

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

Tuesday, December 17, 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: 160 072 2502

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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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8:24-12628 Michael Henry Almeida

Chapter 7

#1.00 Motion for relief from the automatic stay UNLAWFUL DETAINER

**SANTIAGO CREEK ORANGE MHP, A CALIFORNIA L.P.
Vs.
DEBTOR**

Docket 12

Tentative Ruling:

Tentative for December 17, 2024

Per the Windmill Farms factors, (1) a 3 day notice to pay rent or quit has been given; (2) the rent has allegedly not been paid (although Debtor disputes this and states that she has been attempting to pay rent); and (3) Movant filed for an unlawful detainer action prior to the bankruptcy filing and obtained a judgment on 9/20/24. Thus, the factors weigh in favor of granting relief from stay. The court notes that relief from stay was also granted in the previous bankruptcy. Trustee filed a report of no distribution on 12/5/24. It seems more likely Debtor filed this bankruptcy to avoid the judgment and eviction process. But there is no continuing bankruptcy purpose served by continuing the stay.

Appearance required.

Party Information

Debtor(s):

Michael Henry Almeida

Represented By
Diane L Mancinelli

Movant(s):

Santiago Creek Orange MHP A

Represented By
Judy Tsai

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Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:24-11755 George Leo Ramos Olarte

Chapter 7

#2.00 Motion for Relief from the automatic Stay PERSONAL PROPERTY

**U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTOR**

Docket 60

Tentative Ruling:

Tentative for December 17, 2024

Grant as unopposed. *Appearance is optional.*

Party Information

Debtor(s):

George Leo Ramos Olarte

Represented By
Rex Tran

Movant(s):

U.S. Bank National Association

Represented By
Sean C Ferry
Kelli M Brown

Trustee(s):

Richard A Marshack (TR)

Represented By
Leonard M Shulman
Melissa Davis Lowe

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8:24-12686 Emmanuel Villanueva and Diana Palacios

Chapter 7

#3.00 Motion for relief from the automatic stay PERSONAL PROPERTY

**TOYOTA MOTOR CREDIT CORPORATION
Vs.
DEBTORS**

Docket 14

Tentative Ruling:

Tentative for December 17, 2024

Grant as unopposed. *Appearance is optional.*

Party Information

Debtor(s):

Emmanuel Villanueva

Represented By
Joseph W Creed

Joint Debtor(s):

Diana Palacios

Represented By
Joseph W Creed

Movant(s):

Toyota Motor Credit Corporation

Represented By
Kirsten Martinez

Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:20-11235 Felsia Dailey

Chapter 13

#4.00 Motion for relief from the automatic stay REAL PROPERTY

**U.S. BANK NATIONAL ASSOCIATION
Vs.
DEBTOR**

Docket 110

Tentative Ruling:

Tentative for December 17, 2024

Grant as unopposed. *Appearance is optional.*

Party Information

Debtor(s):

Felsia Dailey

Represented By
Richard G. Heston

Movant(s):

U.S. Bank National Association, as

Represented By
Theron S Covey
Joseph C Delmotte

Trustee(s):

Amrane (SA) Cohen (TR)

Pro Se

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8:24-10669 Kamil Finan and Mary Finan

Chapter 7

#5.00 Motion for relief from the automatic stay REAL PROPERTY
(con'td from 10-22-24 per order granting ch 7 tr's mtn to cont. hrg entered
10-18-24 - see order #64)

**GHATTAS ANTON HINNAWI
Vs.
DEBTORS**

Docket 39

Tentative Ruling:

Tentative for December 17, 2024

A continuance was granted at the request of the trustee so that circumstances regarding the alleged lien of movants could be investigated for possible avoidance. An examination of the creditor was also ordered. But nothing further has been filed and, absent a different report from the trustee, there does not appear to be any equity continuing bankruptcy purpose served by the stay.

Appearance suggested.

Party Information

Debtor(s):

Kamil Finan

Represented By
Quintin G Shamman

Joint Debtor(s):

Mary Finan

Represented By
Quintin G Shamman

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CONT... Kamil Finan and Mary Finan

Chapter 7

Movant(s):

GHATTAS ANTON HINNAWI

Represented By
Yoon O Ham

Trustee(s):

Thomas H Casey (TR)

Pro Se

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8:24-12580 Patricia Elaine Anderson Hooper

Chapter 11

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

**RICHARD GRISWOLD, STATE COURT APPOINTED RECEIVER
Vs.
DEBTOR**

Docket 27

Tentative Ruling:

Tentative for December 17, 2024

Receiver/Movant seeks a comfort order that the County of Mono's Nuisance Action and the Receiver's actions undertaken do not violate the automatic stay. Further, Receiver seeks a comfort order that he does not have to turn over possession of the Property to the bankruptcy trustee, as well as orders that he may borrow against the property and may sell the Property without a violation of the automatic stay, should either be approved and ordered by the Superior Court. Finally, the Receiver seeks a comfort order that he may apply the proceeds of any prospective sale to the costs of the receivership and remediation of the Property as directed by the Superior Court, without violation of the automatic stay.

