

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 09, 2018

Hearing Room 303

10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#1.00 Status Conference re: Ch 11 Case

fr. 1/24/2013, 4/30/13, 5/14/13, 7/23/13, 8/6/13,
9/17/13, 9/24/13, 11/19/13, 12/17/13, 1/21/14, 2/18/14,
3/11/14, 4/15/14, 5/6/14, 6/24/14, 9/9/14, 9/23/14,
10/7/14, 11/24/14, 1/6/15, 1/20/15, 2/10/15, 3/10/15,
4/28/15; 5/12/15; 9/29/15, 10/22/15, 12/8/15, 3/1/16,
6/7/16, 7/12/16, 8/16/16, 10/11/16; 12/20/16, 4/4/17,
5/16/17; 6/27/17, 7/11/17, 9/19/17, 11/14/17, 11/28/17,
12/19/17

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Per the status report filed on 1/3/18, the Trustee has assembled a team of real estate brokers to list an market the estate properties (except Gregory). This is through Coldwell Banker and the Trustee will soon be filing his motions to employ the brokers. The settlement with PMB became effective on 12/22 [*please note that on 1/4 Ms. McClure filed her appeal of that order*].

The Trustee is currently seeking new counsel for the state court actions.

In general nothing new has happened as to the Litt appeals. There is some communication between the Trustee and Litt as to a possible settlement.

I believe that I set this so that we can get a date for the reevaluation of the properties as to which ones the Litt lien will attach. Are we reDay to set a date?

prior tentative ruling (12/19/17)

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Per the status report filed on 12/14/17, discussions are or will take place between Litt and the Trustee to try to resolve the issue of Litt's lien. The Baycity appraisals have been completed. [Please note that on 12/13/17 Ms. McClure filed updated the appraisals of Corbett by Robert Magannam of Market Appraisal Group]

I would like to set a hearing on the issue of Litt's adequate protection. If you settle it in the meantime, that is fine. But let's set the date for a hearing.

prior tentative ruling (11/14/17):

The status report was filed on 11/13. Please try to be more timely in the future since this makes it hard for me to work-up my calendar.

There is a settlement pending with PMB, which is set for hearing on 11/28.

The sale of both Michigan properties have closed, bringing net proceeds to the estate of about \$530,000.

The Maui condo is listed for sale.

The Trustee seeks to employ new counsel in the Litt and Tidus state court litigation due to the departure of the current counsel. This is set for hearing on 12/19 due to the Litt objection.

As to the Litt appeal of the order removing the lien from some properties, the new appraisals have been completed and the Trustee sent a proposal to counsel for Litt as to a resolution. The discussion has been delayed due to spinal surgery of the Trustee and an emergency trip of Trustee's counsel. It is expected that a revised proposal will be forthcoming very soon.

The payment of the expert witness fee was not stayed by the District Court, so that has been paid.

proposed ruling:

Continue this without hearing to 11/28 at 10:00. No further status conference report will be needed for that hearing. At that hearing, I would like to discuss a method for dealing with the repetitive Litt objections being brought on the ground that it is a use of their cash collateral. I really see no reason to delay matters to set these on hearing each time. I am going to continue to rule the same way until instructed differently by an appellate court. Of course is there is an objection on other grounds, I may decide to hold a hearing.

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prior tentative ruling (9/19/17):

On 9/12/17 the Trustee filed a status report. The sale of the two Michigan properties have been concluded with net proceeds for Otsego of \$229,477.62 and for Invitational of \$299,615.53. The Maui condo is currently being marketed. All mortgage payments on the other properties are being made.

As to the Tidus litigation, trial is now set for 3/26/18. Because the attorney who was principally handling the case has left the Farley Law Firm for an in-house position, the Trustee has had to locate new counsel and will soon be filing an application to employ. Discovery is continuing and Ms. McClure is cooperating. She has filed a status report that she will be physically able to participate in the case.

The state court action against Litt is on hold.

The Litt lien issue was remanded by the District Court to do a new valuation in light of the Pacifica v. New Investments opinion. The Trustee obtained an order to employ Baycity as the appraiser. Litt appealed that order and sought a stay pending appeal. Judge Wu denied the stay. Baycity is in the process of preparing the appraisals.

Similarly, Litt appealed the order to pay the expert witness fees for the Tidus case. Judge Wu denied a stay pending appeal. He stayed action on the appeals of the expert witness fees and the Baycity order and has a set a status conference for 10/19/17.

On 8/24/17 the Trustee, his counsel and Litt's counsel discussed possible settlement and exchanged proposals. No settlement has been reached.

The parties may wish to appear in person or by phone.

prior tentative ruling (5/16/17)

Per the status report filed on 5/9/17, the Trustee is filing motions to sell each of the Michigan properties and the Maui Condo is listed for sales. All three Corbin properties are rented.

Ms. McClure is currently hospitalized. Discovery is continuing in the Tidus

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lawsuit.

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The Litt appeal in the district court has been remanded to this court to consider the *New Investments* opinion. The Trustee will be seeking to employ an appraiser as to the Corbett properties. PMB agrees that this can be the prior appraiser and just an update.

The Trustee has abandoned the Toyota Land Cruiser and Trailer.

The motion to sell that North Otsego, Gaylord property is set for 6/27/17.
Continue this status conference without appearance to 6/27/17 at 10:00 a.m. By then we should be also have a better idea on when the Corbett appraisals will be completed.

prior tentative ruling (4/4/17)

Per the Trustee's status report filed on 3/28/17:

Tidus Litigation - trial delayed due to Ms. McClure's illness. She just turned over voluminous documents in response to discovery request and that may delay the trial even longer.

McClure v. Litt - stayed by the superior court.

Litt Appeal - Judge Wu is trying to get a consensual resolution of the claims in the Litt litigation. As to the appeal, there has been supplemental briefing on the impact, if any, of *Pacifica L 51 LLC v. New Investments, Inc.* Judge Wu then remanded the Litt Appeal to the bankruptcy court for further consideration. Status conference continued in front of Judge Wu for 6/7/17.

Abandonment of Toyota Land Cruiser and Trailer - the Trustee just gave notice of his intent to abandon these.

As to the remand, we will discuss how to proceed at the 4/4/17 hearing. But it seems to me that it is probably appropriate to obtain new appraisals for the Corbett properties as well as new figures on the PMB liens. Even though property values have been rising, it seems that the Trustee would be wise to also select one or more other properties for a new appraisal, etc. in case the equity in the Corbett properties has fallen or is expected to fall below the 200% threshold. Please discuss this before the hearing.

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prior tentative ruling (12/20/16)

Per the status report filed on 12/13/16, the rental properties are all insured and PMB is being paid the amounts that were paid prior to the Trustee's appointment. There is a new lease on Hewitt, with one year of prepaid rent. Corbett #1 has been repaired and is ready to be leased. Corbett #2 tenant has renewed that lease through 12/17. A broker will be hired to sell the Michigan properties. The Trustee has settled with the California Franchise Tax Board - a 9019 motion is pending.

The Debtor is unwell and awaiting surgery, so cannot fully respond to the Trustee's inquiries. The Tidus trial is also being delayed due to Ms. McClure's health. The Trustee intends to proceed with that trial.

The Litt appeal is pending and Judge Wu ordered the Trustee to provide Litt's litigation counsel with a list of the Trustee's claim in the Litt Litigation. The Trustee is moving forward on this.

From the Court: There is a notice to compromise with the Franchise Tax Board. \$16,2 million will be recognized as gross income to the Debtor for tax year 2006 and is not subject to a valid 1033 Election. Debtor did not realize taxable Cancellation of Debt Income in connection with the foreclosure of the Long Beach properties. No opposition received as of 12/18. The Court will sign the order.

Continue the status conference to April 4, 2017 at 10:00 a.m. If the Trustee, McClure, Litt, and PNB all agree, no appearance will be needed on 12/20.

prior tentative ruling (10/11/16)

Mr. Reitman has been adding staff. I have no other indication of what is happening since no status report was filed. It may be that he has not calendared this hearing. If there is no appearance, I will continue it and make sure that he knows that date and to give notice to all interested parties.

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prior tentative ruling (8/16/16)

On 8/12 Mr. Reitman filed an application to employ his firm as counsel for the Trustee. No hearing was scheduled. I will hold this for the lodging period to see if there are any objections.

This is a case where the professional fees have become immense due to a variety of factors. I want to be sure that Mr. Reitman will keep a close handle on fees and will not pass on to attorneys work that is properly done by the Trustee himself. Also, Ms. McClure is able to provide some assistance, though her desire to run the case may interfere with her utility. Let's discuss this.

As to the overlaps in various matters which are disclosed in the application, I am sure that the Firm can set up a structure so that there is no conflict.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By

Andrew Goodman

Yi S Kim

Robert M Scholnick

James R Felton

Faye C Rasch

Faye C Rasch

Elaine Nguyen

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1:15-14213 Michael Robert Goland
Adv#: 1:16-01046 Lewis v. Goland

Chapter 7

**#2.00 Motion to Compel Discovery Responses
Pursuant to Joint Stipulation**

Docket 117

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Service: Proper. On 12/1/17, Mr. Lewis electronically served U.S. Trustee and Mr. Goland's counsel, David Hagen.

Motion: Mr. Lewis seeks an order requiring Debtor to respond to his Request for Production of Documents and Request for Admissions as set forth in the Joint Stipulation Pursuant to LBR 7026-1(c) dated November 29, 2017. The November 29, 2017 Joint Stipulation is signed by David Hagen and Mr. Lewis.

Request for Production No. 1 - this deals with a request/order made by the Court on October 13, 2016 that the parties fill in the timeline created by the Court and attached to the Order (dkt. #133). It was my hope that each party would fill in the table (as instructed) with facts and not argument. Each was to use a different color. I intended to compile a single table with all of that information and then send it to the parties so that there would be a chronological roadmap to assist me as this adversary moves forward.

In response, Mr. Lewis emailed his table in a timely fashion. While he added many items - some factual and some argumentative - he also objected to this process as an ex parte communication. I scanned this when it was received, but did not read the details.

I waited to begin processing his response until I receive the one from Mr. Goland. It not only arrived late, but it is a long narrative with lots of argument combined with some chronological facts. It was clear that it would take me a considerable amount of time to sort through that document and try to extract items that would be appropriate for the timeline.

At that point I decided that I would not use this exercise to create a

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timeline, so I did not go any further. I have not read either submission, but merely scanned each of them, since I agree that to only use one and not send out a compilation would be an ex parte contact.

I am sorry that the parties did not comply with my simple request, but they did not do so. My original timeline stands and I may add to it as the case progresses. But it is created by me for my use.

Since the Goland response described in Request to Produce #1 was never read or used by the Court, the motion is denied.

Request for Admission #2 - Whether Exhibit A is a genuine copy of the Memorandum of Costs filed on 9/24/10 in LASC EC044886. The Defendant does not dispute or claim that it is not genuine. Deem this to be admitted.

Request for Admission #3 - Whether on 10/13/10 costs of \$31,625 was entered against Goland in LASC EC044886. The issue here seems to be whether the Memorandum of Costs described in #2 was actually entered. The opposition is that there is no order allowing those costs and thus they were not "entered." CA Rule of Court 3.1700(b)(4) provides that if there is no motion to strike or tax costs,"the clerk must immediately enter the costs on the judgment." Thus, it appears that there is no separate order to enter costs. In this particular case, the online Case Summary shows that the judgment dismissing the case against Marlowe was apparently entered on 9/10/10 and the Memorandum of Costs was filed thereafter. The Case Summary states that the Memorandum of Costs was entered on 10/12/10 against Goland for \$31,625). Given the way that the Superior Court keeps its docket [which is different from that of the federal courts], there may not be a separate order "entering" the Memorandum of Costs. The response was not incorrect, but there is no doubt that the Superior Court awarded Marlowe costs of \$31,625. Deny the motion.

Request for Admission #4 - Whether Goland ever challenged the entry of costs described above. The response was to deny in that Goland was not aware that any costs were actually ordered against him. The Court deems that this Request for Admission is denied and strikes everything after the word "Deny."

Request for Admission #14 - Whether Marlowe's bankruptcy schedule B filed

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in 2:09-bk-30368-BR listed certain items. Goland denied this in that he has no personal knowledge of what Marlowe's schedules purported to list. Lewis claims that they cannot claim that they have no knowledge in that they have previously referred to Marlowe's schedule B. Goland responds that the best evidence rule would dictate that the schedules themselves be introduced and not Goland's interpretation of those schedules. Motion denied. The response is appropriate.

Given that this motion is granted in part and denied in part, each party will bear its own costs.

If BOTH parties agree to submit on this tentative ruling, the appearance is waived. Otherwise, feel free to appear in person or by phone. However, if you do appear, I would like to know the status of this case and what comes next.

Party Information

Debtor(s):

Michael Robert Goland

Represented By
David S Hagen

Defendant(s):

Michael Goland

Represented By
David S Hagen

Movant(s):

Bret D Lewis

Represented By
Bret D Lewis

Plaintiff(s):

Bret D Lewis

Represented By
Bret D Lewis

Trustee(s):

Nancy J Zamora (TR)

Represented By

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Jessica L Bagdanov
David Seror
Ezra Brutzkus Gubner

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1:95-19539 Ivds Interactive Acquisition Partners

Chapter 7

#1.00 Status of Chapter 7 Case

fr. 8/29/17

Docket 0

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Per the status report filed on 12/28/17, the Trustee has previously made two interim distributions and hopes to make another one in 2018. The Trustee hopes to sell Vickery's home through a forced sale or, in the alternative, to sell the USDC Judgment against Vickery. Once the settlement with Michael and David is approved by the Court and the situation with Vickery is resolved, the Trustee will close the case.

Continue without appearance to 7/10/18 at 10:00 a.m.

prior tentative ruling (8/29/17)

This case was filed on December 1, 1995. It was originally filed as a Chapter 11. It was converted to Chapter 7 on November 3, 1997. The last activity on the docket was on October 20, 2016. On that date, an Order on Eighth Interim Application for Allowance of Fees to Green, Hasson & Janks was entered. On July 31, 2017, an Order Setting Status Conference Hearing was entered. On August 15, 2017, the Chapter 7 Trustee filed a Status Report in Bankruptcy Case. [dkt. 648]

Trustee's August 15, 2017 Status Report:

Debtor was a general partnership organized under Florida law and composed of approximately 645 individuals. Debtor was created by a group of organizers who used corporate entities controlled by them to raise money to exploit IVDS, a communications medium to be licensed by the FCC.

Trustee has always believed that Debtor was a fraudulent telemarketing scheme. Trustee commenced a lawsuit against the organizers

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of Debtor alleging fraudulent transfer claims. Trustee went to trial against three principal Defendants: David Dambro, Michael Dambro, and Terry Vickery. Trustee obtained judgments against all three Defendants: David: \$5.1 million; Michael: \$4.1 million; and Vickery: \$4.6 million. Judgment will remain enforceable until 2027. Trustee continues to pursue collection activities through special counsel as Trustee believes David, Michael, and Vickery have hidden millions of dollars. Trustee has currently made two interim distributions in this case and hopes to make at least one more distribution after Trustee sells Vickery's home. Thereafter, Trustee will evaluate the possibility of a sale of the judgment at the end of 2017, which would allow Trustee to close the case.

This matter is now off calendar. No appearance is required and no hearing will be held. In the future, please file a status report every 90-180 days.

Party Information

Debtor(s):

Ivds Interactive Acquisition Partners

Represented By

Grant L Simmons

Uzzi O Raanan ESQ

Trustee(s):

Richard K Diamond (TR)

Represented By

J Jeffrey Craven

Uzzi O Raanan ESQ

Howard Kollitz

Richard K Diamond (TR)

Richard K Diamond

Ruba M Forno

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:
Adv#: 1:16-01162 Burke et al v. Khan et al

Chapter 0

#2.00 Motion and Nominal Defendants' Motion for
Sanctions against Plaintiffs for Failure to Comply
with Discovery Order

fr. 4/18/17, 7/11/17, 9/19/17

Docket 423

***** VACATED *** REASON: Case transferred to the calendar of Judge
Brand - jc**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Defendants assert that Plaintiff has now complied with prior discovery orders, but still seeks sanctions. Plaintiff contends that no sanctions are warranted and wish this to go off calendar.

The Court is not ready to rule on this. I will continue it to the same date as you choose for the discovery and MSJ motions. Since this is no less than 90 days away, no less than 45 days before the hearing, Defendants are to provide a summary of the background and basis of their monetary request. Plaintiff will have 21 days to respond.

prior tentative ruling (7/11/17)

At the April 18 hearing, this motion was continued in order for the Plaintiffs to create a privilege log and for the parties to meet and confer regarding this privilege log.

In response to the court's request for information regarding the results of the Plaintiffs' log and the parties subsequent discussions [dkt. 442], the parties jointly submitted additional information [dkt. 444] as follows:

Nominal Defendants: On May 18, the Plaintiffs submitted an incomplete privilege log, indicating that they would provide the remainder of documents shortly. They have neither identified nor provided the remainder

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of the responsive documents. Nominal Defendants renew their request for sanctions.

Plaintiffs: On May 18, the Plaintiffs sent the Nominal Defendants a list of over 400 communications that Plaintiffs counsel has had with counsel for Mr. Barton. This list also served as a privilege log. Due to Plaintiff counsel's trial and vacation schedule and the enormity of the task of searching various computers for communications between June 20, 2013 and May 18, 2017 (including separately identifying individual e-mails from strings), the list did not include reference to all documents and is not yet completed. Counsel is seeking permission from his own client and Barton's counsel to simply produce all documents, but has not yet obtained permission.

This matter sounds as though it could (and should) be resolved by the parties. Has Plaintiff's counsel made any further progress?

prior tentative ruling (4/18/17)

On 2/8/17 the Court entered its Order on Nominal Defendants' Motion to Compel Plaintiffs' Further Discovery Responses and Production of Documents (dkt. 404). This concerned interrogatory #4 and request to produce #6. That Order provided that by 3/1 Mr. Shapiro was to provide a list of documents that fall under the requested category and then allowed the Nominal Defendants a chance to request copies of any such documents that they had not received or could not locate. Once that request was made to Mr. Shapiro, he had 14 days to provide the copies.

As to the request for attorney fees, the Court ruled that no award was required at this time, but "[s]hould it later be found that not all relevant documents were identified and/or produced, the Court will entertain a motion for such fees."

This motion is a follow-up in that the Nominal Defendants assert that they have not received the requested discovery. The focus is the issue of whether the Plaintiffs fairly and adequately represent the interests of the shareholders who are similarly situated in enforcing the rights of the corporation.

Among the communications requested are those with Kenneth Barton or his attorney (Patrick McGarrigle). They are adverse to the Nominal Defendants and are actively litigating against them. These have not been

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identified or produced. The Plaintiff seeks sanctions of their attorney's fees under FRBP 7037; to preclude Plaintiffs from asserting or offering evidence to claim that they are not acting on behalf of Mr. Barton's interests in this litigation; and to dismiss the derivative claims as a result of their pursuit of interests antagonistic to the Nominal Defendants rather than those in the interests of shareholders of the Nominal Defendants. If the Court will not issue preclusion or terminating sanctions, they request the Court to order the Plaintiffs and their counsel to identify and produce all communications between Plaintiffs or their counsel and Barton or McGarrigle relating to the Nominal Defendants and this should be done within 7 days of the hearing on this motion.

Plaintiffs believe that they have fully complied with the Order. They do not seek sanctions against the Defendants and do not believe that the Defendants are acting in bad faith in bringing this motion.

Proposed ruling

Please remember that I came in at the middle of this case and am not fully familiar with the players. As I understand it, SMS was originally formed in 2000 by Khan and Tomkow. It was the initial parent company I am not sure what the relation was with Barton at that time or prior to 2004. Barton believes that he was ousted from SMS in 2004 and thereafter sued SMS and also was active in attempts to remove Khan and Tomkow from SMS management. It appears that the SMS subsidiary for U.S. operations was RPost.

I'm not sure what happened to RPost, but it seems that RPost and SMS are somehow being used interchangeably. Anyway, Barton obtained a judgment against RPost in the amount of \$3.84+ million, plus punitives against Khan and against Tomkow. The Superior Court did not rule on the transfer of the RPost assets. As I understand it, this transfer was to RComm from SMS (which is why I am confused about the relationship of RPost and SMS). The transfer took place in March 2011.

Once Khan and Tomkow filed bankruptcy, Burke demanded that RPost and RComm remove them as corporate officers and that these entities file suit against them. Although litigation committees were formed by both entities, Khan and Tomkow are members of those committees and no action has been taken.

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According to the Nominal Defendants, at the time that the lawsuit was filed the shareholder composition was as follows: SMS - 17 s/hs, Khan = 38%, Tomkow = 49%, Martin = .06%; RComm - 16 common s/hs, 400 preferred s/hs, Khan = 3.8% of common and 1.6% of preferred, Tomkow = 3.8% of common and 1.6% of preferred, Burke = 0.3% of preferred, Canada = 2% of preferred; RMail - 3 s/hs, Khan = 5%, Tomkow = 5%, Rojas = 90%.

I'm not sure what is going forward at this time. I think that it is only the 2d claim for relief (§523(a)(6)) and the 4th claim for relief (§523(a)(4) only as to embezzlement). Is discovery going forward as to the Fifth through Seventh claims for relief, which do not deal with dischargeability, though they deal with the same issues as in the second and fourth claims for relief? As to the second and fourth, the Nominal Defendants appear to be named only because they did not file suit against Khan and Tomkow under §523. Is this correct?

As to the second claim for relief, the theory is that Khan and Tomkow acted tot he detriment of RPost and of RPost's creditors (such as Plaintiffs) by conducting the complained-of transfers and for their own benefit. These were fraudulent and resulted in damages to the Plaintiffs for loss of property.

As to the fourth claim for relief, the theory is that Khan and Tomkow removed misappropriated monies, etc., to the detriment of RPost and RComm and that the Nominal Defendants have not acted to recover these assets.

Anyway, we will discuss this and your theories at the 4/18 hearing.

Party Information

Defendant(s):

Zafar David Khan

Represented By
Lewis R Landau
Matthew C Mickelson

Terrance Alexander Tomkow

Pro Se

RPOST INTERNATIONAL

Represented By
Richard J Decker

RPOST COMMUNICATIONS

Represented By

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RMAIL LIMITED

Lewis R Landau
Richard J Decker

Represented By
Lewis R Landau
Matthew C Mickelson

Juan Rojas

Pro Se

MOMENTEX, INC.

Represented By
Lewis R Landau

Movant(s):

RPOST INTERNATIONAL

Represented By
Richard J Decker

RPOST COMMUNICATIONS

Represented By
Lewis R Landau
Richard J Decker

Plaintiff(s):

Thomas Burke

Represented By
Scott E Shapiro Esq

126736 CANADA, INC.

Represented By
Scott E Shapiro Esq

George Martin

Represented By
Scott E Shapiro Esq

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:
Adv#: 1:16-01162 Burke et al v. Khan et al

Chapter 0

#3.00 Plaintiff's Motion to compel further discovery responses and production of documents from defendant rmail limited

fr. 1/17/17, 2/7/17; 4/18/17, 7/11/17, 9/19/17

Docket 350

***** VACATED *** REASON: Case transferred to the calendar of Judge Brand - jc**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Per the joint status report filed on 9/14, the Plaintiffs wish a 90 day delay so that the Trustee can determine whether to take action on the Debtors' corporate shares to remove the boards of directors and officers, including the Debtors. This will prevent costly discovery. The Defendants dispute the possibility of impact, but agree to a 90 day continuance. This can be continued to 12/19, 1/9, or 1/23 each at 10:00. Because of the holiday season, counsel should jointly choose one of those dates.

prior tentative ruling (7/11/17)

At the April 18 hearing, this motion was continued in order for the relevant parties to have another opportunity to meet and confer, in the hopes of resolving issues in lieu of the Court reviewing each contested request with the parties in court.

In response to the Court's request for information regarding the results of the parties' meet and confer [dkt. 442], the parties jointly submitted additional information [dkt. 444]. It appears from this filing that virtually no progress has been made, with a June 27 e-mail from Defendants' counsel to Plaintiff's counsel the only attempt at meet and confer.

As the meet and confer failed, it appears that the Court may need to go

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through each of these unresolved requests with the parties in court. Is there any alternative way to resolve these issues? Will the grant of partial summary adjudication to the Defendants narrow the scope of the discovery?

prior tentative ruling (4/18/17)

On 2/7/17, the Court ordered the Defendants to provide a list of responsive documents by 3/7. Plaintiff had until 3/21 to request any specific documents that they do not have. This was continued to 4/18/17 at 10:00 a.m. for any remaining issues. As of 4/13, nothing more has been filed on this motion.

Also, see tentative ruling for matter #1.

prior tentative ruling (2/7/17)

Thank you for the summaries. I am now starting to understand this case. It seems that this discovery motion is largely trying to trace money and assets between the various defendants. If this is not correct, advise me at the hearing. I would like to know - in general - what evidence the Plaintiffs already have and what they are lacking. We can see if we can't tailor this to make sure that they receive the relevant information without it being overly burdensome.

Party Information

Defendant(s):

Zafar David Khan

Represented By
Lewis R Landau
Matthew C Mickelson

Terrance Alexander Tomkow

Pro Se

RPOST INTERNATIONAL

Represented By
Richard J Decker

RPOST COMMUNICATIONS

Represented By
Lewis R Landau
Richard J Decker

RMAIL LIMITED

Represented By
Lewis R Landau
Matthew C Mickelson

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Juan Rojas

Pro Se

MOMENTEX, INC.

Represented By
Lewis R Landau

Plaintiff(s):

Thomas Burke

Represented By
Scott E Shapiro Esq

126736 CANADA, INC.

Represented By
Scott E Shapiro Esq

George Martin

Represented By
Scott E Shapiro Esq

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:
Adv#: 1:16-01162 Burke et al v. Khan et al

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#4.00 Motion for Summary Judgment

fr. 4/18/17, 7/11/17, 9/19/17

Docket 415

***** VACATED *** REASON: Case transferred to the calendar of Judge
Brand - jc**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Per the joint status report filed on 9/14, the Plaintiffs wish a 90 day delay so that the Trustee can determine whether to take action on the Debtors' corporate shares to remove the boards of directors and officers, including the Debtors. This will prevent costly discovery. The Defendants dispute the possibility of impact, but agree to a 90 day continuance. This can be continued to 12/19, 1/9, or 1/23 each at 10:00. Because of the holiday season, counsel should jointly choose one of those dates.

prior tentative ruling (7/11/17)

Defendants Zafar Khan ("Khan"), Terrance Tomkow ("Tomkow"), and RMail Ltd. (collectively, the "Movants") move for summary judgment of all remaining claims brought by plaintiffs Thomas Burke, 126736 Canada Inc., and George Martin ("Plaintiffs") in the Third Amended Complaint ("TAC").

For clarity, the following is a listing of the identities of the parties:

RPost International Limited ("RPost") was formed in 2000. In 2013 it became Secure Messaging Systems ("SMS"). Throughout this and other litigation it is referred to as "SMS." However, in this memorandum it is referred to as "**SMS/RPost**" unless some other designation is needed for clarity. SMS/RPost is a nominal defendant.

RPost Holdings, Inc. is a wholly-owned subsidiary of SMS/RPost and is referred to as "**RPH.**"

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RMail Ltd. was formed in 2008 and is referred to as "**RMail**."
RPost Communications, Ltd. was formed in 2011. This is always referred to as "**RComm**." RComm is a nominal defendant.

The Court has some uncertainty about the exact shareholder status of the Plaintiffs since the assertions in the TAC (¶¶16-18) are not identical with the Defendant's summary (dkt. 418 at 12:16-17). Nevertheless, it is undisputed that the three Plaintiffs, taken as a group, include shareholders of SMS/RPost and of RComm, but not of RMail.

Summary of Facts (not all are undisputed):

This motion is not really based on undisputed fact. But the following summary will help to give context to the motion:

- In August 2005, SMS/RPost was found liable for infringing on certain patents owned by Authentix-Authentication Technologies, Ltd. ("Authentix") in a lawsuit brought by Propat International Corp., an Authentix licensee. However, thereafter, the court dismissed the lawsuit for lack of standing as Authentix had not been named as the plaintiff.
- In 2008, Authentix threatened to sue SMS/RPost for patent infringement and discussed the possibility of selling the patents to SMS/RPost.
- Defendants contend that since SMS/RPost did not have the funds necessary to complete the patent purchase, the board of directors suggested SMS/RPost form a separate entity to purchase the patents in an effort to protect SMS/RPost. RMail was formed to purchase the patents. [Plaintiffs dispute that SMS/RPost did not have the funds since SMS/RPost "loaned" the money to RMail (see below). This "loan" was never repaid.]
- In July 2009, the SMS/RPost board of directors approved a loan to RMail for \$554,000 because RMail could not raise additional funds to pay Authentix.
- After RMail paid Authentix, it licensed the email field of use of the patents to SMS/RPost for a licensing fee of \$200,000. RMail agreed to be a named plaintiff in future lawsuits that SMS/RPost might bring and to defend the email field of use of the patents. Under the agreement, RMail would not receive any of the proceeds of the lawsuits. If SMS/RPost received at least

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\$1 million in revenue from RMail's defense of the email field of use, RMail would not be required to repay any principal owed to SMS/RPost.

- Thereafter, SMS/RPost sublicensed the rights it received from RMail to RPH. [Plaintiffs assert that thereafter RMail terminated the license to SMS/RPost, owns all the fields of use to the exclusion of SMS/RPost, and never repaid SMS/RPost.]
- Disputes exist concerning the amounts of licensing revenues received by RMail, as well as revenues received by SMS/RPost and the disposition of those funds.
- Khan and Tomkow ("Debtors") filed bankruptcy petitions on April 13, 2013.
- The Plaintiffs filed adversary proceedings in each of the Debtors' cases on July 29, 2013 (13-1773 and 13-1774). The TAC was filed in each adversary proceeding on June 10, 2014. These adversary proceedings were consolidated on August 3, 2016, with the adversary proceeding from the Burke case (13-1773 and 16-1162 upon transfer to Judge Mund) designated as the lead case. (The adversary in Tomkow's case is now 16-1164. All docket references are to 16-1162, unless noted otherwise.)
- The Plaintiffs are suing derivatively as shareholders of SMS/RPost and of RComm (see above).
- By orders entered April 15, 2016 [dkt. 323 in 16-1162 and dkt. 286 in 16-1164; the "April 2016 Orders"], Judge Brand made the following rulings on the Debtors' motions to dismiss:
 1. granted as to Claim 1 (§523(a)(4) breach of fiduciary duty) based on the failure to meet the standards for fiduciary duty of *Cal-Micro, Inc. v. Cantrell (In re Cantrell)*, 329 F.3d 1119, 1125-28 (9th Cir. 2003);
 2. granted as to Claim 3 (§523(a)(2) for fraud), based on the *in pari delicto* defense;
 3. denied as to Claim 2 (§523(a)(6) for willful and malicious injury); and
 4. limiting Claim 4 (§523(a)(4)) to embezzlement.
- Thus, the remaining claims of the TAC include:
 1. Section 523(a)(6): Willful and malicious injury against

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Khan and Tomkow, with RPost and RComm as nominal defendants (Claim 2)

2. Section 523(a)(4): Embezzlement only against Khan and Tomkow, with RPost and RComm as nominal defendants (Claim 4);
3. Fraudulent transfers, against all Defendants, although the TAC limits this claim to post-petition conduct with respect to Defendants Khan and Tomkow (Claim 5);
4. For constructive trust against all Defendants. (Claim 6); and
5. For accounting, against all Defendants (Claim 7).

- Defendants Juan Rojas and Momentex, Inc. have never filed a response to the TAC and may never have appeared or been served. The address for them on the docket is at the offices of SMS/RPost.

Defendants' Motion:

Defendants assert the primary problem with the TAC is that the action is based on a fraudulent transfer claim made on behalf of SMS/RPost, but SMS/RPost, as the transferor, cannot bring a claim under the UFTA (Cal. Civ. Code Section 3439.07). Under the UFTA, only a creditor of a debtor-transferor has a fraudulent transfer claim. Therefore, for any fraudulent transfer claims in this action to stand under the UFTA, the plaintiff must be a *creditor* of transferor SMS/RPost. Instead, the Plaintiffs are shareholders of SMS/RPost and are attempting to bring the fraudulent transfer claim derivatively on behalf of SMS/RPost. This would essentially be SMS/RPost suing itself and is legally impossible.

Second, the Movants assert that Counts Two and Four (under §523(a)(6) and (a)(4)) are disguised fiduciary duty claims. The TAC contains numerous allegations that the fraudulent transfer of SMS/RPost's property was concocted by Khan and Tomkow; this is the basic premise of this lawsuit. These allegations are really asserting that Khan and Tomkow breached their fiduciary duties to SMS/RPost by encouraging the SMS board to approve the transfer of assets from SMS/RPost to RMail. Since Judge Brand previously dismissed the nondischargeability claims asserting breach of fiduciary duties against Khan and Tomkow (Counts One and Three), the Court should grant summary judgment as to Counts Two and Four, which are disguised fiduciary

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duty claims.

Third, Defendants argue that Plaintiffs' claim for embezzlement must fail. It is a disguised fraudulent transfer claim under the UFTA and subject to dismissal for the reasons noted above. Furthermore, the facts do not indicate embezzlement. The SMS/RPost board approved the SMS/RPost-RMail asset transfers and the funds were used by RMail for the very purpose the board had intended and approved. Further, there was no entrustment of funds, as SMS/RPost did not limit the use of the money. Finally, the Movants did not personally receive the funds, as they own only 10% of RMail.

Claim 5 for fraudulent transfer should fail because the Plaintiffs cannot bring a fraudulent transfer action on SMS/RPost's behalf (as noted above) and the Plaintiffs have presented no facts demonstrating post-petition wrongful conduct by Khan and Tomkow

Finally, since there are no actionable fraudulent transfer claims or embezzlement claims in this lawsuit, the constructive trust and accounting claims (which are remedies rather than causes of action) cannot survive this summary judgment motion.

No genuine issues of material facts exist and so summary judgment should be entered in favor of the Defendants.

Opposition:

Pursuant to FRCP 56(d), Plaintiffs request the Court deny or consider deferring ruling on this Motion. [FRCP Rule 56(d) provides: If a nonmovant shows by affidavit or declaration, that, for specified reasons, it cannot present facts essential to justify its opposition, the court may: (1) defer considering the motion or deny it; (2) allow time to obtain affidavits or declarations or take discovery; or (3) issue any other appropriate order.]

Plaintiffs previously made motions to compel Defendant RMail's responses to requests for production of documents and interrogatory responses, motions were (and still are) pending before Defendants made the subject Motion for Summary Judgment. Instead of providing the requested important documents and information, Defendants have "railroaded" Plaintiffs with their Motion.

Declaration of Scott E. Shapiro [dkt. 424] at 28-13.

Plaintiffs contend they are unable to properly respond to the Motion as they have not received responses to their discovery requests from Defendants. Plaintiffs argue that the pending discovery requests are "crucial

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to the issue of what was delivered by the nominal defendants, [SMS/RPost] and [RComm], and what was or was not delivered by RMail to RPost, and then to RComm." Opposition [dkt. 429] at 3:27-4:3. The discovery requests deal with crucial information concerning monies obtained by Defendants, property received and monies paid out. Plaintiffs believe Defendants are intentionally withholding such information. Further, Plaintiffs are still awaiting Defendants' responses for the following discovery: Interrogatories 4-10 (RFP 6-12), Interrogatories 12-16 (RFP 14-18), Interrogatories 21-23 (RFP 23-25).

Plaintiffs also dispute Defendants' assertion that this shareholder derivative lawsuit is a legal impossibility. Plaintiffs argue they have properly filed this lawsuit and if they had tried to file this lawsuit as a "direct suit" they would have been subject to a motion to dismiss. The Nominal Defendants, by way of this lawsuit, are being forced to seek recourse because of Khan, Tomkow, and RMail's taking of SMS/RPost's property and monies without providing equivalent value.

Further, summary judgment is not appropriate as there is a crucial material disputed fact as to Khan and Tomkow's control of RMail. Plaintiffs are seeking additional evidence to support this issue of control through the recently issued Letter Rogatory. This evidence is further support for the claims of embezzlement and constructive trust in the TAC. Therefore, this is just one more reason to defer ruling on this Motion and continue the hearing to a later date.

Based on the above, Plaintiffs request the Court defer ruling on this Motion as it has been prematurely filed or deny the Motion as disputed material facts exist.

Reply:

First, in response to Plaintiffs' Opposition, Defendants point out that Plaintiffs' memorandum of points and authorities in opposition to the Motion was filed on March 30, 2017, two days after the deadline of March 28. [*The Court notes that, while this is technically correct, Scott Shapiro's Declaration for Denial or Continuance of the Motion, Thomas Burke's Declaration in Opposition to the Motion, and Plaintiffs' Separate Statement of Material Facts in Opposition to the Motion were all filed on March 28.*]

Second, Defendants argue that Plaintiffs have no justified basis for requesting a continuance of the Motion as they have failed to identify with specificity the discovery needed and the connection between that discovery

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and how it would preclude a grant of summary judgment.

Defendants argue that Plaintiffs have continued to delay the prosecution of this lawsuit: the lawsuit was filed in July 2013, but the Plaintiffs failed to initiate any discovery toward RMail until September 2015 and did not seek a deposition of Khan or Tomkow until late 2016. Since Plaintiffs fail to act diligently, this Court should not reward Plaintiff with a continuance of this Motion.

Moreover, Plaintiffs fail to address Defendants' primary argument that this lawsuit is a legal and factual impossibility as well as that Plaintiffs' real theory is one of a breach of fiduciary duty. As previously noted, a breach of fiduciary duty is not actionable in this lawsuit based on Judge Brand's prior ruling. Therefore, no additional time should be granted to Plaintiffs.

Finally, Plaintiffs have failed to show that additional evidence would allow them to successfully oppose the Motion in connection with the embezzlement claim. Defendants have proven that the monies transferred to RMail were never touched by Khan and Tomkow. Even if Plaintiffs were given additional time to attempt to retrieve more evidence, any evidence obtained would not prove up an embezzlement claim against Khan and Tomkow.

Therefore, Defendants believe summary judgment is appropriate at this time and that continuance of the Motion is not warranted.

Additional Information:

The Court entered an order requesting additional information from the parties [dkt. 442] and the parties jointly filed a response with the requested information [dkt. 444]. This additional information is referred to in the relevant sections below.

Analysis:

I. Standard for Summary Judgment

Summary judgment is proper when the pleading, discovery, and affidavits show that there is "no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56 (a). Material facts are those which may affect the outcome of the proceedings. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). The party moving for summary judgment bears the burden of identifying those

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portions of the pleadings, discovery, and affidavits that demonstrate the absence of a genuine issue of a material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986).

On an issue for which the opposing party will have the burden of proof at trial, the moving party need only point out "that there is an absence of evidence to support the nonmoving party's case." *Id.* at 325. The facts must be viewed in the light most favorable to the party opposing the motion. *Anderson*, 477 U.S. at 249; *Masson v. New Yorker Magazine*, 501 U.S. 496, 520 (1991). However, mere allegations or denials do not defeat a moving party's allegations. See *Gasaway v. Northwestern Mut. Life Ins. Co.*, 26 F.3d 957, 960 (9th Cir. 1994).

II. Claim 4 (§523(a)(4))

Claim 4 under §523(a)(4) has been limited by the April 2016 Order to an embezzlement claim. Embezzlement under §523(a)(4) requires that (i) the property in question is rightfully in the possession of a non-owner, (ii) the non-owner used the property for a purpose other than that for which it was entrusted, and (iii) the circumstances indicate fraud. *Transamerica Comm. Fin. Corp. v. Littleton (In re Littleton)*, 942 F.2d 551 (9th Cir. 1991).

The Defendants argue that the only viable legal theory for the Plaintiffs (as shareholders in SMS/RPost) to obtain relief under §523(a)(4) is based on breach of fiduciary duty: that Khan and Tomkow breached their fiduciary duty to SMS/RPost when they caused the transfers to be made to RMail. As Judge Brand has already dismissed the §523(a)(4) claim based on breach of fiduciary duty (Claim 1), this claim must also be dismissed.

This argument is not well taken. Embezzlement is a distinct cause of action, independent of breach of fiduciary duty (although many circumstances may well give rise to both causes of action).

Claims of embezzlement and larceny under 11 U.S.C. § 523(a)(4) differ from fraud and defalcation in that neither require that the debt have been incurred in a fiduciary capacity. *Bullock*, 133 S. Ct. at 1760. Federal law defines embezzlement as "the fraudulent appropriation of property by a person to whom such property has been intrusted [sic], or into whose hands it has lawfully come." *Moore v. United States*, 160 U.S. 268, 269, 16 S. Ct. 294, 40 L. Ed. 422 (1895); *Great Am. Ins. Co. v. Graziano (In re Graziano)*, 35 B.R. 589, 594 (Bankr. E.D.N.Y. 1983). To prove embezzlement, the plaintiff must show that "(1) the debtor

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rightfully possessed another's property; (2) the debtor appropriated the property for use other than the use for which the property was entrusted; and (3) the circumstances implied a fraudulent intent." *Indo-Med Commodities, Inc. v. Wisell (In re Wisell)*, 494 B.R. 23, 40 (Bankr. E.D.N.Y. 2011). A partner or employee who diverts a corporation's funds for his or her own use commits embezzlement within the meaning of § 523(a)(4). See *Race Place of Danbury, Inc. v. Scheller (In re Scheller)*, 265 B.R. 39, 54 (Bankr. S.D.N.Y. 2001); *In re Graziano*, 35 B.R. at 595.

Mirachi v. Nofer (In re Nofer), 514 B.R. 346, 356–57 (Bankr. E.D.N.Y. 2014) (denying motion to dismiss embezzlement claim brought by shareholder against controlling shareholder for diversion of corporate property). Many courts have allowed derivative embezzlement claims under §523(a)(4) to be brought by equityholders and creditors of the entity whose property was embezzled by the debtor. See, e.g., *Cody Farms v. Deerman (In re Deerman)*, 482 B.R. 344, 375 (Bankr. D.N.M. 2012); *Lacourse Builders v. D'Anello (In re D'Anello)*, 477 B.R. 13, 23 (Bankr. D. Mass. 2012); *Wallner v. Liebl (In re Liebl)*, 434 B.R. 529, 541 (Bankr. N.D. Ill. 2010). If the Plaintiffs can establish the required elements of embezzlement, they are entitled to relief.

The Movants also argue that this embezzlement claim is a disguised fraudulent transfer claim, which cannot be asserted under §523(a)(4). Again, if the Plaintiffs can establish the required elements of embezzlement, they are entitled to relief – regardless of whether the same facts might also give rise to a fraudulent transfer claim.

With respect to the required elements of embezzlement under §523(a)(4) - that (i) the property in question is rightfully in the possession of a non-owner, (ii) the non-owner used the property for a purpose other than that for which it was entrusted, and (iii) the circumstances indicate fraud - the Movants primarily argue that the last element, fraud, is missing. Specifically, they assert that Khan and Tomkow could not have fraudulently appropriated the funds entrusted to them from SMS/RPost because (i) the SMS/RPost board approved the transfer to RMail and (ii) RMail used the funds for the purpose for which SMS/RPost transferred them – namely to pay Authentix. In short, there was an agreement that RMail would pay Authentix, would license back to SMS/RPost, and would not have to repay the loan if SMS/RPost generated at least \$1 million in revenues from defending the patents, which it

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did.

The Movants also assert that the money paid to RMail was not an entrustment of funds, but SMS/RPost was paying RMail a license fee and thus RMail's use of the funds was not limited to any specific purpose. Thus, the second element of embezzlement is also missing.

If the non-owner recipients of the property (Khan and Tomkow through RMail) were not in control of the board of directors of the property owner (SMS/RPost), these circumstances in and of themselves would not indicate fraud. The third element required for embezzlement would thus be missing and Khan and Tomkow motion for judgment would be granted as to §523(a) (4). However, the undisputed fact that the SMS/RPost board was intertwined with the ownership of RMail changes the equation.

The relevant board meeting on October 22, 2008 was attended by four members of the SMS/RPost board: Khan, Tomkow, Dick Pryor, and Carole Krechman. Khan acted as chairman of the meeting. The minutes reflect that because of the Authentix threat

Khan and Tomkow offered to establish a separate entity, RMAIL LIMITED, and to fund the entity with personal funds and potentially outside investors. Khan and Tomkow proposed to then have RMAIL LIMITED finalize and fund the acquisition of the Authentix patent portfolio. It was RESOLVED that RPost International Limited would serve as a guarantor for RMAIL LIMITED relating to RMAIL LIMITED's capability to fund the acquisition of the Authentix patent portfolio.

(Declaration of Zafar Khan [dkt.417], ex. 3)

Although Khan and Tomkow do not appear to be the initial directors of RMail (Khan Dec. [dkt. 417], ex. 7), Khan asserts that they – along with Juan Rojas – were the sole shareholders (Khan Dec. [dkt. 417], exs. 4, 5, 6). As the sole shareholders, they were in control because they could replace the board members at will. [The evidence shows that Rojas subscribed for his shares, but does not reflect actual payment. Plaintiffs question whether Rojas was a shareholder or merely a strawman for Khan and Tomkow and, if he was a shareholder, at what percent. They would like to complete discovery on this issue.]

When it became obvious that RMail would not be able to raise the money to pay Authentix, Khan proposed that SMS/RPost loan RMail the money, which was good for SMS/RPost because RMail was "controlled by friends and family." This was approved by the SMS/RPost board on July 20.

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2009. Once again, Khan and Tomkow were two of the four SMS/RPost directors present at the meeting, which Khan chaired. (Khan Dec. [dkt. 417] ¶ 14, ex. 12)

Plaintiffs have asked for more time for discovery and under these circumstances it may be appropriate to give it to them on this issue. The intertwining of the control of SMS/RPost and of RMail by Khan and Tomkow removes any presumption that the Authentix patents rightfully came into RMail's possession and, if they did, that this was not fraud.

III. Claim 2 (§523(a)(6))

The Movants also argue that breach of fiduciary duty is the only viable legal theory for the Plaintiffs (as shareholders in SMS/RPost) to obtain relief under §523(a)(6), so that Judge Brand's dismissal of the §523(a)(4) claim based on breach of fiduciary duty must bar breach of fiduciary duty claims under §523(a)(6) as well. This argument is not well taken.

According to the Plaintiffs, this claim for "willful and malicious injury" under §523(a)(6)) is based on conversion and/or fraudulent transfer. Claim 2 in the TAC refers to both conversion and fraudulent transfer. On February 8, 2016, Judge Brand – considering a motion to dismiss filed by the Movants - entered an order requesting supplemental briefing on the issue of whether a fraudulent transfer claim can serve as the basis of a §523(a)(6) claim. [dkt. 293] In their Supplement Opposition, the Plaintiffs discuss both fraudulent transfer and conversion as bases for their claim for "willful and malicious" injury under §523(a)(6). [dkt. 298] Notably, Judge Brand subsequently denied the motion for dismissal with respect to this claim.

Conversion and fraudulent transfer are causes of action that are independent of breach of fiduciary duty claims, even though the underlying facts may give rise to the same claims. Thus, Judge Brand's dismissal of the Plaintiff's Claim 1 (under §523(a)(4) breach of fiduciary duty) does not bar this §523(a)(6) claim based on either fraudulent transfer or conversion.

Even if this claim could in some way be seen as being based a breach of fiduciary duty, Judge Brand dismissed Claim 1 "breach of fiduciary duty" because the alleged fiduciary duty did not meet the standards of §523(a)(4), as set forth in *Cal-Micro, Inc. v. Cantrell (In re Cantrell)*, 329 F.3d 1119 (9th Cir. Cal. 2003). The standards for "a fiduciary duty" claim under California law are distinct from and less exacting than those under §523(a)(4), as the Ninth Circuit explained in *Cal-Micro*:

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Section 523(a)(4) excepts from discharge a debt "for fraud or defalcation while acting in a fiduciary capacity." The definition of "fiduciary capacity" under §523(a)(4) is a question of federal law. See *Mills v. Gergely (In re Gergely)*, 110 F.3d 1448, 1450 (9th Cir. 1997). We have previously held that "[t]he broad, general definition of fiduciary--a relationship involving confidence, trust and good faith--is inapplicable in the dischargeability context." *Ragsdale v. Haller*, 780 F.2d 794, 796 (9th Cir. 1986). As a result, we have adopted a narrow definition of "fiduciary" for purposes of § 523(a)(4): "[T]he fiduciary relationship must be one arising from an express or technical trust that was imposed before and without reference to the wrongdoing that caused the debt." *Lewis v. Scott (In re Lewis)*, 97 F.3d 1182, 1185 (9th Cir. 1996).

While the definition of "fiduciary" is governed by federal law, we have relied in part on state law to ascertain whether the requisite trust relationship exists. See *id.* at 1185; *Ragsdale*, 780 F.2d at 796. As a result, while not arguing that an express trust existed between it and Cantrell, Cal-Micro does claim that under California law a corporate officer is a statutory trustee with respect to corporate assets.

In support of its argument, Cal-Micro cites to several California cases that have held that a corporate officer is a fiduciary of the corporation. See, e.g., *Stephenson v. Drever*, 16 Cal. 4th 1167, 947 P.2d 1301, 69 Cal. Rptr. 2d 764 (Cal. 1997); *United States Liab. Ins. Co. v. Haidinger-Hayes, Inc.*, 1 Cal. 3d 586, 463 P.2d 770, 83 Cal. Rptr. 418 (Cal. 1970); *GAB Bus. Serv., Inc. v. Lindsey & Newsom Claim Servs., Inc.*, 83 Cal. App. 4th 409, 99 Cal.Rptr.2d 665 (Ct. App. 2000). But these cases merely specify that officers owe fiduciary duties in their capacity as agents of a corporation; they fail to hold that officers are trustees of a statutory trust with respect to corporate assets.

Unfortunately for Cal-Micro, in *Bainbridge v. Stoner*, 16 Cal. 2d 423, 106 P.2d 423 (Cal. 1940), the California Supreme Court held: "One who is a director of a corporation acts in a fiduciary capacity, and the law does not allow him to secure any personal advantage as against the corporation or its stockholders. However, strictly speaking, the relationship is not one of trust, but of agency" 106 P. 2d at 426 (citations omitted); see also *Bancroft-Whitney Co. v. Glen*, 64 Cal.

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2d 327, 411 P.2d 921, 934, 49 Cal. Rptr. 825 (Cal. 1966) (stating that while officers and directors stand in a fiduciary relation to the corporation, they are "technically not trustees"). Therefore, under Bainbridge, although officers and directors are imbued with the fiduciary duties of an agent and certain duties of a trustee, they are not trustees with respect to corporate assets.

329 F.3d at 1125-1126. Thus, Judge Brand's dismissal of the §523(a)(4) "breach of fiduciary duty" claim does not bar a §523(a)(6) claim for willful and malicious injury based on breach of fiduciary duty under state law.

However, for this claim to survive a motion for summary judgment, the Plaintiff must still provide facts supporting a viable claim for "willful and malicious injury" under §523(a)(6). The requirements of "willful" and "malicious" are considered separately. *Carrillo v. Su (In re Su)*, 290 F.3d 1140, 1146 (9th Cir. 2002).

