disregarded when considering the cap. This seems entirely logical to the court. Trustee's interpretation would create a wholly unsupportable and even absurd result, i.e., effectively Congress would have repealed or amended all homestead laws of the various states to the extent they exceeded the cap of §522(p)(1) just because debtors bought a *different* house within the 1215 day period, or,

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strangely, acquired less than the state's maximum of equity from the earlier transaction. No authority is cited for such a proposition, it seems manifestly wrong and so this court declines to embrace such a rule.

C. Applicability of Section 522(m)

While it is not necessary to change the end result of this objection, Debtors point out that Trustee failed to analyze the homestead exemption under Section 522(m), which provides *each* debtor in a joint case entitlement to his or her own exemption cap. Here, Debtors doubly apply the \$189,050 federal cap under Section 522(p), so under their calculations, debtors would be able to claim twice the \$189,050 statutory amount, or \$378,100 as well as \$274,208.83 equity rollover amount, which would result in a total exemption amount of \$652,308.83 even before consideration of the §522(p)(2)(B) question. Debtors cite to two cases that discuss the interaction with Sections 522 (p) and (m). A court in Washington, another community property state, held that "Section 522(m) entitles the Debtors to double the § 522(p)(1) exemption cap to \$340,700." *In re Davis*, 647 B.R. 775 (Bankr. W.D. Wash. 2022). Further, an unreported California District Court agreed with the Bankruptcy Court upon appeal that Section 522(m) doubles the statutory amount in Section 522(p), and that when Congress added subsection (p) in 2005 to the statute, it did not touch the language in subsection (m). *In re Reicher*, CV 22-2050 JBG, 2023.

Consequently, the court agrees with the calculation appearing at page 10 of the debtors' brief. *Overruled. Appearance required.*

Party Information

Debtor(s):

Matias Franco

Represented By
Anthony B Vigil

Joint Debtor(s):

Maria Fernanda Rocca

Represented By
Anthony B Vigil

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Trustee(s):

Weneta M.A. Kosmala (TR)

Represented By
Ryan W Beall

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: Multiple Debtors 2024, see order

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Misc#: 8:24-00105 Multiple Debtors 2024, see order

**#8.00 STATUS CONFERENCE RE: Order Requiring Progressive Management
System to Appear Through Counsel at a Status Conference
(cont'd from 2-27-24)**

Docket 2

Tentative Ruling:

Tentative for April 30, 2024

Creditor needs to enroll in electronic noticing. Status? Appearance required.

Tentative for February 27, 2024

The court needs to obtain someone in authority's attention to the need for enrollment in the court's electronic notice facility. Appearance required.

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: Multiple Debtors 2024, see order

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Misc#: 8:24-00106 Multiple Debtors 2024, see order

**#9.00 STATUS CONFERENCE RE: Order requiring LA Superior Court - Chatsworth
to appear through counsel at status conference.
(cont'd from 2-27-24)**

Docket 2

***** VACATED *** REASON: OFF CALENDAR - STATEMENT
CONFIRMING REGISTRATION FOR ELECTRONIC BANKRUPTCY
NOTICING FILED 4-15-24**

Tentative Ruling:

Tentative for February 27, 2024

The court needs to obtain someone in authority's attention to the need for enrollment in the court's electronic notice facility. Appearance required.