

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

Wednesday, April 24, 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.

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Docket 0

Tentative Ruling:

- NONE LISTED -

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1:24-10005 Amy Jam and Mohsen Ahmadi Hadad

Chapter 13

#1.00 Motion for relief from stay [PP]

MERCEDES-BENZ VEHICLE TRUST
VS
DEBTOR

fr. 4/3/24 (advanced); 4/2/24

Stip for adequate protection filed 4/5/24

Docket 24

*** VACATED *** REASON: Order approving stipulation entered
4/11/24. [Dkt.52]

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Amy Jam

Represented By
Stella A Havkin

Joint Debtor(s):

Mohsen Ahmadi Hadad

Represented By
Stella A Havkin

Movant(s):

Mercedes-Benz Vehicle Trust

Represented By
Sheryl K Ith

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:24-10190 Gregorio Alberto Driotez

Chapter 13

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

fr. 2/28/24

Docket 6

Tentative Ruling:

Grant.

On April 10, 2024, the debtor filed a *Declaration of Gregorio Alberto Driotez re Plan Payment Status* [doc. 26]. Also, on April 12, 2024, the debtor filed a *Declaration Setting Forth PostPetition, PreConfirmation Payments on: (1) Deeds of Trust [or Mortgages]; (2) Leases on Personal Property; (3) Purchase Money Security Liens on Personal Property [LBR 3015-1(e) and LBR 3015-1(m)]* [doc. 27]. With these declarations and the attached exhibit confirming plan payments, the debtor has demonstrated his compliance with the Court's prior ruling, as required for the Court to continue the automatic stay.

Movant to submit an 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.

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| Party Information |
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Debtor(s):

Gregorio Alberto Driotez

Represented By

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CONT... Gregorio Alberto Driotez

Kevin T Simon

Chapter 13

Movant(s):

Gregorio Alberto Driotez

Represented By
Kevin T Simon

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:22-11212 Gabriella Noemi Loos

Chapter 7

#3.00 Motion for relief from stay [AN]

NATHAN AMERBERG AND PAULINA AMERBERG
VS
DEBTOR

Docket 109

Tentative Ruling:

Grant for the reasons discussed below.

I. BACKGROUND

On October 18, 2022, Gabriella Noemi Loos (the "Debtor") filed a chapter 13 petition. On November 10, 2022, the Debtor filed her schedules and statement of financial affairs, as well as her chapter 13 plan. The Debtor did not include Nathan Amerberg and Paulina Amerberg (the "Movants") as creditors in her original schedules and did not include the Movants in her master mailing list of creditors. Until January 2024, the Movants were not notified of the Debtor's bankruptcy case.

According to the Debtor's Statement of Financial Affairs ("SFA") [doc. 13], the Debtor is the owner of two businesses, Krom Construction LLC ("Krom") and Flawless Design Group, Inc. The Debtor states Krom has been in business since 1992 and Flawless Design Group, Inc. has been in business since 2009. SFA, p. 34. The stated nature of these businesses is construction and design. SFA, p. 34.

A. The Construction Contracts

On October 14, 2022, four days before the Debtor filed her chapter 13 petition, the Movants and Krom entered into a contract for the construction of a swimming pool and spa, backyard upgrade and replacement of the Movants' existing driveway. Motion for Relief from the Automatic Stay (Action in NonBankruptcy Forum) ("Motion") [doc. 109], Ex. 2A. The Debtor and Nathan Amerberg signed the contract.

Under the contract, the Movants agreed to pay \$165,000 for the work to be performed by Krom. The contract sets forth a payment schedule of ten payments beginning with

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a first payment of \$1,000. On October 17, 2022, the Movants made the first payment of \$1,000. Declaration of Nathan Amerberg attached to the Motion ("Amerberg Declaration"), p. 10.

On March 22, 2023, the Movants and Krom entered into a second contract for the construction of a patio cover and bbq. Motion, Ex. 2A. Under the contract, the Movants agreed to pay \$70,000 for the work to be performed by Krom. As with the first contract, the second contract sets forth a payment schedule. The payment schedule includes six payments beginning with a first payment of \$20,000. Between October 17, 2022 and May 28, 2023, the Movants paid the Debtor a total of \$188,785. Amerberg Declaration, p. 10.

B. The State Court Action

On October 17, 2023, the Movants filed a complaint against Krom, the Debtor, Shaul C. Hazan (the Debtor's spouse) and Business Alliance Insurance Company in the Superior Court of California, County of Los Angeles. Motion, Ex. 2. On November 10, 2023, the Movants served the summons and the complaint on the Debtor. Declaration of Gennady L. Lebedev attached to the Motion, p. 11, and Ex. 6 thereto.

Among other causes of action, the Movants' complaint seeks damages against the defendants for fraud, and the complaint alleges that the Debtor was the alter ego of Krom. The Movants further allege:

On or about October 14, 2022 and again on or about March 22, 2023, Defendants and each of them, represented to Plaintiffs, that Defendants and each of them, were competent, experienced, qualified and duly licensed by the CSLB to perform contracting work, and that they were ready, willing and able to perform all of the obligations under the Agreement in a workmanlike manner and that they would obtain all necessary permits for such work from relevant governmental agencies as required by law.

However, such representations by Defendants were false at the time they were made, in that the Defendants were not competent, experienced, qualified or duly licensed by the CSLB to perform contracting work and they were not ready, willing or able to perform the obligations under the Agreement in a workmanlike manner and that such Defendants did not intend to obtain all

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necessary permits for such work from relevant governmental agencies as required by law.

Plaintiffs are informed and believe and based thereon allege that, when Defendants made such representations, they knew them to be false, and that such representations were made by Defendants, and each of them, with the intent to defraud and deceive Plaintiffs and with the intent to induce Plaintiffs to act in the manner alleged herein.

Id., ¶¶ 20-22.

C. The Conversion of the Debtor's Case to One Under Chapter 7

On January 8, 2024, the Debtor filed a notice to convert her case from chapter 13 to chapter 7, and the case was converted to one under chapter 7 [doc. 88]. Because the Movants had not been included in the Debtor's master mailing list when she filed her chapter 13 petition, nor did she file an amended master mailing list, it appears that neither the Movants nor their counsel were served with the *Notice of Chapter 7 Bankruptcy Case*; this notice sets forth the deadline of April 22, 2024 to file a complaint to determine whether certain debts are dischargeable [docs. 91 and 93].

On January 10, 2024, the Debtor first provided notice to the Movants of her bankruptcy case, when her bankruptcy counsel sent an email to the Movants' state court counsel that her chapter 13 case had been converted to one under chapter 7.

On January 22, 2024, the Debtor filed, among other things, an amended schedule E/F and an amended SFA. In her amended schedule E/F, referencing the Movants' state court action, the Debtor listed the Movants' counsel in that action as a nonpriority creditor with a contingent, unliquidated and disputed unsecured claim. In the Debtor's amended SFA, in response to item 9, the Debtor identified the Movants' state court action and also other pending litigation. When the Debtor filed those amended documents, the Debtor's amended schedules and amended SFA concurrently were served on the Movants' state court counsel.

On March 28, 2024, the Movants filed the pending Motion. On April 10, 2024, the Debtor filed her opposition to the Motion (the "Opposition") [doc. 113]. On April 17, 2024, the Movants filed a reply (the "Reply") [doc. 114].

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II. DISCUSSION

A. Cause to Lift the Stay

11 U.S.C. § 362(a) provides, in relevant part:

Except as provided in subsection (b) of this section, a petition filed under section 301, 302, or 303 of this title, or an application filed under section 5(a)(3) of the Securities Investor Protection Act of 1970, operates as a stay, applicable to all entities of –

- (1) the commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case under this title, or to recover a claim against the debtor that arose before the commencement of the case under this title;

...

- (3) any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate;

Section 362(d)(1) permits lifting of the automatic stay to continue pending litigation against a debtor in a nonbankruptcy forum. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162, 1166 (9th Cir. 1990). In so determining, "the bankruptcy court should base its decision on the hardships imposed on the parties with an eye towards the overall goals of the Bankruptcy Code." *In re C & S Grain Co., Inc.*, 47 F.3d 233, 238 (7th Cir. 1995).

Here, the Movants' claims against the Debtor in their complaint include fraud. In accordance with 11 U.S.C. § 523(a)(2)(A), damages to the Movants arising from fraud by the Debtor may be nondischargeable. Pursuant to § 523(a)(2)(A), a bankruptcy discharge does not discharge an individual debtor from any debt "for money, property, services, or an extension, renewal, or refinancing of credit, to the extent obtained by – false pretenses, a false representation, or actual fraud, other than a statement respecting a debtor's or an insider's financial condition."

To prevail on a § 523(a)(2)(A) claim, the Movants must prove the following five

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elements:

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- (1) misrepresentation, fraudulent omission or deceptive conduct by the debtor;
- (2) knowledge of the falsity or deceptiveness of his statement or conduct;
- (3) an intent to deceive;
- (4) justifiable reliance by the creditor on the debtor's statement or conduct;
and
- (5) damage to the creditor proximately caused by its reliance on the debtor's statement or conduct.

In re Weinberg, 410 B.R. 19, 35 (B.A.P. 9th Cir. 2009) (citing *In re Slyman*, 234 F.3d 1081, 1085 (9th Cir. 2000)).

Representations made without an intent to perform satisfy the first three requirements of § 523(a)(2)(A). *In re Rubin*, 875 F.2d 755, 759 (9th Cir. 1989). A promise also can be considered fraudulent when the promisor knew or should have known of his inability to perform. *In re Barrack*, 217 B.R. 598, 606 (B.A.P. 9th Cir. 1998).

If Movants prevail in the state court action on their claim against the Debtor for fraud, that judgment for fraud may be held to be nondischargeable under § 523(a)(2)(A). The Supreme Court has recognized that the doctrine of collateral estoppel applies in dischargeability proceedings. *See Grogan v. Garner*, 498 U.S. 279, 284–85, 111 S.Ct. 654, 112 L.Ed.2d 755 (1991). Under collateral estoppel, once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of that issue if the party had "a full and fair opportunity to litigate that issue in the earlier case." *See Allen v. McCurry*, 449 U.S. 90, 95, 101 S.Ct. 411, 66 L.Ed.2d 308 (1980). "Ninth Circuit case law confirms that the elements of fraud under California law match the ones under § 523(a)(2)(A)." *In re Davis*, 486 B.R. 182, 191 (Bankr. N.D. Cal. 2013) (citing *In re Younie*, 211 B.R. 367, 373–74 (9th Cir. BAP 1997)).