"A 'willful' injury is a 'deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury.'" *Albarran v. New Form, Inc. (In re Barboza)*, 545 F.3d 702, 706 (9th Cir. 2008)(quoting *Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998) (emphasis in original)). At a minimum, willful requires "a deliberate act with knowledge that the act is substantially certain to cause injury." *Petralia v. Jercich (In re Jercich)*, 238 F.3d 1202, 1208 (9th Cir. 2001). The Court "may consider circumstantial evidence that tends to establish what the debtor must have actually known when taking the injury-producing action." *Ormsby v. First Am. Title Co. (In re Ormsby)*, 591 F.3d 1199, 1206 (9th Cir. Cal. 2010)(citing *Su*, 290 F.3d at 1146).

"A malicious injury involves (1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause." *Ormsby*, 591 F.3d at 1207.

A. Conversion

Conversion is the wrongful exercise of dominion over the property of another. The elements of a conversion are the plaintiff's ownership or right to possession of the property at the time of the conversion; the defendant's conversion by a wrongful act or disposition of property rights; and damages.

Farmers Insurance Exchange v. Zerín, 53 Cal. App. 4th 445, 451 (Cal. Ct. App. 3rd Dist. 1997) (internal citations omitted).

[T]he establishment of conversion is not dependent on proving

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fraudulent intent. In California, conversion committed with fraudulent intent constitutes embezzlement. *In re Basinger*, 45 Cal.3d 1348, 1363, 249 Cal. Rptr. 110, 756 P.2d 833 (1988) (citing *People v. Kronemyer*, 189 Cal.App.3d 314, 361, 234 Cal.Rptr. 442 (1987)). A judgment of conversion does not necessarily decide that the defendant has caused conversion with fraudulent intent or embezzlement. *In re Phan*, 2014 WL 705298, at *6 (B.A.P. 9th Cir. Feb. 24, 2014); see also *In re Dunn*, 2006 WL 6810930, at *5 (B.A.P. 9th Cir. Oct. 31, 2006) ("embezzlement is essentially conversion with the additional element of fraudulent intent").

Thus, as the element of fraud most at issue in the embezzlement claim is not required for conversion, the Plaintiffs might well have a claim a conversion. However, that same lack of fraudulent intent means that conversion does not necessarily encompass the willfulness and maliciousness required under §523(a)(6).

"Conversion under California law does not require a showing [required for willfulness] that the defendant subjectively intended to injure the plaintiff or subjectively knew that the defendant's conduct was substantially certain to injure the plaintiff.

....

Similarly, conversion under California law does not necessarily implicate 'maliciousness.' Maliciousness requires (1) a wrongful act, (2) done intentionally, (3) which necessarily causes injury, and (4) is done without just cause or excuse. While one of the elements of conversion encompasses a 'wrongful act,' the other elements do not satisfy the remaining maliciousness prongs. We thus conclude that the conversion, in and of itself, is not necessarily 'malicious.'"

Esplanade Enters. v. Horne (In re Horne), 549 B.R. 241, 250 (Bankr. E.D. Cal. 2016)(quoting *Zeeb v. Farrah (In re Zeeb)*, 2015 WL 6720934 (9th Cir. BAP 2015).

"§ 523(a)(6)'s willful injury requirement is met only when the debtor has a subjective motive to inflict injury or when the debtor believes that injury is substantially certain to result from his own conduct." *Carrillo v. Su*, 290 F.3d at 1142; *Ormsby*, 591 F.3d at 1206. "To infer malice, however, it must first be established that the conversion was willful." See *Ormsby*, 591 F.3d at 1207; see also *In re Thiara*, 285 B.R. 420, 434 (B.A.P. 9th Cir. 2002).

The Plaintiffs have not provided evidence that the Debtors had a

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subjective motive to inflict injury or believed that injury was substantially certain to result from their actions or that the Debtors willfully converted SMS/RPost's property. However, as with the evidence of fraud in embezzlement, evidence of this intent might arise from the further discovery sought by the Plaintiff. As noted above, given the circumstances, the Court is inclined to allow the Plaintiffs additional time to conduct this discovery.

B. Fraudulent Transfer

As a general matter, fraudulent transfers may give rise to claims under §523(a)(6) (as well as §523(a)(2)).

Ritz contends that interpreting "actual fraud" in § 523(a)(2)(A) to encompass fraudulent conveyances would render duplicative two other exceptions to discharge in § 523. Section 523(a)(4) exempts from discharge "any debt ... for fraud or defalcation while acting in a fiduciary capacity, embezzlement, or larceny." And § 523(a)(6) exempts "any debt ... for willful and malicious injury by the debtor to another entity or to the property of another entity."

....

The debtors who commit fraudulent conveyances and the debtors who make false representations under § 523(a)(2)(A) could likewise also inflict "willful and malicious injury" under § 523(a)(6). There is, in short, overlap, but that overlap appears inevitable.

Husky Int'l Elecs., Inc. v. Ritz, 136 S. Ct. 1581, 1588, 194 L. Ed. 2d 655 (2016).

1. By SMS/RPost

However, the Plaintiffs lack the standing, either directly as shareholders of the transferor SMS/RPost or derivatively on behalf of SMS/RPost, to assert fraudulent transfer claims respecting transfers made by SMS/RPost.

California fraudulent transfer law only gives a remedy to *creditors* of the transferor.

CUFTA provides that "[a] transfer made or obligation incurred by a debtor is voidable as to a creditor" Cal. Civ. Code § 3439.04(a) (emphasis added). A "creditor" is defined as one who "has a claim." Cal. Civ. Code § 3439.01(c). A "claim" is defined as a "right to payment, whether or not the right is reduced to judgment, liquidated,

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unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured." Cal. Civ. Code § 3439.01(b) (emphasis added).

In re Blanchard, 547 B.R. 347, 353 (Bankr. C.D. Cal. 2016). "On its face, the California Uniform Fraudulent Transfer Act only confers standing upon a 'creditor' of the debtor." *In re Lucas Dallas, Inc.*, 185 B.R. 801, 805 (B.A.P. 9th Cir. 1995).

This means that a transferor - such as SMS/RPost - lacks the power to avoid a fraudulent transfer. "Before it commenced its Chapter 11 case, VCR—as transferor—had no standing to bring a fraudulent transfer claim under the UFTA to avoid its own transfers." *Vaughan Co. v. Ultima Homes, Inc. (In re Vaughan Co.)*, 498 B.R. 297, 306–07 (Bankr. D.N.M. 2013). "As the transferor, it would lack standing had it not acquired the rights and duties of a trustee as a debtor-in-possession (and now as the liquidating debtor)." *Heller Ehrman v. Arnold & Porter (In re Heller Ehrman)*, 2011 WL 4542512, at *5 (Bankr. N.D. Cal. Sept. 28, 2011), *adopted*, 464 B.R. 348 (N.D. Cal. 2011); *see also Eberhard v. Marcu*, 530 F.3d 122, 131 (2d Cir.2008) ("Fraudulent conveyances are binding on all non-creditors, including the transferor himself."). The Plaintiff's derivative fraudulent transfer claim – made on behalf of the transferor SMS/RPost – must accordingly fail for lack of standing.

The California Fraudulent Transfer Act's limitation of remedies to creditors means that the Plaintiffs also lack standing to directly assert a fraudulent transfer claim as shareholders of the transferor SMS/RPost. "Plaintiffs have not provided any authority that a shareholder of a debtor corporation can sue debtors and third-party transferees for fraudulent transfer either directly or derivatively." *Isaka Invs., Ltd. v. Reserva, LLC*, 2010 WL 4108467, at *6–7 (Cal. Ct. App. 2nd Dist. Oct. 20, 2010).

2. By the Debtors

This claim in the TAC also alleges that the Debtors fraudulently transferred their own assets. [TAC ¶76] The Plaintiffs have standing to assert a fraudulent transfer claim against the Debtors for a transfer of the Debtors' own property, if either SMS/RPost or the Plaintiffs themselves have a claim against the Debtors. However, the Movants assert that the Plaintiffs have confirmed that the transfers at issue are those from SMS/RPost to RMail. [Dkt. 418 at 6:22-23]

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The Court sought clarity as to whether the fraudulent transfers at issue are limited to the transfers of SMS/RPost's property to RMail, or also include transfers of the Debtors' own property. [Dkt. 442] The Plaintiffs responded that they do not limit their claims solely to the SMS/RPost transfer to RMail and they identify (i) a "scheme" in which the Debtors fraudulently divested themselves of their interests in RMail to Rojas, while dissipating assets obtained from the Nominal Defendants, (ii) ongoing conduct relating to the original transfers, (iii) \$500,000 fraudulently paid to Khan's father, and (iv) \$500,000 received by the Debtors, not disclosed in their bankruptcies, and fraudulently transferred to third parties. [Dkt. 444 at 13:22-14:20]

The Plaintiffs' response is confusing, as the transfers identified are not clearly described and are not all clearly transfers of the *Debtors'* property. Most of the allegations in this response are not found in the TAC. (The Defendants correctly point out that ¶¶ 47-49 of the TAC have nothing to do with RMail shares and Rojas [as cited by the Plaintiffs].) The only allegation in the TAC of fraudulent transfers of the *Debtors'* property is that the Debtors wrongfully divested themselves of assets by reducing the value of their SMS/RPost shares *by effectuating SMS/RPost's fraudulent transfers discussed above*. [FAC ¶101] In other words, the only factual allegation is the transfer by SMS/RPost to RMail (which the Plaintiffs lack the standing to pursue directly). As with their other claims, the Plaintiffs still have only allegations, rather than evidence, but these allegations are unusually vague and the TAC does not provide the Defendants with any notice of these allegations.

Had the new allegations been made with clarity and some element of specificity, the Court might have entertained a motion to amend the TAC to include them. As it is, it appears that the Plaintiffs have taken the Court's request for clarification as an invitation to conduct a fishing expedition. Summary adjudication should be granted to the Defendants with respect to all fraudulent transfers in this claim.

IV. Claim 5 (Fraudulent Transfers)

Claim 5 is captioned as a fraudulent transfer claim, but also contains allegations of breach of fiduciary duty. It is asserted against all Defendants, although limited to post-petition conduct on the part of Khan and Tomkow. Post-petition actions survive the discharge, so this claim may be asserted

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against Khan and Tomkow without reference to §523(a).

To the extent that this claim is one for a fraudulent transfer of assets by SMS/RPost or RComm, the Plaintiffs lack the standing to assert it, as discussed in Claim 2 above. However, the claim also alleges fraudulent transfers by the Debtors of their own assets. As noted above, the Plaintiffs may have standing to assert a fraudulent transfer claim based on transfers of the Debtors' own assets, if that is, in fact, something the Plaintiffs seek to pursue.

Concerning a claim based on breach of fiduciary duty, the standards for breach of fiduciary duty under §523(a)(4) are more exacting than the state law standards (as noted above). Thus, Judge Brand's dismissal of Claim 1 because it failed to meet the §523(a)(4) standard for breach of fiduciary duty (as set forth in *Cal-Micro, Inc. v. Cantrell (In re Cantrell)*, 329 F.3d 1119 (9th Cir. Cal. 2003)) does not necessarily doom this claim under state law.

Whether based on breach of fiduciary duty or fraudulent transfer, this claim must be based on post-petition conduct. The Movants allege that there are no allegations of post-petition behavior by either Khan or Tomkow, nor have the Plaintiffs' presented any evidence of such post-petition wrongdoing. However, it is not clear from the TAC or the evidence presented by the parties which specific actions of the Debtor occurred post-petition.

The Court sought clarification from the Plaintiffs as to which, if any, post-petition actions of the Debtors are at issue. [Dkt. 442] In response, the Plaintiff's identified allegations from six paragraphs of the TAC:

¶40 – Khan and Tomkow's use of corporate funds and assets to pay personal bankruptcy costs;

¶51 and ¶102 – "use of patents and monies obtained therefrom [?], continues" and fraudulent transfers that have never been undone; and

¶11, ¶101, and ¶102 – ongoing conduct relating to fraudulent transfers, including fraudulent transfers as to RMail ownership.

[Dkt. 444 at 13:1-20]

Most of these allegations appear to relate to fraudulent transfers of SMS/RPost assets, which (as discussed above) the Plaintiffs lack the standing to pursue. The allegations regarding fraudulent transfers as to RMail's ownership could possibly refer to transfers of the Debtors' own assets, but (like the new allegations of transfers of the Debtors' assets discussed in the preceding section) they are too vague and unrelated to the allegations in the TAC to survive scrutiny. However, the allegation of use of

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corporate funds to pay bankruptcy expenses could be the basis for a post-petition claim for breach of fiduciary duty.

Thus, summary adjudication of this claim should be granted to Defendants with respect to all fraudulent transfers. As noted above, the Court is inclined to allow the Plaintiffs additional time to conduct discovery to obtain evidence, if any, of the alleged breach of fiduciary duty.

V. Claim 6 (Constructive Trust) and Claim 7 (Accounting)

Both constructive trusts and accounting are equitable remedies requiring that the defendants either be wrongfully holding property or owe monies to the plaintiff.

Constructive trusts, also called "trusts ex maleficio," are involuntary equitable trusts created by operation of law as a remedy to compel the transfer of property from the person wrongfully holding it to the rightful owner. Thus, as a remedy for conversion, a court may impose a constructive trust on money or property unlawfully converted by a defendant, compelling the defendant to transfer the property to the rightful owner.

60 Cal. Jur. 3d Trusts § 351.

"A cause of action for an accounting requires a showing that a relationship exists between the plaintiff and defendant that requires an accounting, and that some balance is due the plaintiff that can only be ascertained by an accounting." *Teselle v. McLoughlin*, 173 Cal.App.4th 156, 179, 92 Cal. Rptr. 3d 696 (2009).

Cordon v. Wachovia Mortg., 776 F. Supp. 2d 1029, 1040 (N.D. Cal. 2011).

The Movants argue that, since there is no actionable fraudulent transfer claim and no actionable embezzlement claim in this lawsuit, there is no basis for these remedies. However, since the Court has not granted judgment to the Movants on the Second, Fourth and Fifth Claims at this time, the premise of this argument is premature.

Conclusion

The Plaintiffs do lack the standing to bring fraudulent transfers claims respecting transfers of SMS/RPost's property. Although mentioned in the TAC, the Plaintiffs have failed to even allege - much less prove - any coherent claim based on fraudulent transfers of the Debtors' own property. Thus,

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summary adjudication should be granted to the Movants on fraudulent transfer claims under the Second Claim (under §523(a)(6)) and the Fifth Claim for (post-petition) fraudulent transfers.

This leaves these remaining bases for relief:

- Fourth Claim (under §523(a)(4)) based on embezzlement,
- Second Claim (under §523(a)(6)) based on conversion, and
- Fifth Claim (not under §523(a)) for post-petition breach of fiduciary duty.

The Plaintiffs have made a Fed. R. Civ. P. 56(d) request for more time. As discussed above, the Court is inclined to continue this motion to allow the Plaintiffs opportunity to finish discovery and provide evidence of a *prima facie* cases on each of these claims.

This will be continued to some later date. I am still trying to figure out the ins and outs of this case and deal with the relevance of Mr. Barton and his (possible) relationship to the Plaintiffs. We will discuss this at the 4/18 hearing.

Party Information

Defendant(s):

Zafar David Khan

Represented By
Lewis R Landau
Matthew C Mickelson

Terrance Alexander Tomkow

Pro Se

RPOST INTERNATIONAL

Represented By
Richard J Decker

RPOST COMMUNICATIONS

Represented By
Lewis R Landau
Richard J Decker

RMAIL LIMITED

Represented By
Lewis R Landau
Matthew C Mickelson

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Juan Rojas

Pro Se

MOMENTEX, INC.

Represented By
Lewis R Landau

Plaintiff(s):

Thomas Burke

Represented By
Scott E Shapiro Esq

126736 CANADA, INC.

Represented By
Scott E Shapiro Esq

George Martin

Represented By
Scott E Shapiro Esq

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:
Adv#: 1:16-01162 Burke et al v. Khan et al

Chapter 0

#5.00 Status Conference Re: Motion of Rpost Communications limited for Summary Judgment or, in the Alternative, Summary Adjudication of Issues

fr. 7/11/17, 9/19/17

Docket 190

***** VACATED *** REASON: Case transferred to the calendar of Judge Brand - jc**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Was the issue described below taken care of? Continue this to the same date as chosen for the MSJ and discovery motions.

prior tentative ruling (7/11/17)

On 2/13/15 RMail, RPost, and RComm filed a motion for summary judgment. This seems to focus on the standing of the Plaintiffs to bring this adversary proceeding. The docket does not reflect any action that was taken on this motion or any opposition filed. Please clarify so that this can be resolved.

Party Information

Defendant(s):

Zafar David Khan

Represented By
Lewis R Landau
Matthew C Mickelson

Terrance Alexander Tomkow

Represented By
Matthew C Mickelson

RPOST INTERNATIONAL

Represented By
Richard J Decker

RPOST COMMUNICATIONS

Represented By

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	Lewis R Landau Richard J Decker
RMAIL LIMITED	Represented By Lewis R Landau Matthew C Mickelson
Juan Rojas	Pro Se
MOMENTEX, INC.	Represented By Lewis R Landau

Plaintiff(s):

Thomas Burke	Represented By Scott E Shapiro Esq
126736 CANADA, INC.	Represented By Scott E Shapiro Esq
George Martin	Represented By Scott E Shapiro Esq

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10:00 AM

:
Adv#: 1:16-01162 Burke et al v. Khan et al

Chapter 0

#6.00 Status Conference re: Complaint

fr. 1/17/17, 2/7/17; 4/18/17, 7/11/17, 9/19/17

Docket 1

***** VACATED *** REASON: Case transferred to the calendar of Judge
Brand - jc**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Continue this to the same date as chosen for the MSJ and discovery motions.

prior tentative ruling (7/11/17)

While the parties did not file a status report, they did file a supplement with additional information requested by the Court re: the Defendants' pending motion for summary judgment and the two pending discovery dispute motions [dkt. 444]. See cal. ## 12-14.

prior tentative ruling (4/18/17)

At the hearing on 2/7/17, the Court vacated the discovery cutoff dates. There is no prohibition as to expert discovery. As to non-expert discovery (except that currently in process), a reason must be stated. This was then continued to 4/18/17 at 10:00 a.m. It was suggested that the parties consider engaging a mediator so that that process can commence - though it is understood that it will probably be a while before it can be concluded.

prior tentative ruling (2/7/17)

AT SOME POINT I WOULD LIKE TO DISCUSS THE POSSIBILITY OF A GLOBAL SETTLEMENT. DOES MR. BARTON NEED TO BE PART OF ANY SUCH DISCUSSION?

On 2/1/17, the Court sent out the following email to all parties. The summaries were timely received from counsel for the Plaintiffs and for the

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Defendants.

Please forward this to any other interested parties. I do not have an email address for Terrance Tomkow, so please be sure that he is aware of this.

As you are all aware, I have come in on the middle of this very contentious case. I simply do not have an understanding of the issues here. Thus, it is difficult, if not impossible, for me to properly rule on some of the motions that have been set. I will be ready to rule on the motion for letters rogatory and the motion as to putting the document under seal (so far there has been no response to the latter). I may be able to move forward on the disqualification motion, given Judge Brand's prior order and the somewhat limited issues in this second motion on that subject, but that will probably have to wait, too.

But the two motions concerning the interrogatives are not possible without a better understanding of this case, the parties, and what has happened.

Therefore, I would like a BRIEF summary of these things:

- what parties remain in this case
- what are the major contentions and issues of each party
- what is each Plaintiff hoping to recover
- what is the relationship of each Plaintiff to the other
- what is the relationship of each Defendant to the other
- what is the relationship of each Plaintiff to each Defendant
- what discovery has been completed so far, who propounded it and to whom was it directed
- what discovery is in process at this time, who propounded it and to whom was it directed

Please file and serve those no later than 8 a.m. on Monday. I hope that each of these will be no more than six pages long (excluding the caption). No exhibits or attachments, but you can refer to items by docket number if you wish. Please attach a copy of your response to an email to me and to Angela_Jones@cacb.uscourts.gov. No objections or replies are desired. We can talk about the status of this case and clarify things at the hearing on Tuesday.

It is obviously in everyone's best interest that I fully understand the facts, the procedural history, and the disputes. We can go from there.

prior tentative ruling (1/17/17)

As of noon on 1/12/17, no status report has been filed. I would appreciate a summary of this case since I am taking over several years and many motions, etc. into it. Since Monday is a holiday and thus I will not have had time to read what might be filed, this is continued without appearance to **2/7/17 at 9:30 a.m.** [Please note the start time so that I can complete this matter before my regular 10:00 calendar.] **The motion for letters rogatory, also set for 2/7/17, will be heard at 9:30 a.m. rather than at 10:00 a.m. Movant is to give notice.**

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No later than 1/19/17, each party (or group of related parties) is to file and serve a brief narrative summary of this case including a description of the allegations asserted in the complaint, defenses raised, substantive motions and rulings, any appeals and the status thereof, ongoing discovery and intended future discovery.

To the extent that it is relevant and will assist the Court, you can provide additional overview and information. In short, I need to know who the players are, what the stance of each is, how this case has proceeded so far, and what is intended and expected to happen as the case progresses.

Party Information

Defendant(s):

Zafar David Khan	Represented By Lewis R Landau Matthew C Mickelson
Terrance Alexander Tomkow	Pro Se
RPOST INTERNATIONAL	Represented By Richard J Decker
RPOST COMMUNICATIONS	Represented By Lewis R Landau Richard J Decker
RMAIL LIMITED	Represented By Lewis R Landau Matthew C Mickelson
Juan Rojas	Pro Se
MOMENTEX, INC.	Represented By Lewis R Landau

Plaintiff(s):

Thomas Burke	Represented By
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	Scott E Shapiro Esq
126736 CANADA, INC.	Represented By Scott E Shapiro Esq
George Martin	Represented By Scott E Shapiro Esq

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10:00 AM

:
Adv#: 1:16-01164 Burke et al v. Tomkow et al

Chapter 0

#7.00 Status Conference re: Complaint

fr. 1/17/17, 7/11/17, 9/19/17

Docket 1

***** VACATED *** REASON: Case transferred to the calendar of Judge
Brand - jc**

Courtroom Deputy:

This adversary is consolidated with 16-01162

Tentative Ruling:

Continue this to the same date as chosen for the MSJ and discovery motions.

prior tentative ruling (7/11/17)

Unlike the Khan case, there are no motions pending in this case. The email in the Khan case (cal. #6), is also meant to cover the issues in this adversary proceeding. I think that these two adversary proceedings were consolidated. Am I correct?

prior tentative ruling (1/17/17)

As of noon on 1/12/17, no status report has been filed. I would appreciate a summary of this case since I am taking over several years and many motions, etc. into it. Since Monday is a holiday and thus I will not have had time to read what might be filed, this is continued without appearance to **2/7/17 at 9:30 a.m.** [Please note the start time so that I can complete this matter before my regular 10:00 calendar.]

No later than 1/19/17, each party (or group of related parties) is to file and serve a brief narrative summary of this case including a description of the allegations asserted in the complaint, defenses raised, substantive motions and rulings, any appeals and the status thereof, ongoing discovery and intended future discovery.

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To the extent that it is relevant and will assist the Court, you can provide additional overview and information. In short, I need to know who the players are, what the stance of each is, how this case has proceeded so far, and what is intended and expected to happen as the case progresses.

Party Information

Defendant(s):

Terrance Alexander Tomkow	Represented By Lewis R Landau
Zafar David Khan	Pro Se
RPOST INTERNATIONAL	Represented By Henry Ben-Zvi Richard J Decker
RPOST COMMUNICATIONS,	Represented By Henry Ben-Zvi Richard J Decker
RMAIL LIMITED	Represented By Henry Ben-Zvi Matthew C Mickelson
Juan Rojas	Pro Se
MOMENTEX, INC.	Pro Se

Plaintiff(s):

Thomas Burke	Represented By Scott E Shapiro Esq
126736 CANADA, INC.	Represented By Scott E Shapiro Esq
George Martin	Represented By Scott E Shapiro Esq

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:
Adv#: 1:16-01120 Speier v. SunCal Management LLC et al

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#8.00 Defendants' Motion for Summary Adjudication

Docket 518

***** VACATED *** REASON: cont. to 2/13/18 @ 10am (eg)**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Defendant(s):

SunCal Management LLC

Represented By
Craig H Averch
Doah Kim
Aalok Sharma

Argent Management, LLC

Represented By
Craig H Averch
Doah Kim
Aalok Sharma

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

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:
Adv#: 1:16-01121 Speier v. SunCal Management, LLC et al

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#9.00 Defendants' Motion For Summary of Adjudication

Docket 407

***** VACATED *** REASON: cont. to 2/13/18 @ 10am (eg)**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Defendant(s):

SunCal Management, LLC

Represented By
Craig H Averch
Aalok Sharma

Argent Management, LLC

Represented By
Craig H Averch
Aalok Sharma

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01122 Speier v. SunCal Management LLC et al

Chapter 0

#10.00 Defendants' Motion for Summary Adjudication

Docket 399

***** VACATED *** REASON: cont. to 2/13/18 @ 10am (eg)**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Defendant(s):

SunCal Management LLC

Represented By
Craig H Averch
Aalok Sharma

Argent Management, LLC

Represented By
Craig H Averch
Aalok Sharma

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01123 Speier v. SunCal Management LLC et al

Chapter 0

#11.00 Defendants' Motion for Summary Adjudication

Docket 396

***** VACATED *** REASON: cont. to 2/13/18 @ 10am (eg)**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Defendant(s):

SunCal Management LLC

Represented By
Craig H Averch
Aalok Sharma

Argent Management, LLC

Represented By
Craig H Averch
Aalok Sharma

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01124 Speier v. SunCal Management LLC et al

Chapter 0

#12.00 Defendants' Motion for Summary Adjudication

Docket 401

***** VACATED *** REASON: cont. to 2/13/18 @ 10am (eg)**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Defendant(s):

SunCal Management LLC

Represented By
Craig H Averch
Aalok Sharma

Argent Management, LLC

Represented By
Craig H Averch
Aalok Sharma

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

Chapter 0

:
Adv#: 1:16-01124 Speier v. SunCal Management LLC et al

#13.00 Trustee's Motion For Partial Summary Adjudication of
his Restitution and/or Unjust Enrichment Claim for Relief
fr. 12/19/17

Docket 393

***** VACATED *** REASON: cont. to 2/13/18 @ 10am (eg)**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Cont. to 1/23/18 at 10:00 a.m. See Order Granting Application and Setting
Hearing on Shortened Notice.

Party Information

Defendant(s):

SunCal Management LLC

Represented By
Craig H Averch

Argent Management, LLC

Represented By
Craig H Averch

Movant(s):

Steven M Speier (TR)

Represented By
Mike D Neue
Gary A Pemberton

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01123 Speier v. SunCal Management LLC et al

Chapter 0

#14.00 Trustee's Motion for Partial Summary Adjudication of
his Restitution and/or Unjust Enrichment Claim for Relief

fr. 12/19/17

Docket 388
***** VACATED *** REASON: cont. to 2/13/18 @ 10am (eg)**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Cont. to 1/23/18 at 10:00 a.m. See Order Granting Application and Setting
Hearing on Shortened Notice.

Party Information

Defendant(s):

SunCal Management LLC	Represented By Craig H Averch
Argent Management, LLC	Represented By Craig H Averch

Movant(s):

Steven M Speier	Represented By Mike D Neue Gary A Pemberton Heather B Dillion
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Plaintiff(s):

Steven M Speier	Represented By Mike D Neue Gary A Pemberton Heather B Dillion
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01122 Speier v. SunCal Management LLC et al

Chapter 0

#15.00 Trustee's Motion For Partial Summary Adjudication of
his Restitution and/or Unjust Enrichment Claim for Relief

fr. 12/19/17

Docket 391
***** VACATED *** REASON: cont. to 2/13/18 @ 10am (eg)**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Cont. to 1/23/18 at 10:00 a.m. See Order Granting Application and Setting
Hearing on Shortened Notice.

Party Information

Defendant(s):

SunCal Management LLC	Represented By Craig H Averch
Argent Management, LLC	Represented By Craig H Averch

Movant(s):

Steven M Speier	Represented By Mike D Neue Gary A Pemberton Heather B Dillion
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Plaintiff(s):

Steven M Speier	Represented By Mike D Neue Gary A Pemberton Heather B Dillion
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01121 Speier v. SunCal Management, LLC et al

Chapter 0

#16.00 Trustee's Motion For Partial Summary Adjudication of
his Restitution and/or Unjust Enrichment Claim for Relief

fr. 12/19/17

Docket 399
***** VACATED *** REASON: cont. to 2/13/18 @ 10am (eg)**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Cont. to 1/23/18 at 10:00 a.m. See Order Granting Application and Setting
Hearing on Shortened Notice.

Party Information

Defendant(s):

SunCal Management, LLC

Represented By
Craig H Averch

Argent Management, LLC

Represented By
Craig H Averch

Movant(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

1:06-12243 Edwin Perry Hinds

Chapter 7

#17.00 Status of Chapter 7 Case

fr. 8/29/17

Docket 0

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

On November 28, 2017, counsel for the Trustee filed a status report. The only update was that he believes that he located a current address for Mr. Isaacson. Then in late December, the Court received a copy of a letter addressed to the State Bar Client Security Fund Commission and sent by the Law Offices of Brian D. McMahon, attorney for Mr. Isaacson. While it requests that I recuse myself, at this point I have no part of these proceedings.

Continue this status conference without appearance to June 19, 2018 at 10:00 a.m.

prior tentative ruling (8/29/17)

This Chapter 7 case was filed on November 29, 2006. Debtor was discharged on October 24, 2012. On May 15, 2017, an Order was entered granting application to employ Brutzkus Gubner as Trustee's General Counsel effective March 31, 2017. Thereafter, on July 31, 2017, an Order Setting Status Conference Hearing was entered.

On August 10, 2017, Trustee filed a Unilateral Status Report. According to Trustee, Lon B. Isaacson (the "Isaacson Creditors") had obtained a judgment over an attorneys' fees dispute with Debtor pre-petition. The judgment was for \$107,969.16 plus interest. Thereafter, the Isaacson Creditors filed an adversary proceeding in this case. The parties reached a settlement and the Court set a hearing on the settlement. At the hearing, the Court determined that the Debtor would pay the \$100,000 settlement to the

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10:00 AM

CONT... Edwin Perry Hinds

Chapter 7

estate instead of directly to the Isaacson Creditors. Also, the Court entered an Order directing the Isaacson Creditors to turn over \$100,000 to the Trustee. The Isaacson Creditors failed to comply and thereafter, most recently, the Trustee learned that Lon Isaacson had begun to misappropriate client funds from his trust accounts. He was formally disbarred in May 2013. Trustee has been attempting to reach Mr. Isaacson but has not been successful. Trustee's counsel advised Trustee that it may be most cost efficient to attempt to collect the \$100,000 by submitting a claim to the California State Bar Client Fund. Trustee believes the case should remain open for approximately 90 to 180 days pending a response from the State Bar Client Fund.

This matter is now off calendar. No appearance is required and no hearing will be held. In the future, please file a status report every 90-180 days.

Party Information

Debtor(s):

Edwin Perry Hinds

Represented By
Jonathan R Elowitz - DISBARRED -

Trustee(s):

David R Hagen (TR)

Represented By
David Seror

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

1:07-13259 Home Savings Mortgage

Chapter 7

#18.00 Status of Chapter 7 Case

fr. 8/29/17

Docket 0

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

On 12/22/17 the Court entered its order on final fees and the Trustee's final report. All that remains now is to distribute the money. Per the status report filed on 1/9/18, the Trustee requests a 180 day continuance. Continue without appearance to June 19, 2018 at 10:00 a.m.

prior tentative ruling (8/29/17)

This Chapter 7 case was filed on September 5, 2007. On August 15, 2017, Trustee filed a Status Report. The primary activity concerning this case involved the negotiation and sale of loans with Terwin, administration of additional notes, collection of funds, and objections to large claims by Terwin. On May 15, 2017, the Court entered an Order disallowing the Terwin claims as administrative or secured, but allowing them as general unsecured claims. The estate has approximately \$233,000 on hand in free and clear funds. Tax returns are complete and have been filed. Trustee should be able to file his Final Report in the next 30 to 60 days.

This matter is now off calendar. No appearance is required and no hearing will be held. If the Final Report is not filed, please file a status report every 90-180 days.

Party Information

Debtor(s):

Home Savings Mortgage

Represented By
David S Hagen
Annie Verdries

**United States Bankruptcy Court
Central District of California
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Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

CONT... Home Savings Mortgage

Chapter 7

Trustee(s):

David R Hagen (TR)

Represented By
Frank X Ruggier
Walter K Oetzell

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

1:09-18409 Lenny Kyle Dykstra

Chapter 7

Adv#: 1:10-01183 GOTTLIEB v. Simi Auto Spa Center, LP et al

#19.00 Motion to Dismiss Adversary Proceeding 2nd, 3rd, &
4th Claims of Third Amended Complaint Under FRCB 12(b)(1)

Docket 193

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

See Calendar #20

Party Information

Debtor(s):

Lenny Kyle Dykstra

Represented By
Michael T Pines - DISBARRED -
Moshe Mortner

Defendant(s):

Lenny Dykstra's Car Wash Corp., a

Pro Se

South Corona Center, LP

Represented By
Ramin Azadegan

Lenny Dykstra's Car Wash III, LP

Pro Se

Bahram Khadavi

Represented By
Ramin Azadegan

Kia Saidnia

Represented By
Ramin Azadegan

Karine Arditi

Represented By
Ramin Azadegan

Simone Shouhed

Represented By
Ramin Azadegan

**United States Bankruptcy Court
Central District of California
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CONT... Lenny Kyle Dykstra

Chapter 7

Shahram Shouhed	Represented By Ramin Azadegan
Hamid Shohed	Represented By Ramin Azadegan
Farshid Shohed	Represented By Ramin Azadegan
Scott Arditi	Represented By Ramin Azadegan
Shahriar Shouhed	Represented By Ramin Azadegan
National Car Washes, Inc.	Represented By Ramin Azadegan
Corona Petroleum, Inc.	Represented By Ramin Azadegan
Corona Lane Collection, I, LP	Represented By Ramin Azadegan
South Corona Auto Spa Property,	Represented By Ramin Azadegan
South Corona Auto Spa, LP	Represented By Ramin Azadegan
South Corona 76 Property, LLC	Represented By Ramin Azadegan
South Corona 76, LP	Represented By Ramin Azadegan
Simi Auto Spa Property, LLC	Represented By Ramin Azadegan
Simi Auto Spa Center, LP	Represented By Ramin Azadegan
Rafie O. Shouhed	Represented By

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CONT... Lenny Kyle Dykstra

Chapter 7

Ramin Azadegan

Plaintiff(s):

DAVID K GOTTLIEB

Represented By
Irena L Norton
Robert E Huttenhoff
Ryan D ODea

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Howard M Ehrenberg
SulmeyerKupetz
Irena L Norton
Robert E Huttenhoff
Victor A Sahn
Leonard M Shulman
Ryan D ODea

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

1:09-18409 Lenny Kyle Dykstra

Chapter 7

Adv#: 1:10-01183 GOTTLIEB v. Simi Auto Spa Center, LP et al

#20.00 Plaintiff's Motion for Summary Judgment, or
in the Alternative, Partial Summary Judgment

fr. 11/14/17

Docket 175

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

**PREPARED ON 1/17. SOME CHANGES MAY BE MADE PRIOR TO THE
HEARING ON 1/23**

THE COURT HAS PREPARED ITS PROPOSED RULING AS TO UNDISPUTED AND DISPUTED FACTS AND EVIDENTIARY OBJECTIONS. THOSE ARE SET FORTH BELOW AS ARE THE LIST OF LEGAL ISSUES THAT THE COURT INTENDS TO RULE ON AT A LATER DATE. AT THE HEARING ON JANUARY 23, WE CAN DISCUSS THESE PROPOSED RULINGS AND WHETHER THE LIST OF ISSUES IS ACCURATE AND COMPLETE. THEREAFTER THE COURT WILL REVISE (AS NEEDED) AND THEN PROVIDE A WRITTEN MEMORANDUM COVERING ALL ISSUES. ISSUES RAISED BY THE DEFENDANTS' MOTION TO DISMISS IS INCLUDED IN THIS TENTATIVE RULING.

The Plaintiff has set forth his proposed undisputed facts, which have been responded to by the Defendants. The Court finds the following to be undisputed facts. Italics are used to discuss or rule on objections to the facts proposed by the Plaintiff.

UNDISPUTED FACTS

1. For purposes of this motion, the term "Consolidated Entities" refers

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CONT...

Lenny Kyle Dykstra

Chapter 7

to Lenny Dykstra's Car Wash Corp., Lenny Dykstra Car Wash III, LP, and South Corona Center. *This is stated in this fashion because the Complaint and Answer include Lenny Dykstra Estate as part of the "Consolidated Entities," but that Estate did not exist at the relevant times for this motion.*

2. On June 6, 2007, Debtor Lenny Dykstra ("Debtor") and the "Consolidated Entities" entered into Purchase and Sale Agreements to sell real and personal property to the Shohed Group. The Shohed Group consists of individuals who are parties to the Purchase and Sale Agreements, as well as parties to the Prepayment Agreement that is discussed below. *The Defendants' response disputes that Dykstra was a party to the Purchase and Sale Agreements or Promissory Notes. It asserts that Car Wash III was the actual party to these transactions. However, paragraph ¶ 38 of the Answer "admits that the Debtor, the Shohed Group and others entered into agreements for the purchase of certain car wash properties and businesses [located on Los Angeles St., Compton Ave., and California Ave.]. RJN Ex. 7. Thus this fact is not in dispute.*
3. The Purchase and Sale Agreements provided for the purchase and sale of certain car wash properties, convenience store, gas station, and a shopping center (the "Corona Properties").
4. Defendants Simi Auto Spa Property and Simi Auto Spa Center executed promissory notes in favor of one of the Consolidated Entities (Car Wash III), in the original sums of \$2,500,000 ("Note 1") and \$20,500,000 ("Note 2"), together (the "Car Wash Notes"). The Car Wash Notes were secured by a Deed of Trust and Security Agreement encumbering the Simi Car Wash as well as Deeds of Trust and Security Agreements encumbering the Corona Properties. The Car Wash Notes provided for monthly interest

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Lenny Kyle Dykstra

Chapter 7

payments of \$125,000 each. The principal balance payments came due in the amount of \$1 million on July 9, 2012 and \$22 million on July 9, 2017. Interest payments were made through August 9, 2008, totaling \$1,551,130 on Note 1 and \$198,870 on Note 2.

5. The Car Wash Notes were personally guaranteed by members of the Shohed Group.
6. On January 29, 2008, Debtor obtained a \$1,000,000 loan ("Bridge Loan") from the Shohed Group. The due date of the Bridge Loan was extended various times, with the final extension up to September 10, 2008.
7. On August 31, 2007, the Debtor purchased 1072 Newbern Ct., Thousand Oaks (the "Newbern Property") for \$17.425 million.
8. The Newbern Property was purchased with a \$12 million loan from Washington Mutual and a \$8.5 million loan from First Credit Bank. About \$3 million of the loan proceeds were used to pay off certain debt that existed from the car wash business. *The Court is not sure what car wash debt this refers to, but that does not seem relevant to this motion.*
9. On August 28, 2008, Debtor and the Consolidated Entities executed a Pre-Payment Agreement with the Shohed Group to obtain a discounted payoff of the Car Wash Notes.
10. The total debt consideration provided by Defendants to Debtor in the Pre-Payment Agreement is approximately \$12,850,000. However, the unpaid balance on the Car Wash Notes was \$23,000,000.
11. Among the terms of the Prepayment Agreement were the following:

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Lenny Kyle Dykstra

Chapter 7

- a. The Shohed Group agreed to assume the First Credit Bank Loan and obtain a release of Dykstra's collateral [principal amount owed about \$8.5 million]

- b. The Shohed Group agreed to assume the Litt Loan in an amount of up to \$2.2 million and obtain the release of Dykstra's collateral
 - i. In February 2008, Debtor had borrowed approximately \$2,125,000 from the Litts (the "Litt Loan"). This loan was due on August 9, 2008 and had a 12% interest rate. The Litt Loan was secured by a third priority Deed of Trust recorded on the Ladbrook Property and the Car Wash Notes.

 - ii. As a condition to the Litt Loan, Car Wash III was required to pledge the Car Wash Notes and record an allonge to the Car Wash Notes requiring that the payment be made directly to the Litts and not to Car Wash III or Dykstra.

- c. The Shohed Group agreed to assume or pay off the Brodsky Loan in an amount of up to \$900,000
 - i. Between April 23, 2008 and May 29, 2008, Debtor borrowed approximately \$1,063,500 from BSI, LLC. This was through a series of loans. Some were to Dykstra, one to Car Wash III, and the final one on May 29, 2008 was a consolidated promissory note executed by both Dykstra and Car Wash III in the principal amount of \$1,063,500 (the "Brodsky Loan"). The Brodsky Loan matured on October 31, 2008. It carried an interest rate of 12% and a default interest rate of 24%. *It may not be important, but the Court is*

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Lenny Kyle Dykstra

Chapter 7

confused by the dates in that the final loan for \$5,000 was listed as being on May 29, 2008, but Exhibit 29 is labeled as being done simultaneously, but is dated May 5, 2008. Nonetheless, it is undisputed that the principal amount due under the Brodsky Loan is \$1,063,500.

ii. Car Wash III was to execute in favor of BSI a Pledge and Security Agreement to secure the Brodsky Loan, which included a deed of trust. *There is no copy of the Pledge and Security Agreement in evidence and no copy of a recorded Deed of Trust. Exhibit 29 does not refer to a Pledge and Security Agreement or a Deed of Trust. Thus the Court does not find that these were ever executed, although there was an apparent intent to do so.*

d. The Shohed Group agreed to pay Dykstra \$1.250 million: \$500,000 by September 8, 2008 [but if it looked like the agreement would not close, Shohed was to stop payment of the \$500,000] and \$750,000 on closing. . *(The Terms of the Pre-Payment Agreement are detailed in the Motion at pgs. 12-13. Also, see Uncontroverted Fact ("UF") #24.)*

12. The Shohed Group did not assume the Litt Loan or obtain the release of Dykstra's collateral. *A dispute exists as to whether this was due to actions by the Shohed Group or by Dykstra or the Litts. However, a settlement between the Shohed Group and the Litt Group was reached as set forth in Ex. 12 to the declaration of Scott Arditi.*

13. At the time of the bankruptcy, the Litt Lien remained on the Ladbrook Property. Ultimately the senior secured creditor obtained relief from the automatic stay and foreclosed on Ladbrook. It its

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Lenny Kyle Dykstra

Chapter 7

calculations as part of the motion for relief from stay, it included the Litt Loan.

14. On January 22, 2009, BSI filed a state court action against Debtor, Car Wash III, and the Shohed Group for money due on default, tortious interference with contract, and third party beneficiary.
15. On July 7, 2009, Debtor filed a voluntary Chapter 11 petition.
16. On August 11, 2009, the state court granted summary judgment in favor of BSI against Car Wash III. The judgment was entered on September 22, 2009. However, the Bankruptcy Court set the judgment aside as void due to a violation of the automatic stay.
17. On November 10, 2009, BSI filed its proof of claim in Dykstra's bankruptcy case – in the amount of \$1,327,285. In January 2010 the Shohed Group settled with Brodsky. BSI was paid in full under the settlement in an amount which exceeded the proof of claim by \$1,334,987. *Arditi Ex. 9, 10.*
18. On October 27, 2009, Debtor's bankruptcy case was converted to Chapter 7.
19. On May 10, 2010, the instant adversary proceeding was initiated. Trustee's Third Amended Complaint was filed on July 29, 2011. Its claims for relief include: 1) breach of contract; 2) fraudulent transfer under Sections 544, 548(a)(1)(A), Cal. Civ. Code Sections 3439.04, 3439.05, 3439.07, and 3439.09; 3) fraudulent transfer under Sections 544, 548(a)(1)(B), 3439.04, 3439.05, 3439.07, and 3439.09; 4) recovery of avoided transfer; 5) breach of contract-purchase and sale agreement; and 5) declaratory relief.
20. After August 28, 2008, the Debtor was unable to pay his debts as they came due. He also had insufficient capital. *Defendants deny only as to whether this was due to the Prepayment Agreement.*

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Lenny Kyle Dykstra

Chapter 7

The proposed fact links it to the date of the Prepayment Agreement ("subsequent to the execution of ...), but not to the cause of these financial issues. Thus the Court finds this is an undisputed fact on August 29, 2008 and thereafter Dykstra was unable to pay his debts as they came due and had insufficient capital.

21. Numerous creditors have filed proofs of unsecured claim in Debtor's bankruptcy.

DISPUTED FACTS

1. *There is a dispute as to whether the Pre-Payment Agreement ever closed or, if it did, whether the Shohed Group was excused from performance in that Dykstra failed to perform or due to some other action(s) by Dykstra.*
2. *Plaintiff asserts that the existence of the Litt Lien prevented the Debtor from refinancing Ladbroke and removed all equity in the property. The Court is aware that the Litt Lien contributed to the granting of relief from stay allowing the senior lien to foreclose, but cannot find that this was the sole reason that Debtor could not refinance.*
3. *Plaintiff contends that Debtor's intent in entering into the Prepayment Agreement was to defraud his creditors. The Shohed Group filed an Answer to the Trustee's Third Amended Complaint and a Counterclaim against the Trustee. In Paragraphs 31-35 of the Counterclaim, the Shohed Group alleges that Dykstra entered into the Prepayment Agreement for the purpose of defrauding his creditors. However, this contention was denied in the Answer to ¶ 85 of the Third Amended Complaint and the allegations in the Sixth and Seventh Claims for Relief in the Counterclaim are alternative to*

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Lenny Kyle Dykstra

Chapter 7

those in the Eighth Claim for Relief for negligent misrepresentation. Thus they are not binding admissions. The Court finds that this is a disputed issue of fact.

4. Debtor was not financially solvent between April 2008 and the date that he entered into the Prepayment Agreement. *The Shohed Group disputes this, but it also alleges in its Answer to the Third Amended Complaint that one of the false statements made by Dykstra was that he was financially solvent at the time of entering into the Prepayment Agreement. This is repeated in both the Seventh and Ninth Claims (fraud and negligent misrepresentation) and therefore is a fact that qualifies as judicial estoppel as to the time that the Prepayment Agreement was entered into. However, it is the burden of the Plaintiff to put forth evidence that supports its contentions. In the case the evidence is the report of Paul Shields. In Exhibit 30, Mr. Shields concludes that "it is my opinion that Mr. Dykstra was thinly solvent [as of August 28, 2008], and the amount of his solvency was approximately \$3.3 million." [Ex. 30, p.19].*
5. The consideration under the Prepayment Agreement that was actually paid by the Shohed Group is a disputed fact to be resolved after expert testimony at trial.
6. The reasonably equivalent value received by the Debtor from the Prepayment Agreement is a triable issue of fact.

EVIDENTIARY OBJECTIONS

Dykstra Declaration

All objections are overruled except as follows:

¶27

¶28 – the first sentence

¶33

Shields Declaration

BECAUSE THE PLAINTIFF AGREES THAT THERE IS A TRIABLE

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CONT... Lenny Kyle Dykstra

Chapter 7

ISSUE OF FACT AS TO FAIR EQUIVALENT VALUE, WHICH WILL INCLUDE HOW MUCH THE DEFENDANTS ACTUALLY PAID, THE ADMISSIBILITY OF THE SHIELDS DECLARATION IS NOT RELEVANT AT THIS TIME. NONETHELESS, HERE IS THE RULING THAT THE COURT WOULD MAKE ON THE OBJECTIONS:

As to references to Ex. 32 and Ex. 33, the Declaration gives a general statement that these are the documents that he created in connection with the Solvency Report (ex. 30) and the Value Report (ex. 31). Each report states that it has appendices that list the documents relied on, but they are not attached here. HAVE THESE REPORTS BEEN FILED ELSEWHERE IN THE CASE SO THAT WE HAVE A COMPLETE RECORD? They are dated 9/19/17, so probably not.

The documents in Ex. 32 and Ex. 33 are not independently admissible. They are merely what the expert seems to have relied on. Some he may have prepared and those would be admissible. But it is not clear what he created.

As to the qualifications of the declarant to be an expert witness, it is hard for the Court to take the objections seriously. I have never seen an expert be required to produce membership certificates, graduation diplomas, proof of attendance of seminars, etc. If the objecting party has a good faith basis for this objection, I want to see it. If not, this was filed in bad faith and will be overruled with an admonition.

As to the use of other professionals, it is a fair objection to require sufficient information as to whether the declarant supervised the work, reviewed it, and the level and amount of review that he did.

At to Ex. 30 and 31, these are expert's reports. They are being offered as a declaration and are admissible for this motion for summary judgment. It will be up to the Defendants to show that there is a triable issue of fact as to the conclusions drawn by this expert.

All other objections are overruled.

Van Kalsbeek Declaration

The objection is to the overall declaration and to specific parts. The Court notes that Ms. Van Kalsbeek does not identify copies of any specific records. But she also does not take the contents of those records. Thus, the objection is overruled and the Court accepts this as background information and not as an attempt to put specific documents or content into evidence.

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CONT... Lenny Kyle Dykstra

Chapter 7

¶1 – Sustained in that she does not specify when she became the tax preparer. This would only go to any specific tax return. As custodian of records, she can verify that a tax return was filed and provide a copy of that tax return. As controller, she can verify that the contents of the tax return are accurate and specify her role in providing that information to the tax preparer.

¶3 – Overruled in that she is not seeking to admit the records. However, if it is necessary to show that she is in possession of certain records, this part of the declaration would have to be modified to specify which records she has and who else is the custodian of records.

¶4 – Overruled.

¶5 – Partially sustained. To the extent that it indicates that she prepared or provided the information to prepare the 2008 tax return, she has personal knowledge that it is inaccurate as to the gains on stocks. She needs to clarify her role in preparation of that return.

¶6 – Sustained. There is no indication that she has personal knowledge of this or was involved in the preparation of the 3/08 personal financial statement.

¶7 - Sustained. There is no indication that she has personal knowledge of this.

¶8 - Sustained. There is no indication that she has personal knowledge of this.

Declaration of Leonard Shulman

Sustained. A title report is hearsay and not admissible. Further, under California law a preliminary title report has little, if any, value as to how title to real property is held. *In re Massrock, Inc.* 2016 WL 4039659 (9th Cir. BAP 2016). If the ownership of Ladbroke is an issue that cannot be dealt with by stipulation, you need to get a certified copy of the deed of transfer or a proper declaration of a title company as to an abstract of title.

ISSUES TO BE DETERMINED

- I. **Other than the issue of reasonably equivalent value, which the parties agree is a disputed issue of fact, should the Court find that for the Trustee on all other issue under 11 USC §548(a)?**

Because Paul Shields did not include the Car Wash Notes or the

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Prepayment Agreement in his analysis of solvency (ex. 30 to his declaration) and he found that on the date of the transfer the Debtor was "thinly solvent" under the balance sheet test required by 11 USC §101(32)(A), do the Defendants prevail under §548(a)(1)(B) whether there was reasonably equivalent value or not?

