

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

Thursday, February 29, 2024

Hearing Room 301

10:30 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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1:18-11620 Antoine R Chamoun

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

Chapter 7 Trustee David Seror

BG Law LLP, Attorneys for Chapter 7 Trustee

LEA Accountancy, LLP, Accountants for Chapter 7 Trustee

Docket 184

Tentative Ruling:

The Court will continue this hearing to **10:30 a.m. on March 7, 2024.**

Appearances on February 29, 2024 are excused.

Party Information

Debtor(s):

Antoine R Chamoun

Represented By
William H Brownstein

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein
Jorge A Gaitan
Robyn B Sokol
Ryan Coy
Steven T Gubner

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1:21-10179 Alex Foxman and Michal J Morey

Chapter 11

**#2.00 Application For Payment of Final Fees and/or Expenses
for Susan K Seflin, SubChapter V Trustee**

Docket 450

Tentative Ruling:

Susan K. Seflin, subchapter V trustee ("Applicant") – approve compensation of \$3,500.00 and reimbursement of expenses of \$114.02, pursuant to 11 U.S.C. § 330, on a final basis. All fees and expenses approved on an interim basis are approved on a final basis. The subchapter V trustee is authorized to collect the remaining balance of \$7,570.50 in fees.

Applicant to submit the order within seven (7) days.

Note: No response has been filed. Accordingly, no court appearance by the Applicant 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 the Applicant will be so notified.

Party Information

Debtor(s):

Alex Foxman

Represented By
Stella A Havkin

Joint Debtor(s):

Michal J Morey

Represented By
Stella A Havkin

Movant(s):

Susan K Seflin (TR)

Pro Se

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Trustee(s):

Susan K Seflin (TR)

Pro Se

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1:22-11429 All Action Security Consulting Group, Inc.

Chapter 11

#3.00 Final Application by RHM LAW LLP, General Counsel for the Debtor, for Allowance of Fees and Reimbursement of Costs for the Period 2/22/2023 to 1/31/2024

Docket 199

Tentative Ruling:

RHM Law, LLP ("RHM"), counsel to debtor in possession – based on RHM’s consent to reduce fees sought and a stipulation between RHM and the United States trustee [doc. 207], approve fees of \$97,131.00 and reimbursement of expenses of \$6,061.56, pursuant to 11 U.S.C. § 330, on a final basis. All fees and expenses approved on an interim basis are approved on a final basis.

RHM to submit the order within seven (7) days.

Note: No court appearance by RHM 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 RHM will be so notified.

Party Information

Debtor(s):

All Action Security Consulting

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia

Trustee(s):

Mark M Sharf (TR)

Pro Se

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1:22-11514 Victor F. Alba

Chapter 11

#4.00 Final Application Of Subchapter V Trustee For Approval
of Fees And Reimbursement Of Expenses

Docket 177

Tentative Ruling:

John-Patrick M. Fritz, ("Applicant"), subchapter V trustee - approve compensation of \$16,887.50 and reimbursement of expenses of \$3.42 - pursuant to 11 U.S.C. § 330, on a final basis for the period of January 4, 2023 through November 28, 2023.

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

Note: No response has been filed. Accordingly, no court appearance by Applicant 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 Applicant will be so notified.

Party Information

Debtor(s):

Victor F. Alba

Represented By
Crystle Jane Lindsey

Movant(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

Trustee(s):

John-Patrick McGinnis Fritz (TR)

Pro Se

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1:23-11148 D'RIA Group Inc.

Chapter 11

#5.00 First Interim Application for Compensation and Reimbursement
of Expenses of Michael Jay Berger, Debtor's Attorney

Docket 58

Tentative Ruling:

Although such information is to be provided in accordance with Local Bankruptcy Rule 2016-1(a)(1)(A)(i), the interim fee application does not disclose "the general operations of the debtor, stating whether the business of the debtor, if any, is being operated at a profit or loss, [and] whether the business has sufficient operating cash flow"

The Court must be provided with a declaration of an officer of the debtor, or another qualified declarant, which discusses: (1) the general operations of the debtor, stating whether the business of the debtor is being operated at a profit or loss; and (2) the extent of the estate's ability to pay the aggregate approved interim fees and expenses for the professional which has filed the interim fee application and, after such payment is made, have sufficient operating cash flow. *See* Local Bankruptcy Rule 2016-1(a)(1)(A)(i).