In order for the Movants' action to go forward against all the defendants in the same forum, the Movants should be allowed to proceed with their action against the Debtor in the state court. Accordingly, under 11 U.S.C. § 362(d)(1), there is cause for the Court to grant relief from the automatic stay in order for the Movants to prosecute

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their action against the Debtor in the state court.

The automatic stay arising in the Debtor's bankruptcy case also bars "any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate." 11 U.S.C. § 362(a)(3). Although the Movants may proceed against the Debtor in the state court to liquidate their claims, while it is in place, the automatic stay will continue to preclude Movants from enforcing any judgment obtained in the state court action against property of the Debtor's estate, as well as against the Debtor, unless and until the Court holds that any judgment for fraud obtained by Movants against the Debtor is nondischargeable in accordance with 11 U.S.C. § 523(a)(2).

B. Annulment

"Many courts have focused on two factors in determining whether cause exists to grant [retroactive] relief from the stay: (1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct, or prejudice would result to the creditor." *In re National Environmental Waste Corp.*, 129 F.3d 1052, 1055 (9th Cir. 1997). "[T]his court, similar to others, balances the equities in order to determine whether retroactive annulment is justified." *Id.*

Here, before the Movants served their complaint on the Debtor, the Movants were unaware of the Debtor's bankruptcy petition. Amerberg Declaration, p. 10.

With respect to the Debtor's conduct, the Debtor did not provide notice of her bankruptcy case to the Movants until January 10, 2024. At that time, more than one year following the filing of the Debtor's chapter 13 petition, and months after the Debtor was served with the Movants' complaint, the Debtor's bankruptcy counsel notified the Movants' attorney of the pendency and conversion to chapter 7 of the Debtor's bankruptcy case. *See* Amerberg Declaration, p. 10.

When balancing the equities, the Court holds that it is appropriate to annul the automatic stay, such that the Movants need not refile their action against the Debtor and re-serve their complaint, which was served on the Debtor, along with the summons, in November 2023.

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III. CONCLUSION

In light of the foregoing, the Court will grant the Motion. The Movants may proceed under applicable nonbankruptcy law to enforce their remedies to proceed to final judgment in state court, provided that the stay remains in effect with respect to enforcement of any judgment against property of the Debtor's bankruptcy estate or the Debtor.

Regarding the Debtor, if and when the Movants obtain a determination from this Court of the nondischargeability of any claim they hold against the Debtor, the automatic stay will not preclude the Movants from enforcing such a claim against the Debtor.

Grant the Movants' request to annul the automatic stay with respect to the liquidating their claim against the Debtor in state court.

Any other request for relief is denied.

The Movants must submit the order within seven (7) days.

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| Party Information |
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Debtor(s):

Gabriella Noemi Loos

Represented By
Kevin T Simon

Movant(s):

Paulina Amerberg

Represented By
Gennady Leonid Lebedev

Nathan Amerberg

Represented By
Gennady Leonid Lebedev

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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1:24-10465 Samantha L. Boomer

Chapter 13

#4.00 Motion for relief from stay [UD]

MILLER & DESATNIK MANAGEMENT CO., INC
VS
DEBTOR

Docket 8

Tentative Ruling:

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 obtain possession of the property.

The stay is annulled retroactive to the bankruptcy petition date. Any postpetition acts taken by movant to enforce its remedies regarding the property shall not constitute a violation of the stay.

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.

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| Party Information |
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Debtor(s):

Samantha L. Boomer

Pro Se

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Movant(s):

Miller & Desatnik Management Co.,

Represented By
Joseph Cruz

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:21-10696 Carol Audrey Blackwood

Chapter 13

#5.00 Motion for relief from stay [RP]

US BANK TRUSTEE NATIONAL ASSOCIATION
VS
DEBTOR

Docket 95

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Carol Audrey Blackwood

Represented By
Rabin J. Pournazarian

Movant(s):

US Bank Trust National Association,

Represented By
Julian T Cotton
Christopher Giacinto
Jennifer C Wong

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:22-11460 Arthur Sahakyan

Chapter 13

#6.00 Motion for relief from stay [RP]

US BANK TRUST NATIONAL ASSOCIATION
VS
DEBTOR

Docket 52

*** VACATED *** REASON: Adequate protection order entered on
4/16/24 [doc. 61].

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Arthur Sahakyan

Represented By
Tyson Takeuchi

Movant(s):

US Bank Trust National Association,

Represented By
Dane W Exnowski
Ciro Mestres
Jennifer C Wong

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:24-10482 Guadalupe Marie Sanchez

Chapter 13

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

Docket 10

***** VACATED *** REASON: On 4/16/24, dismissal order entered.**

Tentative Ruling:

- NONE LISTED -

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| Party Information |
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Debtor(s):

Guadalupe Marie Sanchez

Represented By
Onyinye N Anyama

Movant(s):

Guadalupe Marie Sanchez

Represented By
Onyinye N Anyama

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:24-10406 K3B Enterprises, LLC

Chapter 11

#8.00 Motion for relief from stay [RP]

9996 SUNSET LOAN ACQUISITION, LLC
VS
DEBTOR

Docket 21

Tentative Ruling:

For the reasons set forth below, pursuant to 11 U.S.C. § 362(d)(1) and (d)(4), the Court will grant movant relief from the automatic stay with respect to the real property located at 9996 Sunset Blvd., Beverly Hills, CA 90210.

I. BACKGROUND

A. First Bankruptcy Case Filed by K3B Enterprises LLC

On July 10, 2023, K3B Enterprises LLC ("K3B") filed a chapter 11 petition, initiating case no. 1:23-bk-10966-VK (the "First Case"). During the First Case, K3B was represented by RHM Law LLP [First Case, doc. 35].

In the First Case, Kaysan Ghasseminejad ("Kaysan") signed the voluntary petition as K3B's managing member. In its list of equity security holders, K3B identified Kaysan as a 100% equity interest holder, and in its statement of financial affairs, K3B identified Kaysan as its managing member with 100% interest in K3B.

1. K3B's Real Property and Scheduled Secured Claims

In its schedule A/B filed in the First Case, K3B disclosed its interest in a residence located at 9996 Sunset Boulevard, Beverly Hills CA 90210 (the "Sunset Residence"). The Sunset Residence is a 7,885 square foot home with six bedrooms, eight bathrooms, three fireplaces, one guest house and a pool. Exh. 0 to Declaration of M. Cary Calkin [First Case, doc. 69]. In schedule A/B, K3B provided a value at \$15 million for its interest in the Sunset Residence. In its schedule A/B, K3B did not

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identify an interest in any other assets [First Case, doc. 13].

As testified by Kaysan in August 2023, at the section 341(a) meeting held in the First Case, Kaysan lives in the Sunset Residence with his father (Behnam Ghasseminejad), his mother and his grandmother. K3B does not generate any income; Kaysan and his family do not pay rent to K3B. *See also* K3B's schedule G and Statement of Financial Affairs, Part 1 [First Case, doc. 13; Case No. 1:24-bk-10406-VK ("Second Case"), doc. 20]].

In its amended schedule D filed in the First Case, K3B identified 4 secured claims: (1) the claim of the Los Angeles County Tax Collector ("LACTC"), in the alleged amount of approximately \$326,000, based on property taxes owed for the Sunset Residence; (2) the claim of Preferred Bank, in the alleged amount of approximately \$7.3 million, secured by a first deed of trust encumbering the Sunset Residence; (3) another claim owed to Preferred Bank, in the alleged amount of approximately \$2 million, secured by a second deed of trust encumbering the Sunset Residence; and (4) the claim of Sunwest Bank ("Sunwest"), arising from cross collateralized loans secured by, among other real properties, the Sunset Residence and an office building located in Encino, California (the "Encino Office Building") [First Case, doc. 27]. [FN 1]

In August 2023, K3B filed a status report and attached Kaysan's supporting declaration. In this declaration, Kaysan stated that K3B was formed on April 2, 2019 for the sole purpose of acquiring the Sunset Residence. Kaysan further represented that his father, Benham Ghasseminejad, was assisting Kaysan with the day-to-day operations of K3B and held no ownership interest in K3B. Declaration of Kaysan Ghasseminejad, filed on August 9, 2023, ¶ 3 [First Case, doc. 22].

2. Proofs of Claim Filed Against K3B's Estate in the First Case

In August 2023, LACTC filed proof of claim no. 3-1 against the K3B estate in the First Case, asserting a secured claim in the amount of \$572,474.42. LACTC indicated that its secured claim was based on past-due property taxes.

In September 2023, Preferred Bank filed proof of claims nos. 5-1 and 6-1 in the First Case, each of which identified claims secured by deeds of trust which encumbered the Sunset Residence. Claim 5-1, secured by a first deed of trust, was in the amount of

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\$7,598,893.52; claim no. 6-1, secured by a second deed of trust, was in the amount of \$2,107,886.90. [FN2]

3. K3B's Section 341(a) Meeting of Creditors in the First Case

At the section 341(a) meeting of creditors held in the First Case on August 15, 2023, Kaysan testified as K3B's principal and managing member. *See* Declaration of Lance N. Jurich (the "Jurich Declaration"), ¶ 2 and Exh. 25 thereto [Second Case, doc. 21-3]. The following testimony appears in the transcript of the section 341(a) meeting:

U.S. TRUSTEE: So [K3B], they just own a piece of property, that's all they do?

MR. K. GHASSEMINEJAD: Yes. That's it.

U.S. TRUSTEE: Okay. What do you do at [K3B] as the managing member of anything?

MR. K. GHASSEMINEJAD: Nothing. Just living with my mom and dad.

...

U.S. TRUSTEE: Okay. And [K3B] just owns one piece of real property?

MR. K. GHASSEMINEJAD: Yes.

U.S. TRUSTEE: And where is that property located?

MR. K. GHASSEMINEJAD: It's 9996 Sunset Boulevard, Beverly Hills. It's in California, 90210.

...

U.S. TRUSTEE: Okay. Prior to purchasing this property, did [K3B] own any other properties?

MR. K. GHASSEMINEJAD: No. It was created for this house.

...

U.S. TRUSTEE: And up to the point of filing for bankruptcy, was [K3B] current on making the monthly mortgage payment for the first?

MR. K. GHASSEMINEJAD: Not truly.

...