The County's entire Nuisance Action and the Receivership over the Nuisance Property constitute an expression of the County's police and regulatory powers to abate nuisance properties and to protect the health and safety of the County's residents. Thus, according to 11 U.S.C. section 362(b)(4), the filing of the Debtor's bankruptcy petition does not stay the proceedings in this Nuisance Action. See *City of Riverside v. Horspool*, 223 Cal.App.4th 670, 676 (2014) ["the automatic stay is not in effect as to the City's nuisance actions 'pursuant to 11 U.S.C. § 362(b)(4)'"]. In addition, the Ninth Circuit uses two alternative tests to determine whether an action falls under the Section 362(b)(4) exemption: (1) the pecuniary purpose test and (2) the public policy test. *Berg v. Good Samaritan Hospital*,

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Chapter 11

230 F.3d 1165, 1167 (2000) [internal quotation marks omitted]. Under the pecuniary purpose test, the Court determines whether the government action relates primarily to the protection of the government's pecuniary interest or to matters of public safety and welfare. In re Berg, supra, 230 F.3d at 1167. Under the public policy test, the court determines whether the government seeks to effectuate public policy or to adjudicate private rights. Berg, supra at 1167. Here, the Nuisance Action constitutes an exercise of its police powers in maintaining the Nuisance Action and having the Receiver appointed for the purpose of protecting the residents and the public affected by the dangerous condition of the Nuisance Property. Since the primary purpose of the Nuisance Action is to protect the public health and welfare, the County's Nuisance Action and Receivership instituted have satisfied the pecuniary purpose test. Under the public policy test, the Nuisance Action does not seek to adjudicate private rights, but rather seeks to protect the public from a dangerous property. Furthermore, the benefits of a successful nuisance abatement and Receivership action inure to the public as a whole by eliminating public dangers and by recovering public money spent to eliminate those dangers. Furthermore, recovery of the County's expenses in enforcing health and safety standards from the hazardous property itself also ensures that the public taxpayers are not left with the burden of improving the property of a debtor.

However, the motion contains procedural issues. Although Movant used a form under LBR 4001-1, this is not the appropriate form for the relief sought. The form used in this case was for an action in Non-Bankruptcy Forum. However, it specifically states it is Re: the Property in June lake. In addition there is a supplemental motion, termed a "comfort" motion for an Order Confirming the Receiver's Exemption from the Automatic Stay Pursuant to 11 U.S.C. section 362(b)(4) and that turnover of receivership property from the State Court Receiver should be excused. ("Supplemental Motion"). Although filed on a LBR 4001-1 form, there is another form that specifically addresses the relief sought by receivers in just this type of situation. That form is entitled "A) For Relief from Automatic Stay Pursuant to 11 U.S.C. §362(d)(1) and B) For Relief from Turnover Order under 11 U.S.C. §543 By Prepetition Receiver (the "Relief Motions"), LBR 4001-1. This would have been the proper form and would have cured an additional problem in this filing.

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Chapter 11

Movant also failed to serve the 20 largest unsecured creditors, or Debtor's counsel. Debtor was also improperly served by electronic filing and should have been served by US Mail. Debtor does not argue the substantive of the motion, just the procedural issues here.

Deny without prejudice. Movant should refile the motion under the proper forms for receivers and properly serve the Debtor' counsel and Debtor through US Mail, and the 20 largest unsecured creditors. Movant should also attach the State Court Complaint for the court's record.

Appearance required.

Party Information

Debtor(s):

Patricia Elaine Anderson Hooper

Represented By
Michael R Totaro

Movant(s):

Richardson Griswold

Represented By
Richardson C Griswold

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8:24-12580 Patricia Elaine Anderson Hooper

Chapter 11

#7.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate 76 Alderman St., June Lake, CA 93529 .

**COUNTY OF MONO, CALIFORNIA
Vs.
DEBTOR**

Docket 33

Tentative Ruling:

Tentative for December 17, 2024

See #6. *Appearance required.*

Party Information

Debtor(s):

Patricia Elaine Anderson Hooper

Represented By
Michael R Totaro

Movant(s):

County of Mono, California

Represented By
Sean E Morrissey

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8:24-12674 The Original Mowbray's Tree Service, Inc.

