

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Wednesday, February 14, 2024

Hearing Room 301

9:30 AM

1: -

Chapter

#0.00 All hearings on this calendar will be conducted in Courtroom 301 at 21041 Burbank Boulevard, Woodland Hills, California, 91367. All parties in interest, members of the public and the press may attend the hearings on this calendar in person.

Additionally, (except with respect to evidentiary hearings, or as otherwise ordered by the Court) parties in interest (and their counsel) may connect by ZoomGov audio and video free of charge, using the connection information provided below. Members of the public and the press may only connect to the zoom audio feed, and only by telephone. Access to the video feed by these individuals is prohibited.

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Docket 0

Tentative Ruling:

- NONE LISTED -

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1:23-11082 Philip M. Lawrence, II

Chapter 7

#1.00 Motion for relief stay [AN]

PATRIZIO MOI, MOI PRODUCTIONS INC. AND THE RECORD PLANT INC.
VS
DEBTOR

fr.11/1/23(stip); 11/29/23(stip); 12/20/23

Docket 95

*** VACATED *** REASON: Hearing continued/advanced to 2/7/24 at
9:30 AM.

Tentative Ruling:

Taking into account, among other things, the facts, the applicable legal standards and case law set forth below, the Court will decide the matter after hearing oral argument.

I. BACKGROUND

A. The Bankruptcy Case

On August 3, 2023, Philip M. Lawrence, II (the "Debtor") filed a chapter 11 petition. In his latest amended schedule A/B, the Debtor represents that he has, among other financial assets, an "Investment into Philmar, Inc. and Philmar Studios, Inc." in the amount of \$2,051,706.00 [doc. 43]. In the amended schedule A/B, the Debtor also lists, as "financial assets," Philmar Holdings BV, Philmar Holdings NV, "Philmar Inc" [sic] and "Philmar Studios Inc" [sic], stating that each has an unknown value.

In his amended statement of financial affairs ("SFA"), the Debtor represents that, within four years before he filed his chapter 11 petition, he owned or had connections with, among other businesses, Philmar Holdings BV, Philmar Holdings NV, Philmar Inc. and Philmar Studios Inc. [doc. 39]. The Debtor does not set forth the name of the accountant or the bookkeeper for any of these businesses, nor does he identify his connection with any of these businesses, e.g., that he is or was an officer, director or managing executive of the corporation or an owner of at least 5% of the voting or

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equity securities of the corporation. *Id.*

On August 13, 2023, the Court entered an order to show cause why it should not order the appointment of a chapter 11 trustee [doc. 41]. On August 23, 2023, the United States trustee (the "UST") filed a Motion Under 11 U.S.C. § 1112(b) to Dismiss or, in the Alternative, to Convert Case [doc. 47].

On September 11, 2023, the UST filed a stipulation between the UST and the Debtor to convert this case to one under chapter 7 [doc. 70]. On September 12, 2023, the Court entered an order granting the stipulation and converting the case [doc. 72]. David K. Gottlieb is the assigned chapter 7 trustee (the "Trustee") [doc. 72].

B. Litigation Prior to the Bankruptcy Case

On July 22, 2021, the Debtor and Philmar Studios, Inc. filed a complaint against Patrizio Moi, Moi Productions, Inc., and The Record Plant, Inc. (the "Movants"), initiating an action in the Los Angeles Superior Court (the "State Court Action"). In their complaint, the Debtor and Philmar Studios, Inc. assert the following claims for relief: (1) intentional misrepresentation; (2) false promise; (3) fraudulent inducement; (4) violation of Business and Professions Code § 17200; (5) conversion; (6) trademark infringement; (7) unjust enrichment; (8) intentional interference with contractual relations; (9) rescission; and (10) declaratory relief; they demanded a jury trial. Declaration of Patrizio Moi ("Moi Declaration"), paras. 4 and 5 [doc. 95]; Exhibit 4 to Request for Judicial Notice, filed by the Trustee ("Trustee's RJN") [doc. 132] and Exhibit 5 to Additional Supplemental Declaration of Patrizio Moi [doc. 142].