- II. **Other than the issue of reasonably equivalent value, which the parties agree is a disputed issue of fact, should the Court find that for the Trustee on all other issue under Civil Code §3439.04(a)?**
- III. **Other than the issue of reasonably equivalent value, which the parties agree is a disputed issue of fact, should the Court find that for the Trustee on all other issue under Civil Code §3439.05?**
- IV. **Are the Defendants' Second, Third, Fourth, Sixth and Seventh Counterclaims barred by the applicable statute of limitations?**
- V. **Does the Trustee have standing to avoid or recover a fraudulent transfer because he never brought a separate motion to preserve his avoidance powers nunc pro tunc after substantive consolidation was granted in December 2010?**
- VI. **Does the Trustee have standing to sue third parties on an alter ego theory on behalf of the Estate's creditors?**
- VII. **Does Dykstra have an interest in the Car Wash III Notes and, if not, does this prevent the Trustee from bringing his avoidance claims?**
- VIII. **Should the Defendants' Motion to Dismiss the Second, Third, and Fourth Claim for Relief be granted?**

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CONT... Lenny Kyle Dykstra

Chapter 7

Debtor(s):

Lenny Kyle Dykstra

Represented By

Michael T Pines - DISBARRED -
Moshe Mortner

Defendant(s):

Lenny Dykstra's Car Wash Corp., a

Pro Se

South Corona Center, LP

Represented By

Ramin Azadegan

Lenny Dykstra's Car Wash III, LP

Pro Se

Bahram Khadavi

Represented By

Ramin Azadegan

Kia Saidnia

Represented By

Ramin Azadegan

Karine Ardit

Represented By

Ramin Azadegan

Simone Shouhed

Represented By

Ramin Azadegan

Shahram Shouhed

Represented By

Ramin Azadegan

Hamid Shohed

Represented By

Ramin Azadegan

Scott Ardit

Represented By

Ramin Azadegan

Farshid Shohed

Represented By

Ramin Azadegan

Shahriar Shouhed

Represented By

Ramin Azadegan

National Car Washes, Inc.

Represented By

Ramin Azadegan

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CONT... Lenny Kyle Dykstra

Chapter 7

Corona Petroleum, Inc. Represented By
Ramin Azadegan

Corona Lane Collection, I, LP Represented By
Ramin Azadegan

South Corona Auto Spa Property, Represented By
Ramin Azadegan

South Corona Auto Spa, LP Represented By
Ramin Azadegan

South Corona 76 Property, LLC Represented By
Ramin Azadegan

South Corona 76, LP Represented By
Ramin Azadegan

Simi Auto Spa Property, LLC Represented By
Ramin Azadegan

Simi Auto Spa Center, LP Represented By
Ramin Azadegan

Rafie O. Shouhed Represented By
Ramin Azadegan

Movant(s):

DAVID K GOTTLIEB Represented By
Irena L Norton
Robert E Huttenhoff
Ryan D ODea

DAVID K GOTTLIEB Pro Se

Plaintiff(s):

DAVID K GOTTLIEB Represented By
Irena L Norton
Robert E Huttenhoff
Ryan D ODea

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CONT... Lenny Kyle Dykstra

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Represented By

Howard M Ehrenberg

SulmeyerKupetz

Irena L Norton

Robert E Huttenhoff

Victor A Sahn

Leonard M Shulman

Ryan D ODea

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1:09-18409 Lenny Kyle Dykstra

Chapter 7

Adv#: 1:10-01183 GOTTLIEB v. Simi Auto Spa Center, LP et al

- #21.00** Pretrial Conference on Trustees Third Amended Complaint for:
1) Breach of Contract;
2) Fraudulent Transfer [11 USC 544, 548(a)(1)(A);
California Civil Code 3439.04, 3439.05, 3439.07, 3439.09];
3) Fraudulent Transfer [11 USC. 544, 548 (a)(1)(B);
California Civil Code 3439.04, 3439.05, 3439.07, 3439.09];
4) Recovery of Avoided Transfer [11 USC 550];
5) Breach of Contract Purchase and Sale Agreement;
and 6) Declaratory Relief

fr. 9/27/11, 12/13/11, 1/3/12, 1/24/12, 5/15/12,
9/25/12, 12/11/12, 2/12/13, 6/4/13 per stip, 8/6/13,
10/22/13, 5/13/14, 7/14/14, 12/16/14; 3/31/15,
10/20/15, 1/26/16; 4/26/16, 8/2/16; 11/15/16, 12/20/16,
3/14/17, 3/21/17, 6/27/17; 11/14/17

Docket 86

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Due to the complexity of a few of the issues and the fact that I have no law clerks to assist me and have other matters on calendar, it will take a while for me to complete the ruling on the motion for summary judgment and motion to dismiss. Unless I grant the motion to dismiss, we know that there will be an evidentiary hearing on the issue of reasonably equivalent value. I don't think that I will need a pretrial order on that since it has been fully briefed in the msj and the expert reports are in. Let's continue this to a status conference on March 27, 2018 at 9:00 a.m. If I have completed my ruling on the msj/motion to dismiss by that time, we can set the trial date. I think it will be a one day trial.

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Chapter 7

3rd Party Defendant(s):

M.R.R., Inc. dba All Valley Trustee	Pro Se
Teresa Litt	Pro Se
David A. Litt	Pro Se
David A. Litt and Teresa Litt, in	Pro Se

3rd Party Plaintiff(s):

South Corona Center, LP	Represented By Ramin Azadegan
South Corona Auto Spa, LP	Represented By Ramin Azadegan
South Corona Auto Spa Property,	Represented By Ramin Azadegan
South Corona 76, LP	Represented By Ramin Azadegan
South Corona 76 Property, LLC	Represented By Ramin Azadegan
Simi Auto Spa Property, LLC	Represented By Ramin Azadegan
Simi Auto Spa Center, LP	Represented By Ramin Azadegan
Shahriar Shouhed	Represented By Ramin Azadegan
Shahram Shouhed	Represented By Ramin Azadegan
Simone Shouhed	Represented By Ramin Azadegan
Hamid Shohed	Represented By Ramin Azadegan

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CONT... Lenny Kyle Dykstra

Chapter 7

Rafie O. Shouhed
Represented By
Ramin Azadegan

Scott Arditi
Represented By
Ramin Azadegan

Corona Lane Collection, I, LP
Represented By
Ramin Azadegan

Corona Petroleum, Inc.
Represented By
Ramin Azadegan

Karine Arditi
Represented By
Ramin Azadegan

National Car Washes, Inc.
Represented By
Ramin Azadegan

Kia Saidnia
Represented By
Ramin Azadegan

Farshid Shohed
Represented By
Ramin Azadegan

Bahram Khadavi
Represented By
Ramin Azadegan

Counter-Claimant(s):

Shahriar Shouhed
Represented By
Ramin Azadegan

South Corona Center, LP
Represented By
Ramin Azadegan

South Corona Auto Spa, LP
Represented By
Ramin Azadegan

South Corona Auto Spa Property,
Represented By
Ramin Azadegan

South Corona 76, LP
Represented By
Ramin Azadegan

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CONT... Lenny Kyle Dykstra Chapter 7

South Corona 76 Property, LLC Represented By
Ramin Azadegan

Simi Auto Spa Property, LLC Represented By
Ramin Azadegan

Simi Auto Spa Center, LP Represented By
Ramin Azadegan

Shahram Shouhed Represented By
Ramin Azadegan

Simone Shouhed Represented By
Ramin Azadegan

Hamid Shohed Represented By
Ramin Azadegan

Farshid Shohed Represented By
Ramin Azadegan

Rafie O. Shouhed Represented By
Ramin Azadegan

Kia Saidnia Represented By
Ramin Azadegan

National Car Washes, Inc. Represented By
Ramin Azadegan

Bahram Khadavi Represented By
Ramin Azadegan

Corona Petroleum, Inc. Represented By
Ramin Azadegan

Corona Lane Collection, I, LP Represented By
Ramin Azadegan

Scott Arditi Represented By
Ramin Azadegan

Karine Arditi Represented By

**United States Bankruptcy Court
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CONT... Lenny Kyle Dykstra

Chapter 7

Ramin Azadegan

Counter-Defendant(s):

DAVID K GOTTLIEB

Pro Se

Debtor(s):

Lenny Kyle Dykstra

Represented By
Michael T Pines - DISBARRED -
Moshe Mortner

Defendant(s):

South Corona Center, LP

Represented By
Ramin Azadegan

Lenny Dykstra's Car Wash III, LP

Pro Se

Bahram Khadavi

Represented By
Ramin Azadegan

Kia Saidnia

Represented By
Ramin Azadegan

Karine Arditi

Represented By
Ramin Azadegan

Simone Shouhed

Represented By
Ramin Azadegan

Shahram Shouhed

Represented By
Ramin Azadegan

Lenny Dykstra's Car Wash Corp., a

Pro Se

Hamid Shohed

Represented By
Ramin Azadegan

Farshid Shohed

Represented By
Ramin Azadegan

Scott Arditi

Represented By
Ramin Azadegan

**United States Bankruptcy Court
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CONT... Lenny Kyle Dykstra

Chapter 7

Corona Petroleum, Inc.

Represented By
Ramin Azadegan

Shahriar Shouhed

Represented By
Ramin Azadegan

National Car Washes, Inc.

Represented By
Ramin Azadegan

Corona Lane Collection, I, LP

Represented By
Ramin Azadegan

South Corona Auto Spa Property,

Represented By
Ramin Azadegan

South Corona Auto Spa, LP

Represented By
Ramin Azadegan

South Corona 76 Property, LLC

Represented By
Ramin Azadegan

South Corona 76, LP

Represented By
Ramin Azadegan

Simi Auto Spa Property, LLC

Represented By
Ramin Azadegan

Simi Auto Spa Center, LP

Represented By
Ramin Azadegan

Rafie O. Shouhed

Represented By
Ramin Azadegan

Plaintiff(s):

DAVID K GOTTLIEB

Represented By
Irena L Norton
Robert E Huttenhoff

Successor Trustee(s):

David K Gottlieb, Chapter 7 Trustee

Represented By
Irena L Norton

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CONT... Lenny Kyle Dykstra

Chapter 7

Robert E Huttenhoff

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Howard M Ehrenberg
SulmeyerKupetz
Irena L Norton
Robert E Huttenhoff
Victor A Sahn
Leonard M Shulman

Arturo Cisneros (TR)

Represented By
Irena L Norton

David K Gottlieb

Represented By
Robert E Huttenhoff

US Trustee(s):

United States Trustee (SV)

Pro Se

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Hearing Room 303

10:00 AM

1:09-19088 Tariq Kahn Afridi and Elizabeth Rose Afridi

Chapter 7

#22.00 Status Conference Hearing

fr. 8/29/17

Docket 30

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Per the status report filed on 12/27/17, the Trustee is receiving payments from the Circuit City bankruptcy estate and he does not know when these will cease. Continue without appearance to June 19, 2018 at 10:00 a.m.

Party Information

Debtor(s):

Tariq Kahn Afridi

Represented By
John D Monte

Joint Debtor(s):

Elizabeth Rose Afridi

Represented By
John D Monte

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Brad D Krasnoff (TR)

**United States Bankruptcy Court
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Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

1:09-19105 Francisco Xavier Pedroza and Jody Lynn Pedroza

Chapter 7

#23.00 Trustee's Motion for Order Disallowing
Claim of Exemption

fr. 6/21/16, 8/16/16, 10/25/16, 2/7/17, 5/16/17; 8/22/17,
11/28/17

Docket 26

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

On 12/11/17 the Court entered its order approving the compromises, employing special counsel, and approving the payment of contingent fee and expenses to special counsel. On 1/22/18 the Court approved the order as to the compromise. There is nothing left to resolve as to this motion. Off calendar. No appearance necessary.

prior tentative ruling (11/28/17)

Chapter 7 Trustee's Motion to Approve Compromise [dkt. 56] was filed on 10/27/17. Thereafter, Trustee filed a Motion to (1) Approve Compromises of Controversies; (2) Employ Special Counsel; and (3) Pay Contingent Fee and Expenses of Special Counsel. [dkt. 58]

Trustee seeks approval of the settlements entered into by Debtor Jody Pedroza concerning a products liability claim against Boston Scientific and Ethicon. The settlements provide that Debtor shall receive \$78,727.68 from Boston Scientific and \$51,915.62 from Ethicon.

Debtors and Trustee have now reached a compromise concerning Trustee's Objection to Debtors' claim of exemption of these product liability claims. The compromise provides that the estate shall retain \$28,500 of the net settlement proceeds. Furthermore, Debtors' law firms involved in the litigation will be paid their contingency fees and their expenses. The balance of any settlement funds will then go to the Debtors.

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CONT... Francisco Xavier Pedroza and Jody Lynn Pedroza

Chapter 7

Trustee believes the settlement is fair, equitable and reasonable for the following reasons (1) success of litigation of the claim was highly uncertain since less than 20 cases of thousands of similar cases have been tried; (2) litigation would have been lengthy, complicated, and costly; and the (3) the best interest of the creditors is achieved since the estate would not have to incur any litigation costs and since Trustee could make a 20% distribution to allowed claimants.

Finally, employment of Debtors' litigation counsel, Clark Love and Hutson and Lee Murphy Law Firm and payment of their contingency fee is appropriate based on the experience of the counsel.

As the settlement is in the best interest of the estate and since Trustee does not expect any opposition to the compromise, the Trustee requests the Court grant the Motion and approve the compromise.

As of 11/27/17, no opposition received.

Proposed Ruling: The Court finds the compromise is in the best interest of the estate as the Trustee will be able to make a reasonable distribution to the claimants, with minimal amount of cost to the estate. Motion granted.

prior tentative (8/22/17)

Continued by stipulation to Nov. 28, 2017 at 10:00 a.m.

prior tentative (5/16/17)

This has been continued from time-to-time to allow the parties to discuss settlement. They have now filed a stipulation to continue once again so that they can determine the amount of claims, which is an important issue in their settlement discussions. Continued without appearance to August 22, 2017 at 10:00 a.m.

Please note that on 5/12/17 the court received a letter from the Pedrozas setting forth their factual contentions as to the claims objection. It does not appear that this was sent to their attorney or to the attorney for the Trustee.

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CONT... Francisco Xavier Pedroza and Jody Lynn Pedroza

Chapter 7

The Court is placing it on the docket and sending it to both counsel.

prior tentative ruling (6/21/16)

This revolves around a personal injury claim that the Debtor has asserted for product liability. When the bankruptcy was first filed, schedules B and C did not reveal such a claim.

In July 2015 there was a complaint filed in the US District Court in West Virginia (2:15-cv-09785), asserting that the devices at issue were implanted prior to the petition date, specifically in 2008 and 2004 (Ex. B). This is for a prolapsed bladder.

On April 22, 2016, Debtors filed their amended schedules B and C to list two personal injury lawsuits and claim them as exempt. The amended schedules value this claim at \$138,727 (anticipated settlement against Boston Scientific Corp for \$78,727 and anticipated settlement against Johnson & Johnson for \$60,000). The entire amount is claimed as exempt.

\$43,969.20 of claims were previously filed. When the case was reopened, a new bar date of 7/18/16 was set.

The Motion

The court may disallow a claim of exemption if the debtor engaged in bad faith. This is proven by a preponderance of the evidence and is determined by examining the totality of the circumstances. One common example of bad faith is where the debtor conceals assets. To determine whether concealment is intentional, the court looks at the facts and circumstances of the case including whether the non-disclosure resulted from the debtor's reckless disregard for the truth and the accuracy of information in the bankruptcy filings. Later disclosure may be denied due to "unclean hands."

The debtor cannot wait for along period of time after s/he becomes aware of the claim. Here the lawsuit was filed nearly a year before the amended schedules.

Even if the Court does not find bad faith by concealment, the exemptions should be disallowed in light of prejudice to the estate. Here the Debtors had initially claimed exemptions under CCP §703 and on that basis the Trustee filed a report of no distribution to the detriment of the Debtors' creditors who had already filed claims. Now the Debtors has trying to get a second bite at the apple by changing to CCP §704.

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CONT... Francisco Xavier Pedroza and Jody Lynn Pedroza Chapter 7

Under FRBP 4003, this motion is timely in that the amended schedule C was filed on 4/22/16 and this objection was filed on 5/20/16.

No opposition received, but there was a stipulation to continue this to 8/16/16.

Proposed Ruling:

The personal injury was before the petition date and, in fact, the remedial surgery appears to have taken place in the year before the petition was filed. For some reason the complaint was not filed until 6 years later, which would appear to be long after the statute of limitations had run. So there is something else happening here that is not clear. However, it is the duty of the Debtors to clarify and explain and they have not done so.

According to the amended schedules filed on 4/22/16, the Debtors are represented by Steven Diamond, Chang & Diamond, 9089 Clairemont Mesa Blvd., Suite 110, San Diego 92123. This objection was served by electronic means on Steven J. Diamond (steve@thebklawyers.com) and by mail on each of the debtors at 29121 Marilyn Dr., Canyon Country, CA 91387. This is the proper email address for counsel and there is no indication that the Debtors have moved.

Sustain the objection.

Party Information

Debtor(s):

Francisco Xavier Pedroza

Represented By
Charles J Brash
Steven J Diamond

Joint Debtor(s):

Jody Lynn Pedroza

Represented By
Charles J Brash
Steven J Diamond

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Carmela Pagay

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

1:09-25922 Adam Cohen and Judith Cohen

Chapter 7

#24.00 Status Conference Hearing

fr. 8/29/17

Docket 56

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Per the status report, payments are still being received and the final one should be in about 5 months. Continue without appearance to 6/19/18 at 10:00 a.m.

Party Information

Debtor(s):

Adam Cohen

Represented By
Asher A Levin

Joint Debtor(s):

Judith Cohen

Represented By
Asher A Levin

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Scott Lee
Amy L Goldman
Michael T Delaney
Amy L Goldman

**United States Bankruptcy Court
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Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

1:10-15070 60th & K, LLC

Chapter 11

#25.00 Post Confirmation Status Conference

fr. 12/14/10, 3/8/10, 9/20/11, 12/13/11, 1/3/12, 4/10/12
7/3/12, 10/9/12, 1/15/13, 4/9/13, 7/9/13, 11/19/13, 2/4/14,
3/25/14, 4/22/14, 6/3/14, 9/2/14, 11/10/14, 2/10/15, 3/10/15,
4/14/15, 5/26/15, 7/21/15, 9/29/15, 11/17/15, 12/22/15,
2/9/16; 4/5/16; 6/21/16, 10/11/16; 12/20/16; 5/2/17, 9/12/17

Docket 1

***** VACATED *** REASON: Order entered cont. to 3/27/18, @9am (eg)**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Continued to 3/27/17 at 9:00 a.m.

prior tentative ruling (9/12/17):

Per the status report filed on 9/6, the Debtor is current under the Plan and the stipulation with LACTTC. Although the stream of payments has commenced, the Debtor thinks that it is too early to seek a final decree. Discharge occurs on substantial consummation. The payments to unsecured creditors will go for 12 years from the effective date (to 2028). Is there any reason to keep this case open for that long?

Please think about this. Continue the status conference without appearance to Jan. 23, 2018 at 10:00 a.m.

prior tentative ruling (5/2/17)

The Debtor and the LACTTC have reached a stipulation on the treatment of the LACTTC claim that takes care of the additional amounts from the date of filing to the effective date. All payments under the plan appear to be current.

Continue without appearance to 9/12/17 at 10:00 a.m.

prior tentative ruling (12/20/16)

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10:00 AM

CONT... 60th & K, LLC

Chapter 11

Per the status report filed 12/16, the Debtor is current under the plan.
Continue without appearance to 5/2/17 at 10:00 a.m.

prior tentative ruling (10/11/6)

Per the status report, the effective date of the Plan is 11/5/16. The Debtor has sufficient cash to comply with the Plan and pay its post-confirmation expenses.

Party Information

Debtor(s):

60th & K, LLC

Represented By
Raymond H Aver

Movant(s):

60th & K, LLC

Represented By
Raymond H Aver

**United States Bankruptcy Court
Central District of California
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Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

#26.00 Motion for relief from stay

IAN CAMPBELL

Docket 58

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Per the Court's order, Mr. Campbell filed this motion for relief from stay to proceed with a state court matter. Proof of service appears in order. No opposition has been received as to 1/17. Grant. The Court will do the order.

Party Information

Debtor(s):

Glen E Pyle

Pro Se

Movant(s):

Ian Campbell

Represented By
Timothy R Pomeroy
Jason T Yu

Trustee(s):

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01181 Campbell v. Pyle

#27.00 Status Conference re: Complaint for
Determination that Debt is Nondischargeable
and/or to Recover Money

fr. 5/11/11, 6/22/11, 10/4/11, 1/24/12, 2/14/12,
4/24/12, 6/19/12, 9/11/12, 10/2/12, 11/6/12,
2/12/13, 3/19/13, 8/27/13, 8/27/13, 11/19/13,
2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14,
12/16/14, 3/10/15; 5/12/15; 6/2/15, 9/1/15,
9/8/15, 11/17/15; 1/12/16, 3/1/16, 6/7/16,
8/2/16, 9/27/16, 10/11/16, 1/17/17, 2/21/17,
3/28/17, 1/14/17, 12/19/17

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Mr. Campbell has filed the motion for relief from stay to complete the superior court case. Continue this status conference to March 27, 2018 at 9:00 a.m. to allow him to obtain his judgment in the superior court.

prior tentative ruling (12/19/17)

I have been in contact with Judge. Hammock of the Superior Court. He advises me that all that is left to do in his case is for Mr. Campbell to file a motion for default judgment. The automatic stay is preventing this.

To move that case forward, Mr. Campbell is to file a motion in this court for relief from the automatic stay. This is to be filed and served no later than December 26. It is to be served by mail and by email on Mr. Pyle. The hearing will be on January 23, 2018 at 10:00 a.m. in courtroom 303. Mr. Campbell is to use the mandatory court form: F 4001-1.RFS.NONBK.MOTION.

**United States Bankruptcy Court
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Judge Geraldine Mund, Presiding
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Tuesday, January 23, 2018

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10:00 AM

CONT... Glen E Pyle

Chapter 7

This is available on the Court website at www.cacb.uscourts.gov/forms/local_bankruptcy_rules_forms. Or you can obtain a copy at the filing window in the clerk's office.

prior tentative ruling (11/14/17)

The Court advised Mr. Campbell of the continuance of the Berry v. Pyle case. He does wish to appear on 11/14. The Court has called Mr. Aver's office and asked them to contact Mr. Pyle (who is pro se in this adversary proceeding) to advise him that the hearing on 11/14 is going forward and that Mr. Pyle is to appear on the phone or in person and instruct him on how to use Court Call. The Court was notified that he also wishes to appear.

What is the status of the state court matter?

prior tentative ruling (3/28/17)

This adversary proceeding has been trailing the Berry v. Pyle one, but it has some different issues. How does Mr. Campbell wish to proceed?

prior tentative ruling (1/17/17)

I believe that Mr. Campbell was trying to obtain counsel. It is best to keep this together with Berry v. Pyle. Therefore continue it without appearance to 2/21/17 at 10:00 a.m. when I have a hearing on the motion for summary judgment in the Berry v. Pyle case.

prior tentative ruling (8/2/16)

Mr. Campbell is now representing himself. How does he wish to proceed to get this ready for trial?

prior tentative ruling (3/1/16)

Per the status report filed by Plaintiff on 2/23/16, discovery is not complete. Plaintiff wants to take Mr. Pyle's deposition and audit the records.

This was trailing the Berry v. Pyle matter, but given Mr. Berry's health, I think that it should go forward alone and complete the discovery. Feel free to appear by phone at the status conference and let's get some dates to complete discovery. Please advise Mr. Pyle, who is not represented by

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10:00 AM

CONT... Glen E Pyle

Chapter 7

counsel in this case, to appear in person or by phone.

prior tentative ruling (1/12/16)

This has nothing to do with Mr. Berry's health and Mr. Pyle is not represented by counsel. The 1/5/16 status report said that plaintiff will be ready for trial on 2/1. He figures 2-3 days. Let's set a trial date. Possible dates when there is a courtroom available are Feb. 16-17 and Mar. 23-24.

prior tentative ruling (9/8/15)

This has been trailing Berry v. Pyle. On 8/18/18 Plaintiff filed a status report. He is ready to go to trial in February 2016. He needs another 4-6 months to complete discovery, which includes Mr. Pyle's deposition and an audit of the records.

In htis case Mr. Pyle is not represented by counsel. So let's get a deposition date and move forward.

prior tentative ruling (3/10/15)

Mediation set for 3/24/15. Continue without appearance to 5/12/15 at 1:00 a.m

prior tentative ruling (10/7/14)

The mediation has been delayed. Continue without appearance to 12/16/14 at 10:00 a.m.

prior tentative ruling (8/5/14)

The Berry v. Pyle matter is scheduled for a settlement conference before Judge Ryan on 9/22/14. Is this case part of the settlement conference? If so, continue without appearance to 10/7/14 at 10:00 a.m. If not, the status report filed by Plaintiff on 7/21 requests mediation. How do you wish to proceed?

prior tentative ruling (4/22/14)

On 4/8/14, counsel for plaintiff filed a status report. He believes that he will be ready for trial in 6 months. There is still discovery to be done, including completing Debtor's deposition. A mediation will take place in May or June.
Continue without appearance to August 5, 2014 at 10:00 a.m.

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Tuesday, January 23, 2018

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10:00 AM

CONT... Glen E Pyle

Chapter 7

prior tentative ruling (3/11/14)

This complaint is both under §523 and §727 as well as §§547 and 548. This has been trailing the Berry v. Pyle adversary proceeding. Mr. Mendoza attended the 2/10/14 deposition of Mr. Pyle, which is a joint deposition in both this case and the Berry v. Pyle case. Pyle is not represented by counsel in this adversary proceeding.

Mr. Mendoza, should this continue to trail the Berry adversary or are you ready to go forward on your own?

prior tentative ruling (4/24)

The parties have stipulated that plaintiff will have until 4/20 to file a Second Amended Complaint. A second amended complaint was filed on 4/20. Per the status report, the parties think that they need 4-5 months to complete discovery. The parties wish to mediate. Plaintiff has no co-counsel and may wish to propound more discovery and seek relief from stay as to certain trust assets.

Continue the status conference without appearance to June 19 at 10:00 a.m.

This will allow sufficient time for there to be a response to the second amended complaint and for new co-counsel to move forward. In the meantime, please complete a mediation order since it often takes weeks to schedule a mediation.

prior tentative ruling (2/14)

Per the status report filed on 1/24, the parties feel that they will not be ready for trial until late in 2012. Set a discovery cutoff date of 7/30/12. Although neither party wants mediation at this time, plaintiff's counsel is willing to attend mediation.

As of 2/12 there is no response to the amended complaint. What is the status of that? When do the parties think that mediation might be beneficial?

prior tentative ruling (1/24)

An answer was filed on 7/15. Plaintiff filed an amended complaint on 1/12, but this was done without leave to amend.

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Central District of California
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Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

CONT... Glen E Pyle

Chapter 7

Counsel, in the future please confer with knowledgeable bankruptcy counsel before filing things in bankruptcy court. Your original cover sheet indicated that this was only a complaint to recover money under §§547 and 548. That is incorrect. The original complaint is under §523 and §727 (although that is not mentioned on the caption) and may include §§547 and 548 (although the uploaded copy has some pages missing, so I can't tell for sure). The amended complaint has all of these claims for relief. The court picked up that there was a §727 claim, but we should not have to review the complaint to do this.

prior tentative ruling (10/4)
Nothing further received as of 10/2.

prior tentative ruling (6/22)
As of 5/9 there has been no return on service on the summons. The plaintiff has counsel. There is no status report as of 5/8. If there is no appearance at the 5/11 hearing, I will issue and OSC re: dismissal for failure to prosecute.

Party Information

Attorney(s):

Richard S. Singer	Pro Se
Klinedinst PC	Represented By Hartford O Brown

Debtor(s):

Glen E Pyle	Pro Se
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Defendant(s):

Glen Pyle	Pro Se
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Plaintiff(s):

Ian Campbell	Pro Se
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**United States Bankruptcy Court
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10:00 AM

CONT... Glen E Pyle

Chapter 7

Trustee(s):

Amy L Goldman (TR)

Represented By

Amy L Goldman

Amy L Goldman (TR)

Amy L Goldman (TR)

Pro Se

US Trustee(s):

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

1:13-12220 Bethel Healthcare, Inc.

Chapter 11

#28.00 Application for Compensation (1) Fourth Interim and Final Application For Allowance of Attorneys Fees and Reimbursement of Expenses in Connection with Services Rendered and Expenses Incurred by Venable LLP as General Insolvency Counsel For the Debtor for the Period of October 1, 2016 Through January 2, 2018; and (2) Final Approval of Compensation and Reimbursement of Expenses From April 2, 2013 Through September 30, 2016 (Previously Approved on an Interim Basis); Period: 10/1/2016 to 1/2/2018, Fee: \$90209.00, Expenses: \$7045.26, for Bethel Healthcare, Inc., Debtor's Attorney, Period: 10/1/2016 to 1/2/2018, Fee: \$90209.00, Expenses: \$7045.26.

Docket 735

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

This concerns the fees for Bethel. Approve as requested. The order will NOT be signed until the Henry adversary matter -including the crossclaim - has been resolved. See Emma Gonzalez at 818-587-2032.

If you submit on this tentative ruling, no appearance is necessary. If you choose to appear and the final ruling is in conformance with the tentative ruling, no additional fees will be allowed for this appearance. If the trustee's firm is representing the trustee, no attorney's fees will be allowed for an appearance on this matter, as the trustee would be expected to be present as part of the trustee's duties.

THE TRUSTEE/DEBTOR IN POSSESSION IS TO NOTIFY ALL PROFESSIONALS OF THIS TENTATIVE RULING.

Party Information

Debtor(s):

Bethel Healthcare, Inc.

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

CONT... Bethel Healthcare, Inc.

Chapter 11

Hamid R Rafatjoo
Hamid R Rafatjoo
Ashley M McDow
Michael T Delaney
Jennifer L Nassiri

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

1:13-12220 Bethel Healthcare, Inc.

Chapter 11

#29.00 Application for Compensation (1)Fourth Interim and Final Application For Allowance of Attorneys Fees and Reimbursement of Expenses in Connection with Services Rendered and Expenses Incurred by Venable LLP as General Insolvency Counsel For the Debtor for the Period of October 1, 2016 Through January 2, 2018; and (2) Final Approval of Compensation and Reimbursement of Expenses From April 2, 2013 Through September 30, 2016 (Previously Approved on an Interim Basis);
Period: 10/1/2016 to 1/2/2018, Fee: \$66434.00, Expenses: \$599.50.

Docket 736

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

This concerns Corinthian. Approve as requested. The order will NOT be signed until the Henry adversary matter -including the crossclaim - has been resolved. See Emma Gonzalez at 818-587-2032.

If you submit on this tentative ruling, no appearance is necessary. If you choose to appear and the final ruling is in conformance with the tentative ruling, no additional fees will be allowed for this appearance. If the trustee's firm is representing the trustee, no attorney's fees will be allowed for an appearance on this matter, as the trustee would be expected to be present as part of the trustee's duties.

THE TRUSTEE/DEBTOR IN POSSESSION IS TO NOTIFY ALL PROFESSIONALS OF THIS TENTATIVE RULING.

Party Information

Debtor(s):

Bethel Healthcare, Inc.

Represented By
Hamid R Rafatjoo
Hamid R Rafatjoo

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

CONT... Bethel Healthcare, Inc.

Chapter 11

Ashley M McDow
Michael T Delaney
Jennifer L Nassiri

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

1:13-12220 Bethel Healthcare, Inc.

Chapter 11

#30.00 Fourth And Final Fee Application Of Arent Fox LLP,
Counsel To The Official Committee Of Unsecured
Creditors, For Allowance Of Compensation And
Reimbursement Of Expenses

Period: 5/10/2013 to 12/28/2017

Fees: \$636568.50 Expenses: \$17253.41

Docket 733

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

This concerns Bethel. Approve as requested. The order will NOT be signed until the Henry adversary matter -including the crossclaim - has been resolved. See Emma Gonzalez at 818-587-2032.

If you submit on this tentative ruling, no appearance is necessary. If you choose to appear and the final ruling is in conformance with the tentative ruling, no additional fees will be allowed for this appearance. If the trustee's firm is representing the trustee, no attorney's fees will be allowed for an appearance on this matter, as the trustee would be expected to be present as part of the trustee's duties.

THE TRUSTEE/DEBTOR IN POSSESSION IS TO NOTIFY ALL PROFESSIONALS OF THIS TENTATIVE RULING.

Party Information

Debtor(s):

Bethel Healthcare, Inc.

Represented By

Hamid R Rafatjoo

Hamid R Rafatjoo

Ashley M McDow

Michael T Delaney

Jennifer L Nassiri

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

CONT... Bethel Healthcare, Inc.

Chapter 11

Movant(s):

Official Committee Of Unsecured

Represented By
Andy Kong
Aram Ordubegian
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

1:13-12220 Bethel Healthcare, Inc.

Chapter 11

#31.00 Fourth And Final Fee Application Of Arent Fox LLP,
Counsel To The Official Committee Of Unsecured
Creditors, For Allowance Of Compensation And
Reimbursement Of Expenses

Period: 5/10/2013 to 12/28/2017
Fees: \$192087 Expenses: \$870.37

Docket 734

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

This concerns Corinthian. Approve as requested. The order will NOT be signed until the Henry adversary matter -including the crossclaim - has been resolved. See Emma Gonzalez at 818-587-2032.

If you submit on this tentative ruling, no appearance is necessary. If you choose to appear and the final ruling is in conformance with the tentative ruling, no additional fees will be allowed for this appearance. If the trustee's firm is representing the trustee, no attorney's fees will be allowed for an appearance on this matter, as the trustee would be expected to be present as part of the trustee's duties.

THE TRUSTEE/DEBTOR IN POSSESSION IS TO NOTIFY ALL PROFESSIONALS OF THIS TENTATIVE RULING.

Party Information

Debtor(s):

Bethel Healthcare, Inc.

Represented By
Hamid R Rafatjoo
Hamid R Rafatjoo
Ashley M McDow
Michael T Delaney
Jennifer L Nassiri

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

CONT... Bethel Healthcare, Inc.

Chapter 11

Movant(s):

Official Committee Of Unsecured

Represented By
Andy Kong
Aram Ordubegian
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

1:13-12220 Bethel Healthcare, Inc.

Chapter 11

Adv#: 1:15-01060 The Official Committee of Unsecured Creditors v. Henry et al

#32.00 Status Conference re: Complaint

fr. 6/2/15, 9/1/15; 11/17/15, 3/1/16, 6/7/16,
8/2/16, 10/11/16; 11/15/16, 2/21/17, 5/16/17; 7/25/17,
10/17/17

Docket 1

Courtroom Deputy:

Tentative Ruling:

This judgment against Henry was sold. Did the judgment include the other defendants. Also, there is still a problem with the cross-claim. We cannot close this adversary complaint until these matter are resolved. Please talk to Emma Gonzalez at 818-587-2832.

Party Information

Debtor(s):

Bethel Healthcare, Inc.

Represented By

Hamid R Rafatjoo

Hamid R Rafatjoo

Ashley M McDow

Michael T Delaney

Defendant(s):

Susan Henry

Pro Se

Randy Henry

Pro Se

Richard Brenner

Pro Se

Genesis Healthcare Center, Inc.

Pro Se

Genesis Healthcare Management,

Pro Se

Genesis Healthcare Group, Inc.

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

CONT... Bethel Healthcare, Inc.

Chapter 11

Ephesian Wellness Center, Inc.

Pro Se

Interested Party(s):

MUFG Union Bank, N.A.

Represented By
Isabelle L Ord

Plaintiff(s):

The Official Committee of

Represented By
Andy Kong
M Douglas Flahaut

US Trustee(s):

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

1:13-12220 Bethel Healthcare, Inc.

Chapter 11

Adv#: 1:15-01060 The Official Committee of Unsecured Creditors v. Henry et al

#33.00 Status Conference re: Crossclaim by Richard Brenner
against Genesis Healthcare Center, Inc., Genesis
Healthcare Group, Inc., Randy Henry, Susan Henry

fr. 8/30/16, 10/11/16; 11/15/16, 2/21/17, 5/16/17; 7/25/17,
10/17/17

Docket 15

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

See calendar #6.

Party Information

Debtor(s):

Bethel Healthcare, Inc.

Represented By
Hamid R Rafatjoo
Hamid R Rafatjoo
Ashley M McDow
Michael T Delaney

Defendant(s):

Susan Henry

Pro Se

Randy Henry

Pro Se

Richard Brenner

Represented By
Scott W Carlson

Genesis Healthcare Center, Inc.

Represented By
Ashley M McDow

Genesis Healthcare Management,

Represented By

**United States Bankruptcy Court
Central District of California
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Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

CONT... Bethel Healthcare, Inc.

Chapter 11

Ashley M McDow

Genesis Healthcare Group, Inc.

Represented By
Ashley M McDow

Ephesian Wellness Center, Inc.

Represented By
Ashley M McDow

Plaintiff(s):

The Official Committee of

Represented By
Andy Kong
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

1:13-12221 Corinthian Sub-Acute & Rehabilitation Center, Inc.

Chapter 11

Adv#: 1:15-01061 The Official Committee of Unsecured Creditors v. Henry et al

#34.00 Status Conference re: Complaint

fr. 6/2/15, 9/1/15; 11/17/15, 3/1/16, 6/7/16,
8/2/16, 10/11/16; 11/15/16, 2/21/17, 5/16/17; 7/25/17,
10/17/17

Docket 1

Courtroom Deputy:

Tentative Ruling:

This judgment against Henry was sold. Did the judgment include the other defendants. Also, there is still a problem with the cross-claim. We cannot close this adversary complaint until these matter are resolved. Please talk to Emma Gonzalez at 818-587-2832.

prior tentative ruling (7/25/17)

As of 7/18/17, no new documents filed. What's the status? The stipulated judgment as to the Henrys was filed only in the Bethel case. Also, we cannot find orders resolving the complaint as to the other defendants and terminating the cross-claim by Richard Brenne. I believe that these have all been resolved, but actual orders are needed. Talk to Emma Gonzales at 818-587-2032 for any questions. If you wish, this and all the the Bethel and Corinthian matters can be continued without appearance to 8/22 at 10:00 a.m. to get the orders entered.

Party Information

Debtor(s):

Corinthian Sub-Acute &

Represented By
Hamid R Rafatjoo

Defendant(s):

Susan Henry

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

CONT... Corinthian Sub-Acute & Rehabilitation Center, Inc. Chapter 11

Randy Henry Pro Se

Richard Brenner Pro Se

Genesis Healthcare Center, Inc. Pro Se

Genesis Healthcare Management, Pro Se

Genesis Healthcare Group, Inc. Pro Se

Ephesian Wellness Center, Inc. Pro Se

Plaintiff(s):

The Official Committee of
Represented By
Andy Kong

US Trustee(s):

United States Trustee (SV) Pro Se

**United States Bankruptcy Court
Central District of California
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Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

1:13-12221 Corinthian Sub-Acute & Rehabilitation Center, Inc.

Chapter 11

Adv#: 1:15-01061 The Official Committee of Unsecured Creditors v. Henry et al

#35.00 Status Conference re: Crossclaim by Richard Brenner
against Genesis Healthcare Center, Inc., Genesis
Healthcare Group, Inc., Randy Henry, Susan Henry

fr. 8/30/16, 10/11/16; 11/15/16, 2/21/17, 5/16/17; 7/25/17,
10/17/17

Docket 13

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

See calendar #11

Party Information

Debtor(s):

Corinthian Sub-Acute &

Represented By
Hamid R Rafatjoo

Defendant(s):

Susan Henry

Pro Se

Randy Henry

Pro Se

Richard Brenner

Represented By
Scott W Carlson

Genesis Healthcare Center, Inc.

Represented By
Ashley M McDow

Genesis Healthcare Management,

Represented By
Ashley M McDow

Genesis Healthcare Group, Inc.

Represented By
Ashley M McDow

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

CONT... Corinthian Sub-Acute & Rehabilitation Center, Inc.

Chapter 11

Ephesian Wellness Center, Inc.

Represented By
Ashley M McDow

Plaintiff(s):

The Official Committee of

Represented By
Andy Kong
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

1:15-14213 Michael Robert Goland
Adv#: 1:16-01046 Lewis v. Goland

Chapter 7

#36.00 Status Conference re: First Amended Complaint

fr. 7/11/17, 8/22/17, 9/19/17

Docket 97

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Mr. Goland filed a unilateral status report on 1/16. He is ready for trial. Mr. Hagen also filed a unilateral status report. According to Mr. Hagen, the only remaining issue is whether the memorandum of costs in the state court matter should be non-dischargeable.

The best thing to do is to set this for trial. The evidence will be as it is. It appears to be a one day trial. Let's set the date.

prior tentative ruling (9/19/17)

Plaintiff and Defendant each filed a status report, although it appears that Mr. Lewis incorporated Mr. Hagen's report into a single one. The issue right now seems to be whether Plaintiff will file an amended complaint to include another state court judgment for attorney's fees. It appears that Mr. Lewis is awaiting a final order on the motion for reconsideration before he amends. Has Mr. Lewis provided Mr. Hagen with the state court documents that he has?

As to the amended complaint concerning the prior ruling on sanctions motions, apparently Mr. Lewis is attempting to obtain documents from Archives to determine whether to amend his complaint.

From the Court - I don't want this to drag on and on. Please come to court or appear by phone so that I can set some dates and make sure that all necessary documents are being exchanged. Let's go through exactly what is

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

CONT... **Michael Robert Goland**
left to adjudicate in this case.

Chapter 7

prior tentative ruling (8/22/17)

An answer was filed on 5/23/17. On 8/7/17, the parties filed a joint status report. Basically, Mr. Lewis is waiting for the ruling on the motion for sanctions to determine how to proceed: file an amended complaint, file additional motions for summary judgment, and/or dismiss the complaint. He also thinks that a motion to revoke the discharge is warranted.

The discharge was entered on 5/31/16. A proceeding to revoke the discharge must be brought by adversary proceeding, not by motion. FRBP 7001(4). Before he files such an adversary proceeding, Mr. Lewis is directed to carefully review 11 USC §727(e) to make sure that the statute of limitations has not passed.

This adversary proceeding is under §523(a)(6) to declare a variety of attorney's fees awards to be non-dischargeable. These arose from three state court cases. The motion for summary judgment resolved one of them (the vexatious litigant judgment). The adjudication of the other two are the basis of this litigation.

The sanctions motions are being heard on 8/22 and presumably the decision will be made at that time. I will then want to know how Mr. Lewis intends to proceed and will set four deadlines. There is already so many documents in this case that I can't imagine that much more (or any more) discovery needs to occur. Let's get this to trial.

Party Information

Debtor(s):

Michael Robert Goland

Represented By
David S Hagen

Defendant(s):

Michael Goland

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

CONT... Michael Robert Goland

Chapter 7

David S Hagen

Plaintiff(s):

Bret D Lewis

Represented By
Bret D Lewis

Trustee(s):

Amy L Goldman (TR)

Pro Se

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

1:16-11387 Real Estate Short Sales Inc

Chapter 7

#37.00 Motion to Approve Compromise Under Rule 9019

Docket 194

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The proposed settlement is between the Trustee and Nancy Cueva. Cueva, on behalf of the Debtor, will tender \$62,250 in exchange for the Trustee's release of all interest of the Estate in both the Chatsworth and Berendo properties. This is the amount that the Trustee believes the estate would receive from the carve-out and a short sale of the properties. The Cueva payment is to be made by wire transfer or cashier's check no later than 1/12/18. The broker will receive commission of \$3,735. If the payment is not timely made, Cueva and the objecting parties will cooperate with the Trustee's marketing efforts. This settlement should pay all allowed administrative fees and expense, all priority unsecured claims, and make a meaningful distribution to timely-filed allowed unsecured claims.

opposition by John Huynh

The \$62,250 to be received will not provide a distribution to the creditors. In fact the money that Cueva will be paying may be part of the \$240,000 that she is accused of fraudulently receiving from Huynh, which she failed to pay him back in connection with a failed short-sale transaction. This may subject the estate to liability as a transferee of a fraudulent transfer.

Proposed ruling:

Money is fungible and unless Mr. Huynh can actually trace the settlement amount to the funds that he asserts were fraudulently received, that is not grounds to deny this compromise. While the funds may not provide much recovery to unsecured creditors, allowing this property to be sold at foreclosure will not benefit the unsecured creditors and will harm the administrative and priority creditors. What is the Trustee's position?

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

CONT... Real Estate Short Sales Inc

Chapter 7

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

1:16-11387 Real Estate Short Sales Inc

Chapter 7

#38.00 Motion for relief from stay

U.S. BANK NATIONAL ASSOC.

Docket 190

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

This concerns the Oklahoma Ave. property. U.S. Bank has a secured claim of \$1.439+ million. It recorded its notice of default in 2/15 and a sale was scheduled, but never held. The current monthly payments as of 11/17 are \$7,057.47. A total of 73 payments were not made. The fair market value of the property is \$1.1 million.

The property was transferred by Cueva to Debtor without the Bank's consent. The Bank received relief from stay in the prior bankruptcy case.

In this case, there was an adequate protection order on which the Debtor defaulted multiple times.

Proposed Ruling

Under the proposed compromise, the Oklahoma Property will be released from the Estate. As to the stay concerning the Debtor, relief from stay will be granted. It is up to Cueva, et al, to work out something with the Bank.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

1:16-11387 Real Estate Short Sales Inc

Chapter 7

#38.01 Motion for relief from stay

CARMELITA GARNER

Docket 199

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

This appears to be part of a scam that claims that property is part of a bankruptcy when that is not the case. Although Exhibit F does not name the Debtor, there is no indication that Real Estate Short Sales, Inc. has or has ever had an interest in the real property located at 1151 Virginia St., Berkeley, CA. Unless Ms. Cueva or the Trustee asserts otherwise, this motion will be granted with the widest possible order granting relief from the stay.

I suggest that Mr. Levinson appears by phone.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Movant(s):

Carmelita Garner

Represented By
Benjamin R Levinson ESQ

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

1:16-11538 Majestic Air, Inc.

Chapter 11

#39.00 Status and Case Management Conference

fr. 8/4/16(xfr from Judge Tighe's calendar); 8/30/16,
9/27/16; 10/25/16; 11/15/16, 2/21/17, 5/16/17; 6/27/17,
8/29/17

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

There is a state court appeal pending. Continue without appearance to June 19, 2018 at 10:00 a.m.

prior tentative ruling (2/21/17)

Per the status report filed on 2/7/17, the LTP parts have been sold and Debtor has moved to its new, less expensive, location. The appeal with the California Court of Appeal as to LTP is continuing. The Debtor expects to file a disclosure statement within the next 60 days.

The Debtor filed a month-by-month comparison of actual revenue and expenses and budgeted revenue and expenses for November, December, and January. They show a slight net profit of \$1,500-\$2,200 per month.

If there is no objection, I will continue this without appearance to May 16, 2017 at 10:00 a.m.

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

1:16-12388 Major Textile Imports Inc.

Chapter 7

#40.00 Trustee's Motion for Order Authorizing
an Interim Distribution to Creditors

Docket 177

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The Trustee wants to make an interim distribution to priority, unsecured, and administrative creditors. All funds have been received except for the final \$15,000 from Shams, which is due by 1/15/18. Omrani requests this distribution due to the serious illness of his wife, which has reduced his ability to work. All tax returns except for 2017 and 2018 have been filed and clearances received. There should not be a significant tax liability for the remaining years.

The Trustee has \$170,000+ on hand and proposes distributing \$110,000 at this time. Tax claims would be paid in full. General unsecured creditors would receive 26.181% of their claims.

No opposition received as of 1/17/18. Grant.

No appearance necessary if you submit on the tentative ruling. Except in the case of a trustee's final report and simultaneous hearing on applications for approval of professional fees, the prevailing party is to lodge a proposed order in conformance with this tentative ruling within seven court days after the hearing, serving all interested parties with a copy of the proposed order.

Party Information

Debtor(s):

Major Textile Imports Inc.

Represented By
Jaenam J Coe

Movant(s):

Carolyn A Dye (TR)

Represented By

**United States Bankruptcy Court
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Judge Geraldine Mund, Presiding
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Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

CONT... Major Textile Imports Inc.

Chapter 7

Christian T Kim
James A Dumas Jr

Trustee(s):

Carolyn A Dye (TR)

Represented By
Christian T Kim
James A Dumas Jr

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:17-01040 GOTTLIEB v. Elkwood Associates, LLC et al

#41.00 Motion to Dismiss the First, Second, Eighth and
Ninth Claims in the Second Amended Complaint

Docket 49

***** VACATED *** REASON: order ent continuing hrg to 2/27/18 at
10:00a.m. - jc**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Defendant(s):

Elkwood Associates, LLC

Represented By
Daniel J McCarthy

Fieldbrook, Inc.

Represented By
Daniel J McCarthy

Soda Partners, LLC

Represented By
Ronald N Richards

Quality Loan Service

Pro Se

Chase Manhattan Mortgage Co.

Pro Se

Howard Abselet

Represented By
Henry S David

Israel Abselet

Represented By
Henry S David

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

CONT... **Solyman Yashouafar**
Citivest financial Services, Inc.

Pro Se

Chapter 11

Movant(s):

Elkwood Associates, LLC

Represented By
Daniel J McCarthy

Fieldbrook, Inc.

Represented By
Daniel J McCarthy

Plaintiff(s):

DAVID K GOTTLIEB

Represented By
Jeremy V Richards
John W Lucas

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:16-01169 Encino Corporate Plaza LP v. Yashouafar et al

#42.00 Status Conference Re:
First Amended Complaint by Encino Corporate
Plaza LP for:
1 - Nondischargeability of Debt (Count One
for Fraud [Deceit]-Pursuant to 11 USC Sec.
523(a)(2)(A));
2 - Nondischargeability of Debt (Count Two
for Fraud [Fraudulent Transfers]-Pursuant to
11 USC Sec. 523(a)(2)(A));
3 - NonDischargeability of Debt (Count Three
for Defalcation as a Fiduciary - Pursuant to
11 USC Sec. 523(a)(4));
4 - Nondischargeability of Debt (Count Four
for Willful and Malicious Injury [Conversion]-
Pursuant to 11 USC Sec. 523(a)(6)); and
5 - Nondischargeability of Debt (Count Five
for Willful and Malicious Injury [Fraudulent
Transfers]-Pursuant to 11 USC Sec.
523(a)(6))

fr. 2/21/17, 3/28/17; 6/27/17, 8/22/17

Docket 30

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

On 10/10/17, the Order granting the 9019 motion between the Trustee and Abselet was entered. Nothing further received in this adversary case as of 1/17/18. This is a §523 case and the settlement does not affect that.

prior tentative ruling (8/22/17)

On 7/18/17 the Court entered an order approving the stipulation of the

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Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

CONT... **Solyman Yashouafar**

Chapter 11

parties to stay this action and vacate all dates and deadlines set by the Court. This was done so that the settlement between Abselet and the Trustee could be finalized. That settlement is now set for hearing on 8/22/17.

Abselet had brought this non-dischargeability action on behalf of Encino Corporate Plaza LP (ECPLP) by virtue of his execution on the Yashouafars' ownership interest in ECPLP. In the settlement agreement, Howard Abselet will continue to pursue the liquidation of ECPLP. Since this is a §523(a) complaint that - if the Plaintiff prevails - will merely give Howard Abselet a judgment that survives the discharge, it is not effected by the settlement agreement.

Are the parties ready to move forward on this case?

Motion to withdraw the reference was denied. The parties want a pretrial conference after 8/21/17 and anticipate trial in October. Plaintiff does not want to mediate - at least at this time. Both consent to a final judgment in this court, but this is probably irrelevant in a §523 case.

By stipulation, the Yashouafars have until 2/17 to respond to the complaint.

I would like to know what the discovery plan is and then I will continue this status conference. Let's get something in writing, please.

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Massoud Aaron Yashouafar

Represented By
C John M Melissinos
Mark M Sharf

Defendant(s):

Massoud Aaron Yashouafar

Pro Se

Solyman Yashouafar

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

CONT... Solyman Yashouafar

Chapter 11

Plaintiff(s):

Encino Corporate Plaza LP

Represented By
Jessica Mickelsen Simon
Henry S David
Andrew F Kim

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

#43.00 Status Conference re: Chapter 11 case

fr. 9/1/16(xfr from Judge Tighe's calendar), 9/27/16,
10/11/16; 10/26/16; 11/15/16, 12/6/16, 3/28/16,
4/4/17; 5/30/17, 8/29/17, 9/19/17

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Per the status report filed on 1/16, there is a motion for summary judgment as to the JCBL Trust, set for hearing on 2/13/18 at 10:00 a.m. As to the Elkwood Associates adversary proceeding, Elkwood and Fieldbrook filed a motion to dismiss the second amended complaint, which is set for hearing on 2/27. The motion to withdraw the reference is still pending before Judge Walter. The Trustee is current with the OUST requirements.

Continue without appearance to May 1, 2018 at 10:00 a.m.

prior tentative ruling (/19/17)

On 9/6/17 the Trustee filed his status report. The Trustee is continuing to collect information about the Debtors and their estates.

The JCBL Trust is the subject of an adversary proceeding as to whether it is property of the estate. The Trustee expects to resolve this through a motion for summary judgment. [17-ap-01050 - status conference set on 10/17]

The settlement motion with the Abselets is pending.

The motion by defendants to dismiss the Elkwood adversary proceeding is pending [17-ap-01040 - cont. 10/3/17]

The Trustee is in compliance with OUST reporting requirements.

Continue without appearance to 1/23/18 at 10:00 a.m.

prior tentative ruling (5/30/17)

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Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

CONT...

Solyman Yashouafar

Chapter 11

Per the Trustee's status report filed on 5/15/17, the Oklahoma action is proceeding and there is a status conference on 6/15/17. The Roosevelt Lofts proceeds are being held as various parties dispute ownership. There is a status conference in this court on that set for 7/11/17. The Trustee wants the Roosevelt Lofts' counsel to continue to hold the excess funds.

The Trustee filed 17-ap-01027 to determine the Debtor's estates' interest in the RLI stock. Abselet filed a motion to withdraw the reference, which is set for hearing in the district court on 5/22. Abselet's motion to dismiss is set for 6/27 in this court. The Trustee and Abselet have set a one day mediation in front of retired Judge Goldberg for 6/3.

Massoud's brother-in-law foreclosed on the Beverly Hills homes of Massoud and of Solyman and sold Solyman's for a substantial profit and rented Massoud's back to him at \$25,000/mo for two years. Massoud never paid any rent and the lease has expired. The Trustee filed 17-ap-1040 seeking quiet title to the Rexford home and to avoid the foreclosures of both homes.

Discovery is continuing in all matters. The Trustee requests a further status conference in 90 days.

It is probably wise to have appearances (in person or on the phone) on 5/30, but this will be continued to an agreeable date in August.

Party Information

Debtor(s):

Solyman Yashouafar

Pro Se

**United States Bankruptcy Court
Central District of California
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Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:16-01166 Barlava et al v. Yashouafar

#44.00 Status Conference re: Complaint

fr. 2/21/17, 3/28/17; 5/30/17; 5/30/17,
10/3/17

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The parties filed unilateral status reports. In the future, please try to file a joint status report. Plaintiffs anticipates a 2 week trial starting after June and wants this matter sent to mediation. Plaintiffs consent to this court entering a final judgment. Defendant, on the other hand, expects to complete discovery at the end of June and wants trial after 11/15/18. He expects a 3-5 day trial. Defendant is not interested in mediation, but also consents to this court entering a final judgment.

Let's talk about what can be done to try to resolve this matter. You are talking about expensive discovery and an expensive trial.

prior tentative ruling (10/3/17)

Nothing further received as of 9/28/17. What is the status of discovery?

prior tentative ruling (5/30/17)

Per the joint status report filed 5/11/17, set a discovery cutoff date of 9/11/17. The parties agree to do their initial disclosures by 6/5/17. There may be some objections to discovery.

Continue without appearance to 10/3/17 at 10:00 a.m.

prior tentative ruling (3/28/17)

The parties stipulated that Massoud has until 2/17/17 to respond to the

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10:00 AM

CONT... Solyman Yashouafar

Chapter 11

complaint. On 2/17, Massoud filed his answer. No status report has been filed as of 3/26.

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Massoud Aaron Yashouafar

Represented By
C John M Melissinos
Mark M Sharf

Defendant(s):

Massoud Aaron Yashouafar

Pro Se

Plaintiff(s):

Simon Barlava

Represented By
Andrew V Jablon

Morris Barlava

Represented By
Andrew V Jablon

Nasser Barlava

Represented By
Andrew V Jablon

Kefayat Barlava

Represented By
Andrew V Jablon

Figueroa Tower II, LP

Represented By
Andrew V Jablon

First National Buildings II, LLC

Represented By
Andrew V Jablon

Carla Ridge, LLC

Represented By
Andrew V Jablon

Trustee(s):

David Keith Gottlieb (TR)

Represented By

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

CONT... Solyman Yashouafar

Jeremy V Richards
John W Lucas

Chapter 11

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, January 23, 2018

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10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:17-01050 Gottlieb v. Yashouafar

#45.00 Status Conference re: Complaint

fr. 7/25/17, 10/17/17

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Ms. Yashouafar has new counsel. This is continued by stipulation to 2/13/18 at 10:00 a.m.

prior tentative ruling (10/17/17)

Nothing further received as of 10/15/17. Counsel for Ms. Yashouafar is withdrawing.

prior tentative ruling (7/25/17)

The complaint is against Parinaz Yashouafar as trustee for the JCBL Trust U/D/T 1/11/00. Ms. Yashouafar is the wife of debtor Massoud Yashouafar. The Complaint contends that Parinaz is the settler and sole trustee of this Trust and that the beneficiaries are the children of Parinaz and Massoud. Originally the Trust was fully revocable, but on 1/5/15 Parinaz executed a First Amendment which rendered the Trust irrevocable. The complaint further alleges that the assets contributed to the Trust were all community assets of Parinaz and Massoud and therefore property of the estate. The Plaintiff seeks declaratory relief, the avoid the first amendment as a fraudulent transfer, and to recover the Trust assets.

An answer has been filed.

Per the status conference report, the Plaintiff intends to seek production of documents and then bring a motion for summary judgment. The Defendant contends that the Trust assets were either her separate property or were gifts

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Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

CONT... Solyman Yashouafar

Chapter 11

from family members to be provided for her children. She will be seeking financial records from banks, some of which are long closed. She will need time to obtain these.

Since the Defendant contends that these are not assets which are property of the estate, she does not consent to the bankruptcy court entering final judgment.

The Court will continue the status conference without appearance until 10/17/17 at 10:00 a.m. Plaintiff may file his motion for summary judgment or to seek discovery prior to that time, if he wishes, and set it for that date or any other date when the Court has scheduled hearings. By 10/2/17 Defendant is to provide the Plaintiff and the Court with a list of institutions from which she is seeking records and the status of her search for those records from each such institution. Should the Plaintiff seek this information in discovery before that date, the Defendant is to comply with the discovery request.

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Massoud Aaron Yashouafar

Represented By
C John M Melissinos
Mark M Sharf

Defendant(s):

Parinaz Yashouafar

Pro Se

Plaintiff(s):

David K. Gottlieb

Represented By
Jeremy V Richards

Trustee(s):

David Keith Gottlieb (TR)

Represented By

**United States Bankruptcy Court
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10:00 AM

CONT... Solyman Yashouafar

Jeremy V Richards
John W Lucas

Chapter 11

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Tuesday, January 23, 2018

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10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:17-01050 Gottlieb v. Yashouafar

#46.00 Motion of David K. Gottlieb, Chapter 11
Trustee, for Summary Judgment on All
Claims For Relief Against Defendant

Docket 24

***** VACATED *** REASON: Stip. cont. to 2/13/18 @10am (eg)**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

This is continued by stipulation to 2/13/18 at 10:00 a.m.

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Defendant(s):

Parinaz Yashouafar

Pro Se

Plaintiff(s):

David K. Gottlieb

Represented By
Jeremy V Richards
John W Lucas

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

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Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:17-01040 GOTTLIEB v. Elkwood Associates, LLC et al

#47.00 Status Conference re: Seconde Amended Complaint
Complaint To (I) Quiet Title Of The Rexford Home,
(II) Set Aside Foreclosure Sale Of The Rexford Home,
(III) Avoid Actual And Constructive Fraudulent Transfer
Of Rexford Home And Actual Fraudulent Transfer Of
Chalette Home, (IV) Recover The Properties Or Value
Thereof, And (V) Related Relief by Jeremy V Richards
on behalf of David K Gottlieb against all defendants

fr. 12/19/17

Docket 39

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

On 12/14/17 the parties filed a stipuation continung the status conference to 1/23/18 at 10:00 a.m., when the motion to dismiss is set for hearing.

Then on 12/28/17 the parties filed a further stipulation continuing the motion for dismiss from 1/23/18 to 2/27/18. This is continued without appearance to 2/27/18 at 10:00 a.m.

Prepared on 12/14. Will be updated before the 2/27 hearing.

The second amended complaint was filed on 10/18/17. A summons was issued on 11/7 and a date to respond was 12/7. The following were on new summonses:

Soda Partners (filed an answer on 11/7)

Quality Loan Service

Chase Manhattan Mortgage Co.

Howard Abselet (filed an answer on 12/6)

Israel Abselet (filed and answer on 12/6)

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10:00 AM

CONT... Solyman Yashouafar

Chapter 11

Citivist Financial Services (stipulation consenting to entry of judgment filed on 12/12)

There is stipulation between the Trustee (plaintiff) and Elkwood and Fieldbrook to extend time to respond to 12/7. On 12/7 they filed a motion to dismiss the first, second, eighth and ninth claims. This is set for hearing on 1/23/18 at 10:00 a.m.

Meanwhile, the Abselets have filed a motion in the district court to withdraw the reference. Presumably that will be heard before the 1/23/18 date for the motion to dismiss. Unless the district court withdraws the reference, the 1/23 hearing will go forward. Even if the reference is withdrawn, there will still be a hearing on the motion to dismiss, although that will be set at the convenience of the district court. So please prepare to oppose that motion in a timely fashion.

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Defendant(s):

Elkwood Associates, LLC

Represented By
Daniel J McCarthy

Fieldbrook, Inc.

Represented By
Daniel J McCarthy

Plaintiff(s):

DAVID K GOTTLIEB

Represented By
Jeremy V Richards
John W Lucas

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

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10:00 AM

CONT... Solyman Yashouafar

Chapter 11

**United States Bankruptcy Court
Central District of California
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Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

1:16-12408 Massoud Aaron Yashouafar
Adv#: 1:16-01168 Carino v. Yashouafar

Chapter 11

#48.00 Status Conference Re: Complaint for
NonDischargeability of Debt Pursuant to
11 U.S.C. Sec. 523(a)(4) and 11 U.S.C.
Sec. 523(a)(6)

fr. 2/21/17, 3/21/17; 5/2/17, 5/30/17, 8/29/17

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Per the Plaintiff's status report filed on 1/11/18, the state court trial is now set to start in mid-March, but could be delayed. Continue without appearance to August 21, 2018 at 10:00 a.m.

prior tentative ruling (5/30/17)

Continue so that the state court trial can take place. Please give me some dates that this might take place.

prior tentative ruling (3/21/17)

This is a §523(a)(4) and (a)(6) complaint solely against Massoud. There is a class action pending in the Nevada State Court (Paradise Spa Owners Assn. v. Jim Pazargad). Carino filed this on behalf of the PSOA. Massud had served as Treasurere of the HOA and he caused significant damages to the class of homeowners. Discovery in the class action is closed and it is awaiting trial. Pre-petition the Nevada State Court adjudicated liability against the Debtor via summary judgment. It found that Massod committed fraud by concealing material facts that he had a duty to disclose regarding his personal use of PSOA insurance proceeds and by failing to pursue collection of assessments on some of the condominiums that he owned. It also found a breach of fiduciary duty. Although the amount of damages has not yet been adjudicated, it is over \$2.5 million.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

CONT... Massoud Aaron Yashouafar

Chapter 11

The Debtor filed an answer and admits that the findings set forth were as the State Court held. Debtor is representing himself pro per in this adversary proceeding.

No status report has been received as of 3/16. Has relief from stay been granted to proceed? Is it necessary?

It seems that the best thing would be to delay acting on this case until the resolution of the Nevada action, including all appeals. But if the parties believe that something should go forward here, I am willing to allow it.

Party Information

Debtor(s):

Massoud Aaron Yashouafar

Represented By
Brian L Davidoff
C John M Melissinos

Defendant(s):

Massoud Aaron Yashouafar

Pro Se

Plaintiff(s):

Raymund Carino

Represented By
Simon Aron

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, January 23, 2018

Hearing Room 303

10:00 AM

1:16-12408 Massoud Aron Yashouafar

Chapter 11

#49.00 Status Conference re: chapter 11 case

fr. 9/27/16, 10/25/16; 10/26/16; 11/15/16,
12/6/16, 3/28/17, 4/4/17; 5/30/17, 8/29/17, 9/19/17

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

This case is being jointly administered with 16-12255.

See cal. #43.

Party Information

Debtor(s):

Massoud Aron Yashouafar

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01120 Speier v. SunCal Management LLC et al

Chapter 11

#1.00 Defendants' Motion for Summary Adjudication

fr. 1/23/18; 2/13/18

Docket 518

***** VACATED *** REASON: Per Court's own motion, continued to
3/6/18 @9am (eg)**

Courtroom Deputy:

Tentative Ruling:

Continued until March 6, 2018 at 9:00 a.m. at the request of the Court.

Party Information

Defendant(s):

Argent Management, LLC

Represented By
Craig H Averch
Doah Kim
Aalok Sharma

SunCal Management LLC

Represented By
Craig H Averch
Doah Kim
Aalok Sharma

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01121 Speier v. SunCal Management, LLC et al

Chapter 0

#2.00 Defendants' Motion For Summary of Adjudication\
fr. 1/23/18

Docket 407

***** VACATED *** REASON: Per Court's own motion, continued to
3/6/18 @9am (eg)**

Courtroom Deputy:

Tentative Ruling:

Continued until March 6, 2018 at 9:00 a.m. at the request of the Court.

Party Information

Defendant(s):

Argent Management, LLC

Represented By
Craig H Averch
Aalok Sharma

SunCal Management, LLC

Represented By
Craig H Averch
Aalok Sharma

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01121 Speier v. SunCal Management, LLC et al

Chapter 0

#3.00 Trustee's Motion For Partial Summary Adjudication of
his Restitution and/or Unjust Enrichment Claim for Relief

fr. 12/19/17; 1/23/18

Docket 399

***** VACATED *** REASON: Per Court's own motion, continued to
3/6/18 @9am (eg)**

Courtroom Deputy:

Tentative Ruling:

Continued until March 6, 2018 at 9:00 a.m. at the request of the Court.

Cont. to 1/23/18 at 10:00 a.m. See Order Granting Application and Setting
Hearing on Shortened Notice.

Party Information

Defendant(s):

SunCal Management, LLC

Represented By
Craig H Averch

Argent Management, LLC

Represented By
Craig H Averch

Movant(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

CONT...

Chapter 0

Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01122 Speier v. SunCal Management LLC et al

Chapter 0

#4.00 Defendants' Motion for Summary Adjudication

fr. 12/19/17; 1/23/18

Docket 399

***** VACATED *** REASON: Per Court's own motion, continued to
3/6/18 @9am (eg)**

Courtroom Deputy:

Tentative Ruling:

Continued until March 6, 2018 at 9:00 a.m. at the request of the Court.

Party Information

Defendant(s):

Argent Management, LLC

Represented By
Craig H Averch
Aalok Sharma

SunCal Management LLC

Represented By
Craig H Averch
Aalok Sharma

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01122 Speier v. SunCal Management LLC et al

Chapter 0

#5.00 Trustee's Motion For Partial Summary Adjudication of
his Restitution and/or Unjust Enrichment Claim for Relief

fr. 12/19/17; 1/23/18

Docket 391

***** VACATED *** REASON: Per Court's own motion, continued to
3/6/18 @9am (eg)**

Courtroom Deputy:

Tentative Ruling:

Continued until March 6, 2018 at 9:00 a.m. at the request of the Court.

Cont. to 1/23/18 at 10:00 a.m. See Order Granting Application and Setting
Hearing on Shortened Notice.

Party Information

Defendant(s):

SunCal Management LLC

Represented By
Craig H Averch

Argent Management, LLC

Represented By
Craig H Averch

Movant(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

CONT...

Chapter 0

Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01123 Speier v. SunCal Management LLC et al

Chapter 0

#6.00 Defendants' Motion for Summary Adjudication

fr. 1/23/18

Docket 396

***** VACATED *** REASON: Per Court's own motion, continued to
3/6/18 @9am (eg)**

Courtroom Deputy:

Tentative Ruling:

Continued until March 6, 2018 at 9:00 a.m. at the request of the Court.

Party Information

Defendant(s):

Argent Management, LLC

Represented By
Craig H Averch
Aalok Sharma

SunCal Management LLC

Represented By
Craig H Averch
Aalok Sharma

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01123 Speier v. SunCal Management LLC et al

Chapter 11

#7.00 Trustee's Motion for Partial Summary Adjudication of
his Restitution and/or Unjust Enrichment Claim for Relief

fr. 12/19/17; 1/23/18

Docket 388

***** VACATED *** REASON: Per Court's own motion, continued to
3/6/18 @9am (eg)**

Courtroom Deputy:

Tentative Ruling:

Continued until March 6, 2018 at 9:00 a.m. at the request of the Court.

Cont. to 1/23/18 at 10:00 a.m. See Order Granting Application and Setting
Hearing on Shortened Notice.

Party Information

Defendant(s):

Argent Management, LLC

Represented By
Craig H Averch

SunCal Management LLC

Represented By
Craig H Averch

Movant(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM
CONT...

Chapter 11

Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01124 Speier v. SunCal Management LLC et al

Chapter 0

#8.00 Defendants' Motion for Summary Adjudication

fr. 1/23/18

Docket 401

***** VACATED *** REASON: Per Court's own motion, continued to
3/6/18 @9am (eg)**

Courtroom Deputy:

Tentative Ruling:

Continued until March 6, 2018 at 9:00 a.m. at the request of the Court.

Party Information

Defendant(s):

Argent Management, LLC

Represented By
Craig H Averch
Aalok Sharma

SunCal Management LLC

Represented By
Craig H Averch
Aalok Sharma

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01124 Speier v. SunCal Management LLC et al

Chapter 0

#9.00 Trustee's Motion For Partial Summary Adjudication of
his Restitution and/or Unjust Enrichment Claim for Relief

fr. 12/19/17; 1/23/18

Docket 393

***** VACATED *** REASON: Per Court's own motion, continued to
3/6/18 @9am (eg)**

Courtroom Deputy:

Tentative Ruling:

Continued until March 6, 2018 at 9:00 a.m. at the request of the Court.

Cont. to 1/23/18 at 10:00 a.m. See Order Granting Application and Setting
Hearing on Shortened Notice.

Party Information

Defendant(s):

SunCal Management LLC

Represented By
Craig H Averch

Argent Management, LLC

Represented By
Craig H Averch

Movant(s):

Steven M Speier (TR)

Represented By
Mike D Neue
Gary A Pemberton

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM
CONT...

Chapter 0

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

1:10-10442 Victor Hugo Hernandez

Chapter 11

#10.00 Status Conference on Chapter 11 Case

fr. 1/11/11, 3/29/11, 4/12/11, 6/14/11, 8/23/11, 10/25/11,
1/17/12, 1/31/12, 2/28/12, 4/10/12, 6/12/12, 7/31/12,
9/11/12, 11/20/12, 12/11/12, 2/26/13, 4/30/13, 6/18/13,
8/27/13, 11/19/13, 1/14/14, 2/4/14, 3/11/14, 4/1/14, 6/24/14,
9/16/14, 11/18/14, 12/16/14, 1/20/15, 2/24/15; 3/31/15; 5/12/15
6/30/15; 8/18/15, 9/22/15, 2/9/16; 3/15/16; 4/26/16,
6/7/16, 7/12/16, 8/16/16; 9/13/16, 10/11/16; 10/25/16; 11/15/16,
12/20/16; 4/18/17, 5/16/17; 6/27/17, 8/1/17, 11/28/17

Docket 1

Courtroom Deputy:

Judge Mund will be holding court in Riverside Location
in **Courtroom 302**

**You are welcome to appear telephonic, Courtcall phone number
866-582-6878 - Please call 24 hrs in advance -**

Tentative Ruling:

On 1/30/17. an Order was entered vacating the prior order that the 401K
administrator make the distribution of the balance of funds. I believe that all
that needs to be done is a motion for final decree. This has not been filed as
of 2/8/18.

prior tentative ruling (11/28/17)

Discharge entered 11/1/17. Per the status report, the Debtor will be
filing a motion for final decree within the next 30 days. Continue without
appearance to Feb. 13, 2018 at 10:00. The motion for final decree can be
heard at that time or sooner or filed on notice and opportunity.

prior tentative ruling (8/1/17)

Per the status report filed on 7/25/17, the Debtor made the final
payment to his ex-spouse and her attorney - \$75,000 on 6/27. The total paid

**United States Bankruptcy Court
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Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

CONT... Victor Hugo Hernandez

Chapter 11

was \$175,000, which was \$5,000 more than anticipated due to accruing post-petition interest. There will be no reduction to the class 4 claimants and the Debtor will seek to reduce some of these claims through negotiating a discount for early payments.

There need to be various satisfactions of judgment signed and recorded and also Prudential requires an order of this court to resolve the QDRO request to that it will unblock the Debtor's 401k plan. Debtor anticipates filing a motion for final fees and to close the case.

Continue without appearance to 11/28/17 at 10:00 a.m.

prior tentative ruling (6/27/17)

Per the status report filed on 6/22/17, the Debtor paid another \$60,000 to the Class 4 claimants (Debtor's former spouse and her attorney) and they have now been paid a total of \$100,000 on the claim. Rather than the Debtor obtaining further proceeds from his 401k account, he is borrowing from his girlfriend in the approximate amount of \$150,000. The Debtor will not longer pursue a QDRO distribution. Approximately \$75,000 remains owing to Class 4 (this includes about \$5,000 of post-confirmation interest). There will be a reduction in the amount available to the unsecured class so that there will be \$10,000 rather than \$15,000.

Debtor anticipates delivering \$75,000 for Mr. Leichter-Maroko by 6/27 and will then receive a satisfaction of judgment. Mr. Leichter/Maroko and Debtor have agreed to a 30 day continuance of the status conference.

Comment by the Court: my quick review of the confirmed Plan requires a total distribution of \$14,000 to the Unsecured Creditor Class. If does not seem to have the flexibility to reduce this to \$10,000. Please address this at the next status conference.

**THE STATUS CONFERENCE IS CONTINUED WITHOUT
APPEARANCE TO AUGUST 1, 2017 AT 10:00 A.M.**

prior tentative ruling (5/16/17)

Per the status report filed on 5/12/17, Prudential will approve the transfer of the 401K plan proceeds to Jinni O'Neill/Ariel Leichter-Maroko. This needs a signature from Debtor's counsel, Mr. Leichter-Maroko, and the

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

CONT... Victor Hugo Hernandez

Chapter 11

Court. There will be a tax penalty to Ms. O'Neill and the Debtor is attempting to determine this amount. Mr. Leichter-Maroko is not comfortable with this as he thinks that there should be a way for this to be a hardship distribution and is concerned about the tax penalty to Ms. O'Neill.

Debtor requests a 30 day continuance. If Mr. Leichter-Maroko agrees, I will continue this hearing to 6/27/17 at 10:00 a.m. If no one appears (in person or by phone) on 5/16, I will assume that there is an agreement to the continuance.

prior tentative ruling (4/18/17)

Per the status report filed on 4/12/17, the Debtor is proceeding to comply with the Plan. There is some delay in paying the full claim in class 4 (Jinni O'Neill's attorney fees) in the Prudential wants a qualified domestic relations support order and this needs to be worked out.

O'Neill and Leichter-Maroko filed a late response. They oppose a QDRO distribution since that would cause them material harm and provide the Debtor with a huge windfall. By rolling the 401K plan into a retirement account in O'Neill's name, she would have to pay income taxes and penalties to withdraw and use the funds. The Debtor is the one who deposited the pre-tax money and he is the one who should be liable for the taxes and penalties to withdraw them in order to pay his domestic support obligation. This is in opposition to the representation by the Debtor in his 401k distribution motion (dkt. 285) that he would pay the taxes and penalties.

Beyond that, the payment is to be made directly to Leichter-Maroko's trust account since these are for attorney's fees and are directly payable to him.

Lastly, Prudential will distribute the 401k funds without a QDRO so long as they withhold 20% for taxes. This means that he could obtain an immediate distribution of \$116,000. He also represented that he could borrow \$30,000 from a friend (dkt. 285). And he has paid \$40,000. This would pay the class 4 claim in full.

From the Court: this is a post-confirmation status conference. How does Debtor intend to handle this? He is the one responsible for the taxes. I want this completed within 30 days.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

CONT... Victor Hugo Hernandez

Chapter 11

Can the Plan be modified to Prudential's requirements?

Party Information

Debtor(s):

Victor Hugo Hernandez

Represented By
David I Brownstein
Bonni S Mantovani

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#11.00 Third and Final Application for Allowance and Payment of Fees;

Period: 11/24/2015 to 5/6/2016,
Fee: \$25,080.00,
Expenses: \$.

Docket 1320

Courtroom Deputy:

Judge Mund will be holding court in Riverside Location in **Courtroom 302**

You are welcome to appear telephonic, Courtcall phone number 866-582-6878 - Please call 24 hrs in advance -

Tentative Ruling:

While Ms. McClure was still a debtor in possession, Ms. Rasch served as her special counsel for certain items. She was employed effective 10/29/14. On 3/25/15 she filed her first interim application for fees and costs. This was granted in the amount of \$19,745, which was paid from the \$20,000 retainer that the Debtor had provided. On 12/4/15, Ms. Rasch filed her second interim fee application seeking \$38,197.50. On 1/27/16, the Court granted this as requested. She was allowed to draw \$30,000 from the funds currently held in her attorney trust account and the remaining \$8,197.50 was allowed as an administrative expense.

Ms. Rasch now seeks a third and final award of \$25,080. The Trustee does not oppose the amount (at this time), but seeks to delay a determination. He does not want to start awarding fees on a piecemeal basis and has not filed applications for himself or his professionals. Ms. Rasch opposes any delay since she is a sole practitioner and this would be harmful to her. She prefers that the Court rule on the amount at this time, but delay payment as requested by the Trustee. She will not be providing further services.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

CONT... Shirley Foose McClure

Chapter 11

proposed ruling - It is clear that there will be no distribution of fees or administrative expenses at this time. Once this estate is further liquidated and reorganization can be determined, there will be rulings on and possible distribution of administrative claims. Ms. Rasch has already received some \$50,000. It is still possible that this could be an administratively insolvent estate and she might have to refund some amount - although the Court hopes that this is not the case. Or it could be converted to chapter 7 and the chapter 11 administrative expenses would be subordinated. Since no money will be distributed at this time, there is no harm to her by not ruling on her application. At some point the Trustee will give notice to professionals to file. At that point Ms. Rasch need do nothing more than file a short notice referring to this application (dkt. #1320) and it will be reviewed.

No appearance necessary if you submit on the tentative ruling. Except in the case of a trustee's final report and simultaneous hearing on applications for approval of professional fees, the prevailing party is to lodge a proposed order in conformance with this tentative ruling within seven court days after the hearing, serving all interested parties with a copy of the proposed order.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#12.00 Application of John P. Reitman, Chapter 11 Trustee, for Order Authorizing Employment of Coldwell Banker (William Friedman, Greg Bingham and Jane Schore) as Broker and Agents in Connection With the Listing and Sale of (1) 218 North Harrington Drive, (2) 13621 Dalmatian Avenue; and (3) 510 South Hewitt Avenue, Unit 1, Los Angeles; and as Co-Broker and Co-Agent With (A) Berkshire Hathaway Home Services Franciscan Properties (Heather Stoltz) in Connection With the Listing and Sale of 910 Corbett Avenue, Units 1, 2 and 3; and (B) Re/Max Island Properties (Barry Lee Brown) in Connection with the Listing and Sale of 5365 Lower Hanoapiilani Road, Unit 102, Lahaina, Hawaii; Declarations of William Friedman, Heather Stoltz, Greg Bingham, Jane Schore and Barry Lee Brown in Support Thereof (Dalberg, Jon)

Docket 1323

Courtroom Deputy:

Judge Mund will be holding court in Riverside Location in **Courtroom 302**

You are welcome to appear telephonic, Courtcall phone number 866-582-6878 - Please call 24 hrs in advance -

Tentative Ruling:

This is a somewhat unusual situation. The Trustee seeks to employ qualified real estate brokers. The Debtor objects on the ground that the estate had previously employed equally qualified brokers who did and will agree to work at a lower percent and who know the properties in question. The Trustee does not agree. None of the Debtor's prior brokers are currently employed by the Estate. Because of the time limit on the PMB stipulation, the Trustee is seeking to employ Coldwell Banker and the other Brokers to

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

CONT... Shirley Foose McClure

Chapter 11

conduct the sales in an orderly, efficient, and coordinated process. Choosing these brokers is in the Trustee's business judgment.

Further, the objection is not timely. Mr. Friedman will add a great deal, which would otherwise fall on the Trustee or his counsel on a day-to-day basis and increase the administrative expenses of this Estate. And he only gets a percent of the commission.

Proposed Ruling

In this case, I agree with the Debtor. There is no reason to bring in new brokers at a higher commission. As to coordination, each property will be listed and sold individually, not as a group. Three are in San Francisco, but the rest are in Southern California. As to Mr. Friedman, Mr. Friedman is being paid from the commission, which is a higher percent than it would need to be if he were not being employed. And I do not agree that if the Trustee does his job (rather than employing Mr. Friedman to do it) there should be an increase in the administrative expenses. Counsel for the Trustee should not be putting in time reviewing offers, etc. This is uniquely the function of the Trustee himself. To the extent that Mr. Reitman is not able to physically carry out these functions, there should be a new Trustee appointed. It is not fair to the Debtor or the Estate that administrative expenses are run up because counsel is being used in place of the Trustee. This will all have to be looked at when I receive the fee applications since there have been many additional delays and court appearances required due to the health of the Trustee. And while it is convenient for the Trustee and his Counsel to be from the same firm, this definitely needs careful scrutiny.

We will need a new order as to each of the brokers based on an updated declaration that s/he has no conflict and will work for the stated percentage. Further, the broker needs to acknowledge that s/he is being employed by the Estate and that the sole representative of the Estate is the Trustee (or his professionals).

Because time is of the essence, unless the Trustee convinces me otherwise, I will continue this to 2/27/18 at 9:00 a.m. to make sure that an order has been entered as to each broker. To the extent that any broker fails to provide the declaration and reach an agreement with the Trustee, at that time the Trustee's motion will be granted as to that piece of property.

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

CONT... Shirley Foose McClure

Chapter 11

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

1:16-11387 Real Estate Short Sales Inc

Chapter 7

#13.00 Motion for relief from stay

BARCELONA TOWER INC

fr. 11/14/17

Docket 164

Courtroom Deputy:

Judge Mund will be holding court in Riverside Location
in **Courtroom 302**

**You are welcome to appear telephonic, Courtcall phone number
866-582-6878 - Please call 24 hrs in advance -**

Tentative Ruling:

This was brought by the Homeowners' Assn as to the Berendo St. property.
At the time that this was filed (Oct. 2017), there was a prepetition delinquency
of \$57,000+ and a post-petition one of \$7,685.70. This was continued by
stipulation.

Under the compromise between the Trustee and the Debtor, approved on
2/5/18, upon receipt of the settlement payment of \$62,250, the Estate
releases all interest in this property. The payment was to be received by
2/13/18 or the Debtor and others are to fully cooperate with the Trustee's
marketing and sale of the property.

Has the payment been received? If so, this is no longer property of the
Estate and relief from stay will be granted. If not, the property is to be sold
and the HOA will be paid off at that time.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

CONT... Real Estate Short Sales Inc

Chapter 7

Movant(s):

Barcelona Tower Inc

Represented By
Jill L Kim

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

1:16-11538 Majestic Air, Inc.

Chapter 11

#14.00 Application for Compensation Supplement

Period: 7/20/2017 to 1/20/2018,
Fee: \$5,730.00,
Expenses: \$122.28.

Docket 214

Courtroom Deputy:

Judge Mund will be holding court in Riverside Location
in **Courtroom 302**

**You are welcome to appear telephonic, Courtcall phone number
866-582-6878 - Please call 24 hrs in advance -**

Tentative Ruling:

This is a supplemental application for fees by the Debtor's attorney. It seeks the allowance of an additional \$5,730 and costs of \$122.28. No opposition received as of 2/7/18. If there is no opposition, this will be approved as requested. If you submit on the tentative ruling, no appearance is necessary.

Judge Mund will be holding court in Riverside Location
at 3420 Twelfth St
Riverside Ca 92501, in **Courtroom 302**

**You are welcome to appear telephonic, Courtcall phone number
800-285-8640**

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:17-01050 Gottlieb v. Yashouafar

#15.00 Motion of David K. Gottlieb, Chapter 11
Trustee, for Summary Judgment on All
Claims For Relief Against Defendant

fr. 1/23/18

Docket 24

Courtroom Deputy:

Judge Mund will be holding court in Riverside Location
in **Courtroom 302**

**You are welcome to appear telephonic, Courtcall phone number
866-582-6878 - Please call 24 hrs in advance -**

Tentative Ruling:

Judge Mund will be holding court in Riverside Location
at 3420 Twelfth St
Riverside Ca 92501, in **Courtroom 302**

**You are welcome to appear telephonic, Courtcall phone number
800-285-8640**

Uncontroverted Facts per Trustee; *Defendant disputes in italics*; and **Court
comments in bold**:

1. On the petition date, Massoud's schedules show that his scheduled liabilities were substantially greater than his scheduled assets.
2. Excluding the Abselet claim, the claims register shows that Massoud had incurred liabilities in the many millions of dollars as of the end of 2014.
3. If the Court were to assign estimates of net value (if any) of the Debtor's stock and equity interests listed in his bankruptcy schedules, he would still be egregiously insolvent by many millions of dollars. For example,

**United States Bankruptcy Court
Central District of California
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Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

CONT... Solyman Yashouafar

Chapter 11

his asserted interest in ECP Building Inc. was of de minimis of no value.

4. Massoud and Parinaz Yashouafar were married in 1985.

5. At the time of the marriage, Parinaz brought into the marriage only some furniture and a television.

6. From the time that they were married, Massoud and Parinaz have continuously lived in California.

7. The Declaration of Trust created a revocable trust with Parinaz as the settlor and trustee.

8. Massoud and Parinaz regularly, if not always, filed joint income tax returns (Joint Tax Returns) including for tax years 2011 through 2015.

9. The Joint Tax Returns used Massoud's social security number. *This is objected to if being used to support a claim of community property since the tax filing status of a taxpayer's income is irrelevant to the character of the asset generating the income.* **Court: this is not a disputed fact although the legal implication drawn (if any) is disputed.** *Parinaz' taxpayer ID or Social Security Number is also listed as the spouse on the returns.* **Court: this is added by the Defendants and is an undisputed fact.**

10. The JCBL Trust was included among the assets, liabilities, and other disclosures in the Joint tax Returns for at least the tax years ending 2011, 2012, 2013, 2014, and 2015. The Joint Tax Returns for 2014 and 2015 were filed and submitted under penalty of perjury on about, respectively, November 5, 2015 and September 13, 2016. **Court: the only objection is whether a return filed under "penalty of perjury" is a guarantee of the accuracy of the return. Objection overruled since this is not a disputed fact.**

11. The Joint Tax Returns do not treat or separately classify the JCBL Trust, but include it as a joint or shared asset of Massoud and Parinaz. The 2014 Joint tax Return shows that Massoud and Parinaz received and reported dividend income from the JCBL Trust. This will allow Massoud and Parinaz to utilize their combined losses in association with the JCBL Trust as part of their combined losses for future years.

12. On the 2014 Form 1041, the JCBL Grantors are identified as "Massoud and Parinaz Yashouafar." Similarly on the California 541, the grantor ID number was that of Massoud. These were signed by Parinaz under penalty of perjury.

13. Because Massoud and Parinaz filed Joint Tax Returns, they chose a tax framework that allowed them to jointly report income and losses from JCBL Trust.

**United States Bankruptcy Court
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Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

CONT... Solyman Yashouafar

Chapter 11

14. The Declaration of Trust allowed Parinaz, as the settlor, to amend the JCBL Trust.

15. On or about December 18, 2014, the United States District Court issued a Writ of Execution with respect to the approximately \$6 million judgment that Howard Abselet held against Massoud.

16. Based on the First Amendment, the JCBL Trust was purportedly transformed from a revocable to an irrevocable trust.

17. Parinaz remained the settlor and trustee under the Declaration of Trust and the First Amendment. Parinaz is an insider of the Debtor.

18. Based on the First Amendment and Declaration of Trust, the First Amendment inured to the benefit of, and was made for the benefit of, The JCBL Trust of which Massoud's children are the named beneficiaries of First Amendment of the JCBL Trust. The children are insiders of the Debtor.

19. Neither Massoud nor Parinaz received any value or consideration in exchange for the First Amendment and Void Transfer. **Court: the objection is well-taken as to the term "Void Transfer." It is otherwise overruled as to the fact of lack of value or consideration to Massoud or Parinaz.**

20. The First Amendment was not recorded with any governmental authority or disclosed at the time to Abselet or any other material creditor of the Debtor.

21. One of the Trust Assets was and is a 20% ownership interest in Milbank Capital I, which in turn holds a 50.5% interest in Nevada Investment Properties,LP (NIP).

22. NIP formerly owned the real property known as "Sky Las Vegas," located at 2700 Las Vegas Boulevard South, Las Vegas, NV. This property sold for approximately \$5.1 million after the commencement of the Debtor's chapter 11 case.

23. The JCBL Trust's share of the proceeds from the sale of the Sky Las Vegas Property was approximately \$479,500 (JCBL Proceeds).

24. Pursuant to stipulation, the JCBL Proceeds are being held in an account at Pacific Western Bank in the name of the JCBL Trust, but may not be distributed without further order of the Court.

25. The JCBL Trust, on an undisclosed date, provided Massoud with an unsecured loan that – on the petition date – had a balance due of approximately \$655,752, indicating Massoud's de facto control of the JCBL Trust and its assets.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

CONT... Solyman Yashouafar

Chapter 11

Evidentiary Facts to be discussed:

1. Was the original source of the Trust a group of checks from Parinaz's father to herself and her children, each in the amount of \$10,000?
2. What sums were added to the Trust after the initial checks dated January 6, 2000?
3. Was the Trust the separate property of Parinaz prior to the First Amendment being created?
4. What, if any, money in the Trust arises from a community property gift to the Trust? How does the Milbank Capital 1. LLC investment fit into this?
5. What portion of the Trust, if any, arises from community property?

Evidentiary Objections:

Declaration of Haleh Fathi:

Overrule as to ¶¶6. Sustain the balance since there is insufficient evidence of the declarant's actual knowledge to support the statements made in this declaration.

Declaration of Parinaz Yashouafar:

Overrule as to ¶¶ 1, 3

Sustain as to ¶¶ 2, 4

Declaration of Massoud Yashouafar:

The major problem here is that there is no declaration of personal knowledge and of the details of how he obtained that personal knowledge. As to the lack of supporting documents, there are ways to still get the information into evidence, but this declaration fails to do so. There is no date as to when Milbank Capital I was formed, so ¶4 is not a relevant statement.

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Defendant(s):

Parinaz Yashouafar

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

CONT... Solyman Yashouafar

Chapter 11

Plaintiff(s):

David K. Gottlieb

Represented By
Jeremy V Richards
John W Lucas

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:17-01050 Gottlieb v. Yashouafar

#16.00 Motion of David K. Gottlieb, Chapter 11
Trustee, for Summary Judgment on All
Claims For Relief Against Defendant

fr, 1/23/18

Docket 24

***** VACATED *** REASON: Duplicated of cal. 15 (eg)**

Courtroom Deputy:

Tentative Ruling:

This is continued by stipulation to 2/13/18 at 10:00 a.m.

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Defendant(s):

Parinaz Yashouafar

Pro Se

Plaintiff(s):

David K. Gottlieb

Represented By
Jeremy V Richards
John W Lucas

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:17-01050 Gottlieb v. Yashouafar

#17.00 Status Conference re: Complaint

fr. 7/25/17, 10/17/17, 1/23/18

Docket 1

Courtroom Deputy:

Judge Mund will be holding court in Riverside Location
in **Courtroom 302**

**You are welcome to appear telephonic, Courtcall phone number
866-582-6878 - Please call 24 hrs in advance -**

Tentative Ruling:

Judge Mund will be holding court in Riverside Location
at 3420 Twelfth St
Riverside Ca 92501, in **Courtroom 302**

**You are welcome to appear telephonic, Courtcall phone number
800-285-8640**

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Massoud Aaron Yashouafar

Represented By
C John M Melissinos
Mark M Sharf

Defendant(s):

Parinaz Yashouafar

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 13, 2018

Hearing Room 303

10:00 AM

CONT... Solyman Yashouafar

Chapter 11

Plaintiff(s):

David K. Gottlieb

Represented By
Jeremy V Richards

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 27, 2018

Hearing Room 303

9:00 AM

1:16-11387 Real Estate Short Sales Inc

Chapter 7

#1.00 Motion for relief from stay

U.S. BANK NATIONAL ASSOC.

fr. 1/23/18

Docket 190

Tentative Ruling:

At the hearing on 2/13, the Court was informed that Ms. Cueva had not made the payment of the settlement amount. Berendo has been vacated and is being put on the market. The Trustee and Ms. Cueva are attempting to work out a modified compromise motion on the Oklahoma Ave. property. Nothing further filed as of 2/25.

prior tentative ruling (1/23/18)

This concerns the Oklahoma Ave. property. U.S. Bank has a secured claim of \$1.439+ million. It recorded its notice of default in 2/15 and a sale was scheduled, but never held. The current monthly payments as of 11/17 are \$7,057.47. A total of 73 payments were not made. The fair market value of the property is \$1.1 million.

The property was transferred by Cueva to Debtor without the Bank's consent. The Bank received relief from stay in the prior bankruptcy case.

In this case, there was an adequate protection order on which the Debtor defaulted multiple times.

Proposed Ruling

Under the proposed compromise, the Oklahoma Property will be released from the Estate. As to the stay concerning the Debtor, relief from stay will be granted. It is up to Cueva, et al, to work out something with the Bank.

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 27, 2018

Hearing Room 303

9:00 AM

CONT... Real Estate Short Sales Inc

Chapter 7

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 27, 2018

Hearing Room 303

9:00 AM

1:15-12380 Lanker Partnership

Chapter 11

#2.00 U.S. Trustee Motion to dismiss or convert Case with an
Order Directing Payment of Quarterly Fees and for Judgment

Docket 155

***** VACATED *** REASON: Motion withdrawn 2/21/18 - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Lanker Partnership

Represented By
Charles Shamash
Joseph Caceres
Nedda Haeri
Stuart I Koenig
Sandford L. Frey

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 27, 2018

Hearing Room 303

9:00 AM

1:15-14213 Michael Robert Goland
Adv#: 1:16-01046 Lewis v. Goland

Chapter 7

#3.00 Status Conference re: First Amended Complaint

fr. 7/11/17, 8/22/17, 9/19/17, 1/23/18

Docket 97

***** VACATED *** REASON: Stip. order entered 1/30/18 -Dismissing (eg)**

Tentative Ruling:

Mr. Goland filed a unilateral status report on 1/16. He is ready for trial. Mr. Hagen also filed a unilateral status report. According to Mr. Hagen, the only remaining issue is whether the memorandum of costs in the state court matter should be non-dischargeable.

The best thing to do is to set this for trial. The evidence will be as it is. It appears to be a one day trial. Let's set the date.

prior tentative ruling (9/19/17)

Plaintiff and Defendant each filed a status report, although it appears that Mr. Lewis incorporated Mr. Hagen's report into a single one. The issue right now seems to be whether Plaintiff will file an amended complaint to include another state court judgment for attorney's fees. It appears that Mr. Lewis is awaiting a final order on the motion for reconsideration before he amends. Has Mr. Lewis provided Mr. Hagen with the state court documents that he has?

As to the amended complaint concerning the prior ruling on sanctions motions, apparently Mr. Lewis is attempting to obtain documents from Archives to determine whether to amend his complaint.

From the Court - I don't want this to drag on and on. Please come to court or appear by phone so that I can set some dates and make sure that all necessary documents are being exchanged. Let's go through exactly what is left to adjudicate in this case.

prior tentative ruling (8/22/17)

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 27, 2018

Hearing Room 303

9:00 AM

CONT... **Michael Robert Goland**

Chapter 7

An answer was filed on 5/23/17. On 8/7/17, the parties filed a joint status report. Basically, Mr. Lewis is waiting for the ruling on the motion for sanctions to determine how to proceed: file an amended complaint, file additional motions for summary judgment, and/or dismiss the complaint. He also thinks that a motion to revoke the discharge is warranted.

The discharge was entered on 5/31/16. A proceeding to revoke the discharge must be brought by adversary proceeding, not by motion. FRBP 7001(4). Before he files such an adversary proceeding, Mr. Lewis is directed to carefully review 11 USC §727(e) to make sure that the statute of limitations has not passed.

This adversary proceeding is under §523(a)(6) to declare a variety of attorney's fees awards to be non-dischargeable. These arose from three state court cases. The motion for summary judgment resolved one of them (the vexatious litigant judgment). The adjudication of the other two are the basis of this litigation.

The sanctions motions are being heard on 8/22 and presumably the decision will be made at that time. I will then want to know how Mr. Lewis intends to proceed and will set four deadlines. There is already so many documents in this case that I can't imagine that much more (or any more) discovery needs to occur. Let's get this to trial.

Party Information

Debtor(s):

Michael Robert Goland

Represented By
David S Hagen

Defendant(s):

Michael Goland

Represented By
David S Hagen

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 27, 2018

Hearing Room 303

9:00 AM

CONT... Michael Robert Goland

Chapter 7

Plaintiff(s):

Bret D Lewis

Represented By
Bret D Lewis

Trustee(s):

Amy L Goldman (TR)

Pro Se

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 27, 2018

Hearing Room 303

9:00 AM

1:14-15182 Mark Alan Shoemaker

Chapter 7

Adv#: 1:14-01206 U.S. Trustee v. Shoemaker

#4.00 Status Conference re: Trial - Holding Date
re: Complaint for
Denial of Discharge Pursuant to
11 USC 727(a)(2), (a)(3), (a)(4) and (a)(5)

fr. 3/25/15; 5/12/15, 9/1/15, 12/8/15, 12/22/15,
3/1/16, 6/7/16, 10/25/16; 10/18/16; 11/1/16; 11/15/16,
12/6/16, 2/21/17; 5/16/17; 6/27/17; 10/10/17; 10/11/17,
12/19/17

Docket 1

***** VACATED *** REASON: Judgment entered 1/4/18, appeal filed
1/6/18 (eg)**

Tentative Ruling:

I am currently working on the decision in this case. Continue this holding date without appearance to Feb. 27, 2018 at 10:00 a.m.. I hope to have it completed and out to you well before that time.

Party Information

Attorney(s):

Bret D Lewis

Represented By
Bret D Lewis

Counter-Claimant(s):

Mark Alan Shoemaker

Pro Se

Counter-Defendant(s):

Peter C Anderson

Represented By
Kenneth G Lau

Alfred H Siegel

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 27, 2018

Hearing Room 303

9:00 AM

CONT... Mark Alan Shoemaker

Chapter 7

Debtor(s):

Mark Alan Shoemaker

Represented By
William H Brownstein

Defendant(s):

Mark Alan Shoemaker

Represented By
William H Brownstein

Plaintiff(s):

U.S. Trustee

Represented By
Kenneth G Lau
Hatty K Yip

Trustee(s):

Alfred H Siegel (TR)

Pro Se

Alfred H Siegel (TR)

Represented By
Anthony A Friedman

US Trustee(s):

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 27, 2018

Hearing Room 303

9:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#5.00 Motion for Sanctions Against Glen Pyle, Sweetwater Management Company Inc and Glen E Pyle Irrevocable Trust

fr. 1/24/12, 4/10/12, 5/29/12, 6/19/12, 9/11/12, 10/2/12, 3/19/13, 6/4/13, 8/27/13, 11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14, 12/16/14, 3/10/15, 5/12/15, 6/2/15, 9/1/15, 9/8/15; 11/17/15; 1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16, 10/11/16, 1/17/17, 2/21/17, 3/28/17; 5/30/17; 7/25/17; 11/14/17

Docket 9

Tentative Ruling:

Continued by stipulation to 2/27/18 at 10:00 a.m. Since Mr. Berry has a new attorney, the parties are again trying to settle this. Nothing new filed as of 2/25/18.

prior tentative ruling (7/25/17)

On July 21, Mr. Aver filed a status report as to discovery compliance. Pyle has appeared a three depositions for some 15 hours of questioning, In each case he has signed the deposition transcript without change. There were disputes as to whether Pyle or Aver ever received the original deposition transcripts.

Pyle has also produced almost 800 pages of documents. Pyle has responded to all interrogatories. There has been no intentional or purposeful failure to comply with discovery.

Mr. Aver then goes through the history of the sanctions requests, Pyle's difficulty in receiving mail, settlement efforts, and asks that the request for sanctions be summarily denied.

No status report has been received from Mr. Berry.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 27, 2018

Hearing Room 303

9:00 AM

CONT...

Glen E Pyle

Chapter 7

Proposed ruling: The issue here is not money, but whether I will strike the answer and enter default. Although Mr. Aver makes Mr. Pyle sound like the most cooperative defendant who ever existed and Mr. Berry like the most aggressive plaintiff, this is not true. Although Mr. Berry has been aggressive, he has not been abusive. Even before Mr. Aver was part of this case, the Court was aware that Mr. Pyle was angry and uncooperative. While he has apparently now made all discovery, it was like pulling teeth to get it, particularly in a complete and comprehensible form. Thus, Mr. Berry's frustration was reasonable.

However, I will not strike the answer. But monetary sanctions are warranted, though I am unable to tell in what amount. The initial request was for \$4,000. But that was during the first year of the case. And while Mr. Berry represents himself, he is still entitled to a reasonable rate of compensation for time spent. I need a set of time records from Mr. Berry so that I can see exactly what was done and for how long. The actual issues for which I will award compensation are the following:

- (1) the second deposition, which I believe was due to the lack of production of documents.
- (2) any motions for production of documents that request new copies of documents that were illegible or unorganized or not produced in a prior request for production.
- (3)

prior tentative ruling (5/30/17)

I would like to complete this motion. I believe that all discovery has been done and this case should be set for trial. How do you recommend that this be resolved?

prior tentative ruling (1/17/17)

Since the deposition took place, I am not sure what is left of this motion. I continued the motion for summary judgment to 2/21/17 at 10:00 a.m. on stipulation of the parties. Please advise me whether this motion should also be continued to that date or whether it will be heard on 1/17. If it is to be heard on 1/17, I need to know what issues remain.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 27, 2018

Hearing Room 303

9:00 AM

CONT... Glen E Pyle

Chapter 7

If no one appears (in person or by phone) on 1/17, I will continue this to 2/21/17 at 10:00 a.m.

prepared on 7/29/16:

On July 25, Mr. Berry filed a supplemental declaration (note that dkt. 111 and 112 are identical, though filed on different dates). One of the conditions for continuing the deposition was that Mr. Aver provide a written response to the settlement proposal at least 10 days before the continued date. This was not done and no written response was ever provided although Berry sent a reminder email to Aver. The deposition did take place on 6/29/16.

Further, neither Aver nor Pyle has ever returned vol 1 and vol 2 of the original deposition transcripts, although the signed signature pages have been received. There is a significant cost to creating copies for the trial.

When Berry sent notices to Pyle on 3/22/16, 4/26/16, and 5/25/16, the envelopes were returned by the Post Office marked "Return to Sender, no mail receptacle, unable to forward." Then he sent two other envelopes to Pyle at the same address on 6/2/16 and 6/9/16, they were returned marked "return to sender, undeliverable as addressed, (or) no such street, unable to forward."

As noted in my order of 3/29/16 (dkt. 103), since Pyle has apparently interfered with the receipt of his mail, he is deemed to be aware of the content and the Court will make rulings accordingly.

He did appear at the agreed-to rescheduled date of the deposition. As to the documents to be produced, I do not know whether Mr. Berry gave a list, but none was filed with the Court as had been ordered in dkt. 103. Therefore apparently Mr. Pyle brought the required documents or none were actually required. As to the settlement offer, that is deemed rejected. I cannot force the parties to settle.

As to the deposition, Mr. Aver is to bring the original to the hearing on August 2 or is to provide a copy for the Court at his own expense.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 27, 2018

Hearing Room 303

9:00 AM

CONT...

Glen E Pyle

Chapter 7

Let's set a trial date and complete this case. This sanctions motion is not completed. I will continue it and may still strike the answer, etc. if Mr. Pyle and his attorney do not cooperate in the trial preparations, etc.

prior tentative ruling (6/7/16)

An initial partial ruling was entered on 3/29/16 and this was continued to 6/7. The Court is concerned that Mr. Pyle is still not accepting the mailings from Mr. Berry. However, Mr. Pyle seems to be in touch with his attorney. The parties have agreed by email to continue the deposition to 6/29/16 and to other matters set forth in Berry's email:

I will agree to continue the deposition and the document production on the following conditions:

- 1. You agree that your client Glen Pyle will appear on the new date as I have no contact with him. All notices/correspondence to him are returned by the post office.*
- 2. The deposition and document production are continued to the earliest of June 16, 17, 21, 28 or 29, at 10:00 am. at my office [I am not available from June 30, 2016, to July 19, 2016].*
- 3. All orders remain in full force and effect including, but not limited to, all of Judge Mund's orders regarding the consequences if Mr. Pyle is not compliant with the May 27, 2016, deposition/document production date; provided those orders are modified only by changing the date of his appearance for deposition and document production.*
- 4. The status conference will be continued from June 7, 2016, to the earliest date set by Judge Mund's Clerk, and a copy of this letter will be sent to the clerk.*
- 5. You will give me a written response to the settlement proposal (still not an offer) at least ten days before the deposition.*
- 6. You fax or email me your agreement to the above before 4:00 p.m. today, the earlier the better because of the court reporter.*

Although Mr. Aver is to prepare a written stipulation to that effect, the Court finds that the email exchange is sufficient for the Court to enter an order and will do so without anything further from the parties.

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9:00 AM

CONT... Glen E Pyle

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The motion is continued without appearance to 8/2/16 at 10:00 a.m. If this is not an available date for the parties, please notify the other side and choose an agreeable date from my self-calendering notice or appear by phone on 6/7 to set the hearing.

prior tentative ruling (3/1/6)

On 2/24/16, Mr. Berry emailed the parties and the Court that he will be appearing by Court Call. Can we go to trial without further delays?

prior tentative ruling (1/12/16):

These matters will be continued due to the health of Mr. Berry. He proposed a date, but the Court has not yet had confirmation of it from Mr. Aver. Please appear by phone or file something showing and agreed-to continued date.

prior tentative ruling (11/17/15)

At the hearing on 9/8, the Court ordered Mr. Pyle to produce all responsive documents to Mr. Berry by 10/30/15. If Mr. Pyle fails to do so, he will be unable to use the documents at trial. The production is also to include a list of all documents submitted. Mr. Pyle and Mr. Avery are to retain a set of all of the documents that they are submitting to Mr. Berry.

prior tentative ruling (9/8/15)

On 8/26/15 Mr. Berry filed a declaration that shows that once again Mr. Aver is not responding to correspondence or phone calls. He requests \$1,024 in sanctions against Mr. Aver.

On 8/28 Mr. Pyle filed his opposition. I have reviewed this and I have heard it all before in this and other cases.

No one should have to work as hard as Mr. Berry has to schedule discovery. The sanctions appear to be warranted assuming that Mr. Berry can link them to a code provision or other legal authority and follow the proper notice requirements for that code provision or other legal authority.

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Per Mr. Aver's declaration, Mr. Pyle did not appear on 8/26 and no documentation provided?

Mr. Berry - do you really need this stuff? I know that a lot of things were previously provided. Is this enough for you to proceed? I would simply like to go to trial. I would give Mr. Pyle a few weeks to prepare his trial documentation and provide it. If there is anything that he does not provide, I would not let him put it in later.

prior tentative ruling (6/2/15)

At the last hearing, Mr. Aver was ordered to advise Mr. Berry of the date for Mr. Pyle's deposition. He was given a choice of dates and was to respond by 5/15. According to Mr. Berry, this did not occur. According to Mr. Aver, he notified Mr. Berry on 5/28 that he and Mr. Pyle would be available on July 8. Without having received this, Mr. Berry stated that he prefers 7/13/15, which is also an acceptable date for Mr. Mendoza. Since Mr. Aver is withdrawing, his wishes are no longer relevant and the deposition will take place on 7/13/15. Mr. Berry is to give written notice to Mr. Pyle and Mr. Mendoza of the time and date. If Mr. Aver does not withdraw, the deposition will still take place on 7/13 unless the parties agree to a different date.

As to sanctions, the ultimate one would be to strike Mr. Pyle's answer and enter a default. If he wishes to defend, he needs to appear for his deposition and cooperate in it.

prior tentative ruling (5/12/15)

I received emails that this matter had settled, but it was to be documented. Mr. Berry filed a unilateral status conference that this has not occurred. I believe that it was Mr. Aver's task to document this and on April 17, 2015 Mr. Berry sent him a letter to this effect. In his unilateral status report, Mr. Aver states that the Debtor is unable to perform the settlement and wants to proceed to trial. He also will be filing a motion to withdraw as counsel.

Mr. Aver will be appearing by phone. Mr. Berry can also so appear. Let's set a date for Mr. Aver's motion to withdraw and a trial date if the Debtor is also on the phone. If he is not, then the motion to withdraw is to be filed no later than June 1 and will be heard on June 30 at 10:00 a.m. (Sorry for the delay,

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but I will be on vacation much of June.) I would like to get trial dates from Mr. Berry and these will be given to the Debtor and on June 30 we will set the actual trial. I will need a trial time estimate.

prior tentative ruling (3/10/15)

Mediation set for 3/24/15. Continue without appearance to 5/12/15 at 1:00 a.m.

prior tentative ruling (10/7/14)

The mediation has been delayed. Continue without appearance to 12/16/14 at 10:00 a.m.

prior tentative ruling (8/5/14)

This is scheduled for a settlement conference before Judge Ryan on 9/22/14. Continue without appearance to 10/7/14 at 10:00 a.m. I would like a status report for that hearing.

prior tentative ruling (3/11/14)

At the prior hearing this was continued to see if Mr. Pyle appeared for his deposition, which was scheduled for 2/10 at 10:00 a.m. at Mr. Berry's office. Per the status report filed 3/4, he did so and Berry intends to schedule another session at a mutually agreeable date. I will continue this as a holding date to make sure that future discovery is complied with.

prior tentative ruling (11/19/13)

At the hearing on 8/17 I determined that if Mr. Pyle is not well enough to be deposed, he is not well enough to be present at the trial. He is not to testify or be in the courtroom. Mr. Aver can defend and bring in other witnesses, but not documents that should have been produced and were not.

As of 11/18 at 8:27 a.m. Mr. Aver has not filed a status report. I have warned him many times about this and ordered him to respond to every email and letter that is sent by Mr. Berry. If this has not been done, I will set an OSC on sanctions as to Mr. Aver.

I want to set this for trial.

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prior tentative ruling (8/27/13)

At the hearing on June 4 the issue arose of Mr. Pyle's health. I ordered Mr. Aver to contact Mr. Berry by 6/7 as to whether Pyle would be available for the scheduled 6/14 deposition. If not, Pyle was to submit a doctor's note to the Court as to the nature of the health disability and when he would be available. Once that was known, Aver and Berry were to reach a mutually agreeable date for the deposition.

Late filed status report states that Mr. Aver tried a variety of times to gain the cooperation of Mr. Pyle's treating physician, but did not receive anything until 8/19. The letter is attached. It says that Pyle had a heart attack. He is just started to be allowed some mild walking and it stay away from stress. He should stay away from stress for the "unforeseeable future given his guarded prognosis."

I will continue this and the sanctions motion to November 19 at 10:00 a.m.
The parties will have the following choices:

- (1) Pyle - can be deposed in whatever reasonable location and time increments that he wishes and then we can set the matter for trial;
- (2) Berry - if Pyle is not able to be deposed, I will declare him unavailable and Berry can proceed to trial. Pyle will not be allowed to be present, to testify, or to provide any evidence not previously given in discovery. His attorney can call other witnesses and defend.

prior tentative ruling (3/19/13)

At the hearing on 10/2, Mr. Pyle was ordered to bring in the originals of the checks (or the copies that he has if he does not have the originals) from 2000 through 2008. He was told that the court would make copies at the hearing. If he has the checks and no additional copies, he is to give them to the court reporter, who will make two sets of copies (1 for Mr. Berry and 1 for me) and return the set to Mr. Pyle.

prior tentative ruling (10/2)

At the hearing on 9/11, Mr. Pyle was ordered to mail to Mr. Berry by 9/14 clean copies of everything that he gave his accountant starting with calendar

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year 2005. He had said that he gave the accountant a written accounting, so that is to be included.

Nothing further received by the court as of 9/30.

prior tentative ruling (9/11/12)

A transcript of the 6/19 hearing has been filed. Mr. Pyle and the Trust were represented by Richard Singer. Pyle did not fully comply with my prior order to turn over an accounting, but I ordered the deposition to take place anyway. It was agreed by the parties that it would be on 8/8. Counsel in the Campbell §523 action indicated that he might also attend the deposition. The status conference and motion to compel were continued to 9/11 to see what came happened at the deposition.

I also ordered that the tax returns for 2009, 2010, and 2011 of both Pyle and the Trust be prepared and filed by 8/3. These are to be complete tax returns, both state and federal. By August 3, he was also to give an accounting and checks for the period of 2006, 2007, and 2008.

Mr. Berry filed a proposed Order and Findings on the motion to compel, etc. Does Debtor's counsel have any objections to it? [Mr. Singer has filed a motion to withdraw as attorney for Pyle, which is set for hearing on 10/2 at 10:00 a.m.]

Berry also filed a declaration as to compliance. According to this, some but not all of the documents were received late. The tax returns were not signed by Pyle or his accountant and there is not evidence that they were filed. The accountings were not received. The accountings are necessary to ascertain if Pyle used trust monies for his own personal expenses. Berry wishes the court to strike Pyle's answer and enter default.

prior tentative ruling (6/19)

A transcript of the 5/28 hearing has been filed. At that hearing I told Mr. Pyle that this was his last chance to provide complete and legible information or that I would not allow him to put on any evidence (written or oral) or income and expenses. I told him that I expected actual tax returns that had either

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been filed or where about to be filed and on the proper tax forms. Also as to the ledger sheets, he is to provide a check number and a statement as to where the money came from that was paid: the bank account number, the check number, and the date of the check.

The new accounting was due by 6/12 from 2009-2012. On 6/15 Berry filed a declaration as to the deficiency. We will go over this at the hearing.

prior tentative ruling (4/10)

On 4/3 Marc Berry filed a declaration of findings after hearing. These were mailed to debtor's counsel on 3/2 and he was asked about it on 3/12. No comments from debtor's counsel. Sanctions of \$4,000 were to be paid to plaintiff's counsel by 3/26, but nothing has been paid. Defendants were to provide an accounting of rental income from the date of transfer, but that was not provided.

Some documents were timely provided, but not the bank statements reflecting the rental income. Apparently many of these are in the possession of defendants' attorney, but have not yet been turned over to plaintiff.

Proposed findings are attached. I will sign these.

The deposition has been continued to May. Unless the sanctions are paid and the bank records turned over, I will strike the answer.

prior tentative ruling (1/24)

This adversary proceeding seeking to avoid fraudulent transfers was commenced against debtor and related entities on 3/7/11. An amended complaint was filed on 3/29/11 to which defendants filed an answer on 5/6/11.

On 5/11/11, the chapter 7 trustee brought a motion to sell her avoidance rights to plaintiff in connection with the debtor's 2006 transfer of certain real estate assets into a trust in exchange for 40% of any potential recovery. Oddly, the 6/17/11 order approving the sale refers to certain business assets sold by the debtor to an employee prepetition.

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The last meeting of creditors on this case was set for 12/16/11 and the docket does not show whether that meeting was continued.

Argument

On 4/6/11, plaintiff propounded requests to produce on all defendants but received no response despite several attempts to contact defendants' counsel. On 7/27/11, debtor served an inadequate and incomplete response; no responses were ever provided on behalf of the other defendants (Sweetwater Management Co., Inc. and Glen E. Pyle Irrevocable Trust). On 8/26/11, plaintiff's counsel sent defendants' counsel a "meet and confer" letter explaining that the responses were inadequate but received no reply or objections to production.

Several meetings of creditors were continued due to debtor being unable to locate records required by the trustee. At the 9/23/11 meeting, debtor said that it is financially impossible to provide any more of the records.

Plaintiff requests that the court compel production of the records that have not been produced (as outlined on p.7-10 of the motion) or that defendants provide a declaration regarding their diligent search or reasonable inquiry. Further, pursuant to FRCP Rule 37(a)(5) plaintiff requests that \$4,000 in sanctions be assessed against defendants for plaintiff's attorney's fees and costs in having to bring this motion.

Opposition

Contains debtor's declaration that he has "recently" given to his attorney "all available documents in my possession that, to the best of my ability, conform with Plaintiff's request." He also declares that no financial documents were ever prepared for Sweetwater. In addition, although the trust was formed in 2000, it had no assets until 2004 and as such, no financial documents exist covering the years 2002-04. The trust had no income until 2005 and did not file a tax return before that (the tax return has been provided to plaintiff). Plaintiff also declares that he cannot provide an accounting regarding the properties that were put into the trust because it would cost him \$5,000 which he does not have.

The opposition also contains a declaration by debtor's counsel that all the

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documents in his possession have been turned over to plaintiff and that debtor be allowed to prepare an accounting himself and submit it under penalty of perjury, since he does not have the funds to hire an accountant.

Analysis

To what extent have the documents produced to date resolved the issue? Is plaintiff satisfied with debtor's declaration as to the missing documents? If not, what else should be addressed? Will plaintiff accept an accounting prepared by the debtor?

As to sanctions, those must be granted pursuant to Rule 37(a)(5), even if the responses were provided after the motion was filed, unless (1) plaintiff had not attempted in good faith to obtain disclosure before filing the motion, (2) the nondisclosure was substantially justified or (3) an award of expenses is unjust. The opposition does not address the issue of sanctions directly but indirectly states that nondisclosure was substantially justified. If that is the case, why did defendants' counsel not provide that information to plaintiff's counsel before the motion was filed and kept ignoring plaintiff's counsel's requests?

Party Information

Attorney(s):

Richard S. Singer	Pro Se
Law Offices Of Raymond H. Aver,	Represented By Raymond H Aver

Debtor(s):

Glen E Pyle	Pro Se
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Defendant(s):

Glen E Pyle	Represented By Raymond H Aver
Sweetwater Management Company	Pro Se
Glen E Pyle Irrevocable Trust	Represented By Raymond H Aver

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Movant(s):

Marc H Berry

Represented By
Marc Berry

Plaintiff(s):

Marc H Berry

Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)

Amy L Goldman (TR)

Pro Se

US Trustee(s):

United States Trustee (SV)

Pro Se

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1:10-24968 Glen E Pyle

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Adv#: 1:11-01180 Berry v. Pyle et al

#6.00 Pre-trial Conference re: Complaint to Set Aside
or Annul Fraudulent Conveyances; Alter Ego;
and for Damages

fr. 4/27/11, 6/15/11, 10/4/11, 1/24/12, 4/10/12, 5/29/12,
6/19/12, 9/11/12, 10/2/12, 11/6/12, 3/19/13, 6/4/13, 8/27/13,
11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14,
12/16/14, 3/10/15, 5/12/15, 6/2/15, 9/1/15, 9/8/15; 11/17/15;
1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16, 10/11/16, 1/17/17,
2/21/17, 3/28/17, 5/30/17; 7/25/17; 11/14/17

Docket 1

Tentative Ruling:

Continued by stipulation to 2/27/18 at 10:00 a.m. Since Mr. Berry has a new attorney, the parties are again trying to settle this. Nothing new filed as of 2/25/18.

prior tentative ruling (5/30/17)

I believe that this is ready for trial. There are many issues and much evidence. Let's get a trial estimate and set some dates.

Party Information

Attorney(s):

Richard S. Singer	Pro Se
Law Offices Of Raymond H. Aver,	Represented By Raymond H Aver

Debtor(s):

Glen E Pyle	Pro Se
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Defendant(s):

Glen E Pyle	Represented By
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Glen E Pyle

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Raymond H Aver

Sweetwater Management Company

Pro Se

Glen E Pyle Irrevocable Trust

Represented By
Raymond H Aver

Plaintiff(s):

Marc H Berry

Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)

Amy L Goldman (TR)

Pro Se

US Trustee(s):

United States Trustee (SV)

Pro Se

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1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:17-01040 GOTTLIEB v. Elkwood Associates, LLC et al

#7.00 Motion to Dismiss the First, Second, Eighth and
Ninth Claims in the Second Amended Complaint

fr. 1/23/18

Docket 49

Tentative Ruling:

The background to this adversary proceeding is contained in the Memorandum of Opinion Re Defendants' Motion to Dismiss First Amended Complaint (dkt. 34). While that motion sought dismissal of the entire complaint, it focused most heavily on the First and Second claims which were to quiet title and set aside the Rexford foreclosure sale.

First Claim – Quiet Title

In the First Amended Complaint (FAC), Plaintiff relied on the Fieldbrook Assignment (Exhibit B to the First Amended Complaint, Exhibit E to the Second Amended Complaint) to assert that "on or about February 18, 2015, Elkwood executed a certain assignment of the PWB Loan, and the Chalette DOT and Rexford DOT in favor of Fieldbrook...." Since Exhibit B showed only the Chalette trust deed was transferred to Fieldbrook, the Court ordered that the First Claim for Relief had to be amended.

The issue of tender was also discussed and the Court held that if "the Plaintiff successfully amends the FAC to support his contention that Fieldbrook was the owner of the Rexford DOT or the entire Note at the time of the foreclosure sale, then no offer to tender is required...."

The Court also determined that the Plaintiff must join the junior lienholders (including the Abselets) under the First and Second Claims for Relief.

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Solyman Yashouafar

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Second Claim – Set Aside Foreclosure Sale of Rexford

The Court found that the "defects" listed in the FAC as to the sale were not sufficient to meet the requirements of Civ.Code §2924(c) and that the Plaintiff would have to plead additional errors in the sale procedures or sufficient facts or law that would support the theory that the sale was illegal and that Elkwood had no legal right to credit bid.

Alternatively, Plaintiff could show that Elkwood does not qualify as a bona fide purchaser for value and without notice. The Court held that the FAC sufficiently pleaded that Elkwood does not meet the requirements of the first element (bona fide purchaser for value) and cannot be a BFP.

While the Court held that the Trustee need not actually tender, it also required him to add such an offer and the details involved in carrying it out if he should prevail and set aside the foreclosure sale on Rexford.

Constructive Fraudulent Transfer Claims as to Chalette

The Court found that the Tenth (under §548(a)(1)(A)) and Eleventh (under §3439(a)(1)) Claims were to be dismissed with leave to amend since the FAC does not contain allegations of unfairness or prejudicial irregularities as to the Chalette sale.

On October 18, 2017, Plaintiff filed his Second Amended Complaint (dkt. 39). The major changes to the SAC are as follows:

1. Citivest Financial Services, Inc.; Israel Abselet; Howard Abselet; Chase Manhattan Mortgage Company; Quality Loan Service Corporation; and Soda Partners, LLC have been added as defendants.

2. The following exhibits have been added: PWB Note, Rexford DOT, and Chalette DOT.

3. The specific terms of the PWB Note and trust deeds have been excerpted.

4. Plaintiff specified that due to the language of the Fieldbrook

Assignment:

a. the Fieldbrook Assignment assigned the Chalette DOT from

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Elkwood to Fieldbrook;

b. the Fieldbrook Assignment conveyed the PWB Note from Elkwood to Fieldbrook by paragraph 4 on page 1 "as it was the debt instrument tied to the Chalette DOT;"

c. "because the PWB Note was assigned, the Rexford DOT was also automatically assigned by operation of law under Cal. Civ. Code §2936 ("The assignment of a debt secured by mortgage carries with it the security,")"

d. the title of the Fieldbrook Assignment states that the DOT and Proissory Note were assigned and since the PWB Note was assigned, the assignment of the Rexford DOT occurred by operation of law.

5. As one of the irregularities described in the Second Claim for Relief, the SAC states: "When Elkwood transferred the Chalette DOT to Fieldbrook by way of the Fieldbrook Assignment it also transferred the entire PWB Note, which in turn automatically transferred the Rexford DOT by operation of law to Fieldbrook. As a result, Elkwood did not own the PWB Note or Rexford DOT, directly or indirectly, and, consequently, was not entitled to credit bid for the Rexford Property as Elkwood was not owed anything nor did it hold the power to foreclose under the Rexford DOT."

6. Because of the above, the Rexford Foreclosure Sale is void since Citivest had no authority to deliver the Rexford Foreclosure Sale Deed to Elkwood.

7. The prior claims to avoid the transfer of Chalette as a constructive fraudulent transfer under 11 USC §548(a)(1)(B), 11 USC §544(b) and Cal. Civ. Code §§3439.04(a)(2) and 3429.05 have been removed from the SAC.

Motion to Dismiss the SAC

The arguments as to the First and Second Claims for Relief are really a rehashing of the prior motion. In short, that the legal conclusion that the "supposed" assignment to Fieldbrook meant as a matter of law that the Rexford DOT was assigned to Fieldbrook in that the Fieldbrook Assignment is ambiguous as to whether the entire PWB was assigned and whether the Rexford DOT was assigned. The Guerrero memo of that previous day made

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it clear that only part of that PWB Note had been assigned to Fieldbrook, the balance remained with Elkwood, and the Rexford DOT was not assigned to Fieldbrook.

Beyond that, the Plaintiff does not deal with the issue of tender of the \$782,000+ to Elkwood that is needed to pursue this claim. At most the Rexford sale is voidable and not void, so tender is required.

The same deficiencies exist both the First and Second Claims. But also, lienholders and Citivest are not joined as parties in the Second Claim.

As to the Eighth and Ninth Claims to avoid the sale of the Chalette Home, it is necessary to join the owner of Chalette since the Trustee is seeking to avoid the sale. The property cannot be transferred back to Fieldbrook without making the current owner a party.

Opposition to Motion to Dismiss

The Fieldbrook Assignment contained no limiting language, which demonstrates that Elkwood assigned the entire PWB Note to Fieldbrook. Parole evidence is not appropriate because the Fieldbrook Assignment is unambiguous. The express terms of the PWB Note required the consent of the Debtors before Elkwood could assign less than the entire PWB Note and that was never obtained.

Because the foreclosure is void, tender is not required. Elkwood does not meet the requirement of "good faith" to be a BFP under the Second Claim and the Court already has held that the Second Claim satisfied the other requirements.

As to the Eighth and Ninth Claims, the Trustee is not seeking to recover the Chalette Home, just the value from the Defendants, not from the current homeowners. Thus the current homeowners need not be named or joined.

Reply

Once again the Defendants argue that tender is required for standing. Because there is a patent ambiguity as to why the entire PWB Note would be

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assigned to Fieldbrook without assigning the Rexford DOT, extrinsic evidence is allowed. Thus, at best, the sale of Rexford is voidable, but not void.

As to the Second Claim, the alleged issues concerning the assignment are not "irregularities" in the notice and sale of the Rexford Home and cannot be the basis to set aside that sale. Also this is duplicative of the First Claim for quiet title. Plaintiff also has not properly pleaded that Elkwood is not a BFP.

Although the lienholders were joined in the First Claim, they were not in the Second Claim and thus would be free to pursue duplicative actions.

As to the Eighth and Ninth Claims, the Court should bind the Plaintiff to its decision that it is not seeking to avoid the foreclosure sale of Chalette, but is only seeking damages.

Analysis

The parties tend to forget that this is a motion to dismiss the complaint and not a motion for summary judgment. Thus, there can be alternative theories of recovery and even alternative alleged facts. As to the parole evidence rule and the interpretation of the Fieldbrook Assignment in relation to the Guerrero Memo, this is not the appropriate place for the Court to decide whether there is sufficient ambiguity to allow parole evidence. Discovery is yet to be taken.

As to the issue of tender, if there is any theory upon which the foreclosure sale of Rexford would be void, tender is not required. The Trustee has put forth such a theory. Whether he can prove it is not an issue to be decided in a motion to dismiss. However, he still asserts that the sale is voidable due to irregularities. If he intends to pursue this, he must plead that when he prevails there is enough value in the property to pay or cure the foreclosing lienholder and pay or cure senior liens and all necessary costs to remove defaults (see dkt. 34, 35:21-26). He has not done so.

The Court has already ruled that Elkwood could not be a BFP by virtue of the first requirement. Nothing more is needed on this issue and no offer of tender is required if the Trustee wishes to limit himself to the theory that the

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sale is void due to the lack of ownership of the DOT by Elkwood.

Concerning naming Citivest and the lienholders as parties in the Second Claim, paragraph I(2) of the SAC states that the "names of the defendant parties in this Second Amended Complaint will appear in the titles of the 'claims for relief' that implicate them. Thus, if a defendant's name does not appear in the title of a claim for relief, Plaintiff is not seeking relief with respect to such defendant in connection with that claim for relief," The title to the Second Claim for Relief specifies that it only pertains to Elkwood and Fieldbrook, although the title to the First Claim for Relief does include Israel, Howard, Chase, Quality Loan, and Soda Partners as well as Elkwood and Fieldbrook.

As to the Eighth and Ninth Claims, the Plaintiff is now estopped from pursuing the owners of Chalette – but only in this adversary proceeding.

Proposed Ruling

As much as I would like to move this forward – and there is no reason that discovery should not continue – there are issues of tender in the Second Claim for Relief and the failure to name Citivest and the lienholders as parties in the Second Claim for Relief. How will these be cured. Please note that there is a stipulation with Citivest that states that Citivest has no interest in the properties. How does this fit in since I thought that the issue with Citivest is that it made mistakes in the foreclosure, but it is not named in the title to the Second Claim for Relief, though it is discussed in the body of the Second Claim for Relief? As to the other lienholders, are the First Claim for quiet title and the Second Claim to set aside the Rexford foreclosure sale so linked that it is sufficient that they were named in only the First Claim for Relief?

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

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CONT... Solyman Yashouafar

Chapter 11

Defendant(s):

Elkwood Associates, LLC	Represented By Daniel J McCarthy
Fieldbrook, Inc.	Represented By Daniel J McCarthy
Soda Partners, LLC	Represented By Ronald N Richards
Quality Loan Service	Pro Se
Chase Manhattan Mortgage Co.	Pro Se
Howard Abselet	Represented By Henry S David
Israel Abselet	Represented By Henry S David
Citivest financial Services, Inc.	Pro Se

Movant(s):

Elkwood Associates, LLC	Represented By Daniel J McCarthy
Fieldbrook, Inc.	Represented By Daniel J McCarthy

Plaintiff(s):

DAVID K GOTTLIEB	Represented By Jeremy V Richards John W Lucas
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Trustee(s):

David Keith Gottlieb (TR)	Represented By Jeremy V Richards John W Lucas
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 27, 2018

Hearing Room 303

9:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:17-01040 GOTTLIEB v. Elkwood Associates, LLC et al

#8.00 Status Conference re: Seconde Amended Complaint
Complaint To (I) Quiet Title Of The Rexford Home,
(II) Set Aside Foreclosure Sale Of The Rexford Home,
(III) Avoid Actual And Constructive Fraudulent Transfer
Of Rexford Home And Actual Fraudulent Transfer Of
Chalette Home, (IV) Recover The Properties Or Value
Thereof, And (V) Related Relief by Jeremy V Richards
on behalf of David K Gottlieb against all defendants

fr. 12/19/17, 1/23/18

Docket 39

Tentative Ruling:

On 12/14/17 the parties filed a stipuation continung the status conference to 1/23/18 at 10:00 a.m., when the motion to dismiss is set for hearing.

Then on 12/28/17 the parties filed a further stipulation continuing the motion for dismiss from 1/23/18 to 2/27/18. This is continued without appearance to 2/27/18 at 10:00 a.m.

Prepared on 12/14. Will be updated before the 2/27 hearing.

The second amended complaint was filed on 10/18/17. A summons was issued on 11/7 and a date to respond was 12/7. The following were on new summonses:

Soda Partners (filed an answer on 11/7)

Quality Loan Service

Chase Manhattan Mortgage Co.

Howard Abselet (filed an answer on 12/6)

Israel Abselet (filed and answer on 12/6)

Citivist Financial Services (stipulation consenting to entry of judgment filed on 12/12)

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CONT... Solyman Yashouafar

Chapter 11

There is stipulation between the Trustee (plaintiff) and Elkwood and Fieldbrook to extend time to respond to 12/7. On 12/7 they filed a motion to dismiss the first, second, eighth and ninth claims. This is set for hearing on 1/23/18 at 10:00 a.m.

Meanwhile, the Abselets have filed a motion in the district court to withdraw the reference. Presumably that will be heard before the 1/23/18 date for the motion to dismiss. Unless the district court withdraws the reference, the 1/23 hearing will go forward. Even if the reference is withdrawn, there will still be a hearing on the motion to dismiss, although that will be set at the convenience of the district court. So please prepare to oppose that motion in a timely fashion.

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Defendant(s):

Elkwood Associates, LLC

Represented By
Daniel J McCarthy

Fieldbrook, Inc.

Represented By
Daniel J McCarthy

Plaintiff(s):

DAVID K GOTTLIEB

Represented By
Jeremy V Richards
John W Lucas

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

**United States Bankruptcy Court
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Tuesday, February 27, 2018

Hearing Room 303

10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#9.00 Motion for Sanctions Against Glen Pyle, Sweetwater Management Company Inc and Glen E Pyle Irrevocable Trust

fr. 1/24/12, 4/10/12, 5/29/12, 6/19/12, 9/11/12, 10/2/12, 3/19/13, 6/4/13, 8/27/13, 11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14, 12/16/14, 3/10/15, 5/12/15, 6/2/15, 9/1/15, 9/8/15; 11/17/15; 1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16, 10/11/16, 1/17/17, 2/21/17, 3/28/17; 5/30/17; 7/25/17; 11/14/17

Docket 9

***** VACATED *** REASON: Moved to 9:00 a.m. per order #192. If**

Tentative Ruling:

Continued by stipulation to 2/27/18 at 10:00 a.m. Since Mr. Berry has a new attorney, the parties are again trying to settle this.

prior tentative ruling (7/25/17)

On July 21, Mr. Aver filed a status report as to discovery compliance. Pyle has appeared a three depositions for some 15 hours of questioning, In each case he has signed the deposition transcript without change. There were disputes as to whether Pyle or Aver ever received the original deposition transcripts.

Pyle has also produced almost 800 pages of documents. Pyle has responded to all interrogatories. There has been no intentional or purposeful failure to comply with discovery.

Mr. Aver then goes through the history of the sanctions requests, Pyle's difficulty in receiving mail, settlement efforts, and asks that the request for sanctions be summarily denied.

No status report has been received from Mr. Berry.

Proposed ruling: The issue here is not money, but whether I will strike the answer and enter default. Although Mr. Aver makes Mr. Pyle sound like the

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CONT... Glen E Pyle

Chapter 7

most cooperative defendant who ever existed and Mr. Berry like the most aggressive plaintiff, this is not true. Although Mr. Berry has been aggressive, he has not been abusive. Even before Mr. Aver was part of this case, the Court was aware that Mr. Pyle was angry and uncooperative. While he has apparently now made all discovery, it was like pulling teeth to get it, particularly in a complete and comprehensible form. Thus, Mr. Berry's frustration was reasonable.

However, I will not strike the answer. But monetary sanctions are warranted, though I am unable to tell in what amount. The initial request was for \$4,000. But that was during the first year of the case. And while Mr. Berry represents himself, he is still entitled to a reasonable rate of compensation for time spent. I need a set of time records from Mr. Berry so that I can see exactly what was done and for how long. The actual issues for which I will award compensation are the following:

- (1) the second deposition, which I believe was due to the lack of production of documents.
- (2) any motions for production of documents that request new copies of documents that were illegible or unorganized or not produced in a prior request for production.
- (3)

prior tentative ruling (5/30/17)

I would like to complete this motion. I believe that all discovery has been done and this case should be set for trial. How do you recommend that this be resolved?

prior tentative ruling (1/17/17)

Since the deposition took place, I am not sure what is left of this motion. I continued the motion for summary judgment to 2/21/17 at 10:00 a.m. on stipulation of the parties. Please advise me whether this motion should also be continued to that date or whether it will be heard on 1/17. If it is to be heard on 1/17, I need to know what issues remain.

If no one appears (in person or by phone) on 1/17, I will continue this to 2/21/17 at 10:00 a.m.

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10:00 AM

CONT... Glen E Pyle

Chapter 7

prepared on 7/29/16:

On July 25, Mr. Berry filed a supplemental declaration (note that dkt. 111 and 112 are identical, though filed on different dates). One of the conditions for continuing the deposition was that Mr. Aver provide a written response to the settlement proposal at least 10 days before the continued date. This was not done and no written response was ever provided although Berry sent a reminder email to Aver. The deposition did take place on 6/29/16.

Further, neither Aver nor Pyle has ever returned vol 1 and vol 2 of the original deposition transcripts, although the signed signature pages have been received. There is a significant cost to creating copies for the trial.

When Berry sent notices to Pyle on 3/22/16, 4/26/16, and 5/25/16, the envelopes were returned by the Post Office marked "Return to Sender, no mail receptacle, unable to forward." Then he sent two other envelopes to Pyle at the same address on 6/2/16 and 6/9/16, they were returned marked "return to sender, undeliverable as addressed, (or) no such street, unable to forward."

As noted in my order of 3/29/16 (dkt. 103), since Pyle has apparently interfered with the receipt of his mail, he is deemed to be aware of the content and the Court will make rulings accordingly.

He did appear at the agreed-to rescheduled date of the deposition. As to the documents to be produced, I do not know whether Mr. Berry gave a list, but none was filed with the Court as had been ordered in dkt. 103. Therefore apparently Mr. Pyle brought the required documents or none were actually required. As to the settlement offer, that is deemed rejected. I cannot force the parties to settle.

As to the deposition, Mr. Aver is to bring the original to the hearing on August 2 or is to provide a copy for the Court at his own expense.

Let's set a trial date and complete this case. This sanctions motion is not completed. I will continue it and may still strike the answer, etc. if Mr. Pyle

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CONT... Glen E Pyle

Chapter 7

and his attorney do not cooperate in the trial preparations, etc.

prior tentative ruling (6/7/16)

An initial partial ruling was entered on 3/29/16 and this was continued to 6/7. The Court is concerned that Mr. Pyle is still not accepting the mailings from Mr. Berry. However, Mr. Pyle seems to be in touch with his attorney. The parties have agreed by email to continue the deposition to 6/29/16 and to other matters set forth in Berry's email:

I will agree to continue the deposition and the document production on the following conditions:

- 1. You agree that your client Glen Pyle will appear on the new date as I have no contact with him. All notices/correspondence to him are returned by the post office.*
- 2. The deposition and document production are continued to the earliest of June 16, 17, 21, 28 or 29, at 10:00 am. at my office [I am not available from June 30, 2016, to July 19, 2016].*
- 3. All orders remain in full force and effect including, but not limited to, all of Judge Mund's orders regarding the consequences if Mr. Pyle is not compliant with the May 27, 2016, deposition/document production date; provided those orders are modified only by changing the date of his appearance for deposition and document production.*
- 4. The status conference will be continued from June 7, 2016, to the earliest date set by Judge Mund's Clerk, and a copy of this letter will be sent to the clerk.*
- 5. You will give me a written response to the settlement proposal (still not an offer) at least ten days before the deposition.*
- 6. You fax or email me your agreement to the above before 4:00 p.m. today, the earlier the better because of the court reporter.*

Although Mr. Aver is to prepare a written stipulation to that effect, the Court finds that the email exchange is sufficient for the Court to enter an order and will do so without anything further from the parties.

The motion is continued without appearance to 8/2/16 at 10:00 a.m. If

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CONT... Glen E Pyle

Chapter 7

this is not an available date for the parties, please notify the other side and choose an agreeable date from my self-calendering notice or appear by phone on 6/7 to set the hearing.

prior tentative ruling (3/1/6)

On 2/24/16, Mr. Berry emailed the parties and the Court that he will be appearing by Court Call. Can we go to trial without further delays?

prior tentative ruling (1/12/16):

These matters will be continued due to the health of Mr. Berry. He proposed a date, but the Court has not yet had confirmation of it from Mr. Aver. Please appear by phone or file something showing and agreed-to continued date.

prior tentative ruling (11/17/15)

At the hearing on 9/8, the Court ordered Mr. Pyle to produce all responsive documents to Mr. Berry by 10/30/15. If Mr. Pyle fails to do so, he will be unable to use the documents at trial. The production is also to include a list of all documents submitted. Mr. Pyle and Mr. Avery are to retain a set of all of the documents that they are submitting to Mr. Berry.

prior tentative ruling (9/8/15)

On 8/26/15 Mr. Berry filed a declaration that shows that once again Mr. Aver is not responding to correspondence or phone calls. He requests \$1,024 in sanctions against Mr. Aver.

On 8/28 Mr. Pyle filed his opposition. I have reviewed this and I have heard it all before in this and other cases.

No one should have to work as hard as Mr. Berry has to schedule discovery. The sanctions appear to be warranted assuming that Mr. Berry can link them to a code provision or other legal authority and follow the proper notice requirements for that code provision or other legal authority.

Per Mr. Aver's declaration, Mr. Pyle did not appear on 8/26 and no documentation provided?

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CONT... Glen E Pyle

Chapter 7

Mr. Berry - do you really need this stuff? I know that a lot of things were previously provided. Is this enough for you to proceed? I would simply like to go to trial. I would give Mr. Pyle a few weeks to prepare his trial documentation and provide it. If there is anything that he does not provide, I would not let him put it in later.

prior tentative ruling (6/2/15)

At the last hearing, Mr. Aver was ordered to advise Mr. Berry of the date for Mr. Pyle's deposition. He was given a choice of dates and was to respond by 5/15. According to Mr. Berry, this did not occur. According to Mr. Aver, he notified Mr. Berry on 5/28 that he and Mr. Pyle would be available on July 8. Without having received this, Mr. Berry stated that he prefers 7/13/15, which is also an acceptable date for Mr. Mendoza. Since Mr. Aver is withdrawing, his wishes are no longer relevant and the deposition will take place on 7/13/15. Mr. Berry is to give written notice to Mr. Pyle and Mr. Mendoza of the time and date. If Mr. Aver does not withdraw, the deposition will still take place on 7/13 unless the parties agree to a different date.

As to sanctions, the ultimate one would be to strike Mr. Pyle's answer and enter a default. If he wishes to defend, he needs to appear for his deposition and cooperate in it.

prior tentative ruling (5/12/15)

I received emails that this matter had settled, but it was to be documented. Mr. Berry filed a unilateral status conference that this has not occurred. I believe that it was Mr. Aver's task to document this and on April 17, 2015 Mr. Berry sent him a letter to this effect. In his unilateral status report, Mr. Aver states that the Debtor is unable to perform the settlement and wants to proceed to trial. He also will be filing a motion to withdraw as counsel.

Mr. Aver will be appearing by phone. Mr. Berry can also so appear. Let's set a date for Mr. Aver's motion to withdraw and a trial date if the Debtor is also on the phone. If he is not, then the motion to withdraw is to be filed no later than June 1 and will be heard on June 30 at 10:00 a.m. (Sorry for the delay, but I will be on vacation much of June.) I would like to get trial dates from Mr. Berry and these will be given to the Debtor and on June 30 we will set the

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CONT... Glen E Pyle

Chapter 7

actual trial. I will need a trial time estimate.

prior tentative ruling (3/10/15)

Mediation set for 3/24/15. Continue without appearance to 5/12/15 at 1:00 a.m.

prior tentative ruling (10/7/14)

The mediation has been delayed. Continue without appearance to 12/16/14 at 10:00 a.m.

prior tentative ruling (8/5/14)

This is scheduled for a settlement conference before Judge Ryan on 9/22/14. Continue without appearance to 10/7/14 at 10:00 a.m. I would like a status report for that hearing.

prior tentative ruling (3/11/14)

At the prior hearing this was continued to see if Mr. Pyle appeared for his deposition, which was scheduled for 2/10 at 10:00 a.m. at Mr. Berry's office. Per the status report filed 3/4, he did so and Berry intends to schedule another session at a mutually agreeable date. I will continue this as a holding date to make sure that future discovery is complied with.

prior tentative ruling (11/19/13)

At the hearing on 8/17 I determined that if Mr. Pyle is not well enough to be deposed, he is not well enough to be present at the trial. He is not to testify or be in the courtroom. Mr. Aver can defend and bring in other witnesses, but not documents that should have been produced and were not.

As of 11/18 at 8:27 a.m. Mr. Aver has not filed a status report. I have warned him many times about this and ordered him to respond to every email and letter that is sent by Mr. Berry. If this has not been done, I will set an OSC on sanctions as to Mr. Aver.

I want to set this for trial.

prior tentative ruling (8/27/13)

At the hearing on June 4 the issue arose of Mr. Pyle's health. I ordered Mr.

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CONT...

Glen E Pyle

Chapter 7

Aver to contact Mr. Berry by 6/7 as to whether Pyle would be available for the scheduled 6/14 deposition. If not, Pyle was to submit a doctor's note to the Court as to the nature of the health disability and when he would be available. Once that was known, Aver and Berry were to reach a mutually agreeable date for the deposition.

Late filed status report states that Mr. Aver tried a variety of times to gain the cooperation of Mr. Pyle's treating physician, but did not receive anything until 8/19. The letter is attached. It says that Pyle had a heart attack. He is just started to be allowed some mild walking and it stay away from stress. He should stay away from stress for the "unforeseeable future given his guarded prognosis."

I will continue this and the sanctions motion to November 19 at 10:00 a.m.
The parties will have the following choices:

- (1) Pyle - can be deposed in whatever reasonable location and time increments that he wishes and then we can set the matter for trial;
- (2) Berry - if Pyle is not able to be deposed, I will declare him unavailable and Berry can proceed to trial. Pyle will not be allowed to be present, to testify, or to provide any evidence not previously given in discovery. His attorney can call other witnesses and defend.

prior tentative ruling (3/19/13)

At the hearing on 10/2, Mr. Pyle was ordered to bring in the originals of the checks (or the copies that he has if he does not have the originals) from 2000 through 2008. He was told that the court would make copies at the hearing. If he has the checks and no additional copies, he is to give them to the court reporter, who will make two sets of copies (1 for Mr. Berry and 1 for me) and return the set to Mr. Pyle.

prior tentative ruling (10/2)

At the hearing on 9/11, Mr. Pyle was ordered to mail to Mr. Berry by 9/14 clean copies of everything that he gave his accountant starting with calendar year 2005. He had said that he gave the accountant a written accounting, so that is to be included.

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CONT... **Glen E Pyle**

Chapter 7

Nothing further received by the court as of 9/30.

prior tentative ruling (9/11/12)

A transcript of the 6/19 hearing has been filed. Mr. Pyle and the Trust were represented by Richard Singer. Pyle did not fully comply with my prior order to turn over an accounting, but I ordered the deposition to take place anyway. It was agreed by the parties that it would be on 8/8. Counsel in the Campbell §523 action indicated that he might also attend the deposition. The status conference and motion to compel were continued to 9/11 to see what came happened at the deposition.

I also ordered that the tax returns for 2009, 2010, and 2011 of both Pyle and the Trust be prepared and filed by 8/3. These are to be complete tax returns, both state and federal. By August 3, he was also to give an accounting and checks for the period of 2006, 2007, and 2008.

Mr. Berry filed a proposed Order and Findings on the motion to compel, etc. Does Debtor's counsel have any objections to it? [Mr. Singer has filed a motion to withdraw as attorney for Pyle, which is set for hearing on 10/2 at 10:00 a.m.]

Berry also filed a declaration as to compliance. According to this, some but not all of the documents were received late. The tax returns were not signed by Pyle or his accountant and there is not evidence that they were filed. The accountings were not received. The accountings are necessary to ascertain if Pyle used trust monies for his own personal expenses. Berry wishes the court to strike Pyle's answer and enter default.

prior tentative ruling (6/19)

A transcript of the 5/28 hearing has been filed. At that hearing I told Mr. Pyle that this was his last chance to provide complete and legible information or that I would not allow him to put on any evidence (written or oral) or income and expenses. I told him that I expected actual tax returns that had either been filed or where about to be filed and on the proper tax forms. Also as to the ledger sheets, he is to provide a check number and a statement as to

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CONT... Glen E Pyle

Chapter 7

where the money came from that was paid: the bank account number, the check number, and the date of the check.

The new accounting was due by 6/12 from 2009-2012. On 6/15 Berry filed a declaration as to the deficiency. We will go over this at the hearing.

prior tentative ruling (4/10)

On 4/3 Marc Berry filed a declaration of findings after hearing. These were mailed to debtor's counsel on 3/2 and he was asked about it on 3/12. No comments from debtor's counsel. Sanctions of \$4,000 were to be paid to plaintiff's counsel by 3/26, but nothing has been paid. Defendants were to provide an accounting of rental income from the date of transfer, but that was not provided.

Some documents were timely provided, but not the bank statements reflecting the rental income. Apparently many of these are in the possession of defendants' attorney, but have not yet been turned over to plaintiff.

Proposed findings are attached. I will sign these.

The deposition has been continued to May. Unless the sanctions are paid and the bank records turned over, I will strike the answer.

prior tentative ruling (1/24)

This adversary proceeding seeking to avoid fraudulent transfers was commenced against debtor and related entities on 3/7/11. An amended complaint was filed on 3/29/11 to which defendants filed an answer on 5/6/11.

On 5/11/11, the chapter 7 trustee brought a motion to sell her avoidance rights to plaintiff in connection with the debtor's 2006 transfer of certain real estate assets into a trust in exchange for 40% of any potential recovery. Oddly, the 6/17/11 order approving the sale refers to certain business assets sold by the debtor to an employee prepetition.

The last meeting of creditors on this case was set for 12/16/11 and the docket does not show whether that meeting was continued.

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CONT... Glen E Pyle

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Argument

On 4/6/11, plaintiff propounded requests to produce on all defendants but received no response despite several attempts to contact defendants' counsel. On 7/27/11, debtor served an inadequate and incomplete response; no responses were ever provided on behalf of the other defendants (Sweetwater Management Co., Inc. and Glen E. Pyle Irrevocable Trust). On 8/26/11, plaintiff's counsel sent defendants' counsel a "meet and confer" letter explaining that the responses were inadequate but received no reply or objections to production.

Several meetings of creditors were continued due to debtor being unable to locate records required by the trustee. At the 9/23/11 meeting, debtor said that it is financially impossible to provide any more of the records.

Plaintiff requests that the court compel production of the records that have not been produced (as outlined on p.7-10 of the motion) or that defendants provide a declaration regarding their diligent search or reasonable inquiry. Further, pursuant to FRCP Rule 37(a)(5) plaintiff requests that \$4,000 in sanctions be assessed against defendants for plaintiff's attorney's fees and costs in having to bring this motion.

Opposition

Contains debtor's declaration that he has "recently" given to his attorney "all available documents in my possession that, to the best of my ability, conform with Plaintiff's request." He also declares that no financial documents were ever prepared for Sweetwater. In addition, although the trust was formed in 2000, it had no assets until 2004 and as such, no financial documents exist covering the years 2002-04. The trust had no income until 2005 and did not file a tax return before that (the tax return has been provided to plaintiff). Plaintiff also declares that he cannot provide an accounting regarding the properties that were put into the trust because it would cost him \$5,000 which he does not have.

The opposition also contains a declaration by debtor's counsel that all the documents in his possession have been turned over to plaintiff and that debtor be allowed to prepare an accounting himself and submit it under

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CONT... Glen E Pyle

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penalty of perjury, since he does not have the funds to hire an accountant.

Analysis

To what extent have the documents produced to date resolved the issue? Is plaintiff satisfied with debtor's declaration as to the missing documents? If not, what else should be addressed? Will plaintiff accept an accounting prepared by the debtor?

As to sanctions, those must be granted pursuant to Rule 37(a)(5), even if the responses were provided after the motion was filed, unless (1) plaintiff had not attempted in good faith to obtain disclosure before filing the motion, (2) the nondisclosure was substantially justified or (3) an award of expenses is unjust. The opposition does not address the issue of sanctions directly but indirectly states that nondisclosure was substantially justified. If that is the case, why did defendants' counsel not provide that information to plaintiff's counsel before the motion was filed and kept ignoring plaintiff's counsel's requests?

Party Information

Attorney(s):

Law Offices Of Raymond H. Aver,

Represented By
Raymond H Aver

Richard S. Singer

Pro Se

Debtor(s):

Glen E Pyle

Pro Se

Defendant(s):

Glen E Pyle

Represented By
Raymond H Aver

Glen E Pyle Irrevocable Trust

Represented By
Raymond H Aver

Sweetwater Management Company

Pro Se

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CONT... Glen E Pyle

Chapter 7

Movant(s):

Marc H Berry

Represented By
Marc Berry

Plaintiff(s):

Marc H Berry

Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR)

Pro Se

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)

US Trustee(s):

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court
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10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#10.00 Pre-trial Conference re: Complaint to Set Aside
or Annul Fraudulent Conveyances; Alter Ego;
and for Damages

fr. 4/27/11, 6/15/11, 10/4/11, 1/24/12, 4/10/12, 5/29/12,
6/19/12, 9/11/12, 10/2/12, 11/6/12, 3/19/13, 6/4/13, 8/27/13,
11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14,
12/16/14, 3/10/15, 5/12/15, 6/2/15, 9/1/15, 9/8/15; 11/17/15;
1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16, 10/11/16, 1/17/17,
2/21/17, 3/28/17, 5/30/17; 7/25/17; 11/14/17

Docket 1

***** VACATED *** REASON: Moved to 9:00 a.m. per order #192. If**

Tentative Ruling:

Continued by stipulation to 2/27/18 at 10:00 a.m. Since Mr. Berry has a new attorney, the parties are again trying to settle this.

prior tentative ruling (5/30/17)

I believe that this is ready for trial. There are many issues and much evidence. Let's get a trial estimate and set some dates.

Party Information

Attorney(s):

Law Offices Of Raymond H. Aver,

Represented By
Raymond H Aver

Richard S. Singer

Pro Se

Debtor(s):

Glen E Pyle

Pro Se

Defendant(s):

Glen E Pyle Irrevocable Trust

Represented By
Raymond H Aver

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Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 27, 2018

Hearing Room 303

10:00 AM

CONT... Glen E Pyle Chapter 7

Sweetwater Management Company Pro Se
Glen E Pyle Represented By
Raymond H Aver

Plaintiff(s):

Marc H Berry Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR) Pro Se
Amy L Goldman (TR) Represented By
Amy L Goldman
Amy L Goldman (TR)

US Trustee(s):

United States Trustee (SV) Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 27, 2018

Hearing Room 303

10:00 AM

1:14-15182 Mark Alan Shoemaker

Chapter 7

Adv#: 1:14-01206 U.S. Trustee v. Shoemaker

#11.00 Status Conference re: Trial - Holding Date
re: Complaint for
Denial of Discharge Pursuant to
11 USC 727(a)(2), (a)(3), (a)(4) and (a)(5)

fr. 3/25/15; 5/12/15, 9/1/15, 12/8/15, 12/22/15,
3/1/16, 6/7/16, 10/25/16; 10/18/16; 11/1/16; 11/15/16,
12/6/16, 2/21/17; 5/16/17; 6/27/17; 10/10/17; 10/11/17,
12/19/17

Docket 1

***** VACATED *** REASON: Judgment entered 1/4/18, appeal filed
1/6/18 (eg)**

Tentative Ruling:

I am currently working on the decision in this case. Continue this holding date without appearance to Feb. 27, 2018 at 10:00 a.m.. I hope to have it completed and out to you well before that time.

Party Information

Attorney(s):

Bret D Lewis

Represented By
Bret D Lewis

Counter-Claimant(s):

Mark Alan Shoemaker

Pro Se

Counter-Defendant(s):

Alfred H Siegel

Pro Se

Peter C Anderson

Represented By
Kenneth G Lau

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 27, 2018

Hearing Room 303

10:00 AM

CONT... Mark Alan Shoemaker

Chapter 7

Debtor(s):

Mark Alan Shoemaker

Represented By
William H Brownstein

Defendant(s):

Mark Alan Shoemaker

Represented By
William H Brownstein

Plaintiff(s):

U.S. Trustee

Represented By
Kenneth G Lau
Hatty K Yip

Trustee(s):

Alfred H Siegel (TR)

Pro Se

Alfred H Siegel (TR)

Represented By
Anthony A Friedman

US Trustee(s):

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 27, 2018

Hearing Room 303

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:17-01040 GOTTlieb v. Elkwood Associates, LLC et al

#12.00 Motion to Dismiss the First, Second, Eighth and
Ninth Claims in the Second Amended Complaint

fr. 1/23/18

Docket 49

***** VACATED *** REASON: Moved to 9:00 a.m. per order #63. If**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Defendant(s):

Elkwood Associates, LLC

Represented By
Daniel J McCarthy

Fieldbrook, Inc.

Represented By
Daniel J McCarthy

Soda Partners, LLC

Represented By
Ronald N Richards

Quality Loan Service

Pro Se

Chase Manhattan Mortgage Co.

Pro Se

Howard Absalet

Represented By
Henry S David

Israel Absalet

Represented By
Henry S David

Citivest financial Services, Inc.

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, February 27, 2018

Hearing Room 303

10:00 AM

CONT... Solyman Yashouafar

Chapter 11

Movant(s):

Elkwood Associates, LLC

Represented By
Daniel J McCarthy

Fieldbrook, Inc.

Represented By
Daniel J McCarthy

Plaintiff(s):

DAVID K GOTTLIEB

Represented By
Jeremy V Richards
John W Lucas

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, March 06, 2018

Hearing Room 303

9:00 AM

:
Adv#: 1:16-01120 Speier v. SunCal Management LLC et al

Chapter 0

#1.00 Defendants' Motion for Summary Adjudication

fr. 1/23/18; 2/13/18

Docket 518

***** VACATED *** REASON: Order ent continuing hrg to 4/17/18 at
10:00 a.m. - jc**

Tentative Ruling:

Continued until March 6, 2018 at 9:00 a.m. at the request of the Court.

Party Information

Defendant(s):

SunCal Management LLC

Represented By
Craig H Averch
Doah Kim
Aalok Sharma

Argent Management, LLC

Represented By
Craig H Averch
Doah Kim
Aalok Sharma

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, March 06, 2018

Hearing Room 303

9:00 AM

:

Chapter 0

Adv#: 1:16-01121 Speier v. SunCal Management, LLC et al

#2.00 Defendants' Motion For Summary of Adjudication

fr. 1/23/18; 2/13/18

Docket 407

***** VACATED *** REASON: Order ent continuing hrg to 4/17/18 at
10:00 a.m. - jc**

Tentative Ruling:

Continued until March 6, 2018 at 9:00 a.m. at the request of the Court.

Party Information

Defendant(s):

SunCal Management, LLC

Represented By
Craig H Averch
Aalok Sharma

Argent Management, LLC

Represented By
Craig H Averch
Aalok Sharma

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, March 06, 2018

Hearing Room 303

9:00 AM

:
Adv#: 1:16-01121 Speier v. SunCal Management, LLC et al

Chapter 0

#3.00 Trustee's Motion For Partial Summary Adjudication of
his Restitution and/or Unjust Enrichment Claim for Relief

fr. 12/19/17; 1/23/18; 2/13/18

Docket 399

***** VACATED *** REASON: Order ent continuing hrg to 4/17/18 at
10:00 a.m. - jc**

Tentative Ruling:

Continued until March 6, 2018 at 9:00 a.m. at the request of the Court.

Cont. to 1/23/18 at 10:00 a.m. See Order Granting Application and Setting
Hearing on Shortened Notice.

Party Information

Defendant(s):

SunCal Management, LLC

Represented By
Craig H Averch

Argent Management, LLC

Represented By
Craig H Averch

Movant(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, March 06, 2018

Hearing Room 303

9:00 AM
CONT...

Chapter 0

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, March 06, 2018

Hearing Room 303

9:00 AM

:
Adv#: 1:16-01122 Speier v. SunCal Management LLC et al

Chapter 0

#4.00 Defendants' Motion for Summary Adjudication

fr. 12/19/17; 1/23/18; 2/13/18

Docket 399

***** VACATED *** REASON: Order ent continuing hrg to 4/17/18 at
10:00 a.m. - jc**

Tentative Ruling:

Continued until March 6, 2018 at 9:00 a.m. at the request of the Court.

Party Information

Defendant(s):

SunCal Management LLC

Represented By
Craig H Averch
Aalok Sharma

Argent Management, LLC

Represented By
Craig H Averch
Aalok Sharma

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, March 06, 2018

Hearing Room 303

9:00 AM

:
Adv#: 1:16-01122 Speier v. SunCal Management LLC et al

Chapter 0

#5.00 Trustee's Motion For Partial Summary Adjudication of
his Restitution and/or Unjust Enrichment Claim for Relief

fr. 12/19/17; 1/23/18; 2/13/18

Docket 391

***** VACATED *** REASON: Order ent continuing hrg to 4/17/18 at
10:00 a.m. - jc**

Tentative Ruling:

Continued until March 6, 2018 at 9:00 a.m. at the request of the Court.

Cont. to 1/23/18 at 10:00 a.m. See Order Granting Application and Setting
Hearing on Shortened Notice.

Party Information

Defendant(s):

SunCal Management LLC

Represented By
Craig H Averch

Argent Management, LLC

Represented By
Craig H Averch

Movant(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, March 06, 2018

Hearing Room 303

9:00 AM
CONT...

Chapter 0

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, March 06, 2018

Hearing Room 303

9:00 AM

:
Adv#: 1:16-01123 Speier v. SunCal Management LLC et al

Chapter 0

#6.00 Defendants' Motion for Summary Adjudication

fr. 1/23/18; 2/13/18

Docket 396

***** VACATED *** REASON: Order ent continuing hrg to 4/17/18 at
10:00 a.m. - jc**

Tentative Ruling:

Continued until March 6, 2018 at 9:00 a.m. at the request of the Court.

Party Information

Defendant(s):

SunCal Management LLC

Represented By
Craig H Averch
Aalok Sharma

Argent Management, LLC

Represented By
Craig H Averch
Aalok Sharma

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, March 06, 2018

Hearing Room 303

9:00 AM

:

Chapter 11

Adv#: 1:16-01123 Speier v. SunCal Management LLC et al

#7.00 Trustee's Motion for Partial Summary Adjudication of
his Restitution and/or Unjust Enrichment Claim for Relief

fr. 12/19/17; 1/23/18; 2/13/18

Docket 388

***** VACATED *** REASON: Order ent continuing hrg to 4/17/18 at
10:00 a.m. - jc**

Tentative Ruling:

Continued until March 6, 2018 at 9:00 a.m. at the request of the Court.

Cont. to 1/23/18 at 10:00 a.m. See Order Granting Application and Setting
Hearing on Shortened Notice.

Party Information

Defendant(s):

SunCal Management LLC

Represented By
Craig H Averch

Argent Management, LLC

Represented By
Craig H Averch

Movant(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, March 06, 2018

Hearing Room 303

9:00 AM

:
Adv#: 1:16-01124 Speier v. SunCal Management LLC et al

Chapter 0

#8.00 Defendants' Motion for Summary Adjudication

fr. 1/23/18; 2/13/18

Docket 401

***** VACATED *** REASON: Order ent continuing hrg to 4/17/18 at
10:00 a.m. - jc**

Tentative Ruling:

Continued until March 6, 2018 at 9:00 a.m. at the request of the Court.

Party Information

Defendant(s):

SunCal Management LLC

Represented By
Craig H Averch
Aalok Sharma

Argent Management, LLC

Represented By
Craig H Averch
Aalok Sharma

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, March 06, 2018

Hearing Room 303

9:00 AM

:
Adv#: 1:16-01124 Speier v. SunCal Management LLC et al

Chapter 0

#9.00 Trustee's Motion For Partial Summary Adjudication of
his Restitution and/or Unjust Enrichment Claim for Relief

fr. 12/19/17; 1/23/18; 2/13/18

Docket 393

***** VACATED *** REASON: Order ent continuing hrg to 4/17/18 at
10:00 a.m. - jc**

Tentative Ruling:

Continued until March 6, 2018 at 9:00 a.m. at the request of the Court.

Cont. to 1/23/18 at 10:00 a.m. See Order Granting Application and Setting
Hearing on Shortened Notice.

Party Information

Defendant(s):

SunCal Management LLC

Represented By
Craig H Averch

Argent Management, LLC

Represented By
Craig H Averch

Movant(s):

Steven M Speier (TR)

Represented By
Mike D Neue
Gary A Pemberton

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, March 06, 2018

Hearing Room 303

9:00 AM

1:08-12023 Robert Sjoquist

Chapter 7

#10.00 Trustee's Final Report and Hearing
on Applications for Compensation

Docket 247

Tentative Ruling:

David R. Hagen, trustee - approve fees and costs as requested.

Danning, Gill, successor attorney for trustee - reduce fees by \$490 for work done in approving employment. It is not the responsibility of the creditors to pay because counsel changes firms. Approve the balance as requested - \$42,573.50 fees, \$1,106.78 costs.

Hahn Fife & Co., accountant for trustee - approve fees and costs as requested.

International Sureties, LTD. - Is this for the trustee's bond? They have been overpaid by \$117.36. How will the trustee obtain the return of this?

Lewis Brisbois - this has been granted and paid through previous orders. No new fees or costs have been requested.

If you submit on this tentative ruling, no appearance is necessary. If you choose to appear and the final ruling is in conformance with the tentative ruling, no additional fees will be allowed for this appearance. If the trustee's firm is representing the trustee, no attorney's fees will be allowed for an appearance on this matter, as the trustee would be expected to be present as part of the trustee's duties.

THE TRUSTEE/DEBTOR IN POSSESSION IS TO NOTIFY ALL PROFESSIONALS OF THIS TENTATIVE RULING.

Party Information

Debtor(s):

Robert Sjoquist

Represented By
Susan Salehi
Socius Law Group PLLC

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, March 06, 2018

Hearing Room 303

9:00 AM

CONT... Robert Sjoquist

Chapter 7

William E Winfield

Trustee(s):

David R Hagen (TR)

Represented By

Brad Krasnoff

Scott Lee

Lewis Brisbois Bisgaard & Smith LLP

Michael T Delaney

Amy L Goldman

Doah Kim

Danning, Gill, Diamond & Kollitz, LLP

Zev Shechtman

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, March 13, 2018

Hearing Room 303

9:00 AM

1:14-15182 Mark Alan Shoemaker

Chapter 7

Adv#: 1:14-01206 U.S. Trustee v. Shoemaker

#1.00 Hearing re: Appellant Required Fees

Docket 0

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Prepared on 3/9 at 3:00 p.m.

Mr. Shoemaker seeks a fee waiver for his appeal. Given that he has the means to travel from Texas to Los Angeles for the trial, to pay for transcripts, and also to relocate in Texas, the Court doubts that he qualifies for a fee waiver. While it appears that his income is low, there is no information about his other assets. The required fee for an appeal is \$298.

Please plan to appear (at least by phone) and explain the above. Otherwise this application will be denied.

Party Information

Debtor(s):

Mark Alan Shoemaker

Represented By
William H Brownstein

Defendant(s):

Mark Alan Shoemaker

Represented By
William H Brownstein

Plaintiff(s):

U.S. Trustee

Represented By
Kenneth G Lau
Hatty K Yip
Nancy S Goldenberg

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, March 13, 2018

Hearing Room 303

9:00 AM

CONT... Mark Alan Shoemaker

Chapter 7

Trustee(s):

Alfred H Siegel (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, March 13, 2018

Hearing Room 303

9:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#2.00 Joint Motion of Trustee and
Litt to Continue Hearing

Docket 1350

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Prepared on 3/9 at 3:00 p.m.

The valuation hearing and status conference are set for March 19. Because there is a motion to settle with Litt, which will be heard on March 27, it would be best to hold off on the valuation hearing until after that motion is ruled on. Thus, this motion to continue would continue both of the March 19 matters to March 27, with the valuation hearing to be merely a holding date. Should the motion to settle not be granted, the valuation hearing will be continued on to a date for an evidentiary hearing.

If there is no objection, appearances will be waived and the Court will continue the valuation hearing and the status conference from March 19 to March 27 at 9:00 a.m. This will be a holding date for the valuation hearing.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, March 13, 2018

Hearing Room 303

9:00 AM

CONT... Shirley Foose McClure

Chapter 11

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, March 27, 2018

Hearing Room 303

9:00 AM

1:09-18409 Lenny Kyle Dykstra

Chapter 7

Adv#: 1:10-01183 GOTTlieb v. Simi Auto Spa Center, LP et al

#1.00 Motion For Leave to Amend Answer and Counterclaims

Docket 212

***** VACATED *** REASON: stip. cont. to 4/17/18 @10am (eg)**

Tentative Ruling:

Continued to July 17, 2018 at 10:00 a.m.

Party Information

Debtor(s):

Lenny Kyle Dykstra

Represented By
Michael T Pines - DISBARRED -
Moshe Mortner

Defendant(s):

Lenny Dykstra's Car Wash Corp., a

Pro Se

South Corona Center, LP

Represented By
Ramin Azadegan

Lenny Dykstra's Car Wash III, LP

Pro Se

Bahram Khadavi

Represented By
Ramin Azadegan

Kia Saidnia

Represented By
Ramin Azadegan

Karine Arditi

Represented By
Ramin Azadegan

Simone Shouhed

Represented By
Ramin Azadegan

Shahram Shouhed

Represented By
Ramin Azadegan

Hamid Shohed

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, March 27, 2018

Hearing Room 303

9:00 AM

CONT... Lenny Kyle Dykstra

Chapter 7

	Ramin Azadegan
Simi Auto Spa Property, LLC	Represented By Ramin Azadegan Victor A Sahn
Farshid Shohed	Represented By Ramin Azadegan
South Corona 76, LP	Represented By Ramin Azadegan
Scott Ardit	Represented By Ramin Azadegan
Rafie O. Shouhed	Represented By Ramin Azadegan
Shahriar Shouhed	Represented By Ramin Azadegan
National Car Washes, Inc.	Represented By Ramin Azadegan
Corona Petroleum, Inc.	Represented By Ramin Azadegan
Corona Lane Collection, I, LP	Represented By Ramin Azadegan
South Corona Auto Spa Property,	Represented By Ramin Azadegan
South Corona Auto Spa, LP	Represented By Ramin Azadegan
Simi Auto Spa Center, LP	Represented By Ramin Azadegan
South Corona 76 Property, LLC	Represented By Ramin Azadegan

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, March 27, 2018

Hearing Room 303

9:00 AM

CONT... Lenny Kyle Dykstra

Chapter 7

Movant(s):

Simi Auto Spa Center, LP

Represented By
Ramin Azadegan

Simi Auto Spa Center, LP

Represented By
Ramin Azadegan

Simi Auto Spa Center, LP

Represented By
Ramin Azadegan

Plaintiff(s):

DAVID K GOTTLIEB

Represented By
Irena L Norton
Robert E Huttenhoff
Ryan D ODea

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Howard M Ehrenberg
SulmeyerKupetz
Irena L Norton
Robert E Huttenhoff
Victor A Sahn
Leonard M Shulman
Ryan D ODea

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, March 27, 2018

Hearing Room 303

9:00 AM

1:10-10442 Victor Hugo Hernandez

Chapter 11

#2.00 Application for Compensation for Brownstein &
Brownstein, LLP, Debtor's Attorney

Period: 6/15/2010 to 2/21/2017
Fees: \$52905 Expenses: \$0

Docket 357

Tentative Ruling:

If I understand this correctly, the applicant wishes the Court to approve the full fee request (\$52,905), but will not seek payment beyond the amounts already received (\$13,726.53 remaining of the retainer and \$24,500 already paid by the Debtor (*which should be in the client trust account since there has been no order for receipt of this money*)). If there is no objection, this will be approved as requested.

Assuming that this is correct, no appearance is necessary. Please lodge your order.

Party Information

Debtor(s):

Victor Hugo Hernandez

Represented By
David I Brownstein
Bonni S Mantovani

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, March 27, 2018

Hearing Room 303

9:00 AM

1:10-10442 Victor Hugo Hernandez

Chapter 11

#3.00 Status Conference on Chapter 11 Case

fr. 1/11/11, 3/29/11, 4/12/11, 6/14/11, 8/23/11, 10/25/11,
1/17/12, 1/31/12, 2/28/12, 4/10/12, 6/12/12, 7/31/12,
9/11/12, 11/20/12, 12/11/12, 2/26/13, 4/30/13, 6/18/13,
8/27/13, 11/19/13, 1/14/14, 2/4/14, 3/11/14, 4/1/14, 6/24/14,
9/16/14, 11/18/14, 12/16/14, 1/20/15, 2/24/15; 3/31/15; 5/12/15
6/30/15; 8/18/15, 9/22/15, 2/9/16; 3/15/16; 4/26/16,
6/7/16, 7/12/16, 8/16/16; 9/13/16, 10/11/16; 10/25/16; 11/15/16,
12/20/16; 4/18/17, 5/16/17; 6/27/17, 8/1/17, 11/28/17, 2/13/18

Docket 1

Tentative Ruling:

A motion for final decree and to close the case was filed on 3/19/18. Notice of opportunity to request a hearing was filed that same date. Continue the status conference without appearance to May 1 at 10:00 a.m. If there is no request for hearing on the motion for final decree, etc., please lodge your order prior to that date.

No appearance is required on 3/27.

Party Information

Debtor(s):

Victor Hugo Hernandez

Represented By
David I Brownstein
Bonni S Mantovani

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, March 27, 2018

Hearing Room 303

9:00 AM

1:10-15070 60th & K, LLC

Chapter 11

#4.00 First And Final Application Of Law Offices Of Raymond H. Aver, A Professional Corporation, General Insolvency Counsel For 60th & K, LLC For Allowance Of Fees And Reimbursement Of Costs for Law Offices Of Raymond Aver.

Period: 4/30/2010 to 3/6/2018

Fee: \$128,106.50

Expenses: \$4,066.80

Docket 385

Tentative Ruling:

Mr. Aver has now filed a declaration and supplemental declaration of Farshad Matian, who states that he has reviewed the application and has not objection.

Approve as requested.

No appearance necessary if you submit on the tentative ruling. Except in the case of a trustee's final report and simultaneous hearing on applications for approval of professional fees, the prevailing party is to lodge a proposed order in conformance with this tentative ruling within seven court days after the hearing, serving all interested parties with a copy of the proposed order.

Party Information

Debtor(s):

60th & K, LLC

Represented By
Raymond H. Aver

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, March 27, 2018

Hearing Room 303

9:00 AM

1:10-15070 60th & K, LLC

Chapter 11

#5.00 Post Confirmation Status Conference

fr. 12/14/10, 3/8/10, 9/20/11, 12/13/11, 1/3/12, 4/10/12
7/3/12, 10/9/12, 1/15/13, 4/9/13, 7/9/13, 11/19/13, 2/4/14,
3/25/14, 4/22/14, 6/3/14, 9/2/14, 11/10/14, 2/10/15, 3/10/15,
4/14/15, 5/26/15, 7/21/15, 9/29/15, 11/17/15, 12/22/15,
2/9/16; 4/5/16; 6/21/16, 10/11/16; 12/20/16; 5/2/17, 9/12/17
1/23/18

Docket 1

Tentative Ruling:

Continue without appearance to June 26, 2018 at 10:00 a.m. It seems like it is time to seek either a final decree or just to close the case. Please file a status report at least a week before the 6/26 hearing to advise me as to what is happening.

prior tentative ruling (9/12/17):

Per the status report filed on 9/6, the Debtor is current under the Plan and the stipulation with LACTTC. Although the stream of payments has commenced, the Debtor thinks that it is too early to seek a final decree. Discharge occurs on substantial consummation. The payments to unsecured creditors will go for 12 years from the effective date (to 2028). Is there any reason to keep this case open for that long?

Please think about this. Continue the status conference without appearance to Jan. 23, 2018 at 10:00 a.m.

prior tentative ruling (5/2/17)

The Debtor and the LACTTC have reached a stipulation on the treatment of the LACTTC claim that takes care of the additional amounts from the date of filing to the effective date. All payments under the plan appear to be current.

Continue without appearance to 9/12/17 at 10:00 a.m.

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CONT... 60th & K, LLC

Chapter 11

prior tentative ruling (12/20/16)

Per the status report filed 12/16, the Debtor is current under the plan.
Continue without appearance to 5/2/17 at 10:00 a.m.

prior tentative ruling (10/11/16)

Per the status report, the effective date of the Plan is 11/5/16. The Debtor has sufficient cash to comply with the Plan and pay its post-confirmation expenses.

Party Information

Debtor(s):

60th & K, LLC

Represented By
Raymond H Aver

Movant(s):

60th & K, LLC

Represented By
Raymond H Aver

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Hearing Room 303

9:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01181 Campbell v. Pyle

#6.00 Status Conference re: Complaint for
Determination that Debt is Nondischargeable
and/or to Recover Money

fr. 5/11/11, 6/22/11, 10/4/11, 1/24/12, 2/14/12,
4/24/12, 6/19/12, 9/11/12, 10/2/12, 11/6/12,
2/12/13, 3/19/13, 8/27/13, 8/27/13, 11/19/13,
2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14,
12/16/14, 3/10/15; 5/12/15; 6/2/15, 9/1/15,
9/8/15, 11/17/15; 1/12/16, 3/1/16, 6/7/16,
8/2/16, 9/27/16, 10/11/16, 1/17/17, 2/21/17,
3/28/17, 1/14/17, 12/19/17, 1/23/18

Docket 1

Tentative Ruling:

The order granting relief from the automatic stay was entered on 1/30/18. On 3/6 Mr. Campbell appeared in Court and wanted to know about the order. He had not been served with a copy of the order - our fault. I directed him to my law clerk, but he left without seeing her. On March 1, 2018, Judge Hammock continued his OSC re: Dismissal (BC416442) to July 5 so that Campbell could seek a judgment (he already has a default) on declaration. As soon as he has obtained his judgment, I will be ready to proceed. When will he be filing his declaration, etc. in the Superior Court? Should this status conference be continued until after July 5 or can we proceed before that?

prior tentative ruling (1/23/18)

Mr. Campbell has filed the motion for relief from stay to complete the superior court case. Continue this status conference to March 27, 2018 at 9:00 a.m. to allow him to obtain his judgment in the superior court.

prior tentative ruling (12/19/17)

I have been in contact with Judge. Hammock of the Superior Court. He

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CONT... Glen E Pyle

Chapter 7

advises me that all that is left to do in his case is for Mr. Campbell to file a motion for default judgment. The automatic stay is preventing this.

To move that case forward, Mr. Campbell is to file a motion in this court for relief from the automatic stay. This is to be filed and served no later than December 26. It is to be served by mail and by email on Mr. Pyle. The hearing will be on January 23, 2018 at 10:00 a.m. in courtroom 303. Mr. Campbell is to use the mandatory court form: F 4001-1.RFS.NONBK.MOTION. This is available on the Court website at www.cacb.uscourts.gov/forms/local_bankruptcy_rules_forms. Or you can obtain a copy at the filing window in the clerk's office.

prior tentative ruling (11/14/17)

The Court advised Mr. Campbell of the continuance of the Berry v. Pyle case. He does wish to appear on 11/14. The Court has called Mr. Aver's office and asked them to contact Mr. Pyle (who is pro se in this adversary proceeding) to advise him that the hearing on 11/14 is going forward and that Mr. Pyle is to appear on the phone or in person and instruct him on how to use Court Call. The Court was notified that he also wishes to appear.

What is the status of the state court matter?

prior tentative ruling (3/28/17)

This adversary proceeding has been trailing the Berry v. Pyle one, but it has some different issues. How does Mr. Campbell wish to proceed?

prior tentative ruling (1/17/17)

I believe that Mr. Campbell was trying to obtain counsel. It is best to keep this together with Berry v. Pyle. Therefore continue it without appearance to 2/21/17 at 10:00 a.m. when I have a hearing on the motion for summary judgment in the Berry v. Pyle case.

prior tentative ruling (8/2/16)

Mr. Campbell is now representing himself. How does he wish to proceed to get this ready for trial?

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CONT... Glen E Pyle

Chapter 7

prior tentative ruling (3/1/16)

Per the status report filed by Plaintiff on 2/23/16, discovery is not complete. Plaintiff wants to take Mr. Pyle's deposition and audit the records.

This was trailing the Berry v. Pyle matter, but given Mr. Berry's health, I think that it should go forward alone and complete the discovery. Feel free to appear by phone at the status conference and let's get some dates to complete discovery. Please advise Mr. Pyle, who is not represented by counsel in this case, to appear in person or by phone.

prior tentative ruling (1/12/16)

This has nothing to do with Mr. Berry's health and Mr. Pyle is not represented by counsel. The 1/5/16 status report said that plaintiff will be ready for trial on 2/1. He figures 2-3 days. Let's set a trial date. Possible dates when there is a courtroom available are Feb. 16-17 and Mar. 23-24.

prior tentative ruling (9/8/15)

This has been trailing Berry v. Pyle. On 8/18/18 Plaintiff filed a status report. He is ready to go to trial in February 2016. He needs another 4-6 months to complete discovery, which includes Mr. Pyle's deposition and an audit of the records.

In htis case Mr. Pyle is not represented by counsel. So let's get a deposition date and move forward.

prior tentative ruling (3/10/15)

Mediation set for 3/24/15. Continue without appearance to 5/12/15 at 1:00 a.m

prior tentative ruling (10/7/14)

The mediation has been delayed. Continue without appearance to 12/16/14 at 10:00 a.m.

prior tentative ruling (8/5/14)

The Berry v. Pyle matter is scheduled for a settlement conference before Judge Ryan on 9/22/14. Is this case part of the settlement conference? If so,

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CONT...

Glen E Pyle

Chapter 7

continue without appearance to 10/7/14 at 10:00 a.m. If not, the status report filed by Plaintiff on 7/21 requests mediation. How do you wish to proceed?

prior tentative ruling (4/22/14)

On 4/8/14, counsel for plaintiff filed a status report. He believes that he will be ready for trial in 6 months. There is still discovery to be done, including completing Debtor's deposition. A mediation will take place in May or June.
Continue without appearance to August 5, 2014 at 10:00 a.m.

prior tentative ruling (3/11/14)

This complaint is both under §523 and §727 as well as §§547 and 548. This has been trailing the Berry v. Pyle adversary proceeding. Mr. Mendoza attended the 2/10/14 deposition of Mr. Pyle, which is a joint deposition in both this case and the Berry v. Pyle case. Pyle is not represented by counsel in this adversary proceeding.

Mr. Mendoza, should this continue to trail the Berry adversary or are you ready to go forward on your own?

prior tentative ruling (4/24)

The parties have stipulated that plaintiff will have until 4/20 to file a Second Amended Complaint. A second amended complaint was filed on 4/20. Per the status report, the parties think that they need 4-5 months to complete discovery. The parties wish to mediate. Plaintiff has no co-counsel and may wish to propound more discovery and seek relief from stay as to certain trust assets.

Continue the status conference without appearance to June 19 at 10:00 a.m.

This will allow sufficient time for there to be a response to the second amended complaint and for new co-counsel to move forward. In the meantime, please complete a mediation order since it often takes weeks to schedule a mediation.

prior tentative ruling (2/14)

Per the status report filed on 1/24, the parties feel that they will not be ready for trial until late in 2012. Set a discovery cutoff date of 7/30/12. Although

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CONT... Glen E Pyle

Chapter 7

neither party wants mediation at this time, plaintiff's counsel is willing to attend mediation.

As of 2/12 there is no response to the amended complaint. What is the status of that? When do the parties think that mediation might be beneficial?

prior tentative ruling (1/24)

An answer was filed on 7/15. Plaintiff filed an amended complaint on 1/12, but this was done without leave to amend.

Counsel, in the future please confer with knowledgeable bankruptcy counsel before filing things in bankruptcy court. Your original cover sheet indicated that this was only a complaint to recover money under §§547 and 548. That is incorrect. The original complaint is under §523 and §727 (although that is not mentioned on the caption) and may include §§547 and 548 (although the uploaded copy has some pages missing, so I can't tell for sure). The amended complaint has all of these claims for relief. The court picked up that there was a §727 claim, but we should not have to review the complaint to do this.

prior tentative ruling (10/4)

Nothing further received as of 10/2.

prior tentative ruling (6/22)

As of 5/9 there has been no return on service on the summons. The plaintiff has counsel. There is no status report as of 5/8. If there is no appearance at the 5/11 hearing, I will issue and OSC re: dismissal for failure to prosecute.

Party Information

Attorney(s):

Klinedinst PC

Represented By
Hartford O Brown

Richard S. Singer

Pro Se

Debtor(s):

Glen E Pyle

Pro Se

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CONT... Glen E Pyle

Chapter 7

Defendant(s):

Glen Pyle Pro Se

Plaintiff(s):

Ian Campbell Pro Se

Trustee(s):

Amy L Goldman (TR) Pro Se

Amy L Goldman (TR) Represented By
Amy L Goldman
Amy L Goldman (TR)

US Trustee(s):

United States Trustee (SV) Pro Se

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9:00 AM

1:10-26168 John Michael Licursi

Chapter 7

Adv#: 1:15-01236 California Bank & Trust v. Licursi et al

#7.00 Status Conference re: Complaint

fr. 1/6/16; 1/12/16, 3/1/16, 6/7/16,
7/12/16, 10/11/16, 1/17/17; 3/21/17,
3/28/17; 6/27/17, 8/1/17, 9/12/17,
11/28/17

Docket 1

Tentative Ruling:

Continued by stipulation to May 29, 2018 at 10:00 a.m.

prior tentative ruling (11/28/17)

Per the status report filed on 11/21/17, Plaintiff intends to propound discovery on the value of the converted collateral and hold a one day trial to complete this case. The parties wish a pretrial conference after 2/28/18. Counsel for Defendants will be withdrawing and the Debtors will be proceeding pro se.

The discovery cutoff will be 2/28/18. There will be a pretrial conference on 3/27/18 at 10:00 a.m. I would like a modified pretrial stipulation setting forth the name of each witness and a paragraph as to what that person is to testify to. Also an exhibit list for each side (except exhibits to be used for purposed of impeachment). All exhibits are to be exchanged prior to 3/20.

By 3/15, Plaintiff is to also provide the Defendants with a spreadsheet as to the calculation of damages. Defendants are to list on that same spreadsheet their calculation of damages. This is to be attached to the proposed Joint Pretrial Stipulation. It is also to be in the form of an Excel spreadsheet and to be provided to the Court electronically prior to the trial.

Please plan to attend the 11/28 hearing in person or by phone so that I can ascertain that the parties are in agreement with these dates and procedures.

prior tentative ruling (8/1/17)

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CONT...

John Michael Licursi

Chapter 7

Summary judgment was granted to Plaintiff as to (1) liability of Susan and John Licursi under §§523(a)(2)(A), 523(a)(2)(B), and 523(a)(6). It was also granted as to John Licursi under §523(a)(4). The measure of damages is yet to be resolved.

No status report has been received as of 7/30. How do the parties intend to proceed?

Party Information

Debtor(s):

John Michael Licursi

Represented By
Andrew Goodman
Yi S Kim
James R Felton

Defendant(s):

John Michael Licursi

Represented By
James R Felton
Yi S Kim

Susan Annette Licursi

Represented By
James R Felton
Yi S Kim

Joint Debtor(s):

Susan Annette Licursi

Represented By
Catherine Christiansen
Andrew Goodman
Yi S Kim
James R Felton

Plaintiff(s):

California Bank & Trust

Represented By
Anthony J Napolitano

Trustee(s):

Diane C Weil (TR)

Pro Se

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John Michael Licursi

Chapter 7

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1:11-22424 Ronald Alvin Neff

Chapter 7

#8.00 Continue as a Holding Date

re:Remand and vacature of order regarding
claim of exemption by Ninth Circuit Bankruptcy
Appellate Panel

fr. 5/14/15; 7/23/15; 8/20/15; 10/22/15; 1/14/16; 2/10/16,
2/17/16; 4/13/16, 8/10/16; 8/30/16; 10/25/16, 12/20/16,
2/7/17, 2/21/17; 3/1/17; 5/2/17; 6/27/17, 8/1/17, 9/19/17; 11/22/17

Docket 87

Tentative Ruling:

Off calendar. Memorandum and Order entered on Jan. 4, 2018.

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut
Aram Ordubegian

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1:11-22424 Ronald Alvin Neff

Chapter 7

#9.00 Motion for New Trial to Amend/Alter Judgement
for Relief from Judgement/Order of January 4, 2018

Docket 390

***** VACATED *** REASON: Order ent continuing hrg to 4/17/18 at 9:00
a.m. [on the Court's own motion] - jc**

Tentative Ruling:

It appears that for a short while Mr. Kwasigroch was substituted out as attorney for Neff and William Winfield replaced him. Then Winfield substituted out and Kwasigroch came back in. So Kwasigroch is now the attorney for Neff.

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

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Hearing Room 302

9:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#10.00 Motion of John P. Reitman, Chapter 11 Trustee,
for Order Approving Settlement with Barrett S. Litt,
et al. Pursuant to Fed. R. Bankr. P. 9019

Docket 1344

Tentative Ruling:

John Reitman chapter 11 trustee (the "Trustee") for the estate (the "Estate") of Shirley McClure (the "Debtor") moves for approval of a settlement between the Trustee and Barrett Litt and affiliated parties (the "Litt Parties").

Service: Appears to be in order.

Background

Initial Case

Debtor initially filed for chapter 11 relief in 1992 (1:92-bk-1371-GM; the "Initial Case"). Early in that case the Debtor confirmed a plan of reorganization, but the case remained open pending the outcome of federal court litigation against the City of Long Beach.

In 2006, the Debtor and her son received \$20 million in settlement of a lawsuit against the City of Long Beach – 95% for the Debtor and 5% for her son. Barrett Litt and his law firms ("Litt") had represented them in this lawsuit since 1993, but Debtor's and Litt's relationship broke down. In July 2008, the Debtor brought a malpractice action against Litt in Superior Court (BC-393584; the "Litt State Court Action"), which included, *inter alia*, malpractice claims for advising the Debtor and her son to make an IRC §1033 election for the majority of their settlement funds and to invest in various real estate rental properties pursuant to that election.

In 2009, this Court granted Litt's final application and awarded fees of \$9,113,911.51 and costs of \$990,592.06 with a credit of \$9 million that had already been paid to Litt, so the remaining amount owed was \$1,104,503.57. (Initial Case dkt. 146). The Debtor appealed (Initial Case dkt 181), but the District Court and the Ninth Circuit upheld the fee award on appeal. McClure has brought another malpractice action against attorneys who represented her in this fee dispute with Litt. (McClure v. Tidus, et al. BC-443404).

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CONT... Shirley Foose McClure

Chapter 11

In the meanwhile, Litt obtained and filed an abstract of judgment against thirteen real properties in which the Debtor had an interest. (Initial Case dkt 154, 155). The Court granted McClure a stay pending her appeal on certain conditions, including Litt's retention of his liens from the recorded abstracts of judgment. (Initial Case dkt. 218). The Initial Case was closed on August 16, 2016.

This Chapter 11

Debtor filed this case for Chapter 11 relief on December 21, 2012. The bulk of her estate's assets were comprised of her interest in multiple parcels of income producing residential real estate in Southern California, San Francisco, Maui, Indiana and Michigan (the "Properties"), most of which were 1033 Properties and owned 95% by the Debtor and 5% by her son. The major claims against the estate were (i) approximately \$460,000 in unsecured claims; (ii) secured lender claims of City National Bank ("CNB"), Pacific Mercantile Bank and its affiliate PM Asset Resolution, Inc. ("PMB"), and Shellpoint Mortgage Servicing for Bank of New York, as trustee ("Shellpoint Mortgage"), each secured by deeds of trust on various real estate, (iii) Litt's lien on most of the Properties (the "Litt Lien"), and (iv) a \$1,317,047 priority tax claim by the Franchise Tax Board ("FTB"). As the debtor-in-possession, the Debtor sold several Properties, using the money to repay some of her secured debt (CNB was paid off in full), for repairs and maintenance on other Properties, and to pay other expenses of the Properties and of this Chapter 11 case. Litt filed objections to most or all of these sales and filed appeals to the District Court when his objections were overruled.

On April 2, 2015, the Court entered an order limiting the Litt Lien to three Properties located at 910 Corbett St., Nos. 1, 2 and 3, San Francisco, CA. Litt appealed this order (the "Litt Lien Appeal") to the United States District Court, where it was assigned to Judge Wu and consolidated with related appeals that the Litt Parties had taken from the Court's orders (collectively, the "Litt Appeals"). In March 2017, the District Court remanded the Litt Lien Appeal for further consideration of the Ninth Circuit Court of Appeals decision in *Pacifica L 51 LLC v. New Investments, Inc. (In re New Investments Inc.)*, 840 F.3d 1137 (9th Cir. 2016).

The Trustee

On July 12, 2016, after this case had been pending for three years

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CONT... Shirley Foose McClure

Chapter 11

without confirmation of a plan and the Debtor had changed counsel repeatedly (often representing herself *pro se*),, the Court ordered the appointment of a chapter 11 trustee in this case (Dkt. 1090). The United States Trustee appointed Mr. Reitman as Chapter 11 Trustee of the Estate (Dkt. 1105). Mr. Reitman accepted – and the Court approved – the appointment. (Dkt. 1106, 1113).

Since his appointment, the Trustee has taken a number of actions to administer the assets of the Estate. He reached a court-approved Closing Agreement with the Franchise Tax Board, resolving the Debtor's dispute with the FTB over the validity of the Debtor's 1033 election (described above). He obtained court authorization to sell two properties in Michigan that were unencumbered but not operating on a net cash flow positive basis. He reached a settlement with PMB (the PMB Settlement"), which is expected to result in the reduction of PMB's secured claim by at least \$650,000. The Court entered on order, following notice and a hearing, approving the PMB Settlement. The Debtor objected to the PMB Settlement and appealed the Court's order approving it (the "McClure Appeal"). The Trustee elected to have the McClure Appeal heard by the District Court and it has also been assigned to Judge Wu.

The Trustee believes that the PMB Settlement is a key step on the road to proposing and funding a plan of reorganization. However, the PMB Settlement provides that PMB's claim must be paid in full by Jun 30, 2018, which requires sale of the Estate's properties in San Francisco, Southern California (other than the Debtor's residence in Fullerton), and Hawaii. In January 2018, the Court approved the Trustee's retention of brokers to market and sell these Properties.

The Proposed Settlement with the Litt Parties

The Trustee has reached a settlement with the Litt Parties, embodied in a settlement agreement (the "Litt Settlement Agreement"; Exhibit 1 to the Declaration of John Reitman), which provides for:

- the reduction of the \$1.1 million Litt Lien on the Corbett Properties (by more than \$800,000) to \$340,000 (the "Litt Settlement Secured Claim"), plus interest thereafter at the federal post-judgment interest rate of 0.45%,
- release of the Litt Lien on all other Properties,
- dismissal of the Litt State Court Case (although not the claims

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Shirley Foose McClure

Chapter 11

- of Jason McClure),
- dismissal of Litt's appeals
- payment of the Litt Settlement Secured Claim upon the sale or refinancing of the Corbett Properties
- customary mutual releases.

The Trustee is seeking approval of the Litt Settlement Agreement. As discussed in the analysis section below, the Trustee argues that this proposed settlement with Litt is fair and equitable and should be approved under the standard set by the Ninth Circuit.

Joinder of Litt Parties

The Litt parties join in the Motion, and argue as follows:

The claims against Litt that the Trustee proposes to settle would not yield any real value for the estate. The Debtor had repeatedly been offered the opportunity to settle with Litt under a 2006 Agreement that would have limited Litt's fees to \$9 million; the Debtor instead chose to go forward with claims against Litt – using a variety of attorneys and in circumstances that indicate the weakness of the Debtor's claims against Litt. The Litt State Court Action has been stayed since 2008 and is barred by *res judicata* (the debtor has litigated every claim she has against Litt in this Court) and the statute of limitations. In particular, the claims against Litt for allegedly deficient tax advice are weak. The Debtor retained other tax counsel before filing the tax returns in question and buying more 1033 properties. The debtor's damages are limited: FTB has settled its claim for \$800,000 in taxes and \$288,000 in interest and the IRS has not filed a claim and the time to do so has passed.

Debtor's Opposition

The Debtor has filed an opposition, arguing as follows:

As the Court has acknowledged, this will be a surplus case. Thus, the settlement will be of no benefit to creditors (who will be paid in full anyway) and will affect only the amount of Debtor's recovery. At the November 28, 2017 hearing, in response to questioning by the Court, the Trustee's counsel stated that the Trustee's projections suggest that there would be a surplus. The Court then stated that if the sale of the Properties did yield a surplus, then the Litt State Court Action could be an asset for the Debtor to keep and pursue. This settlement would deprive the Debtor of the right to pursue these claims against the Litt parties, claims that the Court has said belong to the

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Chapter 11

Debtor.

The Debtor's projections support the conclusion that this a surplus estate: the various properties are listed for sale by the Trustee at \$6.8 million, while secured claims are only \$2.7 million and the Trustee's latest report shows cash of \$950,000. On the other side, unpaid unsecured claims are \$300,000 (without Sulmeyer, Kupetz' disputed claim), the FTB is owed \$1.1 million, and Litt's \$1.1 fee claim should be considered an offset against the Debtor's malpractice claim. (Administrative claims have not yet been litigated, but Debtor's prior counsels have already been paid \$240,000.)

The Debtor and Litt were close to a settlement of the Litt State Court Action shortly after it was filed in 2008, until Litt's malpractice carrier sued Litt for rescission. The State Court Action has been stayed since 2009 - at the request of Litt - pending resolution of the Franchise Tax Board audit.

This Court's ruling and Judge Wu's affirmation of that ruling did not adjudicate the Debtor's claims against Litt, as Judge Wu expressly stated on the record at a July 8, 2012 hearing.

Since his appointment in July 2016, the Trustee has taken no steps to investigate the Litt State Court Action or Litt's disputed claims. He has not interviewed the Debtor, allowed the Farley firm to conduct discovery or file an amended complaint, requested the litigation files, or hired replacement counsel for Farley (except the Makarem firm, which had a conflict of interest as it had previously been retained by the Debtor and her son).

The Debtor does have experienced professional malpractice counsel willing to take the Litt State Court Action: Arie Spangler, who estimates that she will need 7-8 months to prepare for trial, assuming that discovery is still open.

The Debtor's claims against the Litt parties are meritorious. The Farley firm, which took the Litt State Court Action on a modified contingency basis in 2014, valued the litigation in the \$10 million range. The tax attorneys hired by the Debtor and her son, as well as the FTB, all concluded that Litt had committed malpractice.

If successful, the Debtor or the Trustee could recover against Litt. He was a multi-millionaire even before he received \$9 million from the Debtor's estate. He has \$3 million in litigation insurance and Arch's rescission action is still pending, awaiting the outcome of the Litt State Court Action. At a minimum, a judgment against Litt could be offset against his \$1.1 million claim.

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Shirley Foose McClure

Chapter 11

To approve a compromise, the Court must make an independent determination that the compromise is reasonable, fair and equitable: it cannot merely rubber stamp the Trustee's conclusion.

To oppose a settlement, the Debtor must show that s/he is a "person aggrieved," *i.e.*, directly and adversely affected pecuniarily. This can be shown where there is a reasonable possibility of a surplus in the case. This Court has already acknowledged that this is a surplus case and that the Litt State Court Action accordingly belongs to the Debtor. In contrast, this settlement is not in the paramount interest of the unsecured creditors, because they will be paid in any event.

Furthermore, the Trustee has presented no evidence that he has made a substantive review of the merits of the Litt State Court Action, such that he could make an "informed judgment after diligent investigation." Nor has he presented any facts to allow this Court to determine whether the settlement falls above the "lowest point in the range of reasonableness." Nor has the Trustee presented any evidence that a judgment against Litt would not be collectible.

Reply by Trustee

The Court has made no finding that this is a surplus Estate, but was speaking hypothetically. The Trustee's counsel did not represent that the Estate is "unequivocally" surplus, but only that the Trustee's good faith projections show that a surplus is possible. On March 22 the Trustee will file the analysis requested by the Court in its email. Without the sale of the Debtor's current residence and/or the settlement with Litt, it is likely that it will not be surplus.

The Motion contains four pages of analysis of the claims in the Litt State Court Action. The Opposition is unsupported by admissible evidence and the documents that she attaches do not support her arguments: Litt did not admit that he committed malpractice, but he stated that he sought the advice from a tax attorney, who later represented the Debtor directly. The assertion that Litt was the architect of the 1033 program will be hotly litigated in the state court trial.

The damages are also questionable since the 1033 election does not eliminate taxes, but merely defers them.

As to the involvement of the Trustee in the case, the Trustee did meet with the Debtor on 8/18/16 and conducted an extensive interview with her at

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that time, including the issues of the Litt State Court Action. The Trustee, in consultation with the Farley Firm, decided not to proceed to discovery since the Litt State Court Action was stayed and Debtor's health and the ongoing settlement discussions meant that to go forward with discovery would not be in the best interest of the Debtor or the Estate. There was no need to have the Farley Firm turn over the litigation files since that firm represented the Trustee until it withdrew.

The Trustee agrees that difficulty in collecting a judgment is not a significant issue.

Reply by Litt Parties

There has been no determination that this is a surplus estate and that determination cannot be made until all of the professionals have filed their fee applications and had their fees allowed by the Court. The amount of income taxes would also need to be determined. If McClure wins on her appeal of the PMB settlement the Estate could end up owing \$650,000 more. She has done nothing to dispute the SulmeyerKupetz claim. And her assertion that Litt's claim is disputed is incorrect since it has been determined by a final judgment.

The settlement provides an immediate benefit to the estate of over \$800,000. Also the Court has never determined that the Litt State Court Action belong to her rather than to the Estate. Although Litt does not and has not agreed that he is liable to Ms. McClure, he is willing to reduce his secured claim by over \$800,000 to buy peace.

Further, there is no factual support for most of McClure's brief.

Litt Objections to Evidence

Shirley McClure Declaration – overrule all objections

Robert Wood Declaration (ex. B, ex. D) – overrule

Harold Winnett Declaration (ex. C) – overrule. It is clear from the complete declaration that it refers to a meeting held on or about 2/27/07.

Robert Wood Declaration (ex. O) – sustain as it appears to be unsigned, however, this is a copy form 2008 and is part of something larger. There may be a signed copy somewhere.

Analysis

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The Trustee is seeking approval of a compromise pursuant to Fed. R. Bankr. P. 9019, thus the question is whether the Litt Settlement Agreement is "fair and equitable." *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1986). The Court evaluates the fairness, reasonableness and adequacy to the estate under the factors articulated by the Ninth Circuit:

In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. Cal. 1986), *cert. denied sub nom.*, *Martin v. Robinson*, 479 U.S. 854 (1986). The Court should review the issues and determine whether the settlement falls below the lowest point in a range of reasonableness. *In re Teltronics Service, Inc.*, 762 F.2d 185, 189 (2nd Cir. 1985); *Spirtos v. Ray (In re Spirtos)*, 2006 Bankr. LEXIS 4894 at *32 (B.A.P. 9th Cir. May 19, 2006). Courts reviewing a proposed settlement generally accord deference to the Trustee's business judgment, although the Trustee has the burden of persuasion that the settlement is fair and equitable and should be approved. *Goodwin v. Mickey Thompson Entertainment Group (In re Mickey Thompson Entertainment Group)*, 292 B.R. 415, 420 (B.A.P. 9th Cir. 2003).

In essence, the proposed settlement gives up the estate's claims against Litt – valued by the Debtor at \$10 million - in exchange for an \$800,000 reduction in Litt's secured debt. The Trustee argues that probabilities of success in the Litt State Court Case and the complexity, inconvenience and delay in litigating it support approval of this compromise. Regarding complexity, the Debtor asserted numerous claims based on a wide variety of (sometimes conflicting) factual allegations. Litt has asserted a variety of defenses to these claims. (These claims, factual allegations, and defenses have been considered by the Trustee and are detailed in pages 9-11 of the Motion.) Regarding the probabilities of success, the difficulties in litigating the Litt State Court Case include the staleness of the matter (which has been stayed since 2009), the need for testimony from the Debtor (who is in ill health and may not be able to cooperate), and the Trustee's lack of counsel (after the Debtor opposed the employment of Ron Makarem and

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contacted Mr. Makarem directly, the Trustee has not been able to find counsel). Thus, while a jury might prove sympathetic to Ms. McClure (and there appear to be no difficulties in collection), the Trustee has made the business judgment that there is substantial risk that the Estate might not prevail in the Litt State Court Case and the interests of the estate are best served by the Litt Settlement Agreement (which also resolves the Litt Appeals and allows the Trustee to focus on effectuating the PMB Settlement and formulating a plan to bring this bankruptcy case to conclusion).

Ordinarily, this would be sufficient for the Court – in deference to the Trustee’s business judgment – to find that that this proposed settlement is within the range of reasonableness and thus fair and equitable. However, two concerns in this case prevent the Court from drawing that conclusion: (i) the possibility that this will be a surplus estate and (ii) allegations that the Trustee has not duly investigated and pursued the State Court Action.

If the sale of the Properties alone would yield a surplus estate, then this settlement will not affect creditor recoveries – the creditors would be paid in full in any event. The settlement would not be in the "paramount interests of creditors." It would only affect the Debtor’s recoveries and she is opposed to the settlement. And, if the Debtor pursues the litigation, then the cost, difficulty or uncertainty of litigation are irrelevant to the estate. Thus, if it appears likely that the estate will be surplus, the Court will not approve this proposed settlement, absent some other compelling reason to do. (For instance, the Trustee repeatedly states the importance of effectuating the PMB Settlement, but never directly states that this settlement is necessary to effectuate the PMB Settlement, which is solely to sell some of the properties and for which real estate broker(s) have been hired.)

Second, the Trustee has not retained counsel to pursue this matter and the Debtor alleges that the Trustee has not truly investigated the merits of the Litt State Court Action (*i.e.*, neither reviewed the case files nor interviewed the Debtor). It should be noted that although the Trustee states that he held a long meeting with the Debtor soon after he was appointed, he also indicates that this covered many topics and the Litt issues were only a part of those. And as to making an independent review of the files, he only alludes to his prior attorney and there is no showing as to whether he has actually made an independent determination (or had an expert review the files). The Court is also concerned about the fact that the Trustee has not hired a new attorney in the last months or – apparently – even tried to employ

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one. There is no showing that this litigation could not proceed expeditiously.

Litt and the Debtor have each argued the merits of the Debtor's claims against Litt (as described above). In the Motion, the Trustee discusses the difficulties of the litigation, but does not state any judgment on the merit of the underlying claims. This Court cannot determine the merits of these claims, but it does need to know that the Trustee's business judgment rests on an informed consideration of those merits. Thus, even if this estate is not surplus, the Court would need further information from the Trustee regarding his investigation of the actual merits of the Litt State Court Action in order to approve this settlement. Some was given in the Trustee's declaration filed in response to my email. Let's discuss this a bit more.

One further question deals with fees to be paid to prior litigation counsel. If this is settled, are any due? Do they agree to what they are to receive in an administrative claim? What will that be?

Tentative Ruling: Deal with the above questions. Motion denied if it is likely that the estate is surplus. See my comments on the email sent 3/23 for details of the calculation.

THE EMAIL:

Thank you, all, for the information that I requested. Based on that, I prepared a draft spreadsheet that I will be using as a basis of our discussion at the hearings on Tuesday. I attach a .pdf copy and an excel copy for your use.

(1) I prepared this in two forms: one without Ms. McClure's home and the other with it. As to this, the calculation that I prepared still protects her homestead of \$150,000 (though the home itself is sold). I used the most recent figure that I had - from 2014 - though it may be worth more (or less) now. If she were to also waive her homestead and allow the house to be sold, that would increase the amount available to unsecured creditors by an additional \$150,000.

(2) I note that Ms. McClure's figures do not include default interest to PMB, the PMB attorney fees, or the amounts of administrative claims. The estimate of \$1,307,585 provided by the Trustee may be high or low, but it is certain that there will be substantial attorney fees to be paid.

(3) Ms. McClure did not include the Litt lien. If she prevails on the settlement motion, it will remain at \$1,090,058.

(4) The amount of recovery on the Litt State Court Action is much too uncertain to include. However, since he is giving up about \$800,000 on his lien amount, the judgment would have to exceed that sum to make it meaningful for the Court to deny the settlement motion.

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(5) Although there is a settlement pending in Tidus, the Court does not have any details. Ms. McClure is now offering to provide 50% of any net recovery if needed to pay unsecured creditors in full. Until I see the terms of the proposed settlement, it is hard to determine whether to abandon this. Since the Tidus State Court Case has been continued, there is no urgency in dealing with the abandonment motion, so perhaps that should be continued. I also do not fully understand the basis of this case.

(6) For some reason, my spreadsheet total on "Net from Sale of Properties" is about \$400 different from that of the Force 10 one [\$2,688,985 v. \$2,689,387]. I can't figure out why.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Movant(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

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#11.00 Motion to Compel Abandonment of State Court
Litigation Case BC443404 McClure v. Tidus

Docket 1355

Tentative Ruling:

This motion concerns the state court trial in McClure v. Tidus, LASC BC443404. The trial is scheduled to begin on 3/26/18 (Judge Mark Mooney presiding) and there is a final pre-trial hearing set for 3/16/18. There is no attorney for the Plaintiff in that the Farley Law Firm was relieved as counsel on 10/16/17 and no new counsel has been employed. The Farley Law Firm had been employed as special litigation counsel to the Debtor.

The Trustee has known since June 2017 that the Farley Firm would be withdrawing because of a conflict. Nothing has been done by the Trustee.

McClure has been served with five motions in limine.

The fee agreement with the Farley Firm was \$150/hour and 20% of the recovery. The total billing for their work through 6/21/17 was \$22,450.50 fees and \$5,271.40 costs – mostly to defend the Tidus Defendant's motions for summary judgment heard on 1/5/17 and 1/6/17 and to respond to the defendant's discovery demands. No litigation preparation has been done since the Trustee was appointed.

There is insurance coverage for the Tidus Defendants and they are being defended by their insurance carriers. It therefore appears that a judgment against them would be collectible.

At the time of the motion for summary judgment (Jan. 2017), Judge Mooney divided the plaintiff's claims into two parts. Part 1 is her cause of action in the handling of the Litt fee motion. That is going to trial. Part 2 is the cause of action to amend the Litt complaint pending in state court – which was dismissed without prejudice as not being ripe since the Litt case was still pending.

At the time of the disclosure statement in April/May 2016, the Farley

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firm estimated the damages at \$10 million.

The Trustee does not want to pursue Plaintiff's claims in this case or the Litt one. The Trustee wanted to settle with the Tidus Defendants for a much reduced amount.

At this point, the motion goes into issue of hiring Makarem.

Also there is an issue about hiring Taylor to complete the negotiations for a payout with the FTB and an upcoming five-year statutory deadline.

The Debtor wishes the McClure v. Tidus case to be abandoned in that it is clearly burdensome to the Estate and is not being properly administered. §554 Abandonment is appropriate when the trustee delays in the administration of an asset. *Hyman v. Plotkin (in re Hyman)*, 967 F.2d 1316, 1321 (9th Cir. 1992).

Opposition

The Trustee is actively conducting negotiations with the parties in interest. Any agreement would be subject to Court approval. Therefore the Trustee requests a continuance to conclude his negotiations.

Because the Trustee is negotiating a resolution, this case is not burdensome to the Estate. And it certainly is not an inconsequential value and benefit. Thus the statutory standard for abandonment has not been met.

As to the \$10 million figure, that is the value placed by the Debtor for both the Tidus action and the Litt Action – not for the Tidus action alone. But she also indicates that the Tidus action has so little value that it should be abandoned.

The Debtor had hired by Farley Firm and the Trustee continued to act on the advice of that Firm. The Trustee is and has been fully aware of the bifurcated nature of the claim in the Tidus action.

The May 1, 2017 settlement demand made by the Trustee was not a "fire sale" demand. The amount of this demand (which is confidential) was prepared after consultation with the Farley Firm. It took into consideration the Debtor's poor health which made discovery and prosecution of the case more complicated. Anyway, the Defendants did not make a meaningful response.

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Once the Farley Firm withdrew, the Trustee retained the Makarem Firm. When the Debtor contacted Ron Makarem and threatened to object to his employment, that firm withdrew. Since then, the Trustee has continued to seek qualified counsel, but without success. Thus, the fact that the Estate does not have litigation counsel in the Tidus Case is due to a combination of the Debtor's interference with the Trustee's efforts to retain the Makarem Firm and the difficulties that the Trustee has had in finding suitably qualified counsel to replace the Makarem Firm.

It is premature to determine that this is a surplus case. Hopefully it will be, but in the meantime whatever value resides in the Tidus Case should be preserved for the benefit of the Estate and not abandoned to the Debtor.

Reply

The State Court case has been continued to 7/16/18 by Judge Mooney. It is currently stayed.

After the Makaram Firm withdrew, the Trustee never suggested another law firm. The Trustee still has not prepared for trial.

However, the Debtor will retain Aire Spangler to represent her – if the case is abandoned – at a blended contingency rate and the Debtor will contribute up to 50% of the net proceeds to the estate if that is needed to pay creditors in full.

The Debtor then sets forth a calculation to show that this is a surplus estate.

Proposed Ruling

It appears that the trial has been taken off calendar and will not be reset until July 2018.

I am concerned that the Trustee has a weak negotiating position since he clearly is not ready to go to trial. And I do not understand why it is taking months and months to find new counsel.

It appears that Ms. McClure will be hiring new counsel on some sort of mixed contingency arrangement. She is now offering to provide the estate

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with up to 50% of her net recovery if needed to be sure that all creditors are paid in full. What is the situation as to fees owed to the Farley Firm or the Makaram Firm?

Per my email, both sides have provided me with a draft accounting of this estate. From that I have prepared a spreadsheet. See my comments from the email sent on 3/23.

THE EMAIL:

Thank you, all, for the information that I requested. Based on that, I prepared a draft spreadsheet that I will be using as a basis of our discussion at the hearings on Tuesday. I attach a .pdf copy and an excel copy for your use.

(1) I prepared this in two forms: one without Ms. McClure's home and the other with it. As to this, the calculation that I prepared still protects her homestead of \$150,000 (though the home itself is sold). I used the most recent figure that I had - from 2014 - though it may be worth more (or less) now. If she were to also waive her homestead and allow the house to be sold, that would increase the amount available to unsecured creditors by an additional \$150,000.

(2) I note that Ms. McClure's figures do not include default interest to PMB, the PMB attorney fees, or the amounts of administrative claims. The estimate of \$1,307,585 provided by the Trustee may be high or low, but it is certain that there will be substantial attorney fees to be paid.

(3) Ms. McClure did not include the Litt lien. If she prevails on the settlement motion, it will remain at \$1,090,058.

(4) The amount of recovery on the Litt State Court Action is much too uncertain to include. However, since he is giving up about \$800,000 on his lien amount, the judgment would have to exceed that sum to make it meaningful for the Court to deny the settlement motion.

(5) Although there is a settlement pending in Tidus, the Court does not have any details. Ms. McClure is now offering to provide 50% of any net recovery if needed to pay unsecured creditors in full. Until I see the terms of the proposed settlement, it is hard to determine whether to abandon this. Since the Tidus State Court Case has been continued, there is no urgency in dealing with the abandonment motion, so perhaps that should be continued. I also do not fully understand the basis of this case.

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Debtor(s):

Shirley Foose McClure

Represented By

Andrew Goodman

Yi S Kim

Robert M Scholnick

James R Felton

Faye C Rasch

Faye C Rasch

Lisa Nelson

Michael G Spector

Trustee(s):

John P. Reitman

Represented By

John P Reitman

Jon L Dalberg

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#12.00 Hearing re: Valuation

fr. 1/24/2013, 4/30/13, 5/14/13, 7/23/13, 8/6/13,
9/17/13, 9/24/13, 11/19/13, 12/17/13, 1/21/14, 2/18/14,
3/11/14, 4/15/14, 5/6/14, 6/24/14, 9/9/14, 9/23/14,
10/7/14, 11/24/14, 1/6/15, 1/20/15, 2/10/15, 3/10/15,
4/28/15; 5/12/15; 9/29/15, 10/22/15, 12/8/15, 3/1/16,
6/7/16, 7/12/16, 8/16/16, 10/11/16; 12/20/16, 4/4/17,
5/16/17; 6/27/17, 7/11/17, 9/19/17, 11/14/17, 11/28/17,
12/19/17; 1/9/18, 3/19/18

Docket 1

Tentative Ruling:

This will trail the motion to settle with Litt.

prior tentative ruling (1/9/18)

Per the status report filed on 1/3/18, the Trustee has assembled a team of real estate brokers to list and market the estate properties (except Gregory). This is through Coldwell Banker and the Trustee will soon be filing his motions to employ the brokers. The settlement with PMB became effective on 12/22 [*please note that on 1/4 Ms. McClure filed her appeal of that order*].

The Trustee is currently seeking new counsel for the state court actions.

In general nothing new has happened as to the Litt appeals. There is some communication between the Trustee and Litt as to a possible settlement.

I believe that I set this so that we can get a date for the reevaluation of the properties as to which ones the Litt lien will attach. Are we reDay to set a date?

prior tentative ruling (12/19/17)

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Per the status report filed on 12/14/17, discussions are or will take place between Litt and the Trustee to try to resolve the issue of Litt's lien. The Baycity appraisals have been completed. [Please note that on 12/13/17 Ms. McClure filed updated the appraisals of Corbett by Robert Magannam of Market Appraisal Group]

I would like to set a hearing on the issue of Litt's adequate protection. If you settle it in the meantime, that is fine. But let's set the date for a hearing.

prior tentative ruling (11/14/17):

The status report was filed on 11/13. Please try to be more timely in the future since this makes it hard for me to work-up my calendar.

There is a settlement pending with PMB, which is set for hearing on 11/28.

The sale of both Michigan properties have closed, bringing net proceeds to the estate of about \$530,000.

The Maui condo is listed for sale.

The Trustee seeks to employ new counsel in the Litt and Tidus state court litigation due to the departure of the current counsel. This is set for hearing on 12/19 due to the Litt objection.

As to the Litt appeal of the order removing the lien from some properties, the new appraisals have been completed and the Trustee sent a proposal to counsel for Litt as to a resolution. The discussion has been delayed due to spinal surgery of the Trustee and an emergency trip of Trustee's counsel. It is expected that a revised proposal will be forthcoming very soon.

The payment of the expert witness fee was not stayed by the District Court, so that has been paid.

proposed ruling:

Continue this without hearing to 11/28 at 10:00. No further status conference report will be needed for that hearing. At that hearing, I would like to discuss a method for dealing with the repetitive Litt objections being brought on the ground that it is a use of their cash collateral. I really see no reason to delay matters to set these on hearing each time. I am going to continue to rule the same way until instructed differently by an appellate court. Of course is there is an objection on other grounds, I may decide to hold a hearing.

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prior tentative ruling (9/19/17):

On 9/12/17 the Trustee filed a status report. The sale of the two Michigan properties have been concluded with net proceeds for Otsego of \$229,477.62 and for Invitational of \$299,615.53. The Maui condo is currently being marketed. All mortgage payments on the other properties are being made.

As to the Tidus litigation, trial is now set for 3/26/18. Because the attorney who was principally handling the case has left the Farley Law Firm for an in-house position, the Trustee has had to locate new counsel and will soon be filing an application to employ. Discovery is continuing and Ms. McClure is cooperating. She has filed a status report that she will be physically able to participate in the case.

The state court action against Litt is on hold.

The Litt lien issue was remanded by the District Court to do a new valuation in light of the Pacifica v. New Investments opinion. The Trustee obtained an order to employ Baycity as the appraiser. Litt appealed that order and sought a stay pending appeal. Judge Wu denied the stay. Baycity is in the process of preparing the appraisals.

Similarly, Litt appealed the order to pay the expert witness fees for the Tidus case. Judge Wu denied a stay pending appeal. He stayed action on the appeals of the expert witness fees and the Baycity order and has a set a status conference for 10/19/17.

On 8/24/17 the Trustee, his counsel and Litt's counsel discussed possible settlement and exchanged proposals. No settlement has been reached.

The parties may wish to appear in person or by phone.

prior tentative ruling (5/16/17)

Per the status report filed on 5/9/17, the Trustee is filing motions to sell each of the Michigan properties and the Maui Condo is listed for sales. All three Corbin properties are rented.

Ms. McClure is currently hospitalized. Discovery is continuing in the Tidus

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The Litt appeal in the district court has been remanded to this court to consider the *New Investments* opinion. The Trustee will be seeking to employ an appraiser as to the Corbett properties. PMB agrees that this can be the prior appraiser and just an update.

The Trustee has abandoned the Toyota Land Cruiser and Trailer.

The motion to sell that North Otsego, Gaylord property is set for 6/27/17.
Continue this status conference without appearance to 6/27/17 at 10:00 a.m. By then we should be also have a better idea on when the Corbett appraisals will be completed.

prior tentative ruling (4/4/17)

Per the Trustee's status report filed on 3/28/17:

Tidus Litigation - trial delayed due to Ms. McClure's illness. She just turned over voluminous documents in response to discovery request and that may delay the trial even longer.

McClure v. Litt - stayed by the superior court.

Litt Appeal - Judge Wu is trying to get a consensual resolution of the claims in the Litt litigation. As to the appeal, there has been supplemental briefing on the impact, if any, of *Pacifica L 51 LLC v. New Investments, Inc.* Judge Wu then remanded the Litt Appeal to the bankruptcy court for further consideration. Status conference continued in front of Judge Wu for 6/7/17.

Abandonment of Toyota Land Cruiser and Trailer - the Trustee just gave notice of his intent to abandon these.

As to the remand, we will discuss how to proceed at the 4/4/17 hearing. But it seems to me that it is probably appropriate to obtain new appraisals for the Corbett properties as well as new figures on the PMB liens. Even though property values have been rising, it seems that the Trustee would be wise to also select one or more other properties for a new appraisal, etc. in case the equity in the Corbett properties has fallen or is expected to fall below the 200% threshold. Please discuss this before the hearing.

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prior tentative ruling (12/20/16)

Per the status report filed on 12/13/16, the rental properties are all insured and PMB is being paid the amounts that were paid prior to the Trustee's appointment. There is a new lease on Hewitt, with one year of prepaid rent. Corbett #1 has been repaired and is ready to be leased. Corbett #2 tenant has renewed that lease through 12/17. A broker will be hired to sell the Michigan properties. The Trustee has settled with the California Franchise Tax Board - a 9019 motion is pending.

The Debtor is unwell and awaiting surgery, so cannot fully respond to the Trustee's inquiries. The Tidus trial is also being delayed due to Ms. McClure's health. The Trustee intends to proceed with that trial.

The Litt appeal is pending and Judge Wu ordered the Trustee to provide Litt's litigation counsel with a list of the Trustee's claim in the Litt Litigation. The Trustee is moving forward on this.

From the Court: There is a notice to compromise with the Franchise Tax Board. \$16,2 million will be recognized as gross income to the Debtor for tax year 2006 and is not subject to a valid 1033 Election. Debtor did not realize taxable Cancellation of Debt Income in connection with the foreclosure of the Long Beach properties. No opposition received as of 12/18. The Court will sign the order.

Continue the status conference to April 4, 2017 at 10:00 a.m. If the Trustee, McClure, Litt, and PNB all agree, no appearance will be needed on 12/20.

prior tentative ruling (10/11/16)

Mr. Reitman has been adding staff. I have no other indication of what is happening since no status report was filed. It may be that he has not calendared this hearing. If there is no appearance, I will continue it and make sure that he knows that date and to give notice to all interested parties.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, March 27, 2018

Hearing Room 303

9:00 AM

CONT... Shirley Foose McClure

Chapter 11

prior tentative ruling (8/16/16)

On 8/12 Mr. Reitman filed an application to employ his firm as counsel for the Trustee. No hearing was scheduled. I will hold this for the lodging period to see if there are any objections.

This is a case where the professional fees have become immense due to a variety of factors. I want to be sure that Mr. Reitman will keep a close handle on fees and will not pass on to attorneys work that is properly done by the Trustee himself. Also, Ms. McClure is able to provide some assistance, though her desire to run the case may interfere with her utility. Let's discuss this.

As to the overlaps in various matters which are disclosed in the application, I am sure that the Firm can set up a structure so that there is no conflict.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By

Andrew Goodman

Yi S Kim

Robert M Scholnick

James R Felton

Faye C Rasch

Faye C Rasch

Elaine Nguyen

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Tuesday, March 27, 2018

Hearing Room 303

9:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#13.00 Status Conference re: Ch 11 Case

fr. 1/24/2013, 4/30/13, 5/14/13, 7/23/13, 8/6/13,
9/17/13, 9/24/13, 11/19/13, 12/17/13, 1/21/14, 2/18/14,
3/11/14, 4/15/14, 5/6/14, 6/24/14, 9/9/14, 9/23/14,
10/7/14, 11/24/14, 1/6/15, 1/20/15, 2/10/15, 3/10/15,
4/28/15; 5/12/15; 9/29/15, 10/22/15, 12/8/15, 3/1/16,
6/7/16, 7/12/16, 8/16/16, 10/11/16; 12/20/16, 4/4/17,
5/16/17; 6/27/17, 7/11/17, 9/19/17, 11/14/17, 11/28/17,
12/19/17, 1/9/18, 3/19/18

Docket 1

Tentative Ruling:

No tentative ruling. Let's see what happens on the motion to settle with Litt, the Tidus abandonment motion, and the sale of the properties under the PMB settlement.

prior tentative ruling 1/9/18)

Per the status report filed on 1/3/18, the Trustee has assembled a team of real estate brokers to list an market the estate properties (except Gregory). This is through Coldwell Banker and the Trustee will soon be filing his motions to employ the brokers. The settlement with PMB became effective on 12/22 [*please note that on 1/4 Ms. McClure filed her appeal of that order*].

The Trustee is currently seeking new counsel for the state court actions.

In general nothing new has happened as to the Litt appeals. There is some communication between the Trustee and Litt as to a possible settlement.

I believe that I set this so that we can get a date for the reevaluation of the properties as to which ones the Litt lien will attach. Are we reDay to set a date?

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CONT... Shirley Foose McClure

Chapter 11

prior tentative ruling (12/19/17)

Per the status report filed on 12/14/17, discussions are or will take place between Litt and the Trustee to try to resolve the issue of Litt's lien. The Baycity appraisals have been completed. [Please note that on 12/13/17 Ms. McClure filed updated the appraisals of Corbett by Robert Magannam of Market Appraisal Group]

I would like to set a hearing on the issue of Litt's adequate protection. If you settle it in the meantime, that is fine. But let's set the date for a hearing.

prior tentative ruling (11/14/17):

The status report was filed on 11/13. Please try to be more timely in the future since this makes it hard for me to work-up my calendar.

There is a settlement pending with PMB, which is set for hearing on 11/28.

The sale of both Michigan properties have closed, bringing net proceeds to the estate of about \$530,000.

The Maui condo is listed for sale.

The Trustee seeks to employ new counsel in the Litt and Tidus state court litigation due to the departure of the current counsel. This is set for hearing on 12/19 due to the Litt objection.

As to the Litt appeal of the order removing the lien from some properties, the new appraisals have been completed and the Trustee sent a proposal to counsel for Litt as to a resolution. The discussion has been delayed due to spinal surgery of the Trustee and an emergency trip of Trustee's counsel. It is expected that a revised proposal will be forthcoming very soon.

The payment of the expert witness fee was not stayed by the District Court, so that has been paid.

proposed ruling:

Continue this without hearing to 11/28 at 10:00. No further status conference report will be needed for that hearing. At that hearing, I would like to discuss a method for dealing with the repetitive Litt objections being brought on the ground that it is a use of their cash collateral. I really see no reason to delay matters to set these on hearing each time. I am going to continue to rule the same way until instructed differently by an appellate

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9:00 AM

CONT... Shirley Foose McClure

Chapter 11

court. Of course is there is an objection on other grounds, I may decide to hold a hearing.

prior tentative ruling (9/19/17):

On 9/12/17 the Trustee filed a status report. The sale of the two Michigan properties have been concluded with net proceeds for Otsego of \$229,477.62 and for Invitational of \$299,615.53. The Maui condo is currently being marketed. All mortgage payments on the other properties are being made.

As to the Tidus litigation, trial is now set for 3/26/18. Because the attorney who was principally handling the case has left the Farley Law Firm for an in-house position, the Trustee has had to locate new counsel and will soon be filing an application to employ. Discovery is continuing and Ms. McClure is cooperating. She has filed a status report that she will be physically able to participate in the case.

The state court action against Litt is on hold.

The Litt lien issue was remanded by the District Court to do a new valuation in light of the Pacifica v. New Investments opinion. The Trustee obtained an order to employ Baycity as the appraiser. Litt appealed that order and sought a stay pending appeal. Judge Wu denied the stay. Baycity is in the process of preparing the appraisals.

Similarly, Litt appealed the order to pay the expert witness fees for the Tidus case. Judge Wu denied a stay pending appeal. He stayed action on the appeals of the expert witness fees and the Baycity order and has a set a status conference for 10/19/17.

On 8/24/17 the Trustee, his counsel and Litt's counsel discussed possible settlement and exchanged proposals. No settlement has been reached.

The parties may wish to appear in person or by phone.

prior tentative ruling (5/16/17)

Per the status report filed on 5/9/17, the Trustee is filing motions to sell each of the Michigan properties and the Maui Condo is listed for sales. All three Corbin properties are rented.

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CONT... Shirley Foose McClure

Chapter 11

Ms. McClure is currently hospitalized. Discovery is continuing in the Tidus lawsuit.

The Litt appeal in the district court has been remanded to this court to consider the *New Investments* opinion. The Trustee will be seeking to employ an appraiser as to the Corbett properties. PMB agrees that this can be the prior appraiser and just an update.

The Trustee has abandoned the Toyota Land Cruiser and Trailer.

The motion to sell that North Otsego, Gaylord property is set for 6/27/17.
Continue this status conference without appearance to 6/27/17 at 10:00 a.m. By then we should be also have a better idea on when the Corbett appraisals will be completed.

prior tentative ruling (4/4/17)

Per the Trustee's status report filed on 3/28/17:

Tidus Litigation - trial delayed due to Ms. McClure's illness. She just turned over voluminous documents in response to discovery request and that may delay the trial even longer.

McClure v. Litt - stayed by the superior court.

Litt Appeal - Judge Wu is trying to get a consensual resolution of the claims in the Litt litigation. As to the appeal, there has been supplemental briefing on the impact, if any, of *Pacifica L 51 LLC v. New Investments, Inc.* Judge Wu then remanded the Litt Appeal to the bankruptcy court for further consideration. Status conference continued in front of Judge Wu for 6/7/17.

Abandonment of Toyota Land Cruiser and Trailer - the Trustee just gave notice of his intent to abandon these.

As to the remand, we will discuss how to proceed at the 4/4/17 hearing. But it seems to me that it is probably appropriate to obtain new appraisals for the Corbett properties as well as new figures on the PMB liens. Even though property values have been rising, it seems that the Trustee would be wise to also select one or more other properties for a new appraisal, etc. in case the

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CONT... Shirley Foose McClure

Chapter 11

equity in the Corbett properties has fallen or is expected to fall below the 200% threshold. Please discuss this before the hearing.

prior tentative ruling (12/20/16)

Per the status report filed on 12/13/16, the rental properties are all insured and PMB is being paid the amounts that were paid prior to the Trustee's appointment. There is a new lease on Hewitt, with one year of prepaid rent. Corbett #1 has been repaired and is ready to be leased. Corbett #2 tenant has renewed that lease through 12/17. A broker will be hired to sell the Michigan properties. The Trustee has settled with the California Franchise Tax Board - a 9019 motion is pending.

The Debtor is unwell and awaiting surgery, so cannot fully respond to the Trustee's inquiries. The Tidus trial is also being delayed due to Ms. McClure's health. The Trustee intends to proceed with that trial.

The Litt appeal is pending and Judge Wu ordered the Trustee to provide Litt's litigation counsel with a list of the Trustee's claim in the Litt Litigation. The Trustee is moving forward on this.

From the Court: There is a notice to compromise with the Franchise Tax Board. \$16,2 million will be recognized as gross income to the Debtor for tax year 2006 and is not subject to a valid 1033 Election. Debtor did not realize taxable Cancellation of Debt Income in connection with the foreclosure of the Long Beach properties. No opposition received as of 12/18. The Court will sign the order.

Continue the status conference to April 4, 2017 at 10:00 a.m. If the Trustee, McClure, Litt, and PNB all agree, no appearance will be needed on 12/20.

prior tentative ruling (10/11/6)

Mr. Reitman has been adding staff. I have no other indication of what is happening since no status report was filed. It may be that he has not calendared this hearing. If there is no appearance, I will continue it and make

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CONT... Shirley Foose McClure

Chapter 11

sure that he knows that date and to give notice to all interested parties.

prior tentative ruling (8/16/16)

On 8/12 Mr. Reitman filed an application to employ his firm as counsel for the Trustee. No hearing was scheduled. I will hold this for the lodging period to see if there are any objections.

This is a case where the professional fees have become immense due to a variety of factors. I want to be sure that Mr. Reitman will keep a close handle on fees and will not pass on to attorneys work that is properly done by the Trustee himself. Also, Ms. McClure is able to provide some assistance, though her desire to run the case may interfere with her utility. Let's discuss this.

As to the overlaps in various matters which are disclosed in the application, I am sure that the Firm can set up a structure so that there is no conflict.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By

Andrew Goodman

Yi S Kim

Robert M Scholnick

James R Felton

Faye C Rasch

Faye C Rasch

Elaine Nguyen

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Hearing Room 303

9:00 AM

1:15-12380 Lanker Partnership and First American Title Insurance

Chapter 11

#14.00 Scheduling and case management conference re
Chapter 11 Voluntary Petition

fr. 8/11/15, 12/15/15, 4/26/16; 4/27/16, 9/13/16(xfr
from Judge Barash calendar); 9/13/16; 10/25/16,
2/21/17; 5/2/17, 9/12/17, 11/14/17, 11/28/17, 12/19/17

Docket 1

Tentative Ruling:

The OUST has withdrawn its motion to dismiss. Mr.Caceras left a voice message asking to appear by phone, which is acceptable. However, he also indicated that they would be filing a motion to dismiss and wished to set it on May 29. Continue this status conference without appearance to May 29, 2018 at 10:00 a.m.

prior tentative ruling (12/19/17)

If the adversary is settled and dismissed, what will happen to the chapter 11 case?

prior tentative ruling (9/12/17)

Nothing further received as of 9/7/17 as to the expected date for filing a disclosure statement. However, the status report in the adversary case says that there is a total settlement that is being documented. Continue this status conference to 11/14/17 at 10:00 a.m. A proposed disclosure statement and plan are to be filed so that the 11/14 date can also be used for a hearing on the disclosure statement.

prior tentative ruling (5/2/17)

Per the status report filed on 4/26, the settlement with First America Title has been completed and the Debtor has received the settlement check for \$80,000. Settlement discussions are continuing with Deutsche/WAMU/SLS. Until settlement is reached or fails, the Debtor cannot file a disclosure statement and plan.

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CONT... Lanker Partnership and First American Title Insurance

Chapter 11

Continue without appearance to 9/12/17 at 10:00 a.m.

prior tentative ruling (2/21/17)

Since you are appearing on the motion to compromise, let's talk about this case at that time. I am new to the case and don't know if anything can happen before the litigation is completed. The motion for relief from stay was withdrawn. What is the status of this property? Are taxes, etc. being paid? Is it listed for sale? Is it being rented out?

prior tentative ruling (9/15/16)

Per the status report filed on 9/6/16, Debtor is employing a new special counsel for the adversary proceeding. The adversary proceeding should go to trial in the early spring.

This should trail the adversary proceeding. I will continue it to the same date as the continued status conference on cal. #14. No appearance is necessary on 10/25/16 by counsel for the Debtor in the main case since the adversary has special counsel.

prior tentative ruling (9/13/16)

It looks like this should be continued to 10/25 because of the continued status conference on the adversary proceeding. Although the status report filed 9/6 requests a longer continuance, I would like to keep this together with the adversary.

Continue without appearance to 10/25/16 at 10:00 a.m. No further status report is required for that hearing.

Party Information

Debtor(s):

Lanker Partnership

Represented By
Charles Shamash
Joseph Caceres
Nedda Haeri
Stuart I Koenig

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9:00 AM

1:16-11387 Real Estate Short Sales Inc

Chapter 7

#15.00 Motion for relief from stay

CIVIC HOLDINGS V-N TRUST

Docket 213

Tentative Ruling:

This concerns real property at 1151 Virginia St., Berkeley, CA. The Court already determined that a trust deed was dumped into this ongoing bankruptcy on 10/30/17 in order to stop foreclosure. This Debtor has no interest in this property.

On 1/30/18 the Court entered its order granting relief from stay to Carmelita Garner (dkt. #205) and annulling the stay as to all acts taken concerning this property. The Court found that this was part of a scheme to hinder, delay, or defraud creditors.

The Court will prepare an order that annuls the stay as to any property in this case except 10351 Oklahoma Ave., Chatsworth, CA and 625 S. Berendo St., Penthouse 613, Los Angeles, CA.

No appearance is necessary if you submit on the tentative ruling.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Movant(s):

Civic Holdings V-N Trust

Represented By
Reilly D Wilkinson

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

1:10-26168 John Michael Licursi

Chapter 7

Adv#: 1:15-01236 California Bank & Trust v. Licursi et al

#16.00 Status Conference re: Complaint

fr. 1/6/16; 1/12/16, 3/1/16, 6/7/16,
7/12/16, 10/11/16, 1/17/17; 3/21/17,
3/28/17; 6/27/17, 8/1/17, 9/12/17,
11/28/17

Docket 1

***** VACATED *** REASON: Heard at 9:00 a.m. - jc**

Tentative Ruling:

Per the status report filed on 11/21/17, Plaintiff intends to propound discovery on the value of the converted collateral and hold a one day trial to complete this case. The parties wish a pretrial conference after 2/28/18. Counsel for Defendants will be withdrawing and the Debtors will be proceeding pro se.

The discovery cutoff will be 2/28/18. There will be a pretrial conference on 3/27/18 at 10:00 a.m. I would like a modified pretrial stipulation setting forth the name of each witness and a paragraph as to what that person is to testify to. Also an exhibit list for each side (except exhibits to be used for purposed of impeachment). All exhibits are to be exchanged prior to 3/20.

By 3/15, Plaintiff is to also provide the Defendants with a spreadsheet as to the calculation of damages. Defendants are to list on that same spreadsheet their calculation of damages. This is to be attached to the proposed Joint Pretrial Stipulation. It is also to be in the form of an Excel spreadsheet and to be provided to the Court electronically prior to the trial.

Please plan to attend the 11/28 hearing in person or by phone so that I can ascertain that the parties are in agreement with these dates and procedures.

prior tentative ruling (8/1/17)

Summary judgment was granted to Plaintiff as to (1) liability of Susan and John Licursi under §§523(a)(2)(A), 523(a)(2)(B), and 523(a)(6). It was also granted as to John Licursi under §523(a)(4). The measure of damages is yet

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CONT... **John Michael Licursi**
to be resolved.

Chapter 7

No status report has been received as of 7/30. How do the parties intend to proceed?

Party Information

Debtor(s):

John Michael Licursi

Represented By
Andrew Goodman
Yi S Kim
James R Felton

Defendant(s):

Susan Annette Licursi

Represented By
James R Felton
Yi S Kim

John Michael Licursi

Represented By
James R Felton
Yi S Kim

Joint Debtor(s):

Susan Annette Licursi

Represented By
Catherine Christiansen
Andrew Goodman
Yi S Kim
James R Felton

Plaintiff(s):

California Bank & Trust

Represented By
Anthony J Napolitano

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#17.00 Continue as a Holding Date

re:Remand and vacature of order regarding
claim of exemption by Ninth Circuit Bankruptcy
Appellate Panel

fr. 5/14/15; 7/23/15; 8/20/15; 10/22/15; 1/14/16; 2/10/16,
2/17/16; 4/13/16, 8/10/16; 8/30/16; 10/25/16, 12/20/16,
2/7/17, 2/21/17; 3/1/17; 5/2/17; 6/27/17, 8/1/17, 9/19/17; 11/22/17

Docket 87

***** VACATED *** REASON: Heard at 9:00 a.m. - jc**

Tentative Ruling:

At the 8/1 hearing it was agreed that all discovery except expert discovery has been completed. Mr. DeNoce's motion for a "mental examination" will be heard on 9/19 as he will be out of town during the last two weeks of August. If that is granted and he seeks any additional examination, he will have to show substantial cause for that. He is aware that he is not to be present at any such examination.

Set a trial date for a date after he examination.

prior tentative ruling (8/1/17)

I have two matters on calendar, but I intend to rule on cal. #4 and continue only under this status conference, which is really a continued hearing on the original objection to claim (dkt. 87)

By way of procedural background, on 8/24/12 DeNoce filed an objection to the Debtor's claim of exemption (dkt. 87). Judge Kaufman sustained the objection to the \$175,000 disability claim, but allowed an exemption of \$75,000. Both Neff and DeNoce appealed. The Bankruptcy Appellate Panel sustained the ruling as to the \$75,000 amount, but vacated and remanded as to the \$175,000 disability claim based on insufficient evidence (dkt. 208). The appeal to the Court of Appeals was dismissed (dkt. 211).

In the meantime, DeNoce filed four adversary complaints against Neff, but all have been closed.

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10:00 AM

CONT...

Ronald Alvin Neff

Chapter 7

On 4/17/15, Judge Kaufman entered an order setting a status conference on the remand (dkt. 213). Various motions and status conferences were held and this case was transferred to me on 8/9/16. Status conferences and motions continued and on 2/21/17 Neff filed a motion for final ruling on the objection (dkt. 319). That is on today's calendar as cal. #4. Basically it is a motion to terminate discovery and set this for trial.

According to the DeNoce status report filed on 7/27/17, written discovery is completed. The only remaining discover is to have a "Mental Examination" of Dr. Neff. There is a motion for this set for 9/19.

The motion for examination is scheduled by Mr. DeNoce for some 45 days after the motion was filed. This court has three motion calendars available before that one: August 22, August 29, and September 12. Unless there is a request by debtor's counsel to keep it on September 19, the Court will advance the hearing to either August 22 or August 29. I am trying to bring this matter to trial as soon as possible.

Beyond this motion for an examination, no further discovery will be allowed except as to expert witnesses, should either side intend to present such evidence at trial. Let's get that set at this time.

prior tentative ruling (6/27/17)

Nothing new received as of 6/25. Did Mr. Denoce receive the records?

prior tentative ruling (3/1/17)

At the 2/7/17 status conference, Mr. DeNoce appeared by phone and said that he had received a letter from the Social Security Disability Department that they require the Debtor to sign the request for records. Mr. DeNoce was instructed (and agreed) to send a copy of that letter to Mr. Kwasigroch and file it with the court with whatever motion he wished. He was also instructed and agreed to file an undated status report on this matter, which concerns an objection to the homestead exemption.

Mr. DeNoce said that he had problems in the past when he mailed things to the court in that they were not docketed. He was bedridden at the time of the 2/7 hearing and will be having surgery in March.

On 5/16, DeNoce filed a status report that he will be ready for trial after the SSA Disability records are obtained and he has filed a motion for an

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10:00 AM

CONT... Ronald Alvin Neff

Chapter 7

independent medical evaluation. He also filed his declaration concerning his attempts to obtain the disability records. The balance of the declaration deals with his relations with Kwasigroch. At this time, the Court is not particularly interested in the past relations of these parties and has only scanned that materials enough to be aware of the subject matter.

Getting down to the real question-at-hand, obtaining the records, unlike the representations made on the phone, the only correspondence is the the California Department of Social Services, which no longer has the records. They informed DeNoce that these are being held by the Social Security Administration, probably at the Thousand Oaks field office. The operative paragraph from Todd Eberle, Senior Staff Counsel at the California DSS, states: "In the meantime, if you contact the Thousand Oaks SSA field office, I would suggest that you have Mr. Neff sign the SSA's Consent for Release of Information (Form SSA-3288,[link given]). You could try and use the subpoena you provided Mr. Reilley, but from my experience SSA does not consider California subpoenas to be of a court of competent jurisdiction. A signed 3288 makes the process simple, although I understand it can often be problematic to convince an uncooperative party to sign the form." [Emphasis added]

- (1) This is not as DeNoce represented at the last hearing since this is not a communication from the SSA, which is a federal agency. It is from the DDS, which is a state agency.
- (2) The subpoena in question was not from a California court, but from a Federal Bankruptcy Court, so the comment by Mr. Eberle has no relevance.
- (3) There is no showing that DeNoce ever tried to obtain this by subpoena on the SSA.

If Neff wishes to agree to sign the form 3288, that would move this case along. However, unless the SSA itself refuses to provide the information through the subpoena process, I am not going to order that he sign it.

At the request of DeNoce, the Court will issue a new subpoena as to the SSA. I will continue this status conference to let him serve that and receive a response. When is DeNoce having his surgery.

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CONT... Ronald Alvin Neff

Chapter 7

prior tentative ruling (2/7/17)

Nothing further received as of 2/5/17. This status conference was on the bankruptcy case, not the adversary proceedings. It is now off calendar.

prior tentative ruling (12/20/16)

Off calendar. The memorandum and order were entered on 12/15/16.

A status conference on this adversary case will be held on Feb. 7, 2017 at 10:00 a.m. The Court will give notice.

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut
Aram Ordubegian

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10:00 AM

1:15-12380 Lanker Partnership and First American Title Insurance

Chapter 11

#18.00 Scheduling and case management conference re
Chapter 11 Voluntary Petition

fr. 8/11/15, 12/15/15, 4/26/16; 4/27/16, 9/13/16(xfr
from Judge Barash calendar); 9/13/16; 10/25/16,
2/21/17; 5/2/17, 9/12/17, 11/14/17, 11/28/17, 12/19/17

Docket 1

***** VACATED *** REASON: Matter moved to to 9:00 a.m.**

Tentative Ruling:

See cal. #19. If the adversary is settled and dismissed, what will happen to the chapter 11 case?

prior tentative ruling (9/12/17)

Nothing further received as of 9/7/17 as to the expected date for filing a disclosure statement. However, the status report in the adversary case says that there is a total settlement that is being documented. Continue this status conference to 11/14/17 at 10:00 a.m. A proposed disclosure statement and plan are to be filed so that the 11/14 date can also be used for a hearing on the disclosure statement.

prior tentative ruling (5/2/17)

Per the status report filed on 4/26, the settlement with First America Title has been completed and the Debtor has received the settlement check for \$80,000. Settlement discussions are continuing with Deutsche/WAMU/SLS. Until settlement is reached or fails, the Debtor cannot file a disclosure statement and plan.

Continue without appearance to 9/12/17 at 10:00 a.m.

prior tentative ruling (2/21/17)

Since you are appearing on the motion to compromise, let's talk about this case at that time. I am new to the case and don't know if anything can happen before the litigation is completed. The motion for relief from stay was withdrawn. What is the status of this property? Are taxes, etc. being paid?

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, March 27, 2018

Hearing Room 303

10:00 AM

CONT... Lanker Partnership and First American Title Insurance

Chapter 11

Is it listed for sale? Is it being rented out?

prior tentative ruling (9/15/16)

Per the status report filed on 9/6/16, Debtor is employing a new special counsel for the adversary proceeding. The adversary proceeding should go to trial in the early spring.

This should trail the adversary proceeding. I will continue it to the same date as the continued status conference on cal. #14. No appearance is necessary on 10/25/16 by counsel for the Debtor in the main case since the adversary has special counsel.

prior tentative ruling (9/13/16)

It looks like this should be continued to 10/25 because of the continued status conference on the adversary proceeding. Although the status report filed 9/6 requests a longer continuance, I would like to keep this together with the adversary.

Continue without appearance to 10/25/16 at 10:00 a.m. No further status report is required for that hearing.

Party Information

Debtor(s):

Lanker Partnership

Represented By
Charles Shamash
Joseph Caceres
Nedda Haeri
Stuart I Koenig

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 17, 2018

Hearing Room 303

9:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#1.00 Motion for New Trial to Amend/Alter Judgement
for Relief from Judgement/Order of January 4, 2018

fr. 3/27/18

Docket 390

***** VACATED *** REASON: Matter moved to 10:00 am (eg)**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

It appears that for a short while Mr. Kwasigroch was substituted out as attorney for Neff and William Winfield replaced him. Then Winfield substituted out and Kwasigroch came back in. So Kwasigroch is now the attorney for Neff.

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 17, 2018

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01120 Speier v. SunCal Management LLC et al

Chapter 0

#2.00 Defendants' Motion for Summary Adjudication

fr. 1/23/18; 2/13/18, 3/6/18

Docket 518

Courtroom Deputy:

Tentative Ruling:

Tentative ruling emailed to parties on 4/9. Too long to post.

Party Information

Defendant(s):

SunCal Management LLC

Represented By
Craig H Averch
Doah Kim
Aalok Sharma

Argent Management, LLC

Represented By
Craig H Averch
Doah Kim
Aalok Sharma

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 17, 2018

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01121 Speier v. SunCal Management, LLC et al

Chapter 0

#3.00 Defendants' Motion For Summary of Adjudication

fr. 1/23/18; 2/13/18, 3/6/18

Docket 407

Courtroom Deputy:

Tentative Ruling:

Tentative ruling emailed to parties on 4/9. Too long to post.

Party Information

Defendant(s):

SunCal Management, LLC

Represented By
Craig H Averch
Aalok Sharma

Argent Management, LLC

Represented By
Craig H Averch
Aalok Sharma

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 17, 2018

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01121 Speier v. SunCal Management, LLC et al

Chapter 0

#4.00 Trustee's Motion For Partial Summary Adjudication of
his Restitution and/or Unjust Enrichment Claim for Relief

fr. 12/19/17; 1/23/18; 2/13/18, 3/6/18

Docket 399

Courtroom Deputy:

Tentative Ruling:

Tentative ruling emailed to parties on 4/9. Too long to post.

Party Information

Defendant(s):

SunCal Management, LLC

Represented By
Craig H Averch

Argent Management, LLC

Represented By
Craig H Averch

Movant(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 17, 2018

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01122 Speier v. SunCal Management LLC et al

Chapter 0

#5.00 Defendants' Motion for Summary Adjudication

fr. 12/19/17; 1/23/18; 2/13/18, 3/6/18

Docket 399

Courtroom Deputy:

Tentative Ruling:

Tentative ruling emailed to parties on 4/9. Too long to post.

Party Information

Defendant(s):

SunCal Management LLC

Represented By
Craig H Averch
Aalok Sharma

Argent Management, LLC

Represented By
Craig H Averch
Aalok Sharma

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 17, 2018

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01122 Speier v. SunCal Management LLC et al

Chapter 0

#6.00 Trustee's Motion For Partial Summary Adjudication of
his Restitution and/or Unjust Enrichment Claim for Relief

fr. 12/19/17; 1/23/18; 2/13/18, 3/6/18

Docket 391

Courtroom Deputy:

Tentative Ruling:

Tentative ruling emailed to parties on 4/9. Too long to post.

Party Information

Defendant(s):

SunCal Management LLC

Represented By
Craig H Averch

Argent Management, LLC

Represented By
Craig H Averch

Movant(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 17, 2018

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01123 Speier v. SunCal Management LLC et al

Chapter 0

#7.00 Defendants' Motion for Summary Adjudication

fr. 1/23/18; 2/13/18, 3/6/18

Docket 396

Courtroom Deputy:

Tentative Ruling:

Tentative ruling emailed to parties on 4/9. Too long to post.

Party Information

Defendant(s):

SunCal Management LLC

Represented By
Craig H Averch
Aalok Sharma

Argent Management, LLC

Represented By
Craig H Averch
Aalok Sharma

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 17, 2018

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01123 Speier v. SunCal Management LLC et al

Chapter 11

#8.00 Trustee's Motion for Partial Summary Adjudication of
his Restitution and/or Unjust Enrichment Claim for Relief

fr. 12/19/17; 1/23/18; 2/13/18, 3/6/18

Docket 388

Courtroom Deputy:

Tentative Ruling:

Tentative ruling emailed to parties on 4/9. Too long to post.

Party Information

Defendant(s):

SunCal Management LLC

Represented By
Craig H Averch

Argent Management, LLC

Represented By
Craig H Averch

Movant(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 17, 2018

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01124 Speier v. SunCal Management LLC et al

Chapter 0

#9.00 Defendants' Motion for Summary Adjudication

fr. 1/23/18; 2/13/18, 3/6/18

Docket 401

Courtroom Deputy:

Tentative Ruling:

Tentative ruling emailed to parties on 4/9. Too long to post.

Party Information

Defendant(s):

SunCal Management LLC

Represented By
Craig H Averch
Aalok Sharma

Argent Management, LLC

Represented By
Craig H Averch
Aalok Sharma

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 17, 2018

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01124 Speier v. SunCal Management LLC et al

Chapter 0

#10.00 Trustee's Motion For Partial Summary Adjudication of
his Restitution and/or Unjust Enrichment Claim for Relief

fr. 12/19/17; 1/23/18; 2/13/18, 3/6/18

Docket 393

Courtroom Deputy:

Tentative Ruling:

Tentative ruling emailed to parties on 4/9. Too long to post.

Party Information

Defendant(s):

SunCal Management LLC

Represented By
Craig H Averch

Argent Management, LLC

Represented By
Craig H Averch

Movant(s):

Steven M Speier (TR)

Represented By
Mike D Neue
Gary A Pemberton

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 17, 2018

Hearing Room 303

10:00 AM

1:09-18409 Lenny Kyle Dykstra

Chapter 7

Adv#: 1:10-01183 GOTTLIEB v. Simi Auto Spa Center, LP et al

#11.00 Motion For Leave to Amend Answer and Counterclaims

fr. 3/27/18

Docket 212

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Continued to July 17, 2018 at 10:00 a.m.

Party Information

Debtor(s):

Lenny Kyle Dykstra

Represented By
Michael T Pines - DISBARRED -
Moshe Mortner

Defendant(s):

Lenny Dykstra's Car Wash Corp., a

Pro Se

South Corona Center, LP

Represented By
Ramin Azadegan

Lenny Dykstra's Car Wash III, LP

Pro Se

Bahram Khadavi

Represented By
Ramin Azadegan

Kia Saidnia

Represented By
Ramin Azadegan

Karine Ardit

Represented By
Ramin Azadegan

Simone Shouhed

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 17, 2018

Hearing Room 303

10:00 AM

CONT... Lenny Kyle Dykstra

Chapter 7

	Ramin Azadegan
Shahram Shouhed	Represented By Ramin Azadegan
Hamid Shohed	Represented By Ramin Azadegan
Scott Arditi	Represented By Ramin Azadegan
Farshid Shohed	Represented By Ramin Azadegan
Shahriar Shouhed	Represented By Ramin Azadegan
National Car Washes, Inc.	Represented By Ramin Azadegan
Corona Petroleum, Inc.	Represented By Ramin Azadegan
Corona Lane Collection, I, LP	Represented By Ramin Azadegan
South Corona Auto Spa Property,	Represented By Ramin Azadegan
South Corona Auto Spa, LP	Represented By Ramin Azadegan
South Corona 76 Property, LLC	Represented By Ramin Azadegan
South Corona 76, LP	Represented By Ramin Azadegan
Simi Auto Spa Property, LLC	Represented By Ramin Azadegan Victor A Sahn
Simi Auto Spa Center, LP	Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 17, 2018

Hearing Room 303

10:00 AM

CONT... Lenny Kyle Dykstra

Chapter 7

Rafie O. Shouhed

Ramin Azadegan

Represented By
Ramin Azadegan

Movant(s):

Simi Auto Spa Center, LP

Represented By
Ramin Azadegan

Simi Auto Spa Center, LP

Represented By
Ramin Azadegan

Simi Auto Spa Center, LP

Represented By
Ramin Azadegan

Plaintiff(s):

DAVID K GOTTLIEB

Represented By
Irena L Norton
Robert E Huttenhoff
Ryan D ODea

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Howard M Ehrenberg
SulmeyerKupetz
Irena L Norton
Robert E Huttenhoff
Victor A Sahn
Leonard M Shulman
Ryan D ODea

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 17, 2018

Hearing Room 303

10:00 AM

1:09-18409 Lenny Kyle Dykstra

Chapter 7

Adv#: 1:10-01183 GOTTlieb v. Simi Auto Spa Center, LP et al

#12.00 Motion to Dismiss Adversary Proceeding 2nd, 3rd, &
4th Claims of Third Amended Complaint Under FRCB 12(b)(1)

fr. 1/23/18

Docket 193

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Continued to July 17, 2018 at 10:00 a.m.

Party Information

Debtor(s):

Lenny Kyle Dykstra

Represented By

Michael T Pines - DISBARRED -
Moshe Mortner

Defendant(s):

Lenny Dykstra's Car Wash Corp., a

Pro Se

South Corona Center, LP

Represented By

Ramin Azadegan

Lenny Dykstra's Car Wash III, LP

Pro Se

Bahram Khadavi

Represented By

Ramin Azadegan

Kia Saidnia

Represented By

Ramin Azadegan

Karine Arditi

Represented By

Ramin Azadegan

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 17, 2018

Hearing Room 303

10:00 AM

CONT... Lenny Kyle Dykstra

Chapter 7

Simone Shouhed	Represented By Ramin Azadegan
Shahram Shouhed	Represented By Ramin Azadegan
Hamid Shohed	Represented By Ramin Azadegan
Farshid Shohed	Represented By Ramin Azadegan
Scott Ardit	Represented By Ramin Azadegan
Shahriar Shouhed	Represented By Ramin Azadegan
National Car Washes, Inc.	Represented By Ramin Azadegan
Corona Petroleum, Inc.	Represented By Ramin Azadegan
Corona Lane Collection, I, LP	Represented By Ramin Azadegan
South Corona Auto Spa Property,	Represented By Ramin Azadegan
South Corona Auto Spa, LP	Represented By Ramin Azadegan
South Corona 76 Property, LLC	Represented By Ramin Azadegan
South Corona 76, LP	Represented By Ramin Azadegan
Simi Auto Spa Property, LLC	Represented By Ramin Azadegan
Simi Auto Spa Center, LP	Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 17, 2018

Hearing Room 303

10:00 AM

CONT... Lenny Kyle Dykstra

Chapter 7

Rafie O. Shouhed

Ramin Azadegan

Represented By
Ramin Azadegan

Plaintiff(s):

DAVID K GOTTLIEB

Represented By
Irena L Norton
Robert E Huttenhoff
Ryan D ODea

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Howard M Ehrenberg
SulmeyerKupetz
Irena L Norton
Robert E Huttenhoff
Victor A Sahn
Leonard M Shulman
Ryan D ODea

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, April 17, 2018

Hearing Room 303

10:00 AM

1:09-18409 Lenny Kyle Dykstra

Chapter 7

Adv#: 1:10-01183 GOTTLIEB v. Simi Auto Spa Center, LP et al

#13.00 Plaintiff's Motion for Summary Judgment, or
in the Alternative, Partial Summary Judgment

fr. 11/14/17, 1/23/18

Docket 175

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Continued to July 17, 2018 at 10:00 a.m.

prior tentative ruling (1/23/18):

THE COURT HAS PREPARED ITS PROPOSED RULING AS TO UNDISPUTED AND DISPUTED FACTS AND EVIDENTIARY OBJECTIONS. THOSE ARE SET FORTH BELOW AS ARE THE LIST OF LEGAL ISSUES THAT THE COURT INTENDS TO RULE ON AT A LATER DATE. AT THE HEARING ON JANUARY 23, WE CAN DISCUSS THESE PROPOSED RULINGS AND WHETHER THE LIST OF ISSUES IS ACCURATE AND COMPLETE. THEREAFTER THE COURT WILL REVISE (AS NEEDED) AND THEN PROVIDE A WRITTEN MEMORANDUM COVERING ALL ISSUES. ISSUES RAISED BY THE DEFENDANTS' MOTION TO DISMISS IS INCLUDED IN THIS TENTATIVE RULING.

The Plaintiff has set forth his proposed undisputed facts, which have been responded to by the Defendants. The Court finds the following to be undisputed facts. Italics are used to discuss or rule on objections to the facts proposed by the Plaintiff.

UNDISPUTED FACTS

1. For purposes of this motion, the term "Consolidated Entities" refers

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, April 17, 2018

Hearing Room 303

10:00 AM

CONT...

Lenny Kyle Dykstra

Chapter 7

to Lenny Dykstra's Car Wash Corp., Lenny Dykstra Car Wash III, LP, and South Corona Center. *This is stated in this fashion because the Complaint and Answer include Lenny Dykstra Estate as part of the "Consolidated Entities," but that Estate did not exist at the relevant times for this motion.*

2. On June 6, 2007, Debtor Lenny Dykstra ("Debtor") and the "Consolidated Entities" entered into Purchase and Sale Agreements to sell real and personal property to the Shohed Group. The Shohed Group consists of individuals who are parties to the Purchase and Sale Agreements, as well as parties to the Prepayment Agreement that is discussed below. *The Defendants' response disputes that Dykstra was a party to the Purchase and Sale Agreements or Promissory Notes. It asserts that Car Wash III was the actual party to these transactions. However, paragraph ¶ 38 of the Answer "admits that the Debtor, the Shohed Group and others entered into agreements for the purchase of certain car wash properties and businesses [located on Los Angeles St., Compton Ave., and California Ave.]. RJN Ex. 7. Thus this fact is not in dispute.*
3. The Purchase and Sale Agreements provided for the purchase and sale of certain car wash properties, convenience store, gas station, and a shopping center (the "Corona Properties").
4. Defendants Simi Auto Spa Property and Simi Auto Spa Center executed promissory notes in favor of one of the Consolidated Entities (Car Wash III), in the original sums of \$2,500,000 ("Note 1") and \$20,500,000 ("Note 2"), together (the "Car Wash Notes"). The Car Wash Notes were secured by a Deed of Trust and Security Agreement encumbering the Simi Car Wash as well as Deeds of Trust and Security Agreements encumbering the Corona Properties. The Car Wash Notes provided for monthly interest

**United States Bankruptcy Court
Central District of California
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Tuesday, April 17, 2018

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CONT...

Lenny Kyle Dykstra

Chapter 7

payments of \$125,000 each. The principal balance payments came due in the amount of \$1 million on July 9, 2012 and \$22 million on July 9, 2017. Interest payments were made through August 9, 2008, totaling \$1,551,130 on Note 1 and \$198,870 on Note 2.

5. The Car Wash Notes were personally guaranteed by members of the Shohed Group.
6. On January 29, 2008, Debtor obtained a \$1,000,000 loan ("Bridge Loan") from the Shohed Group. The due date of the Bridge Loan was extended various times, with the final extension up to September 10, 2008.
7. On August 31, 2007, the Debtor purchased 1072 Newbern Ct., Thousand Oaks (the "Newbern Property") for \$17.425 million.
8. The Newbern Property was purchased with a \$12 million loan from Washington Mutual and a \$8.5 million loan from First Credit Bank. About \$3 million of the loan proceeds were used to pay off certain debt that existed from the car wash business. *The Court is not sure what car wash debt this refers to, but that does not seem relevant to this motion.*
9. On August 28, 2008, Debtor and the Consolidated Entities executed a Pre-Payment Agreement with the Shohed Group to obtain a discounted payoff of the Car Wash Notes.
10. The total debt consideration provided by Defendants to Debtor in the Pre-Payment Agreement is approximately \$12,850,000. However, the unpaid balance on the Car Wash Notes was \$23,000,000.
11. Among the terms of the Prepayment Agreement were the following:

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Tuesday, April 17, 2018

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CONT...

Lenny Kyle Dykstra

Chapter 7

- a. The Shohed Group agreed to assume the First Credit Bank Loan and obtain a release of Dykstra's collateral [principal amount owed about \$8.5 million]

- b. The Shohed Group agreed to assume the Litt Loan in an amount of up to \$2.2 million and obtain the release of Dykstra's collateral
 - i. In February 2008, Debtor had borrowed approximately \$2,125,000 from the Litts (the "Litt Loan"). This loan was due on August 9, 2008 and had a 12% interest rate. The Litt Loan was secured by a third priority Deed of Trust recorded on the Ladbroke Property and the Car Wash Notes.

 - ii. As a condition to the Litt Loan, Car Wash III was required to pledge the Car Wash Notes and record an allonge to the Car Wash Notes requiring that the payment be made directly to the Litts and not to Car Wash III or Dykstra.

- c. The Shohed Group agreed to assume or pay off the Brodsky Loan in an amount of up to \$900,000
 - i. Between April 23, 2008 and May 29, 2008, Debtor borrowed approximately \$1,063,500 from BSI, LLC. This was through a series of loans. Some were to Dykstra, one to Car Wash III, and the final one on May 29, 2008 was a consolidated promissory note executed by both Dykstra and Car Wash III in the principal amount of \$1,063,500 (the "Brodsky Loan"). The Brodsky Loan matured on October 31, 2008. It carried an interest rate of 12% and a default interest rate of 24%. *It may not be important, but the Court is*

**United States Bankruptcy Court
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CONT...

Lenny Kyle Dykstra

Chapter 7

confused by the dates in that the final loan for \$5,000 was listed as being on May 29, 2008, but Exhibit 29 is labeled as being done simultaneously, but is dated May 5, 2008. Nonetheless, it is undisputed that the principal amount due under the Brodsky Loan is \$1,063,500.

ii. Car Wash III was to execute in favor of BSI a Pledge and Security Agreement to secure the Brodsky Loan, which included a deed of trust. *There is no copy of the Pledge and Security Agreement in evidence and no copy of a recorded Deed of Trust. Exhibit 29 does not refer to a Pledge and Security Agreement or a Deed of Trust. Thus the Court does not find that these were ever executed, although there was an apparent intent to do so.*

d. The Shohed Group agreed to pay Dykstra \$1.250 million: \$500,000 by September 8, 2008 [but if it looked like the agreement would not close, Shohed was to stop payment of the \$500,000] and \$750,000 on closing. . *(The Terms of the Pre-Payment Agreement are detailed in the Motion at pgs. 12-13. Also, see Uncontroverted Fact ("UF") #24.)*

12. The Shohed Group did not assume the Litt Loan or obtain the release of Dykstra's collateral. *A dispute exists as to whether this was due to actions by the Shohed Group or by Dykstra or the Litts. However, a settlement between the Shohed Group and the Litt Group was reached as set forth in Ex. 12 to the declaration of Scott Arditi.*

13. At the time of the bankruptcy, the Litt Lien remained on the Ladbrook Property. Ultimately the senior secured creditor obtained relief from the automatic stay and foreclosed on Ladbrook. It its

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CONT...

Lenny Kyle Dykstra

Chapter 7

calculations as part of the motion for relief from stay, it included the Litt Loan.

14. On January 22, 2009, BSI filed a state court action against Debtor, Car Wash III, and the Shohed Group for money due on default, tortious interference with contract, and third party beneficiary.
15. On July 7, 2009, Debtor filed a voluntary Chapter 11 petition.
16. On August 11, 2009, the state court granted summary judgment in favor of BSI against Car Wash III. The judgment was entered on September 22, 2009. However, the Bankruptcy Court set the judgment aside as void due to a violation of the automatic stay.
17. On November 10, 2009, BSI filed its proof of claim in Dykstra's bankruptcy case – in the amount of \$1,327,285. In January 2010 the Shohed Group settled with Brodsky. BSI was paid in full under the settlement in an amount which exceeded the proof of claim by \$1,334,987. *Arditi Ex. 9, 10.*
18. On October 27, 2009, Debtor's bankruptcy case was converted to Chapter 7.
19. On May 10, 2010, the instant adversary proceeding was initiated. Trustee's Third Amended Complaint was filed on July 29, 2011. Its claims for relief include: 1) breach of contract; 2) fraudulent transfer under Sections 544, 548(a)(1)(A), Cal. Civ. Code Sections 3439.04, 3439.05, 3439.07, and 3439.09; 3) fraudulent transfer under Sections 544, 548(a)(1)(B), 3439.04, 3439.05, 3439.07, and 3439.09; 4) recovery of avoided transfer; 5) breach of contract-purchase and sale agreement; and 5) declaratory relief.
20. After August 28, 2008, the Debtor was unable to pay his debts as they came due. He also had insufficient capital. *Defendants deny only as to whether this was due to the Prepayment Agreement.*

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Tuesday, April 17, 2018

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10:00 AM

CONT...

Lenny Kyle Dykstra

Chapter 7

The proposed fact links it to the date of the Prepayment Agreement ("subsequent to the execution of ...), but not to the cause of these financial issues. Thus the Court finds this is an undisputed fact on August 29, 2008 and thereafter Dykstra was unable to pay his debts as they came due and had insufficient capital.

21. Numerous creditors have filed proofs of unsecured claim in Debtor's bankruptcy.

DISPUTED FACTS

1. *There is a dispute as to whether the Pre-Payment Agreement ever closed or, if it did, whether the Shohed Group was excused from performance in that Dykstra failed to perform or due to some other action(s) by Dykstra.*
2. *Plaintiff asserts that the existence of the Litt Lien prevented the Debtor from refinancing Ladbroke and removed all equity in the property. The Court is aware that the Litt Lien contributed to the granting of relief from stay allowing the senior lien to foreclose, but cannot find that this was the sole reason that Debtor could not refinance.*
3. *Plaintiff contends that Debtor's intent in entering into the Prepayment Agreement was to defraud his creditors. The Shohed Group filed an Answer to the Trustee's Third Amended Complaint and a Counterclaim against the Trustee. In Paragraphs 31-35 of the Counterclaim, the Shohed Group alleges that Dykstra entered into the Prepayment Agreement for the purpose of defrauding his creditors. However, this contention was denied in the Answer to ¶ 85 of the Third Amended Complaint and the allegations in the Sixth and Seventh Claims for Relief in the Counterclaim are alternative to*

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CONT...

Lenny Kyle Dykstra

Chapter 7

those in the Eighth Claim for Relief for negligent misrepresentation. Thus they are not binding admissions. The Court finds that this is a disputed issue of fact.

4. Debtor was not financially solvent between April 2008 and the date that he entered into the Prepayment Agreement. *The Shohed Group disputes this, but it also alleges in its Answer to the Third Amended Complaint that one of the false statements made by Dykstra was that he was financially solvent at the time of entering into the Prepayment Agreement. This is repeated in both the Seventh and Ninth Claims (fraud and negligent misrepresentation) and therefore is a fact that qualifies as judicial estoppel as to the time that the Prepayment Agreement was entered into. However, it is the burden of the Plaintiff to put forth evidence that supports its contentions. In the case the evidence is the report of Paul Shields. In Exhibit 30, Mr. Shields concludes that "it is my opinion that Mr. Dykstra was thinly solvent [as of August 28, 2008], and the amount of his solvency was approximately \$3.3 million." [Ex. 30, p.19].*
5. The consideration under the Prepayment Agreement that was actually paid by the Shohed Group is a disputed fact to be resolved after expert testimony at trial.
6. The reasonably equivalent value received by the Debtor from the Prepayment Agreement is a triable issue of fact.

EVIDENTIARY OBJECTIONS

Dykstra Declaration

All objections are overruled except as follows:

¶27

¶28 – the first sentence

¶33

Shields Declaration

BECAUSE THE PLAINTIFF AGREES THAT THERE IS A TRIABLE

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ISSUE OF FACT AS TO FAIR EQUIVALENT VALUE, WHICH WILL INCLUDE HOW MUCH THE DEFENDANTS ACTUALLY PAID, THE ADMISSIBILITY OF THE SHIELDS DECLARATION IS NOT RELEVANT AT THIS TIME. NONETHELESS, HERE IS THE RULING THAT THE COURT WOULD MAKE ON THE OBJECTIONS:

As to references to Ex. 32 and Ex. 33, the Declaration gives a general statement that these are the documents that he created in connection with the Solvency Report (ex. 30) and the Value Report (ex. 31). Each report states that it has appendices that list the documents relied on, but they are not attached here. HAVE THESE REPORTS BEEN FILED ELSEWHERE IN THE CASE SO THAT WE HAVE A COMPLETE RECORD? They are dated 9/19/17, so probably not.

The documents in Ex. 32 and Ex. 33 are not independently admissible. They are merely what the expert seems to have relied on. Some he may have prepared and those would be admissible. But it is not clear what he created.

As to the qualifications of the declarant to be an expert witness, it is hard for the Court to take the objections seriously. I have never seen an expert be required to produce membership certificates, graduation diplomas, proof of attendance of seminars, etc. If the objecting party has a good faith basis for this objection, I want to see it. If not, this was filed in bad faith and will be overruled with an admonition.

As to the use of other professionals, it is a fair objection to require sufficient information as to whether the declarant supervised the work, reviewed it, and the level and amount of review that he did.

At to Ex. 30 and 31, these are expert's reports. They are being offered as a declaration and are admissible for this motion for summary judgment. It will be up to the Defendants to show that there is a triable issue of fact as to the conclusions drawn by this expert.

All other objections are overruled.

Van Kalsbeek Declaration

The objection is to the overall declaration and to specific parts. The Court notes that Ms. Van Kalsbeek does not identify copies of any specific records. But she also does not take the contents of those records. Thus, the objection is overruled and the Court accepts this as background information and not as an attempt to put specific documents or content into evidence.

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¶1 – Sustained in that she does not specify when she became the tax preparer. This would only go to any specific tax return. As custodian of records, she can verify that a tax return was filed and provide a copy of that tax return. As controller, she can verify that the contents of the tax return are accurate and specify her role in providing that information to the tax preparer.

¶3 – Overruled in that she is not seeking to admit the records. However, if it is necessary to show that she is in possession of certain records, this part of the declaration would have to be modified to specify which records she has and who else is the custodian of records.

¶4 – Overruled.

¶5 – Partially sustained. To the extent that it indicates that she prepared or provided the information to prepare the 2008 tax return, she has personal knowledge that it is inaccurate as to the gains on stocks. She needs to clarify her role in preparation of that return.

¶6 – Sustained. There is no indication that she has personal knowledge of this or was involved in the preparation of the 3/08 personal financial statement.

¶7 - Sustained. There is no indication that she has personal knowledge of this.

¶8 - Sustained. There is no indication that she has personal knowledge of this.

Declaration of Leonard Shulman

Sustained. A title report is hearsay and not admissible. Further, under California law a preliminary title report has little, if any, value as to how title to real property is held. *In re Massrock, Inc.* 2016 WL 4039659 (9th Cir. BAP 2016). If the ownership of Ladbroke is an issue that cannot be dealt with by stipulation, you need to get a certified copy of the deed of transfer or a proper declaration of a title company as to an abstract of title.

ISSUES TO BE DETERMINED

- I. **Other than the issue of reasonably equivalent value, which the parties agree is a disputed issue of fact, should the Court find that for the Trustee on all other issue under 11 USC §548(a)?**

Because Paul Shields did not include the Car Wash Notes or the

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Prepayment Agreement in his analysis of solvency (ex. 30 to his declaration) and he found that on the date of the transfer the Debtor was "thinly solvent" under the balance sheet test required by 11 USC §101(32)(A), do the Defendants prevail under §548(a)(1)(B) whether there was reasonably equivalent value or not?

- II. Other than the issue of reasonably equivalent value, which the parties agree is a disputed issue of fact, should the Court find that for the Trustee on all other issue under Civil Code §3439.04(a)?
- III. Other than the issue of reasonably equivalent value, which the parties agree is a disputed issue of fact, should the Court find that for the Trustee on all other issue under Civil Code §3439.05?
- IV. Are the Defendants' Second, Third, Fourth, Sixth and Seventh Counterclaims barred by the applicable statute of limitations?
- V. Does the Trustee have standing to avoid or recover a fraudulent transfer because he never brought a separate motion to preserve his avoidance powers nunc pro tunc after substantive consolidation was granted in December 2010?
- VI. Does the Trustee have standing to sue third parties on an alter ego theory on behalf of the Estate's creditors?
- VII. Does Dykstra have an interest in the Car Wash III Notes and, if not, does this prevent the Trustee from bringing his avoidance claims?
- VIII. Should the Defendants' Motion to Dismiss the Second, Third, and Fourth Claim for Relief be granted?

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Chapter 7

Debtor(s):

Lenny Kyle Dykstra

Represented By

Michael T Pines - DISBARRED -
Moshe Mortner

Defendant(s):

Lenny Dykstra's Car Wash Corp., a

Pro Se

South Corona Center, LP

Represented By

Ramin Azadegan

Lenny Dykstra's Car Wash III, LP

Pro Se

Bahram Khadavi

Represented By

Ramin Azadegan

Kia Saidnia

Represented By

Ramin Azadegan

Karine Ardit

Represented By

Ramin Azadegan

Simone Shouhed

Represented By

Ramin Azadegan

Shahram Shouhed

Represented By

Ramin Azadegan

Hamid Shohed

Represented By

Ramin Azadegan

Scott Ardit

Represented By

Ramin Azadegan

Farshid Shohed

Represented By

Ramin Azadegan

Shahriar Shouhed

Represented By

Ramin Azadegan

National Car Washes, Inc.

Represented By

Ramin Azadegan

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CONT... Lenny Kyle Dykstra

Chapter 7

Corona Petroleum, Inc. Represented By
Ramin Azadegan

Corona Lane Collection, I, LP Represented By
Ramin Azadegan

South Corona Auto Spa Property, Represented By
Ramin Azadegan

South Corona Auto Spa, LP Represented By
Ramin Azadegan

South Corona 76 Property, LLC Represented By
Ramin Azadegan

South Corona 76, LP Represented By
Ramin Azadegan

Simi Auto Spa Property, LLC Represented By
Ramin Azadegan

Simi Auto Spa Center, LP Represented By
Ramin Azadegan

Rafie O. Shouhed Represented By
Ramin Azadegan

Movant(s):

DAVID K GOTTLIEB Represented By
Irena L Norton
Robert E Huttenhoff
Ryan D ODea

DAVID K GOTTLIEB Pro Se

Plaintiff(s):

DAVID K GOTTLIEB Represented By
Irena L Norton
Robert E Huttenhoff
Ryan D ODea

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CONT... Lenny Kyle Dykstra

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Represented By

Howard M Ehrenberg

SulmeyerKupetz

Irena L Norton

Robert E Huttenhoff

Victor A Sahn

Leonard M Shulman

Ryan D ODea

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1:09-18409 Lenny Kyle Dykstra

Chapter 7

Adv#: 1:10-01183 GOTTLIEB v. Simi Auto Spa Center, LP et al

- #13.01** Pretrial Conference on Trustees Third Amended Complaint for:
- 1) Breach of Contract;
 - 2) Fraudulent Transfer [11 USC 544, 548(a)(1)(A); California Civil Code 3439.04, 3439.05, 3439.07, 3439.09];
 - 3) Fraudulent Transfer [11 USC. 544, 548 (a)(1)(B); California Civil Code 3439.04, 3439.05, 3439.07, 3439.09];
 - 4) Recovery of Avoided Transfer [11 USC 550];
 - 5) Breach of Contract Purchase and Sale Agreement;
 - and 6) Declaratory Relief

fr. 9/27/11, 12/13/11, 1/3/12, 1/24/12, 5/15/12,
9/25/12, 12/11/12, 2/12/13, 6/4/13 per stip, 8/6/13,
10/22/13, 5/13/14, 7/14/14, 12/16/14; 3/31/15,
10/20/15, 1/26/16; 4/26/16, 8/2/16; 11/15/16, 12/20/16,
3/14/17, 3/21/17, 6/27/17; 11/14/17, 1/23/18

Docket 86

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Continued to July 17, 2018 at 10:00 a.m.

Prior tentative ruling:

Due to the complexity of a few of the issues and the fact that I have no law clerks to assist me and have other matters on calendar, it will take a while for me to complete the ruling on the motion for summary judgment and motion to dismiss. Unless I grant the motion to dismiss, we know that there will be an evidentiary hearing on the issue of reasonably equivalent value. I don't think that I will need a pretrial order on that since it has been fully briefed in the msj and the expert reports are in. Let's continue this to a status conference on March 27, 2018 at 9:00 a.m. If I have completed my ruling on the msj/motion to dismiss by that time, we can set the trial date. I think it will be a one day trial.

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Chapter 7

Party Information

3rd Party Defendant(s):

M.R.R., Inc. dba All Valley Trustee	Pro Se
Teresa Litt	Pro Se
David A. Litt	Pro Se
David A. Litt and Teresa Litt, in	Pro Se

3rd Party Plaintiff(s):

South Corona Center, LP	Represented By Ramin Azadegan
South Corona Auto Spa, LP	Represented By Ramin Azadegan
South Corona Auto Spa Property,	Represented By Ramin Azadegan
South Corona 76, LP	Represented By Ramin Azadegan
South Corona 76 Property, LLC	Represented By Ramin Azadegan
Simi Auto Spa Property, LLC	Represented By Ramin Azadegan
Simi Auto Spa Center, LP	Represented By Ramin Azadegan
Shahriar Shouhed	Represented By Ramin Azadegan
Shahram Shouhed	Represented By Ramin Azadegan
Simone Shouhed	Represented By Ramin Azadegan
Hamid Shohed	Represented By

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CONT... Lenny Kyle Dykstra

Chapter 7

	Ramin Azadegan
Rafie O. Shouhed	Represented By Ramin Azadegan
Scott Arditi	Represented By Ramin Azadegan
Corona Lane Collection, I, LP	Represented By Ramin Azadegan
Corona Petroleum, Inc.	Represented By Ramin Azadegan
Karine Arditi	Represented By Ramin Azadegan
National Car Washes, Inc.	Represented By Ramin Azadegan
Kia Saidnia	Represented By Ramin Azadegan
Farshid Shohed	Represented By Ramin Azadegan
Bahram Khadavi	Represented By Ramin Azadegan

Counter-Claimant(s):

Shahriar Shouhed	Represented By Ramin Azadegan
South Corona Center, LP	Represented By Ramin Azadegan
South Corona Auto Spa, LP	Represented By Ramin Azadegan
South Corona Auto Spa Property,	Represented By Ramin Azadegan
South Corona 76, LP	Represented By

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Chapter 7

	Ramin Azadegan
South Corona 76 Property, LLC	Represented By Ramin Azadegan
Simi Auto Spa Property, LLC	Represented By Ramin Azadegan
Simi Auto Spa Center, LP	Represented By Ramin Azadegan
Shahram Shouhed	Represented By Ramin Azadegan
Simone Shouhed	Represented By Ramin Azadegan
Hamid Shohed	Represented By Ramin Azadegan
Farshid Shohed	Represented By Ramin Azadegan
Rafie O. Shouhed	Represented By Ramin Azadegan
Kia Saidnia	Represented By Ramin Azadegan
National Car Washes, Inc.	Represented By Ramin Azadegan
Bahram Khadavi	Represented By Ramin Azadegan
Corona Petroleum, Inc.	Represented By Ramin Azadegan
Corona Lane Collection, I, LP	Represented By Ramin Azadegan
Scott Arditi	Represented By Ramin Azadegan

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CONT... Lenny Kyle Dykstra
Karine Arditi

Chapter 7

Represented By
Ramin Azadegan

Counter-Defendant(s):

DAVID K GOTTLIEB

Pro Se

Debtor(s):

Lenny Kyle Dykstra

Represented By
Michael T Pines - DISBARRED -
Moshe Mortner

Defendant(s):

South Corona Center, LP

Represented By
Ramin Azadegan

Lenny Dykstra's Car Wash III, LP

Pro Se

Bahram Khadavi

Represented By
Ramin Azadegan

Kia Saidnia

Represented By
Ramin Azadegan

Karine Arditi

Represented By
Ramin Azadegan

Simone Shouhed

Represented By
Ramin Azadegan

Shahram Shouhed

Represented By
Ramin Azadegan

Lenny Dykstra's Car Wash Corp., a

Pro Se

Hamid Shohed

Represented By
Ramin Azadegan

Farshid Shohed

Represented By
Ramin Azadegan

Scott Arditi

Represented By

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Chapter 7

	Ramin Azadegan
Corona Petroleum, Inc.	Represented By Ramin Azadegan
Shahriar Shouhed	Represented By Ramin Azadegan
National Car Washes, Inc.	Represented By Ramin Azadegan
Corona Lane Collection, I, LP	Represented By Ramin Azadegan
South Corona Auto Spa Property,	Represented By Ramin Azadegan
South Corona Auto Spa, LP	Represented By Ramin Azadegan
South Corona 76 Property, LLC	Represented By Ramin Azadegan
South Corona 76, LP	Represented By Ramin Azadegan
Simi Auto Spa Property, LLC	Represented By Ramin Azadegan
Simi Auto Spa Center, LP	Represented By Ramin Azadegan
Rafie O. Shouhed	Represented By Ramin Azadegan

Plaintiff(s):

DAVID K GOTTLIEB	Represented By Irena L Norton Robert E Huttenhoff
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Successor Trustee(s):

David K Gottlieb, Chapter 7 Trustee	Represented By
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Chapter 7

Irena L Norton
Robert E Huttenhoff

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Howard M Ehrenberg
SulmeyerKupetz
Irena L Norton
Robert E Huttenhoff
Victor A Sahn
Leonard M Shulman

Arturo Cisneros (TR)

Represented By
Irena L Norton

David K Gottlieb

Represented By
Robert E Huttenhoff

US Trustee(s):

United States Trustee (SV)

Pro Se

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10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#14.00 Pre-trial Conference re: Complaint to Set Aside
or Annul Fraudulent Conveyances; Alter Ego;
and for Damages

fr. 4/27/11, 6/15/11, 10/4/11, 1/24/12, 4/10/12, 5/29/12,
6/19/12, 9/11/12, 10/2/12, 11/6/12, 3/19/13, 6/4/13, 8/27/13,
11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14,
12/16/14, 3/10/15, 5/12/15, 6/2/15, 9/1/15, 9/8/15; 11/17/15;
1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16, 10/11/16, 1/17/17,
2/21/17, 3/28/17, 5/30/17; 7/25/17; 11/14/17; 2/27/18

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

It appears that the Trustee has taken over this adversary proceeding, which had been assigned to Mr. Berry. She now has counsel and a joint status report was filed. Pursuant to that status report, a settlement is in the works and is dependant on Mr. Pyle obtaining a reverse mortgage, which is in process. The parties stipulate to the following schedule:

5/10/18 - Trustee to submit a proposed Joint Pretrial Stipulation

5/24/18 - Defendants provide the Trustee with their portion of the Joint Pretrial Stipulation

6/1/18 - the Joint Pretrial Stipulation is filed.

Those dates are fine and the joint pretrial conference will be continue to June 26, 2018 at 10:00 a.m.

I would appreciate it if the parties would appear on 4/17 (phone is fine) just so that I can straighten out the status of the Berry motion(s) for sanctions.

Party Information

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CONT... Glen E Pyle

Chapter 7

Attorney(s):

Richard S. Singer	Pro Se
Law Offices Of Raymond H. Aver,	Represented By Raymond H Aver

Debtor(s):

Glen E Pyle	Pro Se
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Defendant(s):

Glen E Pyle	Represented By Raymond H Aver
Sweetwater Management Company	Pro Se
Glen E Pyle Irrevocable Trust	Represented By Raymond H Aver

Plaintiff(s):

Marc H Berry	Represented By Marc Berry
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Trustee(s):

Amy L Goldman (TR)	Represented By Amy L Goldman Amy L Goldman (TR)
Amy L Goldman (TR)	Pro Se

US Trustee(s):

United States Trustee (SV)	Pro Se
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**United States Bankruptcy Court
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1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#15.00 Motion for Sanctions Against Glen Pyle, Sweetwater Management Company Inc and Glen E Pyle Irrevocable Trust

fr. 1/24/12, 4/10/12, 5/29/12, 6/19/12, 9/11/12, 10/2/12, 3/19/13, 6/4/13, 8/27/13, 11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14, 12/16/14, 3/10/15, 5/12/15, 6/2/15, 9/1/15, 9/8/15; 11/17/15; 1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16, 10/11/16, 1/17/17, 2/21/17, 3/28/17; 5/30/17; 7/25/17; 11/14/17; 2/27/17

Docket 9

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

I think that I should rule or should have ruled on this motion. But I am somewhat confused as to what is going on. From the joint status report (on which Mr. Berry was not a signatory), this motion may be part of the proposed settlement. But on 4/5/18, Mr. Berry filed a new motion for sanctions against Mr. Aver and that is set for hearing on May 29 at 10:00 a.m. Briefly reviewing that motion, I note that it is brought under 28 USC §1927 as applied to bankruptcy cases in *In re Schaefer Salt Recovery, Inc.*, 542 F.3d 90 (3d Cir. 2008). While I think that the reasoning of the Third Circuit is correct, I am bound by the holdings in the Ninth Circuit, specifically *In re Perroton*, 958 F.2d 889 (9th Cir. 1992); *Determan v. Sandoval (In re Sandoval)*, 186 B.R. 490 (9th Cir. BAP 1995); *In re DeVile*, 361 F.3d 539, 546 (9th Cir. 2004) (quoting with approval the BAP's summary that "28 U.S.C. § 1927 does not suffice because the Ninth Circuit does not regard a bankruptcy court as a 'court of the United States.'").

Thus, I can deny the motion for lack of jurisdiction (and suggest that Mr. Berry take an appeal and see if he can't make a new holding in the Ninth Circuit) or allow Mr. Berry to file an amended motion under some other authority.

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CONT... Glen E Pyle

Chapter 7

Let's discuss a timetable for what decisions you want me to make. As always, phone appearances are allowed.

prior tentative ruling (7/25/17)

On July 21, Mr. Aver filed a status report as to discovery compliance. Pyle has appeared at three depositions for some 15 hours of questioning. In each case he has signed the deposition transcript without change. There were disputes as to whether Pyle or Aver ever received the original deposition transcripts.

Pyle has also produced almost 800 pages of documents. Pyle has responded to all interrogatories. There has been no intentional or purposeful failure to comply with discovery.

Mr. Aver then goes through the history of the sanctions requests, Pyle's difficulty in receiving mail, settlement efforts, and asks that the request for sanctions be summarily denied.

No status report has been received from Mr. Berry.

Proposed ruling: The issue here is not money, but whether I will strike the answer and enter default. Although Mr. Aver makes Mr. Pyle sound like the most cooperative defendant who ever existed and Mr. Berry like the most aggressive plaintiff, this is not true. Although Mr. Berry has been aggressive, he has not been abusive. Even before Mr. Aver was part of this case, the Court was aware that Mr. Pyle was angry and uncooperative. While he has apparently now made all discovery, it was like pulling teeth to get it, particularly in a complete and comprehensible form. Thus, Mr. Berry's frustration was reasonable.

However, I will not strike the answer. But monetary sanctions are warranted, though I am unable to tell in what amount. The initial request was for \$4,000. But that was during the first year of the case. And while Mr. Berry represents himself, he is still entitled to a reasonable rate of compensation for time spent. I need a set of time records from Mr. Berry so that I can see exactly

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CONT... Glen E Pyle

Chapter 7

what was done and for how long. The actual issues for which I will award compensation are the following:
(1) the second deposition, which I believe was due to the lack of production of documents.
(2) any motions for production of documents that request new copies of documents that were illegible or unorganized or not produced in a prior request for production.
(3)

prior tentative ruling (5/30/17)

I would like to complete this motion. I believe that all discovery has been done and this case should be set for trial. How do you recommend that this be resolved?

prior tentative ruling (1/17/17)

Since the deposition took place, I am not sure what is left of this motion. I continued the motion for summary judgment to 2/21/17 at 10:00 a.m. on stipulation of the parties. Please advise me whether this motion should also be continued to that date or whether it will be heard on 1/17. If it is to be heard on 1/17, I need to know what issues remain.

If no one appears (in person or by phone) on 1/17, I will continue this to 2/21/17 at 10:00 a.m.

prepared on 7/29/16:

On July 25, Mr. Berry filed a supplemental declaration (note that dkt. 111 and 112 are identical, though filed on different dates). One of the conditions for continuing the deposition was that Mr. Aver provide a written response to the settlement proposal at least 10 days before the continued date. This was not done and no written response was ever provided although Berry sent a reminder email to Aver. The deposition did take place on 6/29/16.

Further, neither Aver nor Pyle has ever returned vol 1 and vol 2 of the original deposition transcripts, although the signed signature pages have been received. There is be significant cost to creating copies for the trial.

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10:00 AM

CONT... **Glen E Pyle**

Chapter 7

When Berry sent notices to Pyle on 3/22/16, 4/26/16, and 5/25/16, the envelopes were returned by the Post Office marked "Return to Sender, no mail receptacle, unable to forward." Then he sent two other envelopes to Pyle at the same address on 6/2/16 and 6/9/16, they were returned marked "return to sender, undeliverable as addressed, (or) no such street, unable to forward."

As noted in my order of 3/29/16 (dkt. 103), since Pyle has apparently interfered with the receipt of his mail, he is deemed to be aware of the content and the Court will make rulings accordingly.

He did appear at the agreed-to rescheduled date of the deposition. As to the documents to be produced, I do not know whether Mr. Berry gave a list, but none was filed with the Court as had been ordered in dkt. 103. Therefore apparently Mr. Pyle brought the required documents or none were actually required. As to the settlement offer, that is deemed rejected. I cannot force the parties to settle.

As to the deposition, Mr. Aver is to bring the original to the hearing on August 2 or is to provide a copy for the Court at his own expense.

Let's set a trial date and complete this case. This sanctions motion is not completed. I will continue it and may still strike the answer, etc. if Mr. Pyle and his attorney do not cooperate in the trial preparations, etc.

prior tentative ruling (6/7/16)

An initial partial ruling was entered on 3/29/16 and this was continued to 6/7. The Court is concerned that Mr. Pyle is still not accepting the mailings from Mr. Berry. However, Mr. Pyle seems to be in touch with his attorney. The parties have agreed by email to continue the deposition to 6/29/16 and to other matters set forth in Berry's email:

I will agree to continue the deposition and the document production on the following conditions:

1. You agree that your client Glen Pyle will appear on the new date as I have no

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CONT...

Glen E Pyle

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contact with him. All notices/correspondence to him are returned by the post office.

2. The deposition and document production are continued to the earliest of June 16, 17, 21, 28 or 29, at 10:00 am. at my office [I am not available from June 30, 2016, to July 19, 2016].

3. All orders remain in full force and effect including, but not limited to, all of Judge Mund's orders regarding the consequences if Mr. Pyle is not compliant with the May 27, 2016, deposition/document production date; provided those orders are modified only by changing the date of his appearance for deposition and document production.

4. The status conference will be continued from June 7, 2016, to the earliest date set by Judge Mund's Clerk, and a copy of this letter will be sent to the clerk.

5. You will give me a written response to the settlement proposal (still not an offer) at least ten days before the deposition.

6. You fax or email me your agreement to the above before 4:00 p.m. today, the earlier the better because of the court reporter.

Although Mr. Aver is to prepare a written stipulation to that effect, the Court finds that the email exchange is sufficient for the Court to enter an order and will do so without anything further from the parties.

The motion is continued without appearance to 8/2/16 at 10:00 a.m. If this is not an available date for the parties, please notify the other side and choose an agreeable date from my self-calendering notice or appear by phone on 6/7 to set the hearing.

prior tentative ruling (3/1/16)

On 2/24/16, Mr. Berry emailed the parties and the Court that he will be appearing by Court Call. Can we go to trial without further delays?

prior tentative ruling (1/12/16):

These matters will be continued due to the health of Mr. Berry. He proposed a date, but the Court has not yet had confirmation of it from Mr. Aver. Please

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appear by phone or file something showing and agreed-to continued date.

prior tentative ruling (11/17/15)

At the hearing on 9/8, the Court ordered Mr. Pyle to produce all responsive documents to Mr. Berry by 10/30/15. If Mr. Pyle fails to do so, he will be unable to use the documents at trial. The production is also to include a list of all documents submitted. Mr. Pyle and Mr. Avery are to retain a set of all of the documents that they are submitting to Mr. Berry.

prior tentative ruling (9/8/15)

On 8/26/15 Mr. Berry filed a declaration that shows that once again Mr. Aver is not responding to correspondence or phone calls. He requests \$1,024 in sanctions against Mr. Aver.

On 8/28 Mr. Pyle filed his opposition. I have reviewed this and I have heard it all before in this and other cases.

No one should have to work as hard as Mr. Berry has to schedule discovery. The sanctions appear to be warranted assuming that Mr. Berry can link them to a code provision or other legal authority and follow the proper notice requirements for that code provision or other legal authority.

Per Mr. Aver's declaration, Mr. Pyle did not appear on 8/26 and no documentation provided?

Mr. Berry - do you really need this stuff? I know that a lot of things were previously provided. Is this enough for you to proceed? I would simply like to go to trial. I would give Mr. Pyle a few weeks to prepare his trial documentation and provide it. If there is anything that he does not provide, I would not let him put it in later.

prior tentative ruling (6/2/15)

At the last hearing, Mr. Aver was ordered to advise Mr. Berry of the date for Mr. Pyle's deposition. He was given a choice of dates and was to respond by 5/15. According to Mr. Berry, this did not occur. According to Mr. Aver, he notified Mr. Berry on 5/28 that he and Mr. Pyle would be available on July 8. Without having received this, Mr. Berry stated that he prefers 7/13/15, which

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is also an acceptable date for Mr. Mendoza. Since Mr. Aver is withdrawing, his wishes are no longer relevant and the deposition will take place on 7/13/15. Mr. Berry is to give written notice to Mr. Pyle and Mr. Mendoza of the time and date. If Mr. Aver does not withdraw, the deposition will still take place on 7/13 unless the parties agree to a different date.

As to sanctions, the ultimate one would be to strike Mr. Pyle's answer and enter a default. If he wishes to defend, he needs to appear for his deposition and cooperate in it.

prior tentative ruling (5/12/15)

I received emails that this matter had settled, but it was to be documented. Mr. Berry filed a unilateral status conference that this has not occurred. I believe that it was Mr. Aver's task to document this and on April 17, 2015 Mr. Berry sent him a letter to this effect. In his unilateral status report, Mr. Aver states that the Debtor is unable to perform the settlement and wants to proceed to trial. He also will be filing a motion to withdraw as counsel.

Mr. Aver will be appearing by phone. Mr. Berry can also so appear. Let's set a date for Mr. Aver's motion to withdraw and a trial date if the Debtor is also on the phone. If he is not, then the motion to withdraw is to be filed no later than June 1 and will be heard on June 30 at 10:00 a.m. (Sorry for the delay, but I will be on vacation much of June.) I would like to get trial dates from Mr. Berry and these will be given to the Debtor and on June 30 we will set the actual trial. I will need a trial time estimate.

prior tentative ruling (3/10/15)

Mediation set for 3/24/15. Continue without appearance to 5/12/15 at 1:00 a.m.

prior tentative ruling (10/7/14)

The mediation has been delayed. Continue without appearance to 12/16/14 at 10:00 a.m.

prior tentative ruling (8/5/14)

This is scheduled for a settlement conference before Judge Ryan on 9/22/14. Continue without appearance to 10/7/14 at 10:00 a.m. I would like a status

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CONT... **Glen E Pyle**
report for that hearing.

Chapter 7

prior tentative ruling (3/11/4)

At the prior hearing this was continued to see if Mr. Pyle appeared for his deposition, which was scheduled for 2/10 at 10:00 a.m. at Mr. Berry's office. Per the status report filed 3/4, he did so and Berry intends to schedule another session at a mutually agreeable date. I will continue this as a holding date to make sure that future discovery is complied with.

prior tentative ruling (11/19/13)

At the hearing on 8/17 I determined that if Mr. Pyle is not well enough to be deposed, he is not well enough to be present at the trial. He is not to testify or be in the courtroom. Mr. Aver can defend and bring in other witnesses, but not documents that should have been produced and were not.

As of 11/18 at 8:27 a.m. Mr. Aver has not filed a status report. I have warned him many times about this and ordered him to respond to every email and letter that is sent by Mr. Berry. If this has not been done, I will set an OSC on sanctions as to Mr. Aver.

I want to set this for trial.

prior tentative ruling (8/27/13)

At the hearing on June 4 the issue arose of Mr. Pyle's health. I ordered Mr. Aver to contact Mr. Berry by 6/7 as to whether Pyle would be available for the scheduled 6/14 deposition. If not, Pyle was to submit a doctor's note to the Court as to the nature of the health disability and when he would be available. Once that was known, Aver and Berry were to reach a mutually agreeable date for the deposition.

Late filed status report states that Mr. Aver tried a variety of times to gain the cooperation of Mr. Pyle's treating physician, but did not receive anything until 8/19. The letter is attached. It says that Pyle had a heart attack. He is just started to be allowed some mild walking and it stay away from stress. He should stay away from stress for the "unforeseeable future given his guarded prognosis."

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I will continue this and the sanctions motion to November 19 at 10:00 a.m.
The parties will have the following choices:

- (1) Pyle - can be deposed in whatever reasonable location and time increments that he wishes and then we can set the matter for trial;
- (2) Berry - if Pyle is not able to be deposed, I will declare him unavailable and Berry can proceed to trial. Pyle will not be allowed to be present, to testify, or to provide any evidence not previously given in discovery. His attorney can call other witnesses and defend.

prior tentative ruling (3/19/13)

At the hearing on 10/2, Mr. Pyle was ordered to bring in the originals of the checks (or the copies that he has if he does not have the originals) from 2000 through 2008. He was told that the court would make copies at the hearing. If he has the checks and no additional copies, he is to give them to the court reporter, who will make two sets of copies (1 for Mr. Berry and 1 for me) and return the set to Mr. Pyle.

prior tentative ruling (10/2)

At the hearing on 9/11, Mr. Pyle was ordered to mail to Mr. Berry by 9/14 clean copies of everything that he gave his accountant starting with calendar year 2005. He had said that he gave the accountant a written accounting, so that is to be included.

Nothing further received by the court as of 9/30.

prior tentative ruling (9/11/12)

A transcript of the 6/19 hearing has been filed. Mr. Pyle and the Trust were represented by Richard Singer. Pyle did not fully comply with my prior order to turn over an accounting, but I ordered the deposition to take place anyway. It was agreed by the parties that it would be on 8/8. Counsel in the Campbell §523 action indicated that he might also attend the deposition. The status conference and motion to compel were continued to 9/11 to see what came happened at the deposition.

I also ordered that the tax returns for 2009, 2010, and 2011 of both Pyle and

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the Trust be prepared and filed by 8/3. These are to be complete tax returns, both state and federal. By August 3, he was also to give an accounting and checks for the period of 2006, 2007, and 2008.

Mr. Berry filed a proposed Order and Findings on the motion to compel, etc. Does Debtor's counsel have any objections to it? [Mr. Singer has filed a motion to withdraw as attorney for Pyle, which is set for hearing on 10/2 at 10:00 a.m.]

Berry also filed a declaration as to compliance. According to this, some but not all of the documents were received late. The tax returns were not signed by Pyle or his accountant and there is not evidence that they were filed. The accountings were not received. The accountings are necessary to ascertain if Pyle used trust monies for his own personal expenses. Berry wishes the court to strike Pyle's answer and enter default.

prior tentative ruling (6/19)

A transcript of the 5/28 hearing has been filed. At that hearing I told Mr. Pyle that this was his last chance to provide complete and legible information or that I would not allow him to put on any evidence (written or oral) or income and expenses. I told him that I expected actual tax returns that had either been filed or where about to be filed and on the proper tax forms. Also as to the ledger sheets, he is to provide a check number and a statement as to where the money came from that was paid: the bank account number, the check number, and the date of the check.

The new accounting was due by 6/12 from 2009-2012. On 6/15 Berry filed a declaration as to the deficiency. We will go over this at the hearing.

prior tentative ruling (4/10)

On 4/3 Marc Berry filed a declaration of findings after hearing. These were mailed to debtor's counsel on 3/2 and he was asked about it on 3/12. No comments from debtor's counsel. Sanctions of \$4,000 were to be paid to plaintiff's counsel by 3/26, but nothing has been paid. Defendants were to provide an accounting of rental income from the date of transfer, but that was

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CONT... Glen E Pyle
not provided.

Chapter 7

Some documents were timely provided, but not the bank statements reflecting the rental income. Apparently many of these are in the possession of defendants' attorney, but have not yet been turned over to plaintiff.

Proposed findings are attached. I will sign these.

The deposition has been continued to May. Unless the sanctions are paid and the bank records turned over, I will strike the answer.

prior tentative ruling (1/24)

This adversary proceeding seeking to avoid fraudulent transfers was commenced against debtor and related entities on 3/7/11. An amended complaint was filed on 3/29/11 to which defendants filed an answer on 5/6/11.

On 5/11/11, the chapter 7 trustee brought a motion to sell her avoidance rights to plaintiff in connection with the debtor's 2006 transfer of certain real estate assets into a trust in exchange for 40% of any potential recovery. Oddly, the 6/17/11 order approving the sale refers to certain business assets sold by the debtor to an employee prepetition.

The last meeting of creditors on this case was set for 12/16/11 and the docket does not show whether that meeting was continued.

Argument

On 4/6/11, plaintiff propounded requests to produce on all defendants but received no response despite several attempts to contact defendants' counsel. On 7/27/11, debtor served an inadequate and incomplete response; no responses were ever provided on behalf of the other defendants (Sweetwater Management Co., Inc. and Glen E. Pyle Irrevocable Trust). On 8/26/11, plaintiff's counsel sent defendants' counsel a "meet and confer" letter explaining that the responses were inadequate but received no reply or objections to production.

Several meetings of creditors were continued due to debtor being unable to locate records required by the trustee. At the 9/23/11 meeting, debtor said

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that it is financially impossible to provide any more of the records.

Plaintiff requests that the court compel production of the records that have not been produced (as outlined on p.7-10 of the motion) or that defendants provide a declaration regarding their diligent search or reasonable inquiry. Further, pursuant to FRCP Rule 37(a)(5) plaintiff requests that \$4,000 in sanctions be assessed against defendants for plaintiff's attