

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

Thursday, December 19, 2024

Hearing Room 301

9:30 AM

1: -

Chapter

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

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

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Password: 976994

For more information on appearing before Judge Kaufman by ZoomGov, please see the information entitled "Tips for a Successful ZoomGov Court Experience" on the Court's website at: <https://www.cacb.uscourts.gov/judges/honorable-victoria-s-kaufman> under the tab "Telephonic Instructions."

Docket 0

Tentative Ruling:

- NONE LISTED -

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9:30 AM

1:24-11612 Darryl W Williams

Chapter 13

#1.00 Motion for relief from stay [RP]

ALAN VERTUN
VS
DEBTOR

fr. 11/27/24

Docket 16

Tentative Ruling:

In light of the debtor not having made required postpetition payments to movant, the Court will grant relief from stay for cause, pursuant to 11 U.S.C. § 362(d)(1).

On September 26, 2024, Darryl W. Williams ("Debtor") filed a chapter 13 petition. In his schedule A/B, Debtor identified an interest in the real property located at 1005 West 129th Street, Compton, CA 90222 (the "Property"), with a value of \$550,000. In his schedule D, Debtor disclosed a claim owed to Ashwood TD Services in the amount of \$330,000, secured by the Property. Debtor did not disclose any unsecured claims in his schedule E/F.

In his schedule I, Debtor states that his occupation is "self-employed security" and that his monthly income is \$7,000. Debtor does not disclose any information relating to how long he has been self-employed. In addition, Debtor does not attach a statement showing gross receipts or ordinary and necessary business expenses. In his schedule J, Debtor does not identify any monthly expenses. In his statement of financial affairs, Debtor does not disclose, among other things, the amounts and sources of income which he received during 2022, 2023 and January 1, 2024 to the petition date.

In November 2025, Debtor filed an amended chapter 13 plan (the "Plan") [doc. 24]. In the Plan, Debtor proposes payments of \$612.43 per month for 60 months. Plan, p. 1. In addition, Debtor proposes to maintain and make the current installment payments due to movant and to cure arrears in the amount of approximately \$36,000 through the Plan. *See id.*, p. 2.

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CONT... Darryl W Williams

Chapter 13

On October 25, 2024, Alan S. Vertun, as movant and servicing agent for William and Barbara Schmidt, Ronald Dunn, Keffrey Fleitman, Janice Wasserman and Beth Vertun ("Movant"), filed a *Motion for Relief from the Automatic Stay Under 11 U.S.C. § 362 (Real Property)* (the "Motion") [doc. 16]. In the Motion, Movant indicated that its claim is based on a deed of trust secured by the Property. *See* Motion, p. 1; *see also* Declaration of Alan S. Vertun ("Vertun Decl."), ¶ 3.b. and Exh. C thereto [doc. 16]. According to Movant, the total amount of its claim is \$331,868.73. Vertun Decl., ¶ 8.g. Payments in the amount of \$3,255.22 are due to Movant on the first of each month. *See* promissory note dated January 9, 2023 (the "Note"), attached to the Vertun Decl., as Exh. B. The Note's maturity date is March 1, 2025. *Id.* In the Vertun Decl., Movant represents that Debtor did not make the postpetition payment due for October 2024. Vertun Decl., ¶ 12.b.

On November 25, 2024, Debtor belatedly filed a response to the Motion (the "Response") [doc. 25], and the Court continued the hearing on the Motion from the originally noticed hearing date of November 27, 2024.

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 decision to lift the automatic stay is within the discretion of the bankruptcy court. *In re MacDonald*, 755 F.2d 715, 716 (9th Cir. 1985).

Pursuant to the Court's order continuing the hearing on the Motion (the "Order") [doc. 26], Debtor was to serve the Response on Movant and to file a supplemental proof of service of the Response by no later than December 5, 2024. Order, p. 2. As of December 11, 2024, Debtor has not filed a supplemental proof of service of the Response.

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Debtor asserts that he is current on his postpetition deed of trust payments owed to Movant. Pursuant to the Note, payments have come due for October, November and December 2024. In the Response, Debtor provides an unauthenticated copy of a cashier's check for one payment in the amount of \$3,255.22. As of December 11, 2024, Debtor has not provided any other evidence that he is current on his postpetition payments due to Movant.

Movant's claim, which is secured by a deed of trust encumbering the Property, will mature during the term of the Plan. If the Property is Debtor's residence, in order for Debtor to confirm a chapter 13 plan, Movant's entire secured claim must be repaid during the term of Debtor's chapter 13 plan. *See* 11 U.S.C. § 1322(b)(2). Even if the Property is not Debtor's residence, in order for Debtor to confirm a chapter 13 plan, Movant's entire secured claim must be repaid during the term of Debtor's chapter 13 plan. *See In re Enewally*, 368 F.3d 1165, 1172 (9th Cir. 2004) (holding that, when a chapter 13 plan modifies a secured creditor's rights, the modified payments cannot extend beyond 60-month maximum life of the plan) (citing 11 U.S.C. §§ 506(a), 1322(b)(2), 1322(b)(5) and 1325(a)(5)). In order to pay Movant's entire secured claim during the term of Debtor's chapter 13 plan, as required to confirm the chapter 13 plan, Debtor would have to make plan payments of more than \$5,000 per month.

Debtor's contention that Movant is sufficiently protected by an equity cushion and that the Property is necessary for an effective reorganization is unavailing. Movant did not request relief from stay on the grounds that there is no equity in the Property and that it is not necessary for an effective reorganization.

Although Debtor asserts that Movant did not provide adequate notice of the Motion, as indicated on the proof of service attached to the Motion, Movant sufficiently served the Motion on Debtor on October 25, 2024.

Based on the foregoing, there is cause for the Court to grant relief from the automatic stay regarding the Property to Movant.

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

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CONT... Darryl W Williams

Chapter 13

Upon entry of the order, for purposes of Cal. Civ. Code § 2923.5, the debtor is a borrower as defined in Cal. Civ. Code § 2920.5(c)(2)(C).

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

All other requested relief is denied.

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

Party Information

Debtor(s):

Darryl W Williams

Pro Se

Movant(s):

Alan Vertun

Represented By
Jeffrey S Shinbrot

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:24-11357 Galina Tovmasian

Chapter 13

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

Docket 23

Tentative Ruling:

Grant.

Under 11 U.S.C. § 362(c)(3), in order to extend the automatic stay in a case filed within one year of another case which was pending within the same year but was dismissed, the debtor must prove that the instant case was filed in good faith as to the creditors to be stayed. A presumption that the instant case was filed not in good faith has arisen under 11 U.S.C. § 362(c)(3)(C). The debtor can only rebut this presumption, and thereby extend the stay, with clear and convincing evidence that the instant case was filed in good faith.

The debtor has met her burden of proof with: (1) declarations setting forth postpetition, preconfirmation payments on the debtor's deed of trust payments [docs. 30, 35, 43 and 53], evidencing that she is current on her postpetition deed of trust payments; and (2) the debtor's declaration dated December 12, 2024 [doc. 55] evidencing that she is current on her chapter 13 plan payments through December 16, 2024.

In addition, to the debtor's motion to extend the stay [doc. 23], the debtor attached her declaration, which provides the following evidence of her good faith:

- The debtor failed to make plan payments in her prior case because:

1. The debtor's scheduled chapter 13 plan payments did not coincide with the dates that she received her paycheck from her employer, and when she attempted to change the chapter 13 plan payment date she inadvertently cancelled the payments; and
2. Up until the case was dismissed, the debtor mistakenly believed she was

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Galina Tovmasian

Chapter 13

current on her chapter 13 plan payments.

- The debtor understands the importance of keeping current on her plan payments.

- The debtor's adult children are making contributions in the current case that will enable the debtor to remain current on her plan payments and her deed of trust payments.

Finally, no creditor has opposed the debtor's request to extend the automatic stay.

Movant to submit an order within seven (7) days.

Party Information

Debtor(s):

Galina Tovmasian

Represented By
Khachik Akhkashian

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:24-11933 Tereza Teymourian

Chapter 13

#2.00 Motion for relief from stay [UD]

STEVEN HIGGINS
VS
DEBTOR

Docket 6

Tentative Ruling:

Grant motion pursuant to 11 U.S.C. § 362(d)(1).

Effective November 1, 2015, Kambiz Razaghi and Nazanin Mojahed entered into a rental agreement (the "Agreement") with Steve Higgins ("Movant") and Nicole Higgins. *See* Agreement attached as Exh. 1 to the Declaration of Steven Higgins (the "Higgins Decl.") [doc. 6]. Pursuant to the Agreement, Movant leased to Mx. Razaghi and Mx. Mojahed real property located at 23863 Erin Place, West Hills, CA (the "Property").

On June 26, 2024, Movant served a three-day notice to quit (the "Notice to Quit") on Mx. Razaghi, Mx. Mojahed and all others in possession of the Property, by, in part, posting the Notice to Quit on the Property's front door. *See* Exh. 2 to the Higgins Decl. The Notice to Quit states, in part, that rent due from July 1, 2023 through June 30, 2024, in the aggregate amount of \$68,400.00, had not been paid and that "by this notice the landlord/agent elects to and does declare a forfeiture of said lease or rental agreement if said rent is not paid in full within the three (3) period." *Id.*

On July 8, 2024, Movant filed a complaint for unlawful detainer against Mx. Razaghi, Mx. Mojahed and DOES 1 through 10. Exh. 3 to the Higgins Decl. *See* Exh. 2 to the Higgins Decl.

On November 20, 2024, Tereza Teymousian ("Debtor") filed a chapter 13 petition. In her voluntary petition, Debtor indicated that she lives at the Property. In her master mailing list of creditors, Debtor disclosed the following creditors: (1) U.S. Bank; (2) Midland Credit Management; (3) Chase Card Services; and (4) Movant. *See* doc. 1.