On November 29, 2021, in the State Court Action, the Movants filed a cross-complaint against the Debtor and Philmar Studios, Inc. In the cross-complaint, the Movants assert the following claims for relief: (1) declaratory relief; (2) breach of written contract; (3) promissory fraud; and (4) promissory estoppel; the Movants demanded a jury trial. Supplemental Declaration of Patrizio Moi, para. 20 [doc. 95], Exhibit 4 thereto and Exhibit 5 to Trustee's RJN.

According to the Movants, the current trial date in the State Court Action is set for October 28, 2024. Supplemental Declaration of Patricia Moi, para. 25 [doc. 95]. The Movants estimate that the trial will require three to five days. Moi Declaration, para.

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The Movants represent that a terminating sanctions motion against Philmar Studios Inc., for its alleged failure to comply with an order requiring production of documents, is scheduled to be heard in the state court on January 16, 2024. Additional Supplemental Declaration of Patrizio Moi, para. 36 [doc. 142]. The Movants also state that they are ready to file a motion for summary adjudication in the state court. Supplemental Declaration of Patrizio Moi, para. 25 [doc. 95].

C. Relief from Stay Motion

On October 11, 2023, the Movants filed their *Motion for Relief from the Automatic Stay under 11 U.S.C. § 362 (Action in NonBankruptcy Forum)* (the "Motion"), requesting relief to proceed with the State Court Action [doc. 95]. On December 6, 2023, the Trustee and the Debtor each filed an opposition to the Motion [docs. 131 and 133]. On December 13, 2023, the Movants filed an omnibus reply [doc. 142].

II. STANDARDS FOR RELIEF FROM THE AUTOMATIC STAY

The burden of proof on a motion to modify the automatic stay is a shifting one. To obtain relief from the automatic stay, the party seeking relief must first establish a prima facie case that 'cause' exists for relief under § 362(d)(1). Once a prima facie case has been established, the burden shifts to the respondent, e.g., the debtor and/or the chapter 7 trustee, to show that relief from the stay is unwarranted. If the movant fails to meet its initial burden to demonstrate cause, relief from the automatic stay should be denied. *In re Advanced Medical Spa, Inc.*, 2016 WL 6958130, *4 (9th Cir. BAP Nov. 28, 2016); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551, 557 (Bankr. C.D. Cal. 2004).

Section 362(d)(1) permits lifting of the automatic stay to continue pending litigation against a debtor in a nonbankruptcy forum. *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990). Factors that courts have used to determine whether to lift the automatic stay to allow litigation to proceed in a nonbankruptcy forum include:

- (1) Whether the relief will result in a partial or complete resolution of the

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issues.

- (2) The lack of any connection with or interference with the bankruptcy case.
- (3) Whether the foreign proceeding involves the debtor as a fiduciary.
- (4) Whether a specialized tribunal has been established to hear the particular cause of action and that tribunal has the expertise to hear such cases.
- (5) Whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation.
- (6) Whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question.
- (7) Whether litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties.
- (8) Whether the judgment claim arising from the foreign action is subject to equitable subordination under 510(c).
- (9) Whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under Section 522(f).
- (10) The interest of judicial economy and the expeditious and economical determination of litigation for the parties.
- (11) Whether the foreign proceedings have progressed to the point where the parties are prepared for trial.
- (12) The impact of the stay on the parties and the "balance of the hurt."

Plumberex Specialty Prods., 311 B.R. at 559-560; *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984). Not all of these factors are relevant in every case, nor is a court required to give each of the factors equal weigh in making its determination. *Plumberex Specialty Prods.*, 311 B.R. at 560 (internal citations omitted).

In *In re Roger*, 539 B.R. 837, 840-41 (C.D. Cal. 2015), a creditor filed a motion for relief from the automatic stay to proceed with its action in state court. The creditor had filed its complaint against the debtor ("Roger") and other defendants; approximately three years later, the creditor filed a first amended complaint, asserting eighteen causes of action. At the time that Roger filed his chapter 7 petition, the trial in the state court was scheduled for approximately four months later.