U.S. TRUSTEE: Right. But does the Debtor itself, [K3B], have any source of income?

MR. K. GHASSEMINEJAD: Oh, no. No, no, no, no, no.

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U.S. TRUSTEE: Okay. Then who was paying for the monthly mortgages on the property?

MR. K. GHASSEMINEJAD: Mostly my dad.

...

U.S. TRUSTEE: Okay. And when you purchased the property, you're the sole member, so any equity investment in [K3B] would come to you. Was your intent to rent this property out, to live there?

MR. K. GHASSEMINEJAD: No. No. No intent to rent.

...

U.S. TRUSTEE: Do you know if property taxes are current on the property?

MR. K. GHASSEMINEJAD: No. Behind. We're behind on that. I don't know the exact amount. Maybe 200. I don't know exact amount.

...

U.S. TRUSTEE: What's [K3B's] intentions to do with the property?

MR. K. GHASSEMINEJAD: To save. To keep it.

U.S. TRUSTEE: And how is [K3B] going to afford to keep it?

MR. K. GHASSEMINEJAD: Probably—my dad and I have been talking about refinancing the property and I believe he communicated that to you direct at some other time. We will be refinancing the property, the home.

...

MR. K. GHASSEMINEJAD: ...it's our home. We live there.

U.S. TRUSTEE: I thought you said you live there only part-time, no one else lives there?

MR. K. GHASSEMINEJAD: No. My mom and dad and myself and my mom's mom.

U.S. TRUSTEE: Live there.

MR. K. GHASSEMINEJAD: We all live there.

U.S. TRUSTEE: Do they pay any rent?

MR. K. GHASSEMINEJAD: No.

U.S. TRUSTEE: Have they ever paid any rent?

MR. K. GHASSEMINEJAD: No.

U.S. TRUSTEE: Is there a reason why they don't pay any rent to [K3B]?

MR. K. GHASSEMINEJAD: No. No. He does enough to help. He

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stays there. Maybe that's the compensation.

...

U.S. TRUSTEE: . . . I'm talking for [K3B], the daily books and records, who keeps –

MR. K. GHASSEMINEJAD: No, there is [sic] no books. There is [sic] no books.

U.S. TRUSTEE: So there are no finances–

MR. K. GHASSEMINEJAD: Just a home.

U.S. TRUSTEE: —financials being provided at all?

MR. K. GHASSEMINEJAD: No. No. No, no.

...

MR. GOMEZ: And why weren't the property taxes paid when they came due?

MR. K. GHASSEMINEJAD: Just, I should have. I just didn't.

Transcript of the August 15, 2023 section 341(a) meeting (the "Transcript"), Exh. 25 to the Jurich Declaration [Second Case, doc. 21-3].

4. Preferred Bank's Motion for Relief from Automatic Stay and K3B's Decision to Dismiss the First Case

In October 2023, in the First Case, Preferred Bank filed a motion seeking relief from the automatic stay regarding the Sunset Residence [First Case, doc. 40]. According to Preferred Bank, as of October 18, 2023, the total amount owed to it on both deeds of trust encumbering the Sunset Residence was "[n]ot less than \$10,038.559.71[.]" Declaration of Erika Chi, executive vice president of Preferred Bank, ¶ 8 [First Case, doc. 40].

In its motion for relief from the automatic stay, Preferred Bank represented that, as of October 18, 2023, five months of deed of trust payments had not been made to Preferred Bank [First Case, doc. 40]. Moreover, based on K3B's scheduled value of \$15 million for the Sunset Property, and the aggregate amount of the debt encumbering the Sunset Residence, including that owed to Preferred Bank and Sunwest, and past due property taxes, K3B had no equity in the Sunset Residence.

In October 2023, K3B filed a status report (the "October Status Report") [First Case,

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doc. 43]. In this status report, K3B stated that:

[K3B] was formed on April 2, 2019 for the sole purpose of acquiring real property located at 9996 Sunset Blvd., Beverly Hills, CA 90210.

Encino Towers LLC - which owns a real property located at 17835 Ventura Blvd., Encino 91316 - filed its own Chapter 11 petition on the same date as the Debtor herein (Case no. 1:23-bk-10965). The entities, their assets and liabilities as [sic] intertwined, as set forth in the [K3B]'s initial Status Report [Docket No. 22].

The liens against the Sunset property are approximately: \$7,598,894 Preferred Bank (senior), \$2,107,887 Preferred Bank (junior); cross-collateralized debt of about \$12,063,094.74 owed to Sunwest Bank. Preferred Bank filed a Motion for Relief from the Automatic Stay [Docket No. 40]; that is set for hearing on November 8, 2023.

Encino Towers, LLC has accepted an offer of \$14,000,000 for the sale of the Ventura Blvd. property to an unrelated entity. The sale of the Ventura Blvd. will resolve the junior Sunwest Bank lien on the Sunset property.

October Status Report, p. 2. *See also* Declaration of Behnam Ghasseminejad, dated March 18, 2024 ("March 18, 2024 Benham Declaration"), ¶ 15 [First Case, doc. 57].

On November 2, 2023, the Court held a continued status conference in the First Case. At that status conference, K3B consented to the dismissal of the First Case with a 180-day bar to refiling. *See* March 18, 2024 Benham Declaration, ¶ 15 [First Case, doc. 57].

On November 3, 2023, the Court entered its *Order Dismissing Chapter 11 Case With 180-Day Bar to Refiling* (the "K3B Dismissal Order"). The K3B Dismissal Order provides, in relevant part:

The Debtor having consented to dismissal of this case with a 180-day bar to refiling, such dismissal appearing to be in the best interests of

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creditors and the estate and good cause appearing, it is hereby

ORDERED, that the Debtor's case is dismissed, and the Debtor may not be a debtor under any chapter of 11 U.S.C. §§ 101 et seq. for 180 days from the date of entry of this order.

K3B Dismissal Order, p. 2 [First Case, doc. 48]. The First Case was closed on November 21, 2023. *See* First Case, doc. 52.

B. K3B's Affiliate and Co-Debtor, Encino Towers, LLC

Encino Towers, LLC ("Encino Towers") is an affiliate of K3B. Encino Towers' primary asset was an office building located at 17835 Ventura Blvd., Encino 91316 (the "Encino Office Building"). Declaration of Kaysan Ghasseminejad, filed on August 9, 2023, ¶¶ 4-5 [First Case, doc. 22].

In a declaration regarding Encino Towers, Kaysan represented as follows:

[Encino Towers] was formed on April 8, 2021 for the sole purpose of acquiring an office building located at 17835 Ventura Blvd., Encino 91316. [Encino Towers] made an offer of \$12,990,000 for the [Encino Office Building], which was accepted on June 25, 2020.

[Encino Towers] was in a position to acquire the office building through the U.S. Small Business Administration's ("SBA") 504 Loan Program – the SBA loan proceeds would enable [Encino Towers] to fund the purchase in exchange for a junior 20/25year loan at 2.5%. [Sunwest] had agreed to fund a senior loan of \$6,869,000, subject to completion of the SBA loan.

...

Although [Encino Towers] initially qualified for the 504 Loan Program in August 2021, [Encino Towers] was unable to comply with the requirements to complete the junior loan in time to meet the sale closing date. [Sunwest] thereafter agreed to also fund a junior short term bridge loan of \$4,939,000.

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Declaration of Kaysan Ghasseminejad, ¶¶ 6, 8 and 10 [Case No. 1:23-bk-10965-VK ("Encino Towers Case"), doc. 80].

In July 2021, Encino Towers obtained two loans from Sunwest: one for \$6,869,000 (the "First Loan") and a second for \$4,939,000 ("Second Loan" and, together with the "First Loan," the "Loans"). Declaration of M. Cary Calkin ("Calkin Declaration") ¶ 8 [First Case, doc. 69]. A loan agreement and a promissory note memorialized the Loans. *Id.*, ¶ 8 and Exhs. A-D thereto. To secure each of the Loans, separate deeds of trust were recorded in August 2021, encumbering the Encino Office Building. *Id.*, ¶ 9 and Exhs. E-F thereto. Regarding the Second Loan, Encino was required to pay Sunwest all principal and accrued unpaid interest by **December 1, 2021**. *Id.*, ¶ 8 and Exh. D thereto.

Encino Towers did not pay off the Second Loan by its maturity date, triggering a default. *Id.*, ¶ 10. On March 13, 2023, Kaysan, as Encino Towers' member/manager, executed a forbearance agreement between Encino Towers and Sunwest (the "Forbearance Agreement"). Calkin Declaration, ¶ 11 and Exh. G thereto.

Following the execution of the Forbearance Agreement, K3B, as trustor and owner of the Sunset Residence, executed and delivered to Sunwest, as beneficiary, a deed of trust that was recorded in March 2023 (the "Sunwest Deed of Trust"), encumbering the Sunset Residence. Calkin Declaration, ¶ 11 and Exh. H thereto.

Encino Towers defaulted under the Forbearance Agreement. Among other things, Encino Towers failed to accept the highest offer submitted to purchase the Encino Office Building within 60 days of the Forbearance Agreement's execution, i.e., by May 9, 2023, and it failed to close a sale with a full and complete payoff of Sunwest's loan within 120 days of execution of the Forbearance Agreement. Calkin Declaration, ¶ 12. In addition, K3B did not pay property taxes on the Sunset Residence, which constituted a default under the Sunwest Deed of Trust. *Id.*, ¶ 13.

On June 6, 2023, Sunwest filed a judicial foreclosure action in Orange County Superior Court against, among others, Encino Towers and K3B, initiating case no. 30-2023-01325901-CU-BC-CJC (the "Foreclosure Action"). *Id.*, ¶ 14. On June 23, 2023, notices of default were recorded against the Encino Office Building and the Sunset Residence. *Id.*, ¶ 15 and Exh. I thereto.

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C. Post-Dismissal Activity

After the dismissal of the First Case, on November 20, 2023, Preferred Bank recorded notices of default on its two senior deeds of trust against the Sunset Residence. *See* Calkin Declaration, ¶ 25 and Exh. P thereto. Similarly, on January 11, 2024, Sunwest resumed its nonjudicial foreclosure proceedings against the Sunset Residence, and a notice of trustee's sale against the Sunset Residence, in accordance with the Sunset Deed of Trust, was recorded. Calkin Declaration, ¶ 19 and Exh. L thereto.

As of February 1, 2024, the outstanding property taxes on the Sunset Residence totaled approximately \$773,329.27, as set forth on the following chart:

| Description | Amount |
|---|--------------|
| 2021 taxes | \$392,682.52 |
| 2021 penalty (\$4832.84 per month after 8/11/223) | \$24,164.2 |
| 11/1/22 tax plus 10% penalty | \$89,896.27 |
| 2-1-2023 tax plus 10% penalty | \$89,896.24 |
| 11/1/23 tax plus 10% penalty | \$92,551.921 |
| 2/1/2024 tax | \$84,138.11 |
| TOTAL | \$773,329.27 |

Calkin Declaration, ¶ 23 and Exh. N thereto.

1. *K3B's Cross-Complaint in the Foreclosure Action*

On January 29, 2024, K3B and Encino Towers filed a verified cross-complaint against Sunwest and others, in the Foreclosure Action. Exh. 1 to the March 18 Behnam Declaration. The same day, K3B and Encino Towers filed an ex parte application for a temporary restraining order to enjoin a nonjudicial foreclosure by Sunwest of the Sunset Residence. Exh. 2 to the March 18 Behnam Declaration.

On February 2, 2024, the state court entered a temporary restraining order (the "TRO"). Declaration of Adam Apollo (the "Apollo Declaration"), ¶¶ 2 and 3 and Exh. A thereto [First Case, doc. 57]. The TRO stated, in pertinent part:

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IT IS HEREBY ORDERED:

...

Cross-Defendants [Sunwest]...shall be enjoined from foreclosing upon, selling, transferring, or executing any Trustee Deed's Upon sale for the "subject real property," (residential) located at 9996 Sunset Blvd., Beverly Hills, CA 90210 until a determination of the order to show cause regarding a preliminary injunction.

An Order to Show Cause hearing regarding issuance of a preliminary injunction for the same shall be set for hearing 2/23/24 at 10:00 a.m...

TRO, Exh. A to the Apollo Declaration, p. 2 (emphasis omitted). The TRO did not enjoin Sunwest from foreclosing on the Encino Office Building. March 18 Behnam Declaration, ¶ 21. [FN3]

On March 1, 2024, the state court entered a preliminary injunction (the "Preliminary Injunction"). Apollo Declaration, ¶ 3 and Exh. B thereto. The Preliminary Injunction provided, in relevant part:

The Court's order to show cause hearing regarding issuance of an injunction came for hearing on February 3, 2024....IT IS HEREBY ORDERED:

Cross-Defendants [SUNWEST]; and its employees, agents and trustees, and those acting on its behalf, shall be enjoined from foreclosing upon, selling, transferring, or executing any Trustee Deed's Upon sale for the "subject real property," (residential) located at 9996 Sunset Blvd., Beverly Hills, CA 90210 until further order of this Court.

IT IS FURTHER ORDERED THAT within 6 court days, Cross-Complainant [Debtor] shall procure a bond in the amount of \$4,515,431 to protect Cross-Defendant [Sunwest's] risks of loss in this case in the event Cross-Complainant's do not prevail at trial, and cause proof of the same to be filed with the Court.

Preliminary Injunction, Exh. B to the Apollo Declaration, p. 2.

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K3B did not timely post the required bond. *See* Calkin Declaration, ¶ 21; March 18 Behnam Declaration, ¶ 24. On March 13, 2024, Sunwest filed an ex parte motion to dissolve the Preliminary Injunction. Calkin Declaration, ¶ 21.

2. K3B's Second Bankruptcy Case

On March 14, 2024, before the expiration of the 180-day bar imposed by the K3B Dismissal Order, K3B filed another chapter 11 petition, initiating this case, case no. 1:24-bk-10406-VK (the "Second Case"). In its Statement of Financial Affairs filed in the Second Case, K3B identified Behnam as its managing member, with a 100% interest in K3B, and Kaysan as K3B's managing member from 2019 to 2023. Behnam signed the voluntary petition as K3B's managing member.

In its schedule A/B filed in the Second Case, K3B identified an interest in the Sunset Residence, with an approximate value of \$17.6 million (i.e., an increase of \$2.6 million from the \$15 million value which K3B provided in its schedule A/B, filed in the First Case, less than one year earlier). In addition, K3B identified: (1) an interest in a checking account with Strategic Banking Partner, valued at \$0; and (2) a cause of action against Sunwest, with a value of \$0. K3B did not identify an interest in any other assets [Second Case, doc. 20].

On March 29, 2024, Movant filed a motion for relief from the automatic stay, which K3B opposed.

Currently, K3B is significantly behind on property taxes owed for the Sunset Residence for 2021 forward, including property taxes due on December 10, 2023 and April 10, 2024. *See* Jurich Declaration, ¶ 3 and Exh. 26 thereto [Second Case, doc. 21-3]; Supplemental Declaration of Lance N. Jurich, ¶ 2 and Exh. 36 attached thereto [Second Case, doc. 61]. In addition, the two loans secured by the first and second deeds of trust against the Sunset Residence have not been paid in nearly a year. Declaration of Adam Phillips, executed on March 28, 2024 ("Phillips Declaration"), ¶ 26 [Second Case, doc. 21-2]. Secured claims against the Sunset Residence exceed \$17.1 million. *See* Phillips Declaration, ¶¶ 33-34; Jurich Declaration, ¶ 3 and Exh. 26 thereto [Second Case, doc. 21-3].

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II. STANDARDS FOR RELIEF FROM THE AUTOMATIC STAY

A. *Burden of Proof Under 11 U.S.C. § 362(g)*

Pursuant to 11 U.S.C. § 362(g)—

In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section—

- (1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and
- (2) the party opposing such relief has the burden of proof on all other issues.

The movant, "as the party seeking relief, must first establish a prima facie case that cause exists for relief under § 362(d)(1)." *In re Gould*, 401 B.R. 415, 426 (9th Cir. BAP 2009); *citing In re Duvar Apt., Inc.*, 205 B.R. 196, 200 (9th Cir. BAP 1996). Once a prima facie case has been established, the burden shifts to the debtor to show that relief from the stay is not warranted. *Id.*; *see* 11 U.S.C. § 362(g)(2).

B. *Relief from Stay Under 11 U.S.C. § 362(d)(1)*

Pursuant to 11 U.S.C. § 362(d)—

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

- (1) for cause, including the lack of adequate protection of an interest in property of such party in interest[.]

A debtor's bad faith in filing a bankruptcy case can be cause for granting relief from stay. *In re Arnold*, 806 F.2d 937, 939 (9th Cir. 1986). "Bad faith depends on an amalgam of factors and no specific factor is determinative." *In re Sunshine Group*,

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LLC, 2020 WL 1846940, at *7 (9th Cir. BAP Apr. 10, 2020) (citing *Arnold*, 806 F.2d at 939). "A finding of bad faith is made on a case by case basis, there is no list of factors which must be present in each case to make the finding, and the weight given to any particular factor depends on the circumstances of the individual case." *Id.*

Courts may weigh a variety of circumstantial factors to determine whether a debtor has filed a petition in bad faith, including whether:

- (1) the debtor has only one asset;
- (2) the debtor has an ongoing business to reorganize;
- (3) there are any unsecured creditors;
- (4) the debtor has any cash flow or sources of income to sustain a plan of reorganization or to make adequate protection payments; and
- (5) the case is essentially a two party dispute capable of prompt adjudication in state court.

In re St. Paul Self Storage Ltd. Partnership, 185 B.R. 580, 582–83 (9th Cir. BAP 1995). Once a creditor makes a prima facie showing of bad faith, "[t]he burden, thereafter, is on the debtor to establish good and sufficient reasons why the relief should not be granted." *In re Yukon Enterprises, Inc.*, 39 B.R. 919, 921 (Bankr. C.D. Cal. 1984).

C. Relief from Stay Under 11 U.S.C. § 362(d)(4)

Pursuant to 11 U.S.C. § 362(d)—

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

- (4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved...

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(B) multiple bankruptcy filings affecting such real property.

To obtain relief under 11 U.S.C. § 362(d)(4)—

[T]he court must find three elements to be present. First, debtor's bankruptcy filing must have been part of a scheme. Second, the object of the scheme must be to delay, hinder, or defraud creditors. Third, the scheme must involve either (a) the transfer of some interest in the real property without the secured creditor's consent or court approval, or (b) multiple bankruptcy filings affecting the property. For the court to grant relief under § 362(d)(4), and thus trigger two years of prospective relief as to the subject real property, it must affirmatively find that the three elements above are present.

In re First Yorkshire Holdings, Inc., 470 B.R. 864, 870–71 (9th Cir. BAP 2012).

II. ANALYSIS

A. *Granting Relief Under 11 U.S.C. § 362(d)(1)*

If K3B did not file this case in good faith, its lack of good faith would be cause for terminating the automatic stay under 11 U.S.C. § 362(d)(1). Here, because K3B did not file the Second Case in good faith, there is cause to terminate the automatic stay under section 362(d)(1).

In its opposition, K3B asserts that it can fund a plan of reorganization and that successive bankruptcy filings do not constitute bad faith per se. Similarly, K3B contends that filing a bankruptcy to prevent foreclosure does not necessarily constitute bad faith. However, there are other relevant factors which, taken together with K3B's multiple bankruptcy filings to prevent foreclosure of the Sunset Residence, establish that K3B filed this case in bad faith.

After the First Case was dismissed with a 180-day bar, K3B obtained a temporary restraining order enjoining Sunwest from selling the Sunset Residence. However,

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despite the provisions of the subsequent Preliminary Injunction, K3B did not post the required bond. Shortly after Sunwest filed an ex parte motion to dissolve the Preliminary Injunction, K3B filed the chapter 11 petition to commence this case, although the 180-day bar on filing another bankruptcy case, *to which K3B had consented*, still was in place.

K3B has only one asset, a 7,885 square foot single family residence, located in Beverly Hills, California. Its principals reside in this house. K3B has no unsecured creditors. In nearly a year, K3B has not made any payments regarding the two senior deeds of trust against the Sunset Residence; for even longer than that, K3B has not paid property taxes for the Sunset Residence. K3B has never received any rental income for the Sunset Residence. Taking this history into account, it is unlikely that K3B will make ongoing payments to its secured creditors in accordance with any provisions of a chapter 11 plan - assuming K3B could confirm a chapter 11 plan.

Assuming K3B had a legitimate dispute with Sunwest concerning the Sunwest Deed of Trust (i.e., the third deed of trust against the Sunset Residence), that would not explain the failure of K3B's principals to pay any rent, **ever**, K3B's failure to pay property taxes for the Sunset Residence for years and K3B's failure to pay the loans secured by the first and second deeds of trust against the Sunset Residence. The Court concludes that the explanation for K3B's conduct, and its filing of the chapter 11 petition for the Second Case, is the principals' resistance to paying any of the debt secured by the Sunset Residence, or the related property taxes, at the risk and expense of K3B's secured creditors.

Based on these facts and the totality of circumstances, K3B filed this case in bad faith. Consequently, the Court will grant relief from the automatic stay to Movant under 11 U.S.C. § 362(d)(1).

B. Granting Relief Under 11 U.S.C. § 362(d)(4)

There also is cause to terminate the automatic stay under section 362(d)(4). While the 180-day refiling bar was still in place, and shortly after Sunwest requested that the state court dissolve the Preliminary Injunction, K3B filed the chapter 11 petition initiating this case. The Court finds that KB3's filing of the petition was part of a scheme to delay, hinder or defraud creditors. Movant and Sunwest are the only

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creditors disclosed on K3B's schedule D; other than delinquent property taxes for 2021 and forward, K3B appears to owe no other debts. *See* K3B's schedule E/F [Second Case, doc. 20]. There have been multiple bankruptcy filings affecting the Sunset Residence. Consequently, the Court will grant relief from the automatic stay to Movant under 11 U.S.C. § 362(d)(4).

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

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order granting the motion will be binding in any other bankruptcy case purporting to affect the Sunset Residence filed not later than 2 years after the date of the entry of the order by the Court, except that a debtor in a subsequent bankruptcy case may move for relief from the order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property must accept any certified copy of the order for indexing and recording.

The 14-day stay prescribed by Fed. R. Bankr. P. 4001(a)(3) is waived.

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

FOOTNOTES

FN 1: When K3B filed its chapter 11 petition, the Encino Office Building was owned by K3B's affiliate, Encino Towers, LLC. Concurrently with K3B, Encino Towers, LLC also filed a chapter 11 petition, initiating case no. 1:23-bk-10965-VK. Kaysan signed the voluntary petition as the managing member of Encino Towers, LLC. In its list of equity security holders, Encino Towers, LLC also identified Kaysan as a 100% equity interest holder [Case No. 1:23-bk-10965-VK, doc. 1]. *See also* Declaration of Kaysan Ghasseminejad, filed August 9, 2023, ¶¶ 4-5 [First Case, doc. 22].

FN 2: 9996 Sunset Loan Acquisition, LLC has acquired Preferred Bank's two loans, secured by the first and second deeds of trust against the Sunset Residence.

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See Declaration of Adam Phillips, Second Case, doc. 21-2, ¶¶ 28-31.

FN 3: On February 2, 2024, in an apparent attempt to prevent Sunwest's nonjudicial foreclosure of the Encino Office Building, Behnam apparently executed a grant deed conveying title to that property from Encino Towers to 20 E. Mariposa St., LLC ("Mariposa"). *See* Exh. 13 to Declaration of Robert S. McWhorter ("McWhorter Declaration") [First Case, doc. 69]. That day, Mariposa filed a chapter 11 petition, initiating case no. 2:24-bk-10833-SK (the "Mariposa Case"). Exh. 14 to McWhorter Declaration. Behnam executed the voluntary petition for Mariposa as its member. *Id.* On February 5, 2024, notice of the Mariposa Case was sent to Sunwest's attorney with a request to "stop the Trustee Sale." McWhorter Declaration, ¶ 6 and Exh. 13 thereto. Despite Benham's efforts to preclude the foreclosure sale through a transfer of the Encino Office Building and another bankruptcy filing, on February 5, 2024, the Court entered an order dismissing the Mariposa Case. Exh. 15 to McWhorter Declaration.

| |
|--------------------------|
| Party Information |
|--------------------------|

Debtor(s):

K3B Enterprises, LLC

Represented By
Giovanni Orantes

Movant(s):

9996 Sunset Loan Acquisition, LLC

Represented By
Lance N Jurich

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1:24-10406 K3B Enterprises, LLC

Chapter 11

#9.00 Motion for relief from stay [RP]

SUNWEST BANK
VS
DEBTOR

Docket 40

Tentative Ruling:

For the reasons set forth below, pursuant to 11 U.S.C. § 362(d)(4), the Court will grant movant relief from the automatic stay with respect to the real property located at 9996 Sunset Blvd., Beverly Hills, CA 90210.

I. BACKGROUND

A. First Bankruptcy Case Filed by K3B Enterprises LLC

On July 10, 2023, K3B Enterprises LLC ("K3B") filed a chapter 11 petition, initiating case no. 1:23-bk-10966-VK (the "First Case"). During the First Case, K3B was represented by RHM Law LLP [First Case, doc. 35].

In the First Case, Kaysan Ghasseminejad ("Kaysan") signed the voluntary petition as K3B's managing member. In its list of equity security holders, K3B identified Kaysan as a 100% equity interest holder, and in its statement of financial affairs, K3B identified Kaysan as its managing member with 100% interest in K3B.

1. K3B's Real Property and Scheduled Secured Claims

In its schedule A/B filed in the First Case, K3B disclosed its interest in a residence located at 9996 Sunset Boulevard, Beverly Hills CA 90210 (the "Sunset Residence"). The Sunset Residence is a 7,885 square foot home with six bedrooms, eight bathrooms, three fireplaces, one guest house and a pool. Exh. 0 to Declaration of M. Cary Calkin [First Case, doc. 69]. In schedule A/B, K3B provided a value at \$15 million for its interest in the Sunset Residence. In its schedule A/B, K3B did not

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identify an interest in any other assets [First Case, doc. 13].

As testified by Kaysan in August 2023, at the section 341(a) meeting held in the First Case, Kaysan lives in the Sunset Residence with his father (Behnam Ghasseminejad), his mother and his grandmother. K3B does not generate any income; Kaysan and his family do not pay rent to K3B. *See also* K3B's schedule G and Statement of Financial Affairs, Part 1 [First Case, doc. 13; Case No. 1:24-bk-10406-VK ("Second Case"), doc. 20]].

In its amended schedule D filed in the First Case, K3B identified 4 secured claims: (1) the claim of the Los Angeles County Tax Collector ("LACTC"), in the alleged amount of approximately \$326,000, based on property taxes owed for the Sunset Residence; (2) the claim of Preferred Bank, in the alleged amount of approximately \$7.3 million, secured by a first deed of trust encumbering the Sunset Residence; (3) another claim owed to Preferred Bank, in the alleged amount of approximately \$2 million, secured by a second deed of trust encumbering the Sunset Residence; and (4) the claim of Sunwest Bank ("Sunwest"), arising from cross collateralized loans secured by, among other real properties, the Sunset Residence and an office building located in Encino, California (the "Encino Office Building") [First Case, doc. 27]. [FN 1]

In August 2023, K3B filed a status report and attached Kaysan's supporting declaration. In this declaration, Kaysan stated that K3B was formed on April 2, 2019 for the sole purpose of acquiring the Sunset Residence. Kaysan further represented that his father, Benham Ghasseminejad, was assisting Kaysan with the day-to-day operations of K3B and held no ownership interest in K3B. Declaration of Kaysan Ghasseminejad, filed on August 9, 2023, ¶ 3 [First Case, doc. 22].

2. Proofs of Claim Filed Against K3B's Estate in the First Case

In August 2023, LACTC filed proof of claim no. 3-1 against the K3B estate in the First Case, asserting a secured claim in the amount of \$572,474.42. LACTC indicated that its secured claim was based on past-due property taxes.

In September 2023, Preferred Bank filed proof of claims nos. 5-1 and 6-1 in the First Case, each of which identified claims secured by deeds of trust which encumbered the Sunset Residence. Claim 5-1, secured by a first deed of trust, was in the amount of

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\$7,598,893.52; claim no. 6-1, secured by a second deed of trust, was in the amount of \$2,107,886.90. [FN2]

3. K3B's Section 341(a) Meeting of Creditors in the First Case

At the section 341(a) meeting of creditors held in the First Case on August 15, 2023, Kaysan testified as K3B's principal and managing member. *See* Declaration of Lance N. Jurich (the "Jurich Declaration"), ¶ 2 and Exh. 25 thereto [Second Case, doc. 21-3]. The following testimony appears in the transcript of the section 341(a) meeting:

U.S. TRUSTEE: So [K3B], they just own a piece of property, that's all they do?

MR. K. GHASSEMINEJAD: Yes. That's it.

U.S. TRUSTEE: Okay. What do you do at [K3B] as the managing member of anything?

MR. K. GHASSEMINEJAD: Nothing. Just living with my mom and dad.

...

U.S. TRUSTEE: Okay. And [K3B] just owns one piece of real property?

MR. K. GHASSEMINEJAD: Yes.

U.S. TRUSTEE: And where is that property located?

MR. K. GHASSEMINEJAD: It's 9996 Sunset Boulevard, Beverly Hills. It's in California, 90210.

...

U.S. TRUSTEE: Okay. Prior to purchasing this property, did [K3B] own any other properties?

MR. K. GHASSEMINEJAD: No. It was created for this house.

...

U.S. TRUSTEE: And up to the point of filing for bankruptcy, was [K3B] current on making the monthly mortgage payment for the first?

MR. K. GHASSEMINEJAD: Not truly.

...

U.S. TRUSTEE: Right. But does the Debtor itself, [K3B], have any source of income?

MR. K. GHASSEMINEJAD: Oh, no. No, no, no, no, no.

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U.S. TRUSTEE: Okay. Then who was paying for the monthly mortgages on the property?

MR. K. GHASSEMINEJAD: Mostly my dad.

...

U.S. TRUSTEE: Okay. And when you purchased the property, you're the sole member, so any equity investment in [K3B] would come to you. Was your intent to rent this property out, to live there?

MR. K. GHASSEMINEJAD: No. No. No intent to rent.

...

U.S. TRUSTEE: Do you know if property taxes are current on the property?

MR. K. GHASSEMINEJAD: No. Behind. We're behind on that. I don't know the exact amount. Maybe 200. I don't know exact amount.

...

U.S. TRUSTEE: What's [K3B's] intentions to do with the property?

MR. K. GHASSEMINEJAD: To save. To keep it.

U.S. TRUSTEE: And how is [K3B] going to afford to keep it?

MR. K. GHASSEMINEJAD: Probably—my dad and I have been talking about refinancing the property and I believe he communicated that to you direct at some other time. We will be refinancing the property, the home.

...

MR. K. GHASSEMINEJAD: ...it's our home. We live there.

U.S. TRUSTEE: I thought you said you live there only part-time, no one else lives there?

MR. K. GHASSEMINEJAD: No. My mom and dad and myself and my mom's mom.

U.S. TRUSTEE: Live there.

MR. K. GHASSEMINEJAD: We all live there.

U.S. TRUSTEE: Do they pay any rent?

MR. K. GHASSEMINEJAD: No.

U.S. TRUSTEE: Have they ever paid any rent?

MR. K. GHASSEMINEJAD: No.

U.S. TRUSTEE: Is there a reason why they don't pay any rent to [K3B]?

MR. K. GHASSEMINEJAD: No. No. He does enough to help. He

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stays there. Maybe that's the compensation.

...

U.S. TRUSTEE: . . . I'm talking for [K3B], the daily books and records, who keeps –

MR. K. GHASSEMINEJAD: No, there is [sic] no books. There is [sic] no books.

U.S. TRUSTEE: So there are no finances–

MR. K. GHASSEMINEJAD: Just a home.

U.S. TRUSTEE: —financials being provided at all?

MR. K. GHASSEMINEJAD: No. No. No, no.

...

MR. GOMEZ: And why weren't the property taxes paid when they came due?

MR. K. GHASSEMINEJAD: Just, I should have. I just didn't.

Transcript of the August 15, 2023 section 341(a) meeting (the "Transcript"), Exh. 25 to the Jurich Declaration [Second Case, doc. 21-3].

4. Preferred Bank's Motion for Relief from Automatic Stay and K3B's Decision to Dismiss the First Case

In October 2023, in the First Case, Preferred Bank filed a motion seeking relief from the automatic stay regarding the Sunset Residence [First Case, doc. 40]. According to Preferred Bank, as of October 18, 2023, the total amount owed to it on both deeds of trust encumbering the Sunset Residence was "[n]ot less than \$10,038,559.71[.]" Declaration of Erika Chi, executive vice president of Preferred Bank, ¶ 8 [First Case, doc. 40].

In its motion for relief from the automatic stay, Preferred Bank represented that, as of October 18, 2023, five months of deed of trust payments had not been made to Preferred Bank [First Case, doc. 40]. Moreover, based on K3B's scheduled value of \$15 million for the Sunset Property, and the aggregate amount of the debt encumbering the Sunset Residence, including that owed to Preferred Bank and Sunwest, and past due property taxes, K3B had no equity in the Sunset Residence.

In October 2023, K3B filed a status report (the "October Status Report") [First Case,

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doc. 43]. In this status report, K3B stated that:

[K3B] was formed on April 2, 2019 for the sole purpose of acquiring real property located at 9996 Sunset Blvd., Beverly Hills, CA 90210.

Encino Towers LLC - which owns a real property located at 17835 Ventura Blvd., Encino 91316 - filed its own Chapter 11 petition on the same date as the Debtor herein (Case no. 1:23-bk-10965). The entities, their assets and liabilities as [sic] intertwined, as set forth in the [K3B]'s initial Status Report [Docket No. 22].

The liens against the Sunset property are approximately: \$7,598,894 Preferred Bank (senior), \$2,107,887 Preferred Bank (junior); cross-collateralized debt of about \$12,063,094.74 owed to Sunwest Bank. Preferred Bank filed a Motion for Relief from the Automatic Stay [Docket No. 40]; that is set for hearing on November 8, 2023.

Encino Towers, LLC has accepted an offer of \$14,000,000 for the sale of the Ventura Blvd. property to an unrelated entity. The sale of the Ventura Blvd. will resolve the junior Sunwest Bank lien on the Sunset property.

October Status Report, p. 2. *See also* Declaration of Behnam Ghasseminejad, dated March 18, 2024 ("March 18, 2024 Benham Declaration"), ¶ 15 [First Case, doc. 57].

On November 2, 2023, the Court held a continued status conference in the First Case. At that status conference, K3B consented to the dismissal of the First Case with a 180-day bar to refile. *See* March 18, 2024 Benham Declaration, ¶ 15 [First Case, doc. 57].

On November 3, 2023, the Court entered its *Order Dismissing Chapter 11 Case With 180-Day Bar to Refiling* (the "K3B Dismissal Order"). The K3B Dismissal Order provides, in relevant part:

The Debtor having consented to dismissal of this case with a 180-day bar to refile, such dismissal appearing to be in the best interests of

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creditors and the estate and good cause appearing, it is hereby

ORDERED, that the Debtor's case is dismissed, and the Debtor may not be a debtor under any chapter of 11 U.S.C. §§ 101 et seq. for 180 days from the date of entry of this order.

K3B Dismissal Order, p. 2 [First Case, doc. 48]. The First Case was closed on November 21, 2023. *See* First Case, doc. 52.

B. K3B's Affiliate and Co-Debtor, Encino Towers, LLC

Encino Towers, LLC ("Encino Towers") is an affiliate of K3B. Encino Towers' primary asset was an office building located at 17835 Ventura Blvd., Encino 91316 (the "Encino Office Building"). Declaration of Kaysan Ghasseminejad, filed on August 9, 2023, ¶¶ 4-5 [First Case, doc. 22].

In a declaration regarding Encino Towers, Kaysan represented as follows:

[Encino Towers] was formed on April 8, 2021 for the sole purpose of acquiring an office building located at 17835 Ventura Blvd., Encino 91316. [Encino Towers] made an offer of \$12,990,000 for the [Encino Office Building], which was accepted on June 25, 2020.

[Encino Towers] was in a position to acquire the office building through the U.S. Small Business Administration's ("SBA") 504 Loan Program – the SBA loan proceeds would enable [Encino Towers] to fund the purchase in exchange for a junior 20/25year loan at 2.5%. [Sunwest] had agreed to fund a senior loan of \$6,869,000, subject to completion of the SBA loan.

...

Although [Encino Towers] initially qualified for the 504 Loan Program in August 2021, [Encino Towers] was unable to comply with the requirements to complete the junior loan in time to meet the sale closing date. [Sunwest] thereafter agreed to also fund a junior short term bridge loan of \$4,939,000.

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Declaration of Kaysan Ghasseminejad, ¶¶ 6, 8 and 10 [Case No. 1:23-bk-10965-VK ("Encino Towers Case"), doc. 80].

In July 2021, Encino Towers obtained two loans from Sunwest: one for \$6,869,000 (the "First Loan") and a second for \$4,939,000 ("Second Loan" and, together with the "First Loan," the "Loans"). Declaration of M. Cary Calkin ("Calkin Declaration") ¶ 8 [First Case, doc. 69]. A loan agreement and a promissory note memorialized the Loans. *Id.*, ¶ 8 and Exhs. A-D thereto. To secure each of the Loans, separate deeds of trust were recorded in August 2021, encumbering the Encino Office Building. *Id.*, ¶ 9 and Exhs. E-F thereto. Regarding the Second Loan, Encino was required to pay Sunwest all principal and accrued unpaid interest by **December 1, 2021**. *Id.*, ¶ 8 and Exh. D thereto.

Encino Towers did not pay off the Second Loan by its maturity date, triggering a default. *Id.*, ¶ 10. On March 13, 2023, Kaysan, as Encino Towers' member/manager, executed a forbearance agreement between Encino Towers and Sunwest (the "Forbearance Agreement"). Calkin Declaration, ¶ 11 and Exh. G thereto.

Following the execution of the Forbearance Agreement, K3B, as trustor and owner of the Sunset Residence, executed and delivered to Sunwest, as beneficiary, a deed of trust that was recorded in March 2023 (the "Sunwest Deed of Trust"), encumbering the Sunset Residence. Calkin Declaration, ¶ 11 and Exh. H thereto.

Encino Towers defaulted under the Forbearance Agreement. Among other things, Encino Towers failed to accept the highest offer submitted to purchase the Encino Office Building within 60 days of the Forbearance Agreement's execution, i.e., by May 9, 2023, and it failed to close a sale with a full and complete payoff of Sunwest's loan within 120 days of execution of the Forbearance Agreement. Calkin Declaration, ¶ 12. In addition, K3B did not pay property taxes on the Sunset Residence, which constituted a default under the Sunwest Deed of Trust. *Id.*, ¶ 13.

On June 6, 2023, Sunwest filed a judicial foreclosure action in Orange County Superior Court against, among others, Encino Towers and K3B, initiating case no. 30-2023-01325901-CU-BC-CJC (the "Foreclosure Action"). *Id.*, ¶ 14. On June 23, 2023, notices of default were recorded against the Encino Office Building and the Sunset Residence. *Id.*, ¶ 15 and Exh. I thereto.

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C. Post-Dismissal Activity

After the dismissal of the First Case, on November 20, 2023, Preferred Bank recorded notices of default on its two senior deeds of trust against the Sunset Residence. *See* Calkin Declaration, ¶ 25 and Exh. P thereto. Similarly, on January 11, 2024, Sunwest resumed its nonjudicial foreclosure proceedings against the Sunset Residence, and a notice of trustee's sale against the Sunset Residence, in accordance with the Sunset Deed of Trust, was recorded. Calkin Declaration, ¶ 19 and Exh. L thereto.

As of February 1, 2024, the outstanding property taxes on the Sunset Residence totaled approximately \$773,329.27, as set forth on the following chart:

| Description | Amount |
|---|--------------|
| 2021 taxes | \$392,682.52 |
| 2021 penalty (\$4832.84 per month after 8/11/223) | \$24,164.2 |
| 11/1/22 tax plus 10% penalty | \$89,896.27 |
| 2-1-2023 tax plus 10% penalty | \$89,896.24 |
| 11/1/23 tax plus 10% penalty | \$92,551.921 |
| 2/1/2024 tax | \$84,138.11 |
| TOTAL | \$773,329.27 |

Calkin Declaration, ¶ 23 and Exh. N thereto.

1. *K3B's Cross-Complaint in the Foreclosure Action*

On January 29, 2024, K3B and Encino Towers filed a verified cross-complaint (the "Cross-Complaint") against Sunwest and others, in the Foreclosure Action. Exh. 1 to the March 18 Behnam Declaration. The same day, K3B and Encino Towers filed an ex parte application for a temporary restraining order to enjoin a nonjudicial foreclosure by Sunwest of the Sunset Residence. Exh. 2 to the March 18 Behnam Declaration.

On February 2, 2024, the state court entered a temporary restraining order (the "TRO"). Declaration of Adam Apollo (the "Apollo Declaration"), ¶¶ 2 and 3 and Exh. A thereto [First Case, doc. 57]. The TRO stated, in pertinent part:

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IT IS HEREBY ORDERED:

...

Cross-Defendants [Sunwest]...shall be enjoined from foreclosing upon, selling, transferring, or executing any Trustee Deed's Upon sale for the "subject real property," (residential) located at 9996 Sunset Blvd., Beverly Hills, CA 90210 until a determination of the order to show cause regarding a preliminary injunction.

An Order to Show Cause hearing regarding issuance of a preliminary injunction for the same shall be set for hearing 2/23/24 at 10:00 a.m...

TRO, Exh. A to the Apollo Declaration, p. 2 (emphasis omitted). The TRO did not enjoin Sunwest from foreclosing on the Encino Office Building. March 18 Behnam Declaration, ¶ 21. [FN3]

On March 1, 2024, the state court entered a preliminary injunction (the "Preliminary Injunction"). Apollo Declaration, ¶ 3 and Exh. B thereto. The Preliminary Injunction provided, in relevant part:

The Court's order to show cause hearing regarding issuance of an injunction came for hearing on February 3, 2024....IT IS HEREBY ORDERED:

Cross-Defendants [SUNWEST]; and its employees, agents and trustees, and those acting on its behalf, shall be enjoined from foreclosing upon, selling, transferring, or executing any Trustee Deed's Upon sale for the "subject real property," (residential) located at 9996 Sunset Blvd., Beverly Hills, CA 90210 until further order of this Court.

IT IS FURTHER ORDERED THAT within 6 court days, Cross-Complainant [Debtor] shall procure a bond in the amount of \$4,515,431 to protect Cross-Defendant [Sunwest's] risks of loss in this case in the event Cross-Complainant's do not prevail at trial, and cause proof of the same to be filed with the Court.

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Preliminary Injunction, Exh. B to the Apollo Declaration, p. 2.

K3B did not timely post the required bond. *See* Calkin Declaration, ¶ 21; March 18 Behnam Declaration, ¶ 24. On March 13, 2024, Sunwest filed an ex parte motion to dissolve the Preliminary Injunction. Calkin Declaration, ¶ 21.

2. K3B's Second Bankruptcy Case

On March 14, 2024, before the expiration of the 180-day bar imposed by the K3B Dismissal Order, K3B filed another chapter 11 petition, initiating this case, case no. 1:24-bk-10406-VK (the "Second Case"). In its Statement of Financial Affairs filed in the Second Case, K3B identified Behnam as its managing member, with a 100% interest in K3B, and Kaysan as K3B's managing member from 2019 to 2023. Behnam signed the voluntary petition as K3B's managing member.

In its schedule A/B filed in the Second Case, K3B identified an interest in the Sunset Residence, with an approximate value of \$17.6 million (i.e., an increase of \$2.6 million from the \$15 million value which K3B provided in its schedule A/B, filed in the First Case, less than one year earlier). In addition, K3B identified: (1) an interest in a checking account with Strategic Banking Partner, valued at \$0; and (2) a cause of action against Sunwest, with a value of \$0. K3B did not identify an interest in any other assets [Second Case, doc. 20].

On March 29, 2024, Sunwest filed a motion for relief from the automatic stay regarding the Sunset Residence, which K3B opposed. K3B also has opposed a similar motion for relief from the automatic stay filed by 9996 Sunset Loan Acquisition, LLC, the successor in interest to Preferred Bank.

Currently, K3B is significantly behind on property taxes owed for the Sunset Residence for 2021 forward, including property taxes due on December 10, 2023 and April 10, 2024. *See* Jurich Declaration, ¶ 3 and Exh. 26 thereto [Second Case, doc. 21-3]; Supplemental Declaration of Lance N. Jurich, ¶ 2 and Exh. 36 attached thereto [Second Case, doc. 61]. In addition, the two loans secured by the first and second deeds of trust against the Sunset Residence have not been paid in nearly a year. Declaration of Adam Phillips, executed on March 28, 2024 ("Phillips Declaration"), ¶ 26 [Second Case, doc. 21-2]. Secured claims against the Sunset Residence exceed

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\$17.1 million. See Phillips Declaration, ¶¶ 33-34; Jurich Declaration, ¶ 3 and Exh. 26 thereto [Second Case, doc. 21-3].

II. STANDARDS FOR RELIEF FROM THE AUTOMATIC STAY

A. Burden of Proof Under 11 U.S.C. § 362(g)

Pursuant to 11 U.S.C. § 362(g)—

In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section—

- (1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and
- (2) the party opposing such relief has the burden of proof on all other issues.

The movant, "as the party seeking relief, must first establish a prima facie case that cause exists for relief under § 362(d)(1)." *In re Gould*, 401 B.R. 415, 426 (9th Cir. BAP 2009); citing *In re Duvar Apt., Inc.*, 205 B.R. 196, 200 (9th Cir. BAP 1996). Once a prima facie case has been established, the burden shifts to the debtor to show that relief from the stay is not warranted. *Id.*; see 11 U.S.C. § 362(g)(2).

B. Relief from Stay Under 11 U.S.C. § 362(d)(4)

Pursuant to 11 U.S.C. § 362(d)—

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

- (4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme

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to delay, hinder, or defraud creditors that involved...

(B) multiple bankruptcy filings affecting such real property.

To obtain relief under 11 U.S.C. § 362(d)(4)—

[T]he court must find three elements to be present. First, debtor's bankruptcy filing must have been part of a scheme. Second, the object of the scheme must be to delay, hinder, or defraud creditors. Third, the scheme must involve either (a) the transfer of some interest in the real property without the secured creditor's consent or court approval, or (b) multiple bankruptcy filings affecting the property. For the court to grant relief under § 362(d)(4), and thus trigger two years of prospective relief as to the subject real property, it must affirmatively find that the three elements above are present.

In re First Yorkshire Holdings, Inc., 470 B.R. 864, 870–71 (9th Cir. BAP 2012).

II. ANALYSIS

Because K3B filed the chapter 11 petition to initiate the Second Case as part of a scheme to delay, hinder, or defraud creditors, and K3B has instituted multiple bankruptcy filings affecting the Sunset Residence, there is cause for terminating the automatic stay under 11 U.S.C. § 362(d)(4).

After the First Case was dismissed with a 180-day bar, K3B obtained a temporary restraining order enjoining Sunwest from selling the Sunset Residence. However, despite the provisions of the subsequent Preliminary Injunction, K3B did not post the required bond. Shortly after Sunwest filed an ex parte motion to dissolve the Preliminary Injunction, K3B filed the chapter 11 petition to commence this case, although the 180-day bar on filing another bankruptcy case, *to which K3B had consented*, still was in place.

K3B has only one asset, a 7,885 square foot single family residence, located in Beverly Hills, California. Its principals reside in this house. K3B has no unsecured creditors. Sunwest and 9996 Sunset Loan Acquisition, LLC are the only creditors

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disclosed on K3B's schedule D; other than delinquent property taxes for 2021 and forward, K3B appears to owe no other debts. *See* K3B's schedule E/F [Second Case, doc. 20]. In nearly a year, K3B has not made any payments regarding the two senior deeds of trust against the Sunset Residence; for even longer than that, K3B has not paid property taxes for the Sunset Residence. K3B has never received any rental income for the Sunset Residence.

Assuming K3B had a legitimate dispute with Sunwest concerning the Sunwest Deed of Trust (i.e., the third deed of trust against the Sunset Residence), that would not explain the failure of K3B's principals to pay any rent, **ever**, K3B's failure to pay property taxes for the Sunset Residence for years and K3B's failure to pay the loans secured by the first and second deeds of trust against the Sunset Residence. The Court concludes that the explanation for K3B's conduct, and its filing of the chapter 11 petition for the Second Case, is the principals' resistance to paying any of the debt secured by the Sunset Residence, or the related property taxes, at the risk and expense of K3B's secured creditors.

The Court finds that K3B's filing of the petition to commence the Second Case was part of a scheme to delay, hinder or defraud creditors. There have been multiple bankruptcy filings affecting the Sunset Residence. Consequently, the Court will grant relief from the automatic stay to Sunwest under 11 U.S.C. § 362(d)(4).

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

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the order granting the motion will be binding in any other bankruptcy case purporting to affect the Sunset Residence filed not later than 2 years after the date of the entry of the order by the Court, except that a debtor in a subsequent bankruptcy case may move for relief from the order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property must accept any certified copy of the order for indexing and recording.

The 14-day stay prescribed by Fed. R. Bankr. P. 4001(a)(3) is waived.

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

Wednesday, April 24, 2024

Hearing Room 301

9:30 AM

CONT... K3B Enterprises, LLC

Chapter 11

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

FOOTNOTES

- FN 1: When K3B filed its chapter 11 petition, the Encino Office Building was owned by K3B's affiliate, Encino Towers, LLC. Concurrently with K3B, Encino Towers, LLC also filed a chapter 11 petition, initiating case no. 1:23-bk-10965-VK. Kaysan signed the voluntary petition as the managing member of Encino Towers, LLC. In its list of equity security holders, Encino Towers, LLC also identified Kaysan as a 100% equity interest holder [Case No. 1:23-bk-10965-VK, doc. 1]. *See also* Declaration of Kaysan Ghasseminejad, filed August 9, 2023, ¶¶ 4-5 [First Case, doc. 22].
- FN 2: 9996 Sunset Loan Acquisition, LLC has acquired Preferred Bank's two loans, secured by the first and second deeds of trust against the Sunset Residence. *See* Declaration of Adam Phillips, Second Case, doc. 21-2, ¶¶ 28-31.
- FN 3: On February 2, 2024, in an apparent attempt to prevent Sunwest's nonjudicial foreclosure of the Encino Office Building, Behnam apparently executed a grant deed conveying title to that property from Encino Towers to 20 E. Mariposa St., LLC ("Mariposa"). *See* Exh. 13 to Declaration of Robert S. McWhorter ("McWhorter Declaration") [First Case, doc. 69]. That day, Mariposa filed a chapter 11 petition, initiating case no. 2:24-bk-10833-SK (the "Mariposa Case"). Exh. 14 to McWhorter Declaration. Behnam executed the voluntary petition for Mariposa as its member. *Id.* On February 5, 2024, notice of the Mariposa Case was sent to Sunwest's attorney with a request to "stop the Trustee Sale." McWhorter Declaration, ¶ 6 and Exh. 13 thereto. Despite Behnam's efforts to preclude the foreclosure sale through a transfer of the Encino Office Building and another bankruptcy filing, on February 5, 2024, the Court entered an order dismissing the Mariposa Case. Exh. 15 to McWhorter Declaration.

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Central District of California
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CONT... K3B Enterprises, LLC

Chapter 11

Party Information

Debtor(s):

K3B Enterprises, LLC

Represented By
Giovanni Orantes

Movant(s):

Sunwest Bank

Represented By
Jarrett S Osborne-Revis

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

Wednesday, April 24, 2024

Hearing Room 301

1:30 PM

1:23-11082 Philip M. Lawrence, II

Chapter 7

Adv#: 1:23-01050 Lawrence v. Lawrence, II

#10.00 Status conference re: first amended complaint to
determine debt non-dischargeable under 11 U.S.C. §523

fr. 2/21/24; 2/28/24

Docket 20

***** VACATED *** REASON: Continued by stip to 5/8/24 at 2:00 pm**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Philip M. Lawrence II

Represented By
Robert M Yaspan

Defendant(s):

Philip M. Lawrence II

Represented By
Robert M Yaspan

Plaintiff(s):

Urbana Chapa Lawrence

Represented By
David L Oberg
Madison B Oberg

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Ron Bender
Jeffrey S Kwong

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

Wednesday, April 24, 2024

Hearing Room 301

1:30 PM

1:23-11082 Philip M. Lawrence, II

Chapter 7

Adv#: 1:23-01051 Everett v. Lawrence, II

#11.00 Status conference re: verified amended complaint to quiet title
and to determine debt non-dischargeable under 11 U.S.C. §523

fr. 2/21/24; 2/28/24

Docket 20

***** VACATED *** REASON: Summons issued on Amended Complaint on
4/12/24. Status conference is continued to 6/12/24 at 1:30 PM.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Philip M. Lawrence II

Represented By
Robert M Yaspan

Defendant(s):

Philip M. Lawrence II

Represented By
Robert M Yaspan

Plaintiff(s):

Ashley Everett

Represented By
Herlinda Rebeca Vasquez

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Ron Bender
Jeffrey S Kwong

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

Wednesday, April 24, 2024

Hearing Room 301

1:30 PM

1:22-11504 Drita Pasha Kessler

Chapter 7

Adv#: 1:23-01015 Kessler v. Wizman

#12.00 Order to Show Cause why this Adversary Proceeding Should Not be Dismissed for Failure to Prosecute

Docket 0

Tentative Ruling:

On December 15, 2023, the Court converted the underlying bankruptcy case from chapter 11 to one under chapter 7. *See* 1:22-bk-11504-VK (the "Bankruptcy Case"), doc. 228. David Seror was appointed as the chapter 7 trustee (the "Trustee").

The section 341(a) meeting of creditors for the chapter 7 case was scheduled for January 12, 2024 and continued several times to April 5, 2024. *See* Bankruptcy Case docs. 230, 235, 247, 248, 274, 300 and 311. It appears that the section 341(a) meeting of creditors was not continued again after April 5, 2024. *See generally* Bankruptcy Case docket.

At the pretrial conference held on January 10, 2024, the Court continued that conference, as a status conference, so that the Trustee could have sufficient time to evaluate whether or not he will prosecute this adversary proceeding, on behalf of the debtor's estate.

On January 11, 2024, the Court entered its *Order Setting Status Conference* (the "Order") [doc. 21]. Pursuant to the Order, the Trustee, on behalf of the estate, and the defendant were to file a joint or unilateral status report in accordance with Local Bankruptcy Rule 7016-1 by no later than March 6, 2024. The Trustee did not appear at the status conference on March 20, 2024.

On March 26, 2024, the Court issued its *Order to Show Cause Why This Adversary Proceeding Should Not be Dismissed for Failure to Prosecute* (the "OSC") [doc. 24]. Given the record in this adversary proceeding, that the parties did not comply with Local Bankruptcy Rule 7016-1 and for the reasons stated in the Court's ruling regarding the March 20, 2024 status conference [doc. 23], the OSC ordered the Trustee to explain why this adversary proceeding should not be dismissed for failure

**United States Bankruptcy Court
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Wednesday, April 24, 2024

Hearing Room 301

1:30 PM

CONT...

Drita Pasha Kessler

Chapter 7

to prosecute. The OSC further ordered the Trustee to file and serve on the defendant a written response to the OSC by no later than April 10, 2024.

As of April 15, 2024, the Trustee has not filed a response to the OSC.

Local Bankruptcy Rule 7016-1(g) provides that—

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

Here, the OSC directed the Trustee to explain why the Court should not dismiss this adversary proceeding, based on the parties’ noncompliance with the pretrial procedure set forth in Local Bankruptcy Rule 7016-1. The Trustee did not file a response to the OSC. Consequently, pursuant to Local Bankruptcy Rule 7016-1(f) and (g), the Court will dismiss this adversary proceeding for failure to prosecute.

The Court will prepare the order.

Party Information

Debtor(s):

Drita Pasha Kessler

Represented By
Andrew Edward Smyth
Stephen S Smyth

Defendant(s):

Jacob Wizman

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
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Wednesday, April 24, 2024

Hearing Room 301

1:30 PM

CONT... Drita Pasha Kessler

Chapter 7

Andre Boniadi

Plaintiff(s):

Drita Pasha Kessler

Represented By
Andrew Edward Smyth

Trustee(s):

David Seror (TR)

Represented By
Elissa Miller

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
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Wednesday, April 24, 2024

Hearing Room 301

1:30 PM

1:23-10848 Margarita Orosco Robles

Chapter 7

Adv#: 1:23-01038 Sanchez v. Robles

#12.01 Status Conference Re: Second Amended Complaint

fr. 4/3/24, 4/10/24

Docket 12

Tentative Ruling:

Unless an appearance is made at the status conference, the status conference is continued to **1:30 p.m. on May 29, 2024.**

It appears that the plaintiff has not requested entry of default under Local Bankruptcy Rule 7055-1(a). The plaintiff must submit Local Bankruptcy Rule Form F 7055-1.1.REQ.ENTER.DEFAULT, "Request for Clerk to Enter Default Under LBR 7055-1(a)."

If the plaintiff will be pursuing a default judgment pursuant to Local Bankruptcy Rule 7055-1(b), the plaintiff must serve a motion for default judgment (if such service is required pursuant to Fed. R. Bankr. P. 7055, Fed. R. Civ. P. 55(b)(2) and/or Local Bankruptcy Rule 7055-1(b)(1)(D)) and must file that motion by **May 17, 2024.**

If the plaintiff will be seeking to recover attorneys' fees, the plaintiff must demonstrate that the award of attorneys' fees complies with Local Bankruptcy Rule 7055-1(b)(4).

The plaintiff's appearance on April 24, 2024 is excused.

| |
|--------------------------|
| Party Information |
|--------------------------|

Debtor(s):

Margarita Orosco Robles

Represented By
Joel M Feinstein

Defendant(s):

Margarita Orosco Robles

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Wednesday, April 24, 2024

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1:30 PM

CONT... Margarita Orosco Robles

Chapter 7

Plaintiff(s):

Margarita Sanchez

Pro Se

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
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Wednesday, April 24, 2024

Hearing Room 301

2:00 PM

1:22-11162 Gustavo Ruiz

Chapter 7

Adv#: 1:24-01004 Ruiz v. Loan Funder, LLC, a Delaware Limited Liability Com

#13.00 Order to Show Cause Why This Adversary Proceeding
Should Not Be Dismissed

Docket 11

Tentative Ruling:

The Court will continue this hearing to 1:30 p.m. on June 12, 2024.

Appearances on April 24, 2024 are excused.

Party Information

Debtor(s):

Gustavo Ruiz

Represented By
Stella A Havkin

Defendant(s):

Loan Funder, LLC, a Delaware

Represented By
Daniel I Singer

Loan Funder LLC Series 8389

Represented By
Daniel I Singer

HOF 1 Grantor Trust 5, a Delaware

Represented By
Daniel I Singer

JSS Enterprises Inc, an unknown

Pro Se

LIL' Wave Financial Inc dba

Pro Se

Plaintiff(s):

Gustavo Ruiz

Represented By
Stella A Havkin

Trustee(s):

Amy L Goldman (TR)

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
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Wednesday, April 24, 2024

Hearing Room 301

2:00 PM

CONT...

Gustavo Ruiz

Todd A. Frealy
Anthony A. Friedman

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Victoria Kaufman, Presiding
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Wednesday, April 24, 2024

Hearing Room 301

2:00 PM

1:22-11162 Gustavo Ruiz

Chapter 7

Adv#: 1:24-01004 Ruiz v. Loan Funder, LLC, a Delaware Limited Liability Com

- #14.00** Status conference re: complaint for
1. Fraudulent transfer;
 2. Recover and preserve avoided transfer;
 3. Violations of California High-Cost Mortgage Law, California Financial Code § 4970 et seq;
 4. Violation of California Civil Code §1632;
 5. Intentional misrepresentation;
 6. Fraud;
 7. Unfair business practices; and (Bus Prof Code §17200)
 8. Declaratory relief

fr. 4/17/24

Docket 1

Tentative Ruling:

The Court will continue the status conference to **1:30 p.m. on June 12, 2024**, to be held in conjunction with the *Order to Show Cause Why this Adversary Proceeding Should Not Be Dismissed* [doc. 11].

Appearances on April 24, 2024 are excused.

Party Information

Debtor(s):

Gustavo Ruiz

Represented By
Stella A Havkin

Defendant(s):

Loan Funder, LLC, a Delaware

Represented By
Daniel I Singer

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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2:00 PM

CONT... Gustavo Ruiz Chapter 7

Loan Funder LLC Series 8389 Represented By
Daniel I Singer

HOF 1 Grantor Trust 5, a Delaware Represented By
Daniel I Singer

JSS Enterprises Inc, an unknown Pro Se

LIL' Wave Financial Inc dba Pro Se

Plaintiff(s):

Gustavo Ruiz Represented By
Stella A Havkin

Trustee(s):

Amy L Goldman (TR) Represented By
Todd A. Frealy
Anthony A. Friedman