Chapter 11

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

**JAIME RODRIGUEZ AND ANA LIDIA GOMEZ
Vs.
DEBTOR**

Docket 189

Tentative Ruling:

Tentative for December 17, 2024

Jaime Rodriguez and Ana Lidia Gomez ("Plaintiffs") bring this Motion for Relief from the Automatic Stay under Section 362(d)(1) to proceed in the San Bernardino Superior Court to allow the state court to enter an order overruling an objection to proposed judgment and enter judgment so Plaintiffs can commence collection efforts limited to only the Debtor's available insurance policies.

On February 6, 2020, Plaintiffs commenced the state court action against Debtor, whereby the jury reached a verdict as to noneconomic and punitive damages. Debtor objected to the proposed judgment and the state court took it under submission. On October 24, 2024, the court overruled the objection and on November 4, 2024, entered the judgment the docket in the state court action. However, six days prior to the October 24 order, Debtor filed its bankruptcy on October 18, 2024. The automatic stay took effect and under 11 U.S.C. § 362, the stay is effective against all entities and all acts. In re Fuller, 134 Bankr. 945, 947 (9th Cir. BAP 1992). It is undisputed that the entry of the San Bernardino Superior Court's October 24, 2024 Ruling on the Defendant's Objection to Plaintiff's Proposed Judgment and subsequent November 4, 2024 Judgment, technically violated the Bankruptcy Code's automatic stay provision. 11 U.S.C. § 362(a)(6).

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Chapter 11

Plaintiffs request that the court retroactively annul the automatic stay as to the October 24, 2024 ruling and lift the stay to allow the November 4, 2024 to be reentered as a compromise. Plaintiffs also request lifting the stay to allow them to proceed with collection efforts through Everest Insurance Policy which provides for the \$1,000,000 allocation and “supplementary payment” provision. The supplementary payment provision will allow for Movants to collect litigation costs taxed against insured during the court of litigation.

Debtor does not necessarily oppose all of the relief requested in the motion, such as lifting the stay to permit entry of a new judgment and permitting the Movants to seek to collect the Everest Insurance Policy’s \$1,000,000 coverage allocation. Debtor mainly opposes the immediacy of lifting the stay at the early stages of this bankruptcy and challenges the meaning of the “supplementary payments” provision. Specifically, Debtor argues that lifting the stay now to allow for entry of the November 4 judgment could have important legal consequences and could create uncertainty with respect to the deadlines for Debtor to exercise its post-judgment rights. Thus, the state court action should remain stayed in its entirety until at least February 15, 2025. This bankruptcy case remains in the early stages, and Debtor is focused on complying with administrative obligations, improving operations and cash flow, and developing its reorganization plan. Additionally, Debtor takes issue with the “supplemental payment” provision, arguing that the term is not defined or detailed in the motion, the policy attached does not contain a provision entitled “supplemental payments” and the motion does not cite to a particular policy provision for the “supplemental payments”. Plaintiffs are amenable to reentry of the November 4, 2024 ruling by granting the motion and lifting the stay but insist that the October 24, 2024 ruling be retroactively annulled. Debtors did not appear to oppose the October 24, 2024 ruling being retroactively annulled, so it seems that this issue has been resolved. The October 24, 2024 will be retroactively annulled and the stay will be lifted to allow for reentry of the November 4 judgment. Debtors do not oppose collection through the Everest Insurance Policy’s \$1,000,000 allocation, and Plaintiffs have provided clarification in the reply as to what the “supplementary payments” provision is, where to find it in the policy, and what it means. Absent any further opposition to this provision at the hearing, the form of collection also appears resolved. The remaining issue is whether to lift the stay upon order from this court after the hearing or on February 15, 2025,

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which is approximately two months from hearing date. Debtor wants more time to get its bearings in this bankruptcy and proceed towards a confirmation, and Plaintiffs assert that no delay is needed because the Everest Insurance Policy has assumed fully responsibility for defending the litigation and will be handled by counsel retained and fully paid for by the insurer. If this is the case, the court also does not see any reason to delay two months, unless Debtor has an alternative (or more compelling) argument as to how this would severely prejudice Debtor.

Grant. Appearance required.

Party Information

Debtor(s):

The Original Mowbray's Tree

Represented By
Robert S Marticello
Michael Simon

Movant(s):

Ana Lidia Gomez

Represented By
Ahren A Tiller

Jaime Rodriguez

Represented By
Ahren A Tiller

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8:23-10434 Shirley Q. Pham

Chapter 7

#9.00 Amended Motion For Order Re: Requesting The Court Keep The Debtors Case Open For No Less Than 90 Days (No Earlier Than March 15, 2025) To Allow Debtor To Continue Her Judgment Lien Avoidance Issues With The Estates Largest Unsecured Creditor

Docket 140

Tentative Ruling:

Tentative for December 17, 2024

Grant as unopposed. *Appearance is optional.*

Party Information

Debtor(s):

Shirley Q. Pham

Represented By
Thomas J Polis

Trustee(s):

Thomas H Casey (TR)

Pro Se