When will the applicant be able to file such declaration?

Party Information

Debtor(s):

D'RIA Group Inc.

Represented By
Michael Jay Berger
Bryn Letsch

Movant(s):

D'RIA Group Inc.

Represented By
Michael Jay Berger
Michael Jay Berger
Michael Jay Berger

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Michael Jay Berger
Bryn Letsch
Bryn Letsch
Bryn Letsch
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1:23-11762 Tony Kian Djie

Chapter 7

#6.00 Involuntary Debtor's Motion to Dismiss Involuntary Bankruptcy Petition;
Annulment of the Automatic Stay; Sanctions Against Petitioner and Other Relief

Docket 18

***** VACATED *** REASON: Withdrawal of motion filed 2/6/24. [Dkt. 36]**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tony Kian Djie

Represented By
John D Sarai

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1:23-11762 Tony Kian Djie

Chapter 7

#7.00 Motion to Dismiss Involuntary Bankruptcy Petition; Annulment of the Automatic Stay; Sanctions Against Petitioner and Other Relief

Docket 30

Tentative Ruling:

The Court will grant the motion to dismiss the involuntary petition against Tony Kian Djie [doc. 30].

I. BACKGROUND

A. Relevant Prepetition History

On February 8, 2017, Jubilio Escalera ("Escalera"), on behalf of Santa Fe Construction, and Tony Kian Djie ("Alleged Debtor") entered into a lease agreement for the premises located at 7911 Ventura Canyon Avenue, Panorama City, California 91402 (the "Property"). A copy of the lease agreement is included in Ex. 1 to the *Motion to Dismiss Involuntary Bankruptcy Petition; Annulment of the Automatic Stay; Sanctions against Petitioner and Other Relief* ("Motion to Dismiss") [doc. 30].

In April 2022, Alleged Debtor filed an unlawful detainer complaint against Escalera for subletting the Property without the consent of Alleged Debtor. *Id.*, Ex. 1 and *Declaration of Tony Kian Djie*, ¶ 6 [doc. 30]. On July 21, 2023, the state court entered an amended judgment for unlawful detainer against Escalera and others and in favor of Alleged Debtor. Motion to Dismiss, Ex. 4.

Escalera attempted to avoid eviction by, among other things, filing a motion to set aside the judgment, appealing the judgment, causing the filing of bankruptcy cases by alleged occupants of the Property and the filing of notices of removal of the unlawful detainer action to the United States District Court (the "District Court"). *See, e.g., id.*, Exs. 2 and 3-a (Notice of Stay of Proceedings re Jose Lopez, filed October 17, 2022), 3-c (Notice of Stay of Proceedings re Jose Lopez, filed November 13, 2023), 3-e (Notice of Stay of Proceedings re Joseph Policarpio, filed March 27, 2023), 3-g (Motion to Vacate and Set Aside Default Judgment and Recall the Writ and Quash It,

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filed April 10, 2023) and 3-i (Notice of Stay of Proceedings re Maria Rodriguez, filed June 13, 2022).

In June 2023, in response to the fifth attempt to remove the unlawful detainer action to the District Court, the District Court held:

Five attempts are enough. This Court orders the Clerk of the Court to forthwith reject and send back to state court any further Notice of Removal as to the unlawful detainer action – *Tony Dije et al. v. Jubilio Escalar, et al.*, No. 22VEUD00409 – unless written permission has been given in advance by this Court for the filing of such Notice of Removal.

Id., Ex. 3-j.

On October 12, 2023, the state court issued a Writ of Possession of Real Property in favor of Alleged Debtor. *Id.*, Ex. 5. On December 14, 2023, the state court entered an order denying Escalera's writ of supersedeas relief and request for an immediate stay. *Id.*, Ex. 7.

On January 23, 2024, the Sheriff removed Escalera and all occupants from the Property. *Declaration of Tony Kian Djie*, ¶ 17 [doc. 30].

B. The Involuntary Petition and Relevant Pleadings

On December 14, 2023, Escalera filed an involuntary chapter 7 petition against Alleged Debtor; Escalera is the only petitioner. In the petition, Escalera checked the box to affirm that: "The debtor generally is not paying such debtor's debts as they become due, unless they are the subject of a bona fide dispute as to liability or amount." Escalera set forth the Alleged Debtor's address and also Escalera's mailing address, which was identified as 7911 Ventura Canyon Ave., Panorama City CA 91402. In the petition, Escalera alleges he has a "construction contract" claim against Alleged Debtor in the amount of \$35,000.

On December 18, 2023, the Court issued an *Order to Show Cause Re: Dismissal With a 180-Day Bar, Annulment of the Automatic Stay, and Disgorgement* ("OSC") [doc.

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4]. In the OSC, the Court noted that Escalera "is the only creditor listed on the Involuntary Petition, with an alleged debt of \$35,000.00. The Involuntary Petition does not contain evidence for the basis for this alleged debt." The Court served the OSC on the Alleged Debtor and Escalera.

In accordance with the OSC, on December 21, 2023, the Court conducted a hearing on the OSC. Pursuant to the *Order Continuing Hearing on Order to Show Cause*, entered on December 21, 2023, that hearing was continued [doc. 8].

On January 2, 2024, Escalera filed *Petitioner's Response to OSC Order By Honorable District Bankruptcy Judge Victoria S. Kaufman* ("January 2, 2024 Response to OSC") [doc. 13]; and (2) *Petitioner Jubilio Escalera's Declaration in Support of Court's OSC* [doc. 14]. On January 10, 2024, Escalera filed (1) *Petitioner Jubilio Escalera's Declaration in Support of Court's Order January 2, 2024* [doc. 16]; and (2) *Petitioner's Creditor's Documentary Evidence in Support of Creditor's Claim Pursuant to Honorable Bankruptcy Judge Victoria S. Kaufman Order January 2, 2024* [doc. 17].

On January 19, 2024, Alleged Debtor filed the following documents: (1) a motion to dismiss the involuntary petition [doc. 18]; (2) *Declaration of Tony Kian Djie* [doc. 19]; and (3) *Alleged Debtor's Documentary Evidence and Declaration in Support of Dismissal of the Involuntary Petition* [doc. 21].

On January 25, 2024, the Court issued a *Summons and Notice of Status Conference in an Involuntary Bankruptcy Case* [doc. 23]. Pursuant to the summons, a status conference was set for February 29, 2024 at 1:00 p.m. On that same date, the Court entered an *Order Setting Hearing on Motion to Dismiss Involuntary Bankruptcy Petition; Continuing Hearing on Order to Show Cause; and Related Deadlines* [doc. 24].

On January 26, 2024, Escalera filed *Petitioner's Creditor's Opposition and Objections to Creditor's Documentary Evidence and Declaration of Dismissal of Involuntary Petition* [doc. 27]. On February 1, 2024, Alleged Debtor filed the Motion to Dismiss [doc. 30].

C. Bankruptcy Cases Involving Jubilio Escalera

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Since 2018, Escalera has been involved in at least seven bankruptcy cases as either a debtor or petitioning creditor. The cases include the following:

Case Number	Case Title	Debtor or Petitioning Creditor	Date Filed	Date Dismissed	Reason for Dismissal	Principal Address Listed for Escalera
1:18-bk-11910-MB Involuntary case	The Kingsley Trust	Petitioning Creditor	7/31/18	1/23/19	Failure to prosecute and appear at status conference.	7912 Ventura Canyon Avenue, Panorama City, CA 91402
1:19-bk-14597-SK Chapter 13	Jubilio Escalera	Debtor	4/22/19	9/5/19 – dismissed with 180 day bar	Escalera’s request for voluntary dismissal.	7912 Ventura Canyon Avenue, Panorama City, CA 91402
1:19-bk-12902-VK Involuntary chapter 7 case; petitioning creditor Arturo Cervera	Jubilio Escalera	Debtor	11/19/19	12/2/19 – dismissed with 180 day bar	Failure to appear at the order to show cause hearing and failure to respond to the order to show cause.	7912 Ventura Avenue, Panorama City, CA 91402
1:21-bk-11704-VK Chapter 13	Jubilio S. L. Escalera	Debtor	10/18/21	1/7/22	Failure to file schedules, statements and/or plan.	7912 Ventura Avenue, Panorama City, CA 91402

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1:22- bk-10214- MB Chapter 13	Jubilio H. Escalera	Debtor	2/23/22	5/16/22	Failure to file schedules, statements and/or plan.	7912 Ventura Avenue, Panorama City, CA 91402
1:22- bk-10691- MB Involuntary chapter 7 case; petitioning creditor Juan Roman	Jubilio Escalera	Debtor	6/10/22	6/30/22	Failure to appear at the order to show cause hearing. On 12/28/22, amended order entered adding a one- year bar to refiling.	4050 Camino De La Cumbre, Sherman Oaks, CA 91423

In case number 1:22-BK-10691-MB, the Court entered an *Order Amending the Dismissal Order to Add a One-Year Bar to Refiling Pursuant to 11 U.S.C. §§ 105 & 109(g)* [doc. 20].

D. Escalera's Response to OSC

Escalera asserts that Alleged Debtor hired him to perform repairs on the Property. *Petitioner Jubilio Escalera's Declaration in Support of Court's OSC*, ¶¶ 2-7 [doc. 14]; *Petitioner Jubilio Escalera's Declaration in Support of Court's Order January 2, 2024*, ¶¶ 3-9 [doc. 16]. Escalera has submitted, among other things: (1) an undated authorization, purportedly signed by Alleged Debtor, allowing Escalera to obtain permits for improvements or repairs to the Property; and (2) an invoice allegedly from Santafe General Construction, Inc., referring to Lic. #990682, to Alleged Debtor, dated November 29, 2023. January 2, 2024 Response to OSC, Exs. A and D [doc. 13].

According to Escalera, Alleged Debtor has not paid Escalera for the alleged repairs. *Petitioner Jubilio Escalera's Declaration in Support of Court's OSC*, ¶¶ 2, 5, 9-10 [doc. 14]; *Petitioner Jubilio Escalera's Declaration in Support of Court's Order January 2, 2024*, ¶¶ 2, 9-10 [doc. 16]. Escalera asserts that is why Escalera filed the involuntary petition. *Id.*

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E. Alleged Debtor's Responses

Alleged Debtor contends that his alleged debt to Escalera is in bona fide dispute. Alleged Debtor states that he never hired Escalera for any services, nor has he received any invoices or demands for payment from Escalera. *Declaration of Tony Kian Djie*, ¶¶ 3-4 [doc. 30]. Alleged Debtor argues that Escalera's purported evidence of the debt is not credible because, among other things: (1) the contractor's invoice for \$15,000 sets forth a contractor's license number that is not associated with Escalera; (2) the contractor's invoice is dated after the unlawful detainer rulings in favor of Alleged Debtor; and (3) the other miscellaneous invoices and receipts submitted by Escalera do not refer to Alleged Debtor or the Property. Motion to Dismiss, pp. 11, 19, 21-23.

Alleged Debtor also contends that Escalera filed the involuntary petition in bad faith, to further Escalera's attempts to avoid eviction from the Property. Consequently, Alleged Debtor requests that the Court: (1) dismiss the involuntary petition with prejudice; (2) order annulment of the automatic stay; and (3) impose sanctions and recovery of costs, attorney's fees and damages against Escalera.

II. ANALYSIS

A. Service of the Summons

Fed. R. Bankr. P. 1010(a) ("Rule 1010(a)") provides for the service of an involuntary petition and summons. Rule 1010(a) states:

On the filing of an involuntary petition, the clerk shall forthwith issue a summons for service. When an involuntary petition is filed, service shall be made on the debtor. The summons shall be served with a copy of the petition in the manner provided for service of a summons and complaint by Rule 7004(a) or (b). If service cannot be so made, the court may order that the summons and petition be served by mailing copies to the party's last known address, and by at least one publication in a manner and form directed by the court. The summons and petition may be served on the party anywhere. Rule 7004(e) and Rule 4(1) F.R.Civ.P. apply when service is made or attempted under this rule.

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Under Rule 7004(e), service of the summons "shall be made within 7 days after the summons is issued."

Local Bankruptcy Rule ("LBR") 1010-1 provides, in pertinent part:

The court may dismiss an involuntary petition without further notice and hearing if the Petitioner fails to... (c) serve the summons and petition within the time allowed by FRBP 7004; (d) file a proof of service of the summons and petition with the court; or (e) appear at the status conference set by the court.

The Court issued the summons on January 25, 2024. The deadline for Escalera to serve the summons was February 1, 2024. To date, Escalera has not filed a proof of service of the summons on Alleged Debtor

B. Bona Fide Dispute Under 11 U.S.C. § 303

Where an alleged debtor has fewer than 12 creditors, section 303(b)(2) establishes that an involuntary filing can be made by a qualifying petitioning creditor holding a claim in the aggregate amount of \$18,600. 11 U.S.C. § 303(b)(2). To qualify, a petitioning creditor's claim cannot be subject to bona fide dispute. *In re Vortex Fishing Sys., Inc.*, 277 F.3d 1057, 1064 (9th Cir. 2002). "For a majority of the federal circuits, including the Ninth Circuit, a 'bona fide dispute' exists if 'there is an objective basis for either a factual or legal dispute as to the validity of a debt.'" *In re EB Holdings II, Inc.*, 589 B.R. 704, 722 (Bankr. D. Nev. 2017) (quoting *Vortex Fishing*, 277 F.3d at 1064). "The same objective test applies for determining a bona fide dispute as to the amount of a debt." *Id.* (citing *In re Marciano*, 708 F.3d 1123, 1126 (9th Cir. 2013)).

"A bankruptcy court is not asked to evaluate the potential outcome of a dispute, but merely to determine whether there are facts that give rise to a legitimate disagreement over whether money is owed, or, in certain cases, how much." *Vortex Fishing*, 277 F.3d at 1064. In light of the evidence submitted by the Alleged Debtor, and taking into account the problems with the evidence submitted by Escalera and Escalera's lack of credibility, Escalera's claim is in bona fide dispute over its validity and amount. Accordingly, the Court will dismiss the involuntary petition.

C. Dismissal of Involuntary Petition for Bad Faith Under 11 U.S.C. § 303

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"Since § 303(i)(2) seems to imply that an involuntary petition can be dismissed for bad faith, and numerous cases support the proposition that bankruptcy petitions of any kind should not be employed for improper purposes, § 105(a) would seem to authorize the court to dismiss an involuntary based on a finding of bad faith." *In re WLB-RSK Venture*, 296 B.R. 509, 513 (Bankr. C.D. Cal. 2003) (internal citations omitted).

In *In re Wavelength*, 61 B.R. 614, 620 (9th Cir. BAP 1986), the BAP identified the standard to be applied in finding bad faith in the context of an involuntary for the purposes of awarding damages. As the court stated, 'Whether a party acted in bad faith is essentially a question of fact.'

In re WLB-RSK Venture, 296 B.R. at 513 (finding that petitioning creditor filed the involuntary petition as part of a forum shopping litigation tactic to "circumvent his lack of success over the past eight years in prior litigation in other courts" and to avoid a state court action that was pending against him).

Here, as a result of numerous frivolous filings made by Escalera, including notices of bankruptcy filings to stay the unlawful detainer proceedings and numerous failed attempts to remove the unlawful detainer action to the District Court, the eviction of Escalera and others from the Property was delayed for nearly two years. Motion to Dismiss, Exhs. 3-a to 3-j. Given the unlawful detainer litigation that preceded the filing of the involuntary petition, Alleged Debtor's eventual success in that litigation, Escalera's filing of the involuntary petition on the same date that the state court entered an order denying Escalera's writ of supersedeas relief and Escalera's extensive history of filing bankruptcy petitions that were regularly dismissed, the Court concludes that Escalera filed the involuntary petition against the Alleged Debtor in bad faith.

D. Awarding Attorney's Fees and Costs and Damages

Alleged Debtor requests judgment for attorney's fees, costs and punitive damages against Escalera. Pursuant to 11 U.S.C. § 303(i) –

If the court dismisses a petition under this section other than on consent of all

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petitioners and the debtor, and if the debtor does not waive the right to judgment

under this subsection, the court may grant judgment –

(1) against the petitioners and in favor of the debtor –

(A) costs; or

(B) a reasonable attorney’s fee; or

(2) against any petitioner that filed the petition in bad faith, for –

(A) any damages proximately caused by such filing; or

(B) punitive damages.

Here, the circumstances merit an award of attorney’s fees and costs to Alleged Debtor. Also, given that the Court has determined the petition was filed in bad faith, the Court may award any damages proximately caused by Escalera’s filing of the involuntary petition or punitive damages. To make a determination concerning fees, costs and damages, the Court will require supplemental briefing from Alleged Debtor.

III. CONCLUSION

The Court finds that (1) Escalera did not serve the summons in accordance with Rule 1010(a); (2) Escalera does not qualify as a creditor whose claim against Alleged Debtor is not subject to bona fide dispute within the meaning of 11 U.S.C. § 303(b); and (3) Escalera filed the involuntary petition against Alleged Debtor in bad faith. Thus, the Court will dismiss the involuntary petition. The Court also will annul the automatic stay, such that no stay will be deemed to have arisen as a result of Escalera's filing of the involuntary petition.

The Court will set a continued hearing to determine the amount of attorney's fees, costs and damages, *i.e.*, compensatory or punitive, to be awarded against Escalera and in favor of Alleged Debtor.

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Alleged Debtor must submit the order within seven days.

Party Information

Debtor(s):

Tony Kian Djie

Represented By
John D Sarai

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#8.00 Order To Show Cause Re: Dismissal With A 180-Day Bar,
Annulment Of The Automatic Stay, And Disgorgement

fr. 12/21/23; 1/4/24; 1/31/24

Docket 4

Tentative Ruling:

See cal. no. 7.

Party Information

Debtor(s):

Tony Kian Djie

Pro Se

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#9.00 Status conference re involuntary petition

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Tony Kian Djie

Represented By
John D Sarai

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1:22-11504 Drita Pasha Kessler

Chapter 7

#10.00 Motion To Stay Pending Appeal Sale of Assets by Trustee

Docket 251

Tentative Ruling:

The Court will deny the debtor's *Motion to Stay Sale of Any Bankruptcy Estate Assets During Pendency of Appeal of Judgment Held by Traveler's Insurance Company* ("the Motion") [doc. 251].

Fed. R. Bankr. P. 8007 provides, in relevant part—

(a) Initial motion in the Bankruptcy Court

(1) In general

Ordinarily, a party must move first in the bankruptcy court for the following relief:

...

(D) the suspension or continuation of proceedings in a case or other relief permitted by subdivision (e).

...

(e) Continuation of proceedings in the bankruptcy court

Despite Rule 7062 and subject to the authority of the district court, BAP, or court of appeals, the bankruptcy court may:

(1) suspend or order the continuation of other proceedings in the case; or

(2) issue any other appropriate orders during the pendency of an appeal to protect the rights of all parties in interest.

"A court has considerable discretion when determining whether to issue a stay pending appeal." *In re GGW Brands, LLC*, 2013 WL 6906375, at *10 (Bankr. C.D.

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Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
Courtroom 301 Calendar**

Thursday, February 29, 2024

Hearing Room 301

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Drita Pasha Kessler

Chapter 7

Cal Nov. 15, 2013) (citing *Nken v. Holder*, 556 U.S. 418, 433-34, 129 S.Ct. 1749, 173 L.Ed.2d 550 (2009)). "A discretionary stay 'should be sparingly employed and reserved for the exceptional situation.'" *In re O'Kelley*, 2010 WL 3984666, at *4 (D. Haw. Oct. 8, 2010) (quoting *In re Wymer*, 5 B.R. 802, 806 (9th Cir. BAP 1980)).

The party requesting a stay bears the burden of "showing that the circumstances justify an exercise of that discretion." *Nken*, at 556 U.S. at 433-34. "A stay is not a matter of right, even if irreparable injury might otherwise result." *Id.* at 433. The court considers four factors when determining whether to issue a stay pending appeal:

1. Whether the stay applicant has made a strong showing that he is likely to succeed on the merits;
2. Whether the applicant will be irreparably harmed;
3. Whether the issuance of the stay will substantially injure the other parties interested in the proceeding; and
4. Where the public interest lies.

Id., at 434 (quoting *Hilton v. Braunskill*, 481 U.S. 770, 776, 107 S.Ct. 2113, 95 L.Ed.2d 724 (1987)); see also *In re North Plaza, LLC*, 395 B.R. 113, 119 (S.D. Cal. 2008). The four factors may be weighed in a sliding scale, "where a stronger showing of one element may offset a weaker showing of another." *All. for the Wild Rockies v. Cottrell*, 632 F.3d 1127, 1131 (9th Cir. 2011).

The party requesting a stay must prove each of the four elements. See *In re Irwin*, 338 B.R. 839, 843 (E.D. Cal. 2006) (denying motion for stay pending appeal) ("The party moving for a stay has the burden on each of these elements."). "Movant's failure to satisfy one prong of the standard for granting a stay pending appeal dooms the motion." *Id.*; see also *In re Spiritos*, 2009 U.S. Dist. LEXIS 119524, *6 (C.D. Cal. Dec. 3, 2009) ("[F]ailure to satisfy any one of the four elements justifies denying the stay motion."); *In re Pon*, 1994 U.S. Dist. LEXIS 2559, *6 (N.D. Cal. 1994) ("[T]hese four factors are conjunctive, and the appellant will not win a stay pending appeal unless each factor is established by a preponderance of the evidence.").

As set forth in the opposition to the Motion filed by Travelers Property Casualty Company of America ("Travelers") [doc. 263] and in the chapter 7 trustee's opposition to the Motion [doc. 264], the debtor has not established by a

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Chapter 7

preponderance of the evidence that she is likely to succeed on the merits of her appeal. In addition, the debtor has not shown by a preponderance of the evidence that she will suffer irreparable harm if a stay is not ordered or that other parties will not be substantially injured by a stay. Lastly, the debtor did not address where the public interest lies; the Court finds that the public interest lies in denying the Motion, in order for the chapter 7 trustee to move forward with recovering and liquidating assets of the debtor's estate, in order to provide a distribution to the debtor's creditors.

Having assessed the standards as set forth above, and taking into account the background in this case [FN 1] and the reasons set forth in the oppositions to the Motion filed by Travelers and the chapter 7 trustee, the Court will deny the Motion.

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

FOOTNOTES

FN 1: For a detailed background of this matter, the Court incorporates by reference its rulings [docs. 138 and 226] sustaining the objection to the debtor's claim of a homestead exemption and granting the motion to convert this case to one under chapter 7.

Party Information

Debtor(s):

Drita Pasha Kessler

Represented By
Andrew Edward Smyth

Trustee(s):

David Seror (TR)

Represented By
Elissa Miller

**United States Bankruptcy Court
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1:23-10270 Linda Ezor Swarzman

Chapter 11

#11.00 Chaper 11 Trustee's Motion for Order: (1) Authorizing Sale of Real Property [3707 Bear Lake Dr., Kingwood, TX 77345] Free and Clear of Liens, Claims, and Interests Pursuant to 11 U.S.C. §§ 363(b) and (f); (2) Approving Overbid Procedures; (3) Approving Buyer, Successful Bidder, and Back-Up Bidder as Good-Faith Purchaser pursuant to 11 U.S.C. § 363(m); (4) Authorizing Payment of Any Liens, Real Estate Broker's Commissions, and Other Ordinary Costs of Sale

Docket 461

Tentative Ruling:

Grant.

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

Party Information

Debtor(s):

Linda Ezor Swarzman

Pro Se

Movant(s):

David M Goodrich (TR)

Represented By
Matthew A Lesnick

Trustee(s):

David M Goodrich (TR)

Represented By
Matthew A Lesnick

**United States Bankruptcy Court
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San Fernando Valley
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Hearing Room 301

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1:24-10228 Mr. Tortilla, Inc.

Chapter 11

#12.00 Motion in Chapter 11 Case for Order Authorizing Debtor to Provide Adequate Assurance of Payment to Utility Service Providers

Docket 17

Tentative Ruling:

Grant.

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

Party Information

Debtor(s):

Mr. Tortilla, Inc.

Represented By
Michael Jay Berger