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CONT... Tereza Teymourian

Chapter 13

As of December 9, 2024, Debtor has not filed her schedules, statements and chapter 13 plan. [FN1]

On November 22, 2024, Movant filed a motion for relief from the automatic stay to proceed with the unlawful detainer action in state court (the "Motion") [doc. 6]. In support of the Motion, Movant attached the Higgins Decl.

On December 5, 2024, Debtor filed an opposition to the Motion (the "Opposition") [doc. 14], asserting that: (1) Movant has not established compliance with procedural requirements under Cal. Code Civ. Procedure ("CCP") §§ 1161 and 1162; (2) Movant has not shown that his interest in the Property is diminishing; (3) Movant has not shown irreparable harm or immediate risk to the Property; (4) the Property is adequately protected by an equity cushion; (5) the Property is necessary for Debtor's reorganization because it is her primary residence; (6) the rent arrearages, the total amount of which Debtor disputes, would be cured through a chapter 13 plan. Contrary to Local Bankruptcy Rule 9013-1(f)(2), Debtor did not attach to the Motion a declaration, signed under penalty of perjury, attesting to the facts stated in the Motion.

11 U.S.C. § 362(a) provides, in part, that the automatic stay applies to "any act to obtain possession of property of the estate, or property from the estate, or to exercise control over property of the estate." 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 decision to lift the automatic stay is within the discretion of the bankruptcy court. *In re MacDonald*, 755 F.2d 715, 716 (9th Cir. 1985).

"Relief from stay proceedings...are primarily procedural; they determine whether there are sufficient countervailing equities to release an individual creditor from the collective stay. One consequence of this broad inquiry is that a creditor's claim or

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Tereza Teymourian

Chapter 13

security is not finally determined in the relief from stay proceeding." *In re Veal*, 450 B.R. 897, 914 (9th Cir. BAP 2011) (citing *In re Johnson*, 756 F.2d 738, 740–41 (9th Cir. 1985) ("Hearings on relief from the automatic stay are thus handled in a summary fashion. The validity of the claim or contract underlying the claim is not litigated during the hearing.").

A proceeding to determine eligibility for relief from a stay only determines whether a creditor should be released from the stay in order to argue the merits in a separate proceeding. Given the limited nature of the relief obtained through this proceeding and because final adjudication of the parties' rights and liabilities is yet to occur, a party seeking stay relief need only establish that it has a colorable claim to the property at issue.

In re Griffin, 719 F.3d 1126, 1128 (9th Cir. 2013) (internal citations omitted).

In her opposition, Debtor represents that she resides at the Property and acknowledges that there are rent arrears. [FN2]

On June 26, 2024, Movant served the Notice to Quit on all those in possession of the Property. *See* Exh. 2 to the Higgins Decl. Subsequently, Movant filed the complaint for unlawful detainer.

Debtor's response states that she will pay the arrears to Movant through a chapter 13 plan. However, Debtor has not provided any evidence or filed any schedules or a chapter 13 plan that would indicate that Debtor has sufficient cash flow or sources of income to sustain a plan of reorganization.

Finally, the Notice to Quit contains the forfeiture election referenced in *Windmill Farms*. Movant has established that he "has a colorable claim to the property at issue." *Veal*, 450 B.R. at 914–15. Consequently, there is cause to terminate the automatic stay under section 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.

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CONT... Tereza Teymourian

Chapter 13

The order is binding and effective in any bankruptcy case commenced by or against Debtor for a period of 180 days, so that no further automatic stay shall arise in that case as to the Property.

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

Any other request for relief is denied.

Movant to submit an order within seven (7) days.

FOOTNOTES

FN1: On December 5, 2024, the Court entered an order extending the deadline for Debtor to file her schedules, statements and chapter 13 plan until December 17, 2024. *See* doc. 13.

FN2: Although Debtor disputes the amount of the arrears, she has not provided any evidence of payments to substantiate her dispute.

Party Information

Debtor(s):

Tereza Teymourian

Pro Se

Movant(s):

Steven Higgins

Represented By
Helen G Long

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:21-10057 Margarita Sarkisian

Chapter 13

#3.00 Motion for relief from stay [PP]

TOYOTA MOTOR CREDIT CORPORATION
VS
DEBTOR

Docket 43

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 foreclose upon and obtain possession of the property.

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

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

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

Party Information

Debtor(s):

Margarita Sarkisian

Represented By
Vahe Khojayan

Movant(s):

Toyota Motor Credit Corporation

Represented By
Kirsten Martinez

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CONT... Margarita Sarkisian

Chapter 13

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

**United States Bankruptcy Court
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1:24-11753 Cory Beth Honickman

Chapter 13

#4.00 Motion for relief from stay [RP]

AMWEST FUNDING CORPORATION
VS
DEBTOR

Docket 33

***** VACATED *** REASON: No chambers copy of motion provided.
Motion is not on calendar.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Cory Beth Honickman

Represented By
Kevin Tang

Movant(s):

AMWEST FUNDING

Represented By
Shannon A Doyle

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:24-12007 Farouque Mazra

Chapter 13

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

Docket 15

Tentative Ruling:

The Court will grant the motion on an interim basis up to the date of the continued hearing. The Court will continue this hearing to **9:30 a.m. on January 30, 2025.**

No later than December 26, 2024, the debtor must serve on secured creditors Investment Management Company LLC ("IMC") and U.S. Bank Trust Company, National Association ("U.S. Bank"), whose loan is apparently being serviced by Select Portfolio Servicing ("SPS"), notice of the continued hearing date and time and the deadline to file any response 14 days prior thereto.

The addresses for IMC and U.S. Bank, to which the debtor must send the notice, is as follows:

Investment Management Company
c/o SBS Trust Deed Network
31194 La Baya Drive, Suite 106
Thousand Oaks, CA 91362

Investment Management Company LLC
Attn: Brian Boren
1014 Broadway #344
Santa Monica, CA 90401

Allan D. Sarver
Law Offices of Allan D. Sarver
16000 Ventura Boulevard
Suite 1000
Encino, CA 91436

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U.S. Bank Trust Company, National Association
c/o Select Portfolio Servicing, Inc.
P.O. Box 65250
Salt Lake City, UT 84165-0250

Josephine E. Salmon
Aldridge Pite, LLP
3333 Camino del Rio South, Suite 225
San Diego, CA 92108

In addition, the debtor must timely pay: (1) to SPS, his deed of trust payment for January 2025 in the amount of \$2,045.00 (as stated in his current schedule J) as to the real property located at 16550 Knollwood Drive, Granada Hills, CA 91344; and (2) his January 2025 plan payment in the amount of \$6,447.70, as stated in the debtor's proposed chapter 13 plan [doc. 6].

No later than January 16, 2025, the debtor must file a declaration which demonstrates that he timely made his required postpetition deed of trust and chapter 13 plan payments.

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

Party Information

Debtor(s):

Farouque Mazra

Represented By
Steven Abraham Wolvek

Movant(s):

Farouque Mazra

Represented By
Steven Abraham Wolvek

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:24-12015 Khachatur Khachatryan

Chapter 13

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

Docket 7

Tentative Ruling:

The Court will grant the motion on an interim basis up to the date of the continued hearing. The Court will continue this hearing to **9:30 a.m. on January 30, 2025.**

No later than December 26, 2024, the debtor must serve on all secured creditors, including but not limited to Nationstar Mortgage LLC ("Nationstar") and Global Federal Credit Union ("Global FCU"), whose loan is apparently being serviced by Cenlar FSB ("Cenlar"), notice of the continued hearing date and time and the deadline to file any response 14 days prior thereto. The addresses for Nationstar and Global FCU, to which the debtor must send the notice, is as follows:

Nationstar Mortgage LLC
P.O. Box 619096
Dallas, TX 75261-9741

Global Federal Credit Union
c/o Cenlar FSB
Attn: BK Department
425 Phillips Blvd.
Ewing, NJ 08618

Jennifer C. Wong
McCarthy & Holthus, LLP
2763 Camino Del Rio South, Suite 100
San Diego, CA 92108

In addition, as to the real property located at 18950 Salt Lake Place, Porter Ranch, CA 91326, the debtor must timely pay: (1) to Nationstar, his deed of trust payment for January 2025; (2) to Global FCU, his deed of trust payments for December 2024 (if

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CONT... Khachatur Khachatryan

Chapter 13

any) and January 2025; and (3) his January 2025 plan payment in the amount of \$1,050.00, as stated in the debtor's proposed chapter 13 plan [doc. 13].

No later than January 16, 2025, the debtor must file a declaration which demonstrates that he timely made his required postpetition deed of trust and chapter 13 plan payments.

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

Party Information

Debtor(s):

Khachatur Khachatryan

Represented By
Tyson Takeuchi

Movant(s):

Khachatur Khachatryan

Represented By
Tyson Takeuchi

Trustee(s):

Elizabeth (SV) F Rojas (TR)

Pro Se

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1:24-12045 Arutyun Adamian

Chapter 7

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

Docket 9

Tentative Ruling:

Grant.

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

Party Information

Debtor(s):

Arutyun Adamian

Represented By
Sevan Gorginian

Trustee(s):

Amy L Goldman (TR)

Pro Se

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1:22-11019 Steven Louis Miller

Chapter 7

Adv#: 1:22-01062 Miller et al v. Miller

- #6.00** Ruling re:
Trial re Complaint for non-dischargeability and objection to discharge for:
1) Obligation/money obtained through false pretenses, false representation or actual fraud under 11 U.S.C. §523(a)(2)(A)
2) For conversion/embezzlement under 11 U.S.C. § 523(a)(4)
3) Objection to discharge under 11 U.S.C. § 727(a)(2)
4) Objection to discharge under 11 U.S.C. § 727(a)(2)
5) Objection to discharge under 11 U.S.C. § 727(a)(5)

fr. 11/19/24

Docket 1

Tentative Ruling:

The Court will continue the hearing to **January 9, 2025, at 1:30 p.m.**

Appearances on December 19, 2024, are excused.

Party Information

Debtor(s):

Steven Louis Miller Pro Se

Defendant(s):

Steven Louis Miller Pro Se

Plaintiff(s):

Keri Miller Represented By
Daren M Schlecter

Michael Miller Represented By
Daren M Schlecter

Trustee(s):

David Seror (TR) Pro Se

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1:22-11212 Gabriella Noemi Loos

Chapter 7

Adv#: 1:24-01012 Amerberg et al v. Loos

#7.00 Status conference re: complaint to determine non-dischargeability of debt and objection to discharge

fr. 6/26/24; 12/18/24

Docket 1

Tentative Ruling:

On December 4, 2024, the plaintiffs filed a *Joint Status Report* [doc. 15]. In the Joint Status Report, the parties represented that a trial setting conference has been set for December 18, 2024 in the state court action.

In light of this, the Court will continue the status conference to **1:30 p.m. on February 6, 2025**. Pursuant to Local Bankruptcy Rule 7016-1(a), the parties are required to file a joint status report by no later than **January 23, 2025**.

The Court will prepare the order.

Appearances on December 19, 2024 are excused.

Party Information

Debtor(s):

Gabriella Noemi Loos

Represented By
Kevin T Simon

Defendant(s):

Gabriella Noemi Loos

Pro Se

Plaintiff(s):

Nathan Amerberg

Represented By
Gennady Leonid Lebedev

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CONT... **Gabriella Noemi Loos**
Paulina Amerberg

Represented By
Gennady Leonid Lebedev

Chapter 7

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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1:22-11504 Drita Pasha Kessler

Chapter 7

Adv#: 1:24-01023 Seror v. Vukelj, an individual et al

#8.00 Status conference re: complaint for (1) Avoidance and recovery of fraudulent transfers, (2) Preservation of fraudulent transfers, (3) Disallowance of claims, (4) Declaratory relief, and (5) Turnover

fr. 8/7/24 (stip), 8/14/24; 12/18/24

Docket 1

Tentative Ruling:

Unless an appearance is made at the status conference, the status conference is continued to **1:30 p.m. on February 13, 2025**, to allow the settling parties to complete their settlement documents and for the plaintiff to file a motion to amend the complaint. Plaintiff must give written notice of the continued status conference.

Plaintiff and defendant Kennedy Kessler must file an updated joint status report no later than 14 days prior to the continued status conference.

Appearances on December 19, 2024 are excused.

Party Information

Debtor(s):

Drita Pasha Kessler

Represented By

Andrew Edward Smyth

Stephen S Smyth

Defendant(s):

Vitora Vukelj, an individual

Pro Se

Kennedy Kessler, an individual

Represented By

Robert M Yaspan

Collette Kessler, an individual

Represented By

Charles G Smith

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CONT...

Drita Pasha Kessler

Chapter 7

Simone Kessler, an individual

Represented By
Charles G Smith

Plaintiff(s):

David Seror

Represented By
Elissa Miller
Shantal Malmed

Trustee(s):

David Seror (TR)

Represented By
Elissa Miller
Shantal Malmed

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1:22-11504 Drita Pasha Kessler

Chapter 7

Adv#: 1:24-01024 Seror v. Belwood Group LLC, a Wyoming Limited Liability Com

#9.00 Status conference re: complaint for (1) Avoidance and recovery of fraudulent transfers, (2) Preservation of fraudulent transfers, (3) Disallowance of claims, (4) Declaratory relief, and (5) Turnover

fr. 8/7/24; 8/14/24; 12/18/24

Docket 1

Tentative Ruling:

Parties should be prepared to discuss the following:

Within seven (7) days after this status conference, the plaintiff must submit an Order Assigning Matter to Mediation Program and Appointing Mediator and Alternate Mediator using Form 702. **During the status conference, the parties must inform the Court of their choice of Mediator and Alternate Mediator.** The parties should contact their mediator candidates before the status conference to determine if their candidates can accommodate the deadlines set forth below.

Deadline to complete discovery: 6/30/25.

Deadline to complete one day of mediation: 7/18/25.

Deadline to file pretrial motions: 8/1/25.

Deadline to complete and submit pretrial stipulation in accordance with Local Bankruptcy Rule 7016-1: 8/7/25

Pretrial: 8/21/25 at 1:30 p.m.

In accordance with Local Bankruptcy Rule 7016-1(a)(3), within seven (7) days after this status conference, the plaintiff must submit a Scheduling Order.

If any of these deadlines are not satisfied, the Court will consider imposing sanctions

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CONT... Drita Pasha Kessler

Chapter 7

against the party at fault pursuant to Local Bankruptcy Rule 7016-1(f) and (g).

Party Information

Debtor(s):

Drita Pasha Kessler

Represented By
Andrew Edward Smyth
Stephen S Smyth

Defendant(s):

Belwood Group LLC, a Wyoming

Represented By
Robert M Yaspan

Kennedy Kessler, an individual

Represented By
Robert M Yaspan

Plaintiff(s):

David Seror

Represented By
Elissa Miller

Trustee(s):

David Seror (TR)

Represented By
Elissa Miller
Shantal Malmed

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1:23-11200 Windsor Terrace Healthcare, LLC

Chapter 11

Adv#: 1:24-01042 Pratt-Wood v. Windsor Gardens Convalescent Hospital et al

#9.01 Status conference re: removal of pre-petition lawsuit pending
in Los Angeles Superior Court to Bankruptcy Court

fr. 11/21/24; 12/12/24

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Windsor Terrace Healthcare, LLC

Represented By
Ron Bender
Juliet Y. Oh
Monica Y Kim
Lindsey L Smith
Robert Carrasco
Beth Ann R. Young

Defendant(s):

Windsor Gardens Convalescent

Represented By
David W. Loy

Windsor Gardens Convalescent

Represented By
David W. Loy

DOES 1 through 250, inclusive

Pro Se

Plaintiff(s):

Drew Pratt-Wood

Represented By
Justin Vitug

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1:23-11200 Windsor Terrace Healthcare, LLC

Chapter 11

Adv#: 1:24-01043 Wicker v. Windsor Elmhaven Care Center, LLC dba Windsor Elm

#10.00 Plaintiff's Motion to Remand

Docket 12

Tentative Ruling:

This proceeding is one of several actions removed to federal courts in California from the Superior Courts of Los Angeles County, Sacramento County and Solano County between late September 2024 and early October 2024. The plaintiffs filed substantively identical remand motions in the other districts. *See generally* the Reply Declaration of Robert J. Pfister ("Pfister Decl."), ¶¶ 2–9. [doc. 20].

On November 11, 2024, the Honorable Ronald H. Sarkis of the U.S. Bankruptcy Court for the Eastern District of California entered civil minutes granting one such motion. *See* civil minutes attached as Exh. C to the Pfister Decl. Although that case involved a different action removed from the Superior Court for the County of Sacramento, this proceeding is materially indistinguishable. Both matters involve personal injury and elder abuse cases that the defendants removed on the same alleged legal and factual basis as the removal in this proceeding.

The Court agrees with the determination of Judge Sarkis. *See* Exh. C to the Pfister Decl. For that reason, and as set forth in further detail below, the Court will remand this proceeding to the state court.

I. BACKGROUND

A. The State Court Action

In May 2021, Catherine Wicker ("Plaintiff") was admitted to a skilled nursing facility run by Windsor Elmhaven Care Center, LLC ("Windsor Elmhaven").

On or about January 13, 2022, Plaintiff filed a complaint in state court (the "Complaint") against Windsor Elmhaven, S&F Management Company, LLC ("SFM") and certain "Doe" defendants (collectively, "Defendants"), initiating state court case

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no. 22STCV01554 (the "State Court Action"). In the Complaint, Plaintiff stated causes of action for elder abuse, negligence and violation of resident's rights under California Health and Safety Code § 1430(b). *See* Complaint, attached as Exh. 1 to the *Notice of Removal of Pre-Petition Lawsuit Pending in Los Angeles Superior Court to Bankruptcy Court (28 U.S.C. § 1452)* (the "Notice of Removal") [doc. 1]. The Complaint makes, in relevant part, the following factual allegations:

While Plaintiff was a resident at Windsor Elmhaven, she was neglected such that she suffered a fall that required hospitalization for a comminuted intertrochanteric fracture of her proximal left femur, which caused her and continues to cause her extreme pain and suffering. In addition, because Windsor Elmhaven failed to adequately and completely carry out doctor's orders for Plaintiff's treatment and failed to adequately and appropriately document her plan of care, Plaintiff suffered malnutrition, dehydration and infections.

Complaint, ¶¶ 9, 12-13, 15 and 16. The Complaint included a request for jury trial. *Id.*, p. 1.

In May 2022, the state court set a jury trial for July 2023. *See* Exh. 2 to the Notice of Removal. In May 2023, Windsor Elmhaven and SFM filed a stipulation to continue the trial. *See id.* In August 2023, Windsor Elmhaven filed a notice of stay of proceedings. *See id.*

B. The Bankruptcy Cases

On August 23, 2023, Windsor Elmhaven and eighteen related entities filed chapter 11 petitions (the "Original Debtors"). On September 29, 2023, two additional related entities filed chapter 11 petitions (the "New Debtors," and collectively with the Original Debtors, "Debtors"). The Court approved the joint administration of these cases in case no. 1:23-bk-11200-VK (the "Lead Bankruptcy Case").