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The creditor asserted the following causes of action, among others: (1) against Roger for breach of a promissory note, a security agreement and a guaranty; and (2) declaratory relief, asserting that certain trusts were invalid and that legal title to those trusts' assets had to be transferred to Roger. During the state court litigation, before Roger filed his bankruptcy case, "over three dozen motions were heard and more than a million dollars were spent in attorney's fees." *Id.* at 840 n.3.

As a result of the opposition of the chapter 7 trustee and the debtor, and because of the chapter 7 trustee's objections to the creditor's security interest and the priority of its claim, the bankruptcy court denied the creditor's motion for relief from stay. On appeal, the district court reversed, holding that the bankruptcy court's denial of the motion constituted an abuse of discretion. In doing so, the district court analyzed the applicable *Curtis* factors and decided that, while one factor weighed against a finding of "cause," other factors indicated that "cause" existed to grant relief from stay.

As noted by the district court in *Roger*, "courts in the Ninth Circuit have granted relief from the stay under § 362(d)(1) when necessary to permit pending litigation to be concluded in another forum if the non-bankruptcy suit involves multiple parties or is ready for trial." *Id.* at 845. In support of its decision to reverse the bankruptcy court's ruling, the district court stated:

[G]iven the advanced stage of the State Court Action . . . it stands to reason that judicial economy would be well served by permitting the State Court Action to reach resolution before addressing the bankruptcy issues, particularly where the State Court Action involves solely state law issues and not doing so runs a significant risk of creating inconsistent rulings. Indeed, given . . . the state court's familiarity with the discovery practices that occurred in the four plus years since the [c]omplaint was filed, it would be unreasonable for the Bankruptcy Court to conclude it is better equipped than the state court to determine issues such as the reasonableness of attorneys' fees.

Id. at 851 (*citing, inter alia, In re Castlerock Properties*, 781 F.2d 159, 163 (9th Cir. 1986)(affirming district court's decision to terminate automatic stay for litigation on state law claims to proceed in state court; "A clear congressional policy exists to give state law claimants a right to have claims heard in state court.")).

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The district court also disagreed with the bankruptcy court's conclusion that the Roger bankruptcy estate would be harmed by granting relief from stay:

"Ordinarily, litigation costs to a bankruptcy estate do not compel a court to deny stay relief." *In re Santa Clara Cnty. Fair Ass'n*, 180 B.R. 564, 566 (9th Cir. BAP 1995)(citations omitted). Neither the Bankruptcy Court nor Appellees provided any argument or authority indicating why this case presents an exception to this rule, particularly where it is speculative at best whether the Roger bankruptcy estate would be harmed by granting relief from stay. Indeed, the record does not contain any documentary evidence concerning projections regarding the comparative attorneys' fees and expenses that would be amassed in a different fora was before the Bankruptcy Court.

Id. at 847-48. Finally, the district court explained:

[L]iquidating Appellant's state court claims against Roger as soon as possible...will best serve the efficient administration of Roger's bankruptcy estate by giving the Trustee a clearer understanding of the scope of Roger's liabilities and the ratio of Appellant's claim to Roger's total creditor pool.

Id. at 847.

Party Information

Debtor(s):

Philip M. Lawrence II

Represented By
Robert M Yaspan

Movant(s):

Patrizio Moi

Represented By
Matthew D. Resnik

Trustee(s):

David Keith Gottlieb (TR)

Represented By

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Ron Bender
Jeffrey S Kwong

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1:23-10674 Ingrid Lorena Asturias

Chapter 13

#2.00 Motion for relief from stay [RP]

THE BANK OF NEW YORK MELLON
VS
DEBTOR

fr. 11/1/23; 12/13/23; 1/10/24(stip)

Stipulation for adequate protection filed 2/12/24

Docket 40

*** VACATED *** REASON: Order approving stipulation entered
2/12/24. [Dkt. 54]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ingrid Lorena Asturias

Represented By
Anerio V Altman

Movant(s):

The Bank Of New York Mellon FKA

Represented By
Wendy A Locke
Jenelle C Arnold

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:24-10089 David Marcell Williams

Chapter 7

#3.00 Motion for relief from stay [UD]

WRPV XIV ONTARIO TA, LLC
VS
DEBTOR

Docket 8

*** VACATED *** REASON: Case dismissed on 2/6/24.

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

David Marcell Williams

Pro Se

Movant(s):

WRPV XIV Ontario TA, L.L.C.

Represented By
Curtis Tyler Greer IV

Trustee(s):

David Seror (TR)

Pro Se

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1:23-11794 Jermaine Collins

Chapter 7

#4.00 Motion for relief from stay [PP]

ACAR LEASING LTD
VS
DEBTOR

Docket 25

Tentative Ruling:

This concerns a car loan. There are at least three months of payments that are in arrears. The debtor filed a statement of intention to surrender the car.

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to repossess and sell the property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Jermaine Collins

Represented By
Stephen L Burton

Movant(s):

ACAR Leasing LTD d/b/a GM

Represented By

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Jermaine Collins

Sheryl K Ith

Chapter 7

Trustee(s):

David Seror (TR)

Pro Se

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1:23-11747 Celia Flor Lorenzo

Chapter 13

#5.00 Motion for relief from stay [UD]

REDWOOD HOLDINGS, LLC
VS.
DEBTOR

Docket 15

Tentative Ruling:

The debtor's husband owned the property. The movant bought it at a foreclosure sale on 12/12/23. Three hours later the debtor filed this bankruptcy. Her husband had three prior bankruptcy cases (2010, 2016, 2020). The movant seeks to seek possession of the property through an unlawful detainer action in state court.

No opposition received as of 2/9/24.

Grant relief from stay pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to obtain possession of the property.

The co-debtor stay of 11 U.S.C. § 1201(a) and § 1301(a) is terminated, modified or annulled as to the co-debtor, on the same terms and conditions as to the debtor.

This order is binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of the Bankruptcy Code.

The order is 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 property.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Movant must submit the order within seven (7) days.

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Chapter 13

Note: No response has been filed. Accordingly, no court appearance by movant is required. Should an opposing party file a late opposition or appear at the hearing, the Court will determine whether further hearing is required and movant will be so notified.

Party Information

Debtor(s):

Celia Flor Lorenzo

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:23-11187 David Flores

Chapter 13

#6.00 Motion for relief from stay [RP]

CENTER STREET LENDING VIII SPE, LLC
VS
DEBTOR

Docket 28

Tentative Ruling:

David confirmed his chapter 13 plan in November 2023. On 1/10/24 he received a 5% interest in a grant deed of the real property (a single family residence in Hancock Park area). In his opposition he states that he was not involved in this and had no knowledge of it.

This appears to be a classic case of dumping an interest in a piece of property by a third party in order to obtain some delaying in the foreclosure sale that was scheduled for 1/16/24.

Grant relief from stay pursuant to 11 U.S.C. §§ 362(d)(1).

Movant (and any successors or assigns) may proceed under applicable nonbankruptcy law to enforce its remedies to foreclose upon and obtain possession of the property.

This order is binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of the Bankruptcy Code.

The 14-day stay prescribed by FRBP 4001(a)(3) is waived.

Any other request for relief is denied.

Movant must submit the order within seven (7) days.

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Chapter 13

Debtor(s):

David Flores

Represented By
Kevin T Simon

Movant(s):

Center Street Lending VIII SPE,

Represented By
Kelli M Brown

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:24-10094 Martin Pelayo Moreno

Chapter 13

#7.00 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate

Docket 8

Tentative Ruling:

The debtor had a prior filing and he missed the 341(a) hearing on 1/18/24. This case was filed that same day.

The Court will grant the motion on an interim basis up to the date of the continued hearing. The Court will continue this hearing to **9:30 a.m. on March 20, 2024.**

No later than February 16, 2024, the debtor must serve **on all creditors** notice of the continued hearing date and time and the deadline to file any response 14 days prior thereto. In addition, the debtor must timely pay: (1) his first deed of trust payment for March 2024 in the amount of \$4,221.00 (as stated in his current schedule J) as to the real property located at 12300 San Fernando Road, Sylmar, California 91342; and (2) his February and March 2024 plan payments in the amount of \$2,109.01, as stated in the debtor's proposed chapter 13 plan [doc. 12].

No later than March 19, 2024, the debtor must file a declaration which demonstrates that he timely made his required postpetition deed of trust and chapter 13 plan payments.

The debtor must submit an order within seven (7) days.

Party Information

Debtor(s):

Martin Pelayo Moreno

Represented By
A Mina Tran

Movant(s):

Martin Pelayo Moreno

Represented By

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A Mina Tran

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:24-10106 Ani Sinanyan

Chapter 13

#7.01 Motion in Individual Case for Order Imposing a Stay or Continuing the Automatic Stay as the Court Deems Appropriate

Docket 10

Tentative Ruling:

This is the second chapter 13 filing. The debtor allowed the first to be dismissed at the 341(a) meeting because she expected her husband to receive a commission from a real estate sale so as to cure the arrears, but the sale fell through. Now she intends to sell the house and use the equity to buy a new home.

Her plan is to cure the arrears through a sale and this will occur within 6 months. [In her motion she refers to a first amended plan, but as of 2/10/24 no first amended plan has been filed.]

According to the proof of claim in the prior case, Cenlar (the holder of the first trust deed) was owed \$781,759 with an arrearage of \$66,816.98. The schedules in this case show a debt to Cenlar of \$781,759 and an arrears of \$81,816. There is also a junior secured claim by Special Default Services scheduled in the amount of \$377,000. The property is valued in schedule A at \$1,311,300.

The debtor plans to sell this for \$1,500,000.

Per the proof of claim by Cenlar in the prior case, the monthly payment is as follows:
\$3,707.57 principal and interest
\$1,167.05 escrow
\$261.38 insurance
\$5,136.00 total

The Court will grant the motion on an interim basis up to the date of the continued hearing. The Court will continue this hearing to **9:30 a.m. on March 20, 2024.**

No later than February 16, 2024, the debtor must serve **on all creditors** notice of the

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continued hearing date and time and the deadline to file any response 14 days prior thereto. In addition, the debtor must timely pay: (1) the first deed of trust payment for March 2024 in the amount of \$5,136 as to the real property located at 17465 Flanders St., Granada Hills ; and (2) her February and March 2024 plan payments each in the amount of \$1,000, as stated in the debtor's proposed chapter 13 plan. [If an amended plan was filed, the amount of the monthly payment will be as stated in the amended plan.]

Further, by **March 19, 2024**, the debtor must file a copy of the real estate listing for this property and a declaration of the date that it was listed on the multiple listing service, the dates of any past or future open houses that have occurred and/or been scheduled, and a summary of any offers for purchase that have been received.

No later than March 19, 2024, the debtor must file a declaration which demonstrates that she timely made her required postpetition deed of trust and chapter 13 plan payments.

The debtor must submit an order within seven (7) days.

Party Information

Debtor(s):

Ani Sinanyan

Represented By
Tyson Takeuchi

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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2:00 PM

1:23-10828 Dennis Phillip Ayre
Adv#: 1:23-01037 Cowan v. Ayre

Chapter 7

#8.00 Plaintiff's Motion For Summary Judgment and/or Partial Summary Adjudication

Docket 15

***** VACATED *** REASON: Hearing continued to 2/21/24 at 2:00 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Dennis Phillip Ayre

Represented By
Navid Kohan

Defendant(s):

Dennis Phillip Ayre

Pro Se

Plaintiff(s):

Susan Shapiro Cowan

Represented By
Leslie A Cohen

Trustee(s):

Nancy J Zamora (TR)

Pro Se