1. Plaintiff's Proof of Claim

In January 2024, Plaintiff filed proof of claim no. 21-1 against Windsor Elmhaven in case no. 1:23-bk-11213-VK. Plaintiff asserted a nonpriority unsecured claim in an

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Chapter 11

unknown amount (the "Claim"). As the basis for the Claim, Plaintiff indicated as follows: "Elder Abuse & Negligence (See Supporting Documentation)." 1:23-bk-11213-VK, Claim No. 21-1. To the Claim, Plaintiff attached a copy of the Complaint.

2. The Chapter 11 Plan of Reorganization

In August 2024, Debtors filed *Debtors' Plan of Reorganization (Dated June 11, 2024) as Amended* (the "Plan") [Lead Bankruptcy Case, doc. 1424]. With respect to Class 4 Creditors, including Plaintiff, the Plan provides, in relevant part:

Class 4 – General Unsecured Claims. Each holder of an Allowed Class 4 General Unsecured Claim will have the option (which option will be included in their Plan ballot) of selecting between the following two treatments under this Plan, which (except as set forth immediately below) will be in full settlement and satisfaction of their Allowed General Unsecured Claim against the Debtors. Each Claimant with a Personal Injury Claim who does not accept the Debtors' proposed Claim settlement amount and who is otherwise not able to reach agreement with the Debtors on a different mutually agreeable Claim settlement amount prior to the date of Plan confirmation (each, a "Non-Settling Personal Injury Claimant") **shall be permitted to proceed with the liquidation of their disputed Personal Injury Claim against the Debtors and any third parties (including the Guarantors) in the manner set forth in Section IV(D)(7) below.**

Plan, p. 12 (emphasis added). With respect to the protocol for liquidating disputed claims, the Plan provides, in pertinent part:

The Debtors have proposed, for settlement purposes only, the amount they propose to allow for each timely-filed Unliquidated Litigation Claim. [FNI] Attached as Exhibits 2(a) through 2(e) to the Disclosure Statement is a written summary of each Unliquidated Litigation Claim and the relevant Debtor's analysis of the Unliquidated Litigation Claim. At the end of each such summary is the Debtors' proposed settlement amount for that Unliquidated Litigation Claim. If a claimant

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accepts the amount proposed for that claimant, then that amount shall be deemed the amount of the Allowed Class 4 Claim for that claimant for both voting and distribution purposes under this Plan, and this Plan's treatment of their Allowed Class 4 Claim shall be deemed to be in full settlement and satisfaction of their Allowed Class 4 Claim.

...

The Personal Injury Claim of any claimant who does not accept the Debtors' proposed Claim settlement amount and who does not reach agreement with the Debtors through mediation or otherwise on a different mutually agreeable Claim settlement amount will be deemed a Disputed Claim, and the holder of any such Claim will not be entitled to receive any distribution from the Reorganized Debtors unless and until such Claim becomes a liquidated Allowed Claim **pursuant to a Final Order from the District Court or, to the extent the District Court elects to abstain, the applicable state court, [FN2] at which time such Claim will be treated in the same manner as all other Allowed General Unsecured Claims.** For the avoidance of doubt, all rights of holders of Personal Injury Claims and the Reorganized Debtors with respect to any request for abstention by the District Court are expressly preserved and reserved.

Plan, pp. 29 and 32 (emphasis added). Plaintiff voted to reject the Plan and chose Plan Treatment Option One. *See* Exh. A to the Declaration of Juliet Y. Oh [Lead Bankruptcy Case, doc. 1358].

In September 2024, the Court entered an order confirming the Plan [Lead Bankruptcy Case, doc. 1437]. On November 27, 2024, Debtors filed *Reorganized Debtors' Motion for Final Decree Closing Chapter 11 Cases* [Lead Bankruptcy Case, doc. 1675].

3. The Removal of the State Court Action to this Court

On September 27, 2024, Windsor Elmhaven filed the Notice of Removal, removing the State Court Action to this Court and initiating this adversary proceeding. On October 12, 2024, Plaintiff filed *Plaintiff's Notice of Motion and Motion to Remand* (the "Motion") [doc. 12]. On December 5, 2024, Windsor Elmhaven filed an

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opposition to the Motion [doc. 18] and the supporting Declaration of Eligio J. Luevanos [doc. 19]. On December 12, 2024, Plaintiff filed a reply in support of the Motion and the Pfister Decl. [doc. 20] .

II. ANALYSIS

"Bankruptcy courts have broad discretion to remand cases over which they otherwise have jurisdiction on any equitable ground." *In re Enron Corp.*, 296 B.R. 505, 508 (C.D. Cal. 2003). 28 U.S.C. § 1452(b) provides, in pertinent part: "The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground." "[E]ven where federal jurisdiction attaches in actions 'related to' bankruptcy proceedings, Congress has explicitly provided for courts to find that those matters are more properly adjudicated in state court." *Parke v. Cardsystem Solutions, Inc.*, 2006 WL 2917604 (N.D. Cal. October 11, 2006) (quoting *Williams v. Shell Oil Co.*, 169 B.R. 684, 690 (S.D. Cal. 1994)). See also *Century Bankcard Services, Inc. v. U.S. Bancorp.*, 318 F. Supp. 983, 985 (C.D. Cal. 2004) ("[A]ny doubt about the right of removal is resolved in favor of remand.").

Courts generally consider up to fourteen factors in deciding whether to remand a case to state court. *Enron*, 296 B.R. at 508. Factors courts should consider in deciding whether to remand are:

- (1) the effect or lack thereof on the efficient administration of the estate if the Court recommends [remand or] abstention;
- (2) extent to which state law issues predominate over bankruptcy issues;
- (3) difficult or unsettled nature of applicable law;
- (4) presence of related proceeding commenced in state court or other nonbankruptcy proceeding;
- (5) jurisdictional basis, if any, other than [section] 1334;
- (6) degree of relatedness or remoteness of proceeding to main bankruptcy case;
- (7) the substance rather than the form of an asserted core proceeding;
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state

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- court with enforcement left to the bankruptcy court;
- (9) the burden on the bankruptcy court's docket;
 - (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
 - (11) the existence of a right to a jury trial;
 - (12) the presence in the proceeding of nondebtor parties;
 - (13) comity; and
 - (14) the possibility of prejudice to other parties in the action.

Id., 508 n.2; *see also In re Cytodyn of New Mexico, Inc.*, 374 B.R. 733, 738 (Bankr. C.D. Cal. 2007) (noting that courts typically consider these 14 factors in deciding whether to grant a motion to remand); *Stichting Pensioenfonds ABP v. Countrywide Financial Corp.*, 447 B.R. 302, 311 (C.D. Cal 2010) ("Because Section 1452(b) affords 'an unusually broad grant of authority,' any one of the relevant factors may provide a sufficient basis for equitable remand.").

Here, the equities weigh in favor of remanding this matter to state court.

(1) Effect or Lack Thereof on Efficient Administration of the Estate

The Plan specifically contemplates liquidation of disputed personal injury claims, including the Claim, in either the District Court or the appropriate state court. *See* Plan, pp. 12 and 32. There is no indication that litigation outside of this Court will negatively impact the efficient administration of the estate. This factor favors granting remand.

(2) Extent to Which State Law Issues Predominate Over Bankruptcy Issues

The Complaint seeks recovery on claims for elder abuse, negligence and violation of resident's rights under California Health and Safety Code § 1430(b). These are state law causes of action; there are no bankruptcy causes of action to adjudicate. In addition, the State Court Action is grounded entirely in California law; Plaintiff's injuries took place in a California facility subject to California law. As such, state law issues predominate over bankruptcy issues.

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(3) Nature of Applicable Law**

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The causes of action listed in the Complaint involve elder abuse, negligence and violations of patient's rights, the nature of which do not seem particularly difficult or unsettled. Consequently, this factor favors granting remand.

(4) Presence of Related Proceeding

The parties have been litigating the State Court Action since January 2022, more than a year before the bankruptcy cases were filed, including by filing pleadings, exchanging discovery and appearing at multiple status conferences. See Exh. 2 to the Notice of Removal. Not only does the State Court Action exist, but there has been substantial activity in it. This factor favors granting remand.

(5) Jurisdictional Basis Other Than 11 U.S.C. § 1334

Windsor Elmhaven has not asserted any jurisdictional basis for this matter remaining in this Court other than 28 U.S.C. § 1334(b). See Notice of Removal, p. 2. Windsor Elmhaven asserts that supplemental jurisdiction may be asserted over Defendants pursuant to 28 U.S.C. § 1367(a). According to Windsor Elmhaven, the State Court Action is "related to" the bankruptcy cases because the debt liquidated in this proceeding (if any) will then be paid through the Plan. This is substantially duplicative of the "related to" jurisdiction provided in 28 U.S.C. § 1334(b) and does not add anything of "jurisdictional substance." Consequently, this factor favors granting remand.

(6) Relatedness or Remoteness to the Bankruptcy Case

Although the liquidation of the Claim and determination of the amount owed, if any, is related to the bankruptcy cases and payment under the Plan, there is no need to interpret or apply the Plan in connection with adjudicating the Claim. As such, this factor favors granting remand.

(7) Substance Versus Form of an Asserted Core Proceeding

In substance, this matter does not relate to law arising under the Bankruptcy Code or proceedings in the bankruptcy cases. Rather, it involves liquidation of the amount

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owed, if any, to Plaintiff, to be paid through the Plan.

In addition, to the extent that Windsor Elmhaven asserts that liquidation of the Claim constitutes a matter arising in the bankruptcy cases, such assertion is unconvincing. 28 U.S.C. § 157(b)(2) explicitly provides that "liquidation or estimation of contingent or unliquidated personal injury tort...claims against the estate for purposes of distribution in a case under title 11" do not constitute "core" proceedings. 28 U.S.C. § 157(b)(2)(B). In addition, 28 U.S.C. § 157(b)(2) provides that "Core proceedings include...(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor...relationship, **except personal injury tort...claims[.]**" 28 U.S.C. § 157(b)(2)(O) (emphasis added). In light of the foregoing, this factor favors granting remand.

(8) Feasibility of Severing State Law Claims from Core Bankruptcy Matters

Plaintiff only asserts state law claims. There are no core bankruptcy matters to be severed and resolved in this Court. This factor favors granting remand.

(9) Burden on the Bankruptcy Court's Docket

Although bankruptcy courts can and do regularly address complex and substantial non-federal law issues, the personal injury claims at issue here are not commonly litigated in bankruptcy courts. Conversely, such issues are regularly litigated in state court, and this factor favors granting remand.

(10) Likelihood of Forum Shopping

The Plan provides for liquidation of claims such as Plaintiff's in either the District Court or the appropriate state court. *See* Plan, pp. 12 and 32. Although the Court makes no determination as to whether Windsor Elmhaven engaged in forum shopping by removing the matter to this Court, such removal threatens to delay needlessly a trial in the state court.

(11) Right to a Jury Trial

Both parties have exercised their right to a jury trial. *See* Exh. 1 to the Notice of Removal; doc. 9. However, Plaintiff has not consented to this Court conducting a jury

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trial. *See* doc. 6. 28 U.S.C. § 157(e) permits a plaintiff to demand trial by jury yet also withhold consent for a bankruptcy court to conduct that jury trial. *See* 28 U.S.C. § 157(e). As such, this factor favors granting remand.

(12) Presence of Non-Debtor Parties

Although this proceeding involves non-debtor defendants, Windsor Elmhaven's contention that such defendants had no liability independent of Windsor Elmhaven is questionable. Moreover, liability of the non-debtor defendants is irrelevant to the equitable remand analysis.

(13) Comity

"Comity dictates that California courts should have the right to adjudicate the exclusively state law claims involving California-centric plaintiffs and California-centric transactions." *Enron*, 296 B.R. at 509. Here, the matter involves a California-centric Plaintiff and California-centric transactions. Therefore, this factor favors granting remand.

(14) Possibility of Prejudice to Other Parties

Granting remand would not prejudice the non-debtor defendants. The Plan, proposed by Windsor Elmhaven and the other Debtors, explicitly provides for a process by which holders of disputed personal injury claims, including Plaintiff, could continue to litigate their claims in the District Court or the appropriate state court. *See* Plan, p. 32. This indicates that Debtors, including Windsor Elmhaven, anticipated that Plaintiff may continue prosecuting the Claim in the state court. To the extent that Windsor Elmhaven now contends, post-confirmation, that it would be prejudiced by remand, such contention is not well-taken. Even if this factor supports denying remand, it does not outweigh the factors which support granting remand.

In light of the foregoing, the Court will remand this proceeding to the state court.

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

FOOTNOTES

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FN1: A "Litigation Claim" is defined in the Plan as "an Employment Claim or Personal Injury Claim." Plan, p. 7. An "Unliquidated Litigation Claim" is defined in the Plan as a Litigation Claim that was not fully liquidated by judgment or settlement prior to the filing of the bankruptcy cases. *Id.*, p. 10. A "Personal Injury Claim" is defined in the Plan as "a General Unsecured Claim that has been scheduled by the Debtors or asserted by a claimant in a timely filed proof of claim for damages for personal injury, wrongful death or related claims." *Id.*, p. 8.

FN2: Pursuant to 28 U.S.C. § 157(b)(5):

The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

Party Information

Debtor(s):

Windsor Terrace Healthcare, LLC

Represented By
Ron Bender
Juliet Y. Oh
Monica Y Kim
Lindsey L Smith
Robert Carrasco
Beth Ann R. Young

Defendant(s):

Windsor Elmahaven Care Center,

Represented By
Eligio J. Luevanos

S&F Management Company, LLC

Represented By
Eligio J. Luevanos

Does 1 Through 200, Inclusive

Pro Se

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Plaintiff(s):

Catherine Wicker

Represented By
Steven C Peck
Robert J Pfister

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Adv#: 1:24-01044 Nathan Floyd as Successor-in-Interest and Heir of v. Windsor Cheviot Hills,

#11.00 Plaintiff's Motion to Remand

Docket 12

Tentative Ruling:

This proceeding is one of several actions removed to federal courts in California from the Superior Courts of Los Angeles County, Sacramento County and Solano County between late September 2024 and early October 2024. The plaintiffs filed substantively identical remand motions in the other districts. *See generally* the Reply Declaration of Robert J. Pfister ("Pfister Decl."), ¶¶ 2–9. [doc. 20].

On November 11, 2024, the Honorable Ronald H. Sarkis of the U.S. Bankruptcy Court for the Eastern District of California entered civil minutes granting one such motion. *See* civil minutes attached as Exh. C to the Pfister Decl. Although that case involved a different action removed from the Superior Court for the County of Sacramento, this proceeding is materially indistinguishable. Both matters involve personal injury and elder abuse cases that the defendants removed on the same alleged legal and factual basis as the removal in this proceeding.

The Court agrees with the determination of Judge Sarkis. *See* Exh. C to the Pfister Decl. For that reason, and as set forth in further detail below, the Court will remand this proceeding to the state court.

I. BACKGROUND

A. The State Court Action

In or around July 2016, Mary Carter was admitted to a skilled nursing facility run by Windsor Cheviot Hills, LLC ("Windsor Cheviot Hills").

On or about April 3, 2019, Nathan Floyd, as guardian ad litem of Ms. Carter ("Plaintiff") filed a complaint in state court against Windsor Cheviot Hills, Olympia Health Care, LLC dba Olympia Medical Center, Kirk Uomoto, M.D. and certain

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"Doe" defendants (collectively, "Defendants"), initiating state court case no. 19STCV11538 (the "State Court Action"). In June 2019, Ms. Carter passed away. Declaration of Nicholas Heiman, ¶ 2 [doc. 12].

On or about August 15, 2019, Plaintiff, as successor-in-interest and heir of Ms. Carter, filed a first amended complaint (the "FAC") against Defendants. *See* FAC, attached as Exh. 1 to *Defendant Debtor's Submission of Removed Litigation Documents* [doc. 10]. In the FAC, Plaintiff stated causes of action for elder abuse and neglect, medical malpractice and violation of patient's rights under California Health and Safety Code § 1430(b) and (c). *See id.* The FAC makes, in relevant part, the following factual allegations:

While Ms. Carter was a resident at Windsor Cheviot Hills, she was neglected such that she suffered avoidable bedsores and infections requiring repeated hospitalizations, surgical procedures and antibiotic therapy with ongoing avoidable pain, suffering and overall decline. Among other things, Mrs. Carter was suspected to have sustained an infected Stage IV coccyx pressure wound, a urinary tract infection and/or sacral wound infection and a septic infection.

FAC, ¶¶ 14, 18 and 24.

In November 2022, the state court set a jury trial for December 2023. *See* Exh. 2 to the *Notice of Removal of Pre-Petition Lawsuit Pending in Los Angeles Superior Court to Bankruptcy Court (28 U.S.C. § 1452)* (the "Notice of Removal") [doc. 1]. In September 2023, Windsor Cheviot Hills filed a notice of stay of proceedings. *See id.*

B. The Bankruptcy Cases

On August 23, 2023, Windsor Cheviot Hills and eighteen related entities filed chapter 11 petitions (the "Original Debtors"). On September 29, 2023, two additional related entities filed chapter 11 petitions (the "New Debtors," and collectively with the Original Debtors, "Debtors"). The Court approved the joint administration of these cases in case no. 1:23-bk-11200-VK (the "Lead Bankruptcy Case").

1. Plaintiff's Proof of Claim

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In January 2024, Plaintiff filed proof of claim no. 26-1 against Windsor Cheviot Hills in case no. 1:23-bk-11206-VK. Plaintiff asserted a nonpriority unsecured claim in an unliquidated amount (the "Claim"). As the basis for the Claim, Plaintiff indicated as follows: "medical malpractice and elder abuse and neglect." 1:23-bk-11206-VK, Claim No. 26-1. To the Claim, Plaintiff attached a copy of the FAC.

2. The Chapter 11 Plan of Reorganization

In August 2024, Debtors filed *Debtors' Plan of Reorganization (Dated June 11, 2024) as Amended* (the "Plan") [Lead Bankruptcy Case, doc. 1424]. With respect to Class 4 Creditors, including Plaintiff, the Plan provides, in relevant part:

Class 4 – General Unsecured Claims. Each holder of an Allowed Class 4 General Unsecured Claim will have the option (which option will be included in their Plan ballot) of selecting between the following two treatments under this Plan, which (except as set forth immediately below) will be in full settlement and satisfaction of their Allowed General Unsecured Claim against the Debtors. Each Claimant with a Personal Injury Claim who does not accept the Debtors' proposed Claim settlement amount and who is otherwise not able to reach agreement with the Debtors on a different mutually agreeable Claim settlement amount prior to the date of Plan confirmation (each, a "Non-Settling Personal Injury Claimant") **shall be permitted to proceed with the liquidation of their disputed Personal Injury Claim against the Debtors and any third parties (including the Guarantors) in the manner set forth in Section IV(D)(7) below.**

Plan, p. 12 (emphasis added). With respect to the protocol for liquidating disputed claims, the Plan provides, in pertinent part:

The Debtors have proposed, for settlement purposes only, the amount they propose to allow for each timely-filed Unliquidated Litigation Claim. [FNI] Attached as Exhibits 2(a) through 2(e) to the Disclosure Statement is a written summary of each Unliquidated Litigation Claim and the relevant Debtor's analysis of the Unliquidated Litigation

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Claim. At the end of each such summary is the Debtors' proposed settlement amount for that Unliquidated Litigation Claim. If a claimant accepts the amount proposed for that claimant, then that amount shall be deemed the amount of the Allowed Class 4 Claim for that claimant for both voting and distribution purposes under this Plan, and this Plan's treatment of their Allowed Class 4 Claim shall be deemed to be in full settlement and satisfaction of their Allowed Class 4 Claim.

...

The Personal Injury Claim of any claimant who does not accept the Debtors' proposed Claim settlement amount and who does not reach agreement with the Debtors through mediation or otherwise on a different mutually agreeable Claim settlement amount will be deemed a Disputed Claim, and the holder of any such Claim will not be entitled to receive any distribution from the Reorganized Debtors unless and until such Claim becomes a liquidated Allowed Claim **pursuant to a Final Order from the District Court or, to the extent the District Court elects to abstain, the applicable state court, [FN2] at which time such Claim will be treated in the same manner as all other Allowed General Unsecured Claims.** For the avoidance of doubt, all rights of holders of Personal Injury Claims and the Reorganized Debtors with respect to any request for abstention by the District Court are expressly preserved and reserved.

Plan, pp. 29 and 32 (emphasis added). Plaintiff voted to reject the Plan and chose Plan Treatment Option One. *See* Exh. A to the Declaration of Juliet Y. Oh [Lead Bankruptcy Case, doc. 1358].

In September 2024, the Court entered an order confirming the Plan [Lead Bankruptcy Case, doc. 1437]. On November 27, 2024, Debtors filed *Reorganized Debtors' Motion for Final Decree Closing Chapter 11 Cases* [Lead Bankruptcy Case, doc. 1675].

3. The Removal of the State Court Action to this Court

On September 27, 2024, Windsor Cheviot Hills filed the Notice of Removal, removing the State Court Action to this Court and initiating this adversary proceeding.

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In October 2024, Plaintiff filed a *Statement Pursuant to Federal Bankruptcy Rule 9027(e)(3), Local Bankruptcy Rule 9015-2, and Judicial Court Section 157(e); Reservation of Rights* [doc. 6] and asserted his demand for a jury trial.

On October 25, 2024, Plaintiff filed *Plaintiff's Notice of Motion and Motion to Remand* (the "Motion") [doc. 12]. On December 5, 2024, Windsor Cheviot Hills filed an opposition to the Motion [doc. 18] and the supporting Declaration of Eligio J. Luevanos [doc. 19]. On December 12, 2024, Plaintiff filed a reply in support of the Motion and the Pfister Decl. [doc. 20].

II. ANALYSIS

"Bankruptcy courts have broad discretion to remand cases over which they otherwise have jurisdiction on any equitable ground." *In re Enron Corp.*, 296 B.R. 505, 508 (C.D. Cal. 2003). 28 U.S.C. § 1452(b) provides, in pertinent part: "The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground." "[E]ven where federal jurisdiction attaches in actions 'related to' bankruptcy proceedings, Congress has explicitly provided for courts to find that those matters are more properly adjudicated in state court." *Parke v. Cardsystem Solutions, Inc.*, 2006 WL 2917604 (N.D. Cal. October 11, 2006) (quoting *Williams v. Shell Oil Co.*, 169 B.R. 684, 690 (S.D. Cal. 1994)). See also *Century Bankcard Services, Inc. v. U.S. Bancorp.*, 318 F. Supp. 983, 985 (C.D. Cal. 2004) ("[A]ny doubt about the right of removal is resolved in favor of remand.").

Courts generally consider up to fourteen factors in deciding whether to remand a case to state court. *Enron*, 296 B.R. at 508. Factors courts should consider in deciding whether to remand are:

- (1) the effect or lack thereof on the efficient administration of the estate if the Court recommends [remand or] abstention;
- (2) extent to which state law issues predominate over bankruptcy issues;
- (3) difficult or unsettled nature of applicable law;
- (4) presence of related proceeding commenced in state court or other nonbankruptcy proceeding;
- (5) jurisdictional basis, if any, other than [section] 1334;

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- (6) degree of relatedness or remoteness of proceeding to main bankruptcy case;
- (7) the substance rather than the form of an asserted core proceeding;
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court;
- (9) the burden on the bankruptcy court's docket;
- (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties;
- (11) the existence of a right to a jury trial;
- (12) the presence in the proceeding of nondebtor parties;
- (13) comity; and
- (14) the possibility of prejudice to other parties in the action.

Id., 508 n.2; *see also In re Cytodyn of New Mexico, Inc.*, 374 B.R. 733, 738 (Bankr. C.D. Cal. 2007) (noting that courts typically consider these 14 factors in deciding whether to grant a motion to remand); *Stichting Pensioenfonds ABP v. Countrywide Financial Corp.*, 447 B.R. 302, 311 (C.D. Cal 2010) ("Because Section 1452(b) affords 'an unusually broad grant of authority,' any one of the relevant factors may provide a sufficient basis for equitable remand.").

Here, the equities weigh in favor of remanding this matter to state court.

(1) Effect or Lack Thereof on Efficient Administration of the Estate

The Plan specifically contemplates liquidation of disputed personal injury claims, including the Claim, in either the District Court or the appropriate state court. *See* Plan, pp. 12 and 32. There is no indication that litigation outside of this Court will negatively impact the efficient administration of the estate. This factor favors granting remand.

(2) Extent to Which State Law Issues Predominate Over Bankruptcy Issues

The FAC seeks recovery on claims for elder abuse and neglect, medical malpractice

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and violation of patient's rights under California Health and Safety Code § 1430(b) and (c). These are state law causes of action; there are no bankruptcy causes of action to adjudicate. In addition, the State Court Action is grounded entirely in California law; Plaintiff's injuries took place in a California facility subject to California law. As such, state law issues predominate over bankruptcy issues.

(3) Nature of Applicable Law

The causes of action listed in the FAC involve elder abuse and neglect, medical malpractice and violations of patient's rights, the nature of which do not seem particularly difficult or unsettled. Consequently, this factor favors granting remand.

(4) Presence of Related Proceeding

The parties have been litigating the State Court Action since April 2019, more than four years before the bankruptcy cases were filed, including by filing pleadings, exchanging discovery and appearing at multiple status conferences. *See* Exh. 2 to the Notice of Removal. In addition, the state court has heard motions, including but not limited to a motion to strike and two motions for summary judgment. *See id.* Not only does the State Court Action exist, but there has been substantial activity in it. This factor favors granting remand.

(5) Jurisdictional Basis Other Than 11 U.S.C. § 1334

Windsor Cheviot Hills has not asserted any jurisdictional basis for this matter remaining in this Court other than 28 U.S.C. § 1334(b). *See* Notice of Removal, p. 2. Windsor Cheviot Hills asserts that supplemental jurisdiction may be asserted over Defendants pursuant to 28 U.S.C. § 1367(a). According to Windsor Cheviot Hills, the State Court Action is "related to" the bankruptcy cases because the debt liquidated in this proceeding (if any) will then be paid through the Plan. This is substantially duplicative of the "related to" jurisdiction provided in 28 U.S.C. § 1334(b) and does not add anything of "jurisdictional substance." Consequently, this factor favors granting remand.

(6) Relatedness or Remoteness to the Bankruptcy Case

Although the liquidation of the Claim and determination of the amount owed, if any,

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is related to the bankruptcy cases and payment under the Plan, there is no need to interpret or apply the Plan in connection with adjudicating the Claim. As such, this factor favors granting remand.

(7) Substance Versus Form of an Asserted Core Proceeding

In substance, this matter does not relate to law arising under the Bankruptcy Code or proceedings in the bankruptcy cases. Rather, it involves liquidation of the amount owed, if any, to Plaintiff, to be paid through the Plan.

In addition, to the extent that Windsor Cheviot Hills asserts that liquidation of the Claim constitutes a matter arising in the bankruptcy cases, such assertion is unconvincing. 28 U.S.C. § 157(b)(2) explicitly provides that "liquidation or estimation of contingent or unliquidated personal injury tort...claims against the estate for purposes of distribution in a case under title 11" do not constitute "core" proceedings. 28 U.S.C. § 157(b)(2)(B). In addition, 28 U.S.C. § 157(b)(2) provides that "Core proceedings include...(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor...relationship, **except personal injury tort...claims[.]**" 28 U.S.C. § 157(b)(2)(O) (emphasis added). In light of the foregoing, this factor favors granting remand.

(8) Feasibility of Severing State Law Claims from Core Bankruptcy Matters

Plaintiff only asserts state law claims. There are no core bankruptcy matters to be severed and resolved in this Court. This factor favors granting remand.

(9) Burden on the Bankruptcy Court's Docket

Although bankruptcy courts can and do regularly address complex and substantial non-federal law issues, the personal injury claims at issue here are not commonly litigated in bankruptcy courts. Conversely, such issues are regularly litigated in state court, and this factor favors granting remand.

(10) Likelihood of Forum Shopping

The Plan provides for liquidation of claims such as Plaintiff's in either the District Court or the appropriate state court. *See* Plan, pp. 12 and 32. Although the Court

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makes no determination as to whether Windsor Cheviot Hills engaged in forum shopping by removing the matter to this Court, such removal threatens to delay needlessly a trial in the state court.

(11) Right to a Jury Trial

Both parties have exercised their right to a jury trial. *See* docs. 6 and 9. However, Plaintiff has not consented to this Court conducting a jury trial. *See* doc. 6. 28 U.S.C. § 157(e) permits a plaintiff to demand trial by jury yet also withhold consent for a bankruptcy court to conduct that jury trial. *See* 28 U.S.C. § 157(e). As such, this factor favors granting remand.

(12) Presence of Non-Debtor Parties

Although this proceeding involves non-debtor defendants, Windsor Cheviot Hills's contention that such defendants had no liability independent of Windsor Cheviot Hills's is questionable. Moreover, liability of the non-debtor defendants is irrelevant to the equitable remand analysis.

(13) Comity

"Comity dictates that California courts should have the right to adjudicate the exclusively state law claims involving California-centric plaintiffs and California-centric transactions." *Enron*, 296 B.R. at 509. Here, the matter involves a California-centric Plaintiff and California-centric transactions. Therefore, this factor favors granting remand.

(14) Possibility of Prejudice to Other Parties

Granting remand would not prejudice the non-debtor defendants. The Plan, proposed by Windsor Cheviot Hills and the other Debtors, explicitly provides for a process by which holders of disputed personal injury claims, including Plaintiff, could continue to litigate their claims in the District Court or the appropriate state court. *See* Plan, p. 32. This indicates that Debtors, including Windsor Cheviot Hills, anticipated that Plaintiff may continue prosecuting the Claim in the state court. To the extent that Windsor Cheviot Hills now contends, post-confirmation, that it would be prejudiced by remand, such contention is not well-taken. Even if this factor supports denying

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remand, it does not outweigh the factors which support granting remand.

In light of the foregoing, the Court will remand this proceeding to the state court.

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

FOOTNOTES

FN1: A "Litigation Claim" is defined in the Plan as "an Employment Claim or Personal Injury Claim." Plan, p. 7. An "Unliquidated Litigation Claim" is defined in the Plan as a Litigation Claim that was not fully liquidated by judgment or settlement prior to the filing of the bankruptcy cases. *Id.*, p. 10. A "Personal Injury Claim" is defined in the Plan as "a General Unsecured Claim that has been scheduled by the Debtors or asserted by a claimant in a timely filed proof of claim for damages for personal injury, wrongful death or related claims." *Id.*, p. 8.

FN2: Pursuant to 28 U.S.C. § 157(b)(5):

The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

Party Information

Debtor(s):

Windsor Terrace Healthcare, LLC

Represented By
Ron Bender
Juliet Y. Oh
Monica Y Kim
Lindsey L Smith
Robert Carrasco
Beth Ann R. Young

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Defendant(s):

Windsor Cheviot Hills, LLC dba

Represented By
Eligio J. Luevanos

Olympia Health Care, LLC dba

Pro Se

Kirk Uomoto

Pro Se

DOES 1 through 100, inclusive

Pro Se

Movant(s):

Nathan Floyd as Successor-in-

Represented By
Nicholas Heiman
Robert J Pfister
Paul Anthony Saso

Plaintiff(s):

Nathan Floyd as Successor-in-

Represented By
Nicholas Heiman
Robert J Pfister
Paul Anthony Saso

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1:23-11200 Windsor Terrace Healthcare, LLC

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Adv#: 1:24-01046 James Portis, by and through his Successor-in-Inte v. Windsor Cheviot Hills,

#12.00 Plaintiffs' Motion to Remand

Docket 10

Tentative Ruling:

This proceeding is one of several actions removed to federal courts in California from the Superior Courts of Los Angeles County, Sacramento County and Solano County between late September 2024 and early October 2024. The plaintiffs filed substantively identical remand motions in the other districts. *See generally* the Reply Declaration of Robert J. Pfister ("Pfister Decl."), ¶¶ 2–9. [doc. 17].

On November 11, 2024, the Honorable Ronald H. Sarkis of the U.S. Bankruptcy Court for the Eastern District of California entered civil minutes granting one such motion. *See* civil minutes attached as Exh. C to the Pfister Decl. Although that case involved a different action removed from the Superior Court for the County of Sacramento, this proceeding is materially indistinguishable. Both matters involve personal injury and elder abuse cases that the defendants removed on the same alleged legal and factual basis as the removal in this proceeding.

The Court agrees with the determination of Judge Sarkis. *See* Exh. C to the Pfister Decl. For that reason, and as set forth in further detail below, the Court will remand this proceeding to the state court.

I. BACKGROUND

A. The State Court Action

In or around February 2020, James Portis was admitted to a skilled nursing facility run by Windsor Cheviot Hills, LLC ("Windsor Cheviot Hills"). In May 2020, Mr. Portis passed away.

On or about April 30, 2021, Patricia Portis, individually and as successor-in-interest of Mr. Portis (together, "Plaintiffs"), filed a complaint in state court (the "Complaint")

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against Windsor Cheviot Hills and certain "Doe" defendants (collectively, "Defendants"), initiating state court case no. 21STCV16326 (the "State Court Action"). In the Complaint, Plaintiffs stated causes of action for elder abuse, violation of resident's rights under California Health and Safety Code § 1430(b) and wrongful death. *See* Complaint, attached as Exh. 1 to the *Notice of Removal of Pre-Petition Lawsuit Pending in Los Angeles Superior Court to Bankruptcy Court (28 U.S.C. § 1452)* (the "Notice of Removal") [doc. 1]. The Complaint makes, in relevant part, the following factual allegations:

While Mr. Portis was a resident at Windsor Cheviot Hills, he was neglected such that he suffered urosepsis, severe sepsis with septic shock, metabolic encephalopathy, viral pneumonia and acute kidney failure with tubular necrosis. In addition, as a result of Defendants' neglect, Mr. Portis's kidney function gradually worsened, and he underwent emergency endotracheal intubation and passed away about a week after he was transferred to Southern California Hospital. Mr. Portis's cause of death was documented as pneumonia.

Complaint, ¶¶ 17-20. The Complaint included a request for jury trial. *Id.*, p. 1.

In July 2023, the state court set a jury trial for June 2024. *See* Exh. 2 to the Notice of Removal. In September 2023, Windsor Cheviot Hills filed a notice of stay of proceedings. *See id.*

B. The Bankruptcy Cases

On August 23, 2023, Windsor Cheviot Hills and eighteen related entities filed chapter 11 petitions (the "Original Debtors"). On September 29, 2023, two additional related entities filed chapter 11 petitions (the "New Debtors," and collectively with the Original Debtors, "Debtors"). The Court approved the joint administration of these cases in case no. 1:23-bk-11200-VK (the "Lead Bankruptcy Case").

1. Plaintiffs' Proof of Claim

In January 2024, Plaintiffs filed proof of claim no. 19-1 against Windsor Cheviot Hills in case no. 1:23-bk-11206-VK. Plaintiffs asserted a nonpriority unsecured claim in an

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unknown amount (the "Claim"). As the basis for the Claim, Plaintiffs indicated as follows: "Elder Abuse and Wrongful Death Claim (See Supporting Document)." 1:23-bk-11206-VK, Claim No. 19-1. To the Claim, Plaintiffs attached a copy of the Complaint.

2. The Chapter 11 Plan of Reorganization

In August 2024, Debtors filed *Debtors' Plan of Reorganization (Dated June 11, 2024) as Amended* (the "Plan") [Lead Bankruptcy Case, doc. 1424]. With respect to Class 4 Creditors, including Plaintiffs, the Plan provides, in relevant part:

Class 4 – General Unsecured Claims. Each holder of an Allowed Class 4 General Unsecured Claim will have the option (which option will be included in their Plan ballot) of selecting between the following two treatments under this Plan, which (except as set forth immediately below) will be in full settlement and satisfaction of their Allowed General Unsecured Claim against the Debtors. Each Claimant with a Personal Injury Claim who does not accept the Debtors' proposed Claim settlement amount and who is otherwise not able to reach agreement with the Debtors on a different mutually agreeable Claim settlement amount prior to the date of Plan confirmation (each, a "Non-Settling Personal Injury Claimant") **shall be permitted to proceed with the liquidation of their disputed Personal Injury Claim against the Debtors and any third parties (including the Guarantors) in the manner set forth in Section IV(D)(7) below.**

Plan, p. 12 (emphasis added). With respect to the protocol for liquidating disputed claims, the Plan provides, in pertinent part:

The Debtors have proposed, for settlement purposes only, the amount they propose to allow for each timely-filed Unliquidated Litigation Claim. [FNI] Attached as Exhibits 2(a) through 2(e) to the Disclosure Statement is a written summary of each Unliquidated Litigation Claim and the relevant Debtor's analysis of the Unliquidated Litigation Claim. At the end of each such summary is the Debtors' proposed settlement amount for that Unliquidated Litigation Claim. If a claimant

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accepts the amount proposed for that claimant, then that amount shall be deemed the amount of the Allowed Class 4 Claim for that claimant for both voting and distribution purposes under this Plan, and this Plan's treatment of their Allowed Class 4 Claim shall be deemed to be in full settlement and satisfaction of their Allowed Class 4 Claim.

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The Personal Injury Claim of any claimant who does not accept the Debtors' proposed Claim settlement amount and who does not reach agreement with the Debtors through mediation or otherwise on a different mutually agreeable Claim settlement amount will be deemed a Disputed Claim, and the holder of any such Claim will not be entitled to receive any distribution from the Reorganized Debtors unless and until such Claim becomes a liquidated Allowed Claim **pursuant to a Final Order from the District Court or, to the extent the District Court elects to abstain, the applicable state court, [FN2] at which time such Claim will be treated in the same manner as all other Allowed General Unsecured Claims.** For the avoidance of doubt, all rights of holders of Personal Injury Claims and the Reorganized Debtors with respect to any request for abstention by the District Court are expressly preserved and reserved.

Plan, pp. 29 and 32 (emphasis added). Plaintiffs voted to reject the Plan and chose Plan Treatment Option One. *See* Exh. A to the Declaration of Juliet Y. Oh [Lead Bankruptcy Case, doc. 1358].

In September 2024, the Court entered an order confirming the Plan [Lead Bankruptcy Case, doc. 1437]. On November 27, 2024, Debtors filed *Reorganized Debtors' Motion for Final Decree Closing Chapter 11 Cases* [Lead Bankruptcy Case, doc. 1675].

3. The Removal of the State Court Action to this Court

On October 3, 2024, Windsor Cheviot Hills filed the Notice of Removal, removing the State Court Action to this Court and initiating this adversary proceeding. On November 2, 2024, Plaintiffs filed *Plaintiffs' Notice of Motion and Motion to Remand* (the "Motion") [doc. 10]. On December 5, 2024, Windsor Cheviot Hills filed an

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opposition to the Motion [doc. 16]. On December 12, 2024, Plaintiffs filed a reply in support of the Motion and the Pfister Decl. [doc. 17].

On December 17, 2024, Windsor Cheviot Hills filed *Windsor Cheviot Hills, LLC's Objection to Citations to Eastern District Cases in Reply to Opposition to Plaintiff's Motion to Remand* (the "Objection") [doc. 20, refiled at doc. 23]. The same day, Plaintiffs filed a response to the Objection [doc. 21].

II. ANALYSIS

"Bankruptcy courts have broad discretion to remand cases over which they otherwise have jurisdiction on any equitable ground." *In re Enron Corp.*, 296 B.R. 505, 508 (C.D. Cal. 2003). 28 U.S.C. § 1452(b) provides, in pertinent part: "The court to which such claim or cause of action is removed may remand such claim or cause of action on any equitable ground." "[E]ven where federal jurisdiction attaches in actions 'related to' bankruptcy proceedings, Congress has explicitly provided for courts to find that those matters are more properly adjudicated in state court." *Parke v. Cardsystem Solutions, Inc.*, 2006 WL 2917604 (N.D. Cal. October 11, 2006) (quoting *Williams v. Shell Oil Co.*, 169 B.R. 684, 690 (S.D. Cal. 1994)). See also *Century Bankcard Services, Inc. v. U.S. Bancorp.*, 318 F. Supp. 983, 985 (C.D. Cal. 2004) ("[A]ny doubt about the right of removal is resolved in favor of remand.").

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- (4) presence of related proceeding commenced in state court or other nonbankruptcy proceeding;
- (5) jurisdictional basis, if any, other than [section] 1334;
- (6) degree of relatedness or remoteness of proceeding to main bankruptcy case;

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- (7) the substance rather than the form of an asserted core proceeding;
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Id., 508 n.2; *see also In re Cytodyn of New Mexico, Inc.*, 374 B.R. 733, 738 (Bankr. C.D. Cal. 2007) (noting that courts typically consider these 14 factors in deciding whether to grant a motion to remand); *Stichting Pensioenfonds ABP v. Countrywide Financial Corp.*, 447 B.R. 302, 311 (C.D. Cal 2010) ("Because Section 1452(b) affords 'an unusually broad grant of authority,' any one of the relevant factors may provide a sufficient basis for equitable remand.").

Here, the equities weigh in favor of remanding this matter to state court.

(1) Effect or Lack Thereof on Efficient Administration of the Estate

The Plan specifically contemplates liquidation of disputed personal injury and wrongful death claims, including the Claim, in either the District Court or the appropriate state court. *See* Plan, pp. 12 and 32. There is no indication that litigation outside of this Court will negatively impact the efficient administration of the estate. This factor favors granting remand.

(2) Extent to Which State Law Issues Predominate Over Bankruptcy Issues

The Complaint seeks recovery on claims for elder abuse, violation of resident's rights under California Health and Safety Code § 1430(b) and wrongful death. These are state law causes of action; there are no bankruptcy causes of action to adjudicate. In

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In addition, the State Court Action is grounded entirely in California law; Plaintiffs' injuries took place in a California facility subject to California law. As such, state law issues predominate over bankruptcy issues.

(3) Nature of Applicable Law

The causes of action listed in the Complaint involve elder abuse, violations of resident's rights and wrongful death, the nature of which do not seem particularly difficult or unsettled. Consequently, this factor favors granting remand.

(4) Presence of Related Proceeding

The parties have been litigating the State Court Action since April 2021, more than two years before the bankruptcy cases were filed, including by filing pleadings, exchanging discovery and appearing at multiple status conferences. *See* Exh. 2 to the Notice of Removal. Not only does the State Court Action exist, but there has been substantial activity in it. This factor favors granting remand.

(5) Jurisdictional Basis Other Than 11 U.S.C. § 1334

Windsor Cheviot Hills has not asserted any jurisdictional basis for this matter remaining in this Court other than 28 U.S.C. § 1334(b). *See* Notice of Removal, p. 2. Windsor Cheviot Hills asserts that supplemental jurisdiction may be asserted over Defendants pursuant to 28 U.S.C. § 1367(a). According to Windsor Cheviot Hills, the State Court Action is "related to" the bankruptcy cases because the debt liquidated in this proceeding (if any) will then be paid through the Plan. This is substantially duplicative of the "related to" jurisdiction provided in 28 U.S.C. § 1334(b) and does not add anything of "jurisdictional substance." Consequently, this factor favors granting remand.

(6) Relatedness or Remoteness to the Bankruptcy Case

Although the liquidation of the Claim and determination of the amount owed, if any, is related to the bankruptcy cases and payment under the Plan, there is no need to interpret or apply the Plan in connection with adjudicating the Claim. As such, this factor favors granting remand.

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Windsor Terrace Healthcare, LLC
(7) Substance Versus Form of an Asserted Core Proceeding

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In substance, this matter does not relate to law arising under the Bankruptcy Code or proceedings in the bankruptcy cases. Rather, it involves liquidation of the amount owed, if any, to Plaintiffs, to be paid through the Plan.

In addition, to the extent that Windsor Cheviot Hills asserts that liquidation of the Claim constitutes a matter arising in the bankruptcy cases, such assertion is unconvincing. 28 U.S.C. § 157(b)(2) explicitly provides that "liquidation or estimation of contingent or unliquidated personal injury tort or wrongful death claims against the estate for purposes of distribution in a case under title 11" do not constitute "core" proceedings. 28 U.S.C. § 157(b)(2)(B). In addition, 28 U.S.C. § 157(b)(2) provides that "Core proceedings include...(O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor...relationship, **except personal injury tort or wrongful death claims[.]**" 28 U.S.C. § 157(b)(2)(O) (emphasis added). In light of the foregoing, this factor favors granting remand.

(8) Feasibility of Severing State Law Claims from Core Bankruptcy Matters

Plaintiffs only assert state law claims. There are no core bankruptcy matters to be severed and resolved in this Court. This factor favors granting remand.

(9) Burden on the Bankruptcy Court's Docket

Although bankruptcy courts can and do regularly address complex and substantial non-federal law issues, the personal injury and wrongful death claims at issue here are not commonly litigated in bankruptcy courts. Conversely, such issues are regularly litigated in state court, and this factor favors granting remand.

(10) Likelihood of Forum Shopping

The Plan provides for liquidation of the Claim in either the District Court or the appropriate state court. *See* Plan, pp. 12 and 32. Although the Court makes no determination as to whether Windsor Cheviot Hills engaged in forum shopping by removing the matter to this Court, such removal threatens to delay needlessly a trial in the state court.

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(11) Right to a Jury Trial

Both parties have exercised their right to a jury trial. *See* Exh. 1 to the Notice of Removal; doc. 7. However, Plaintiffs have not consented to this Court conducting a jury trial. *See* doc. 6. 28 U.S.C. § 157(e) permits a plaintiff to demand trial by jury yet also withhold consent for a bankruptcy court to conduct that jury trial. *See* 28 U.S.C. § 157(e). As such, this factor favors granting remand.

(12) Presence of Non-Debtor Parties

Although this proceeding involves non-debtor defendants, Windsor Cheviot Hills' contention that such defendants had no liability independent of the liability of Windsor Cheviot Hills is questionable. Moreover, liability of the non-debtor defendants is irrelevant to the equitable remand analysis.

(13) Comity

"Comity dictates that California courts should have the right to adjudicate the exclusively state law claims involving California-centric plaintiffs and California-centric transactions." *Enron*, 296 B.R. at 509. Here, the matter involves California-centric plaintiffs and California-centric transactions. Therefore, this factor favors granting remand.

(14) Possibility of Prejudice to Other Parties

Granting remand would not prejudice the non-debtor defendants. The Plan, proposed by Windsor Cheviot Hills and the other Debtors, explicitly provides for a process by which holders of disputed personal injury and wrongful death claims, including Plaintiffs, could continue to litigate their claims in the District Court or the appropriate state court. *See* Plan, p. 32. This indicates that Debtors, including Windsor Cheviot Hills, anticipated that Plaintiffs may continue prosecuting the Claim in the state court. To the extent that Windsor Cheviot Hills now contends, post-confirmation, that it would be prejudiced by remand, such contention is not well-taken. Even if this factor supports denying remand, it does not outweigh the factors which support granting remand.

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In light of the foregoing, the Court will remand this proceeding to the state court.

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

FOOTNOTES

FN1: A "Litigation Claim" is defined in the Plan as "an Employment Claim or Personal Injury Claim." Plan, p. 7. An "Unliquidated Litigation Claim" is defined in the Plan as a Litigation Claim that was not fully liquidated by judgment or settlement prior to the filing of the bankruptcy cases. *Id.*, p. 10. A "Personal Injury Claim" is defined in the Plan as "a General Unsecured Claim that has been scheduled by the Debtors or asserted by a claimant in a timely filed proof of claim for damages for personal injury, wrongful death or related claims." *Id.*, p. 8.

FN2: Pursuant to 28 U.S.C. § 157(b)(5):

The district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose, as determined by the district court in which the bankruptcy case is pending.

Party Information

Debtor(s):

Windsor Terrace Healthcare, LLC

Represented By
Ron Bender
Juliet Y. Oh
Monica Y Kim
Lindsey L Smith
Robert Carrasco
Beth Ann R. Young

Defendant(s):

Windsor Cheviot Hills, LLC dba

Represented By

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Andrew K. Whitman

Plaintiff(s):

James Portis, by and through his

Represented By
Adam J Peck
Robert J Pfister

Patricia Portis

Represented By
Adam J Peck
Robert J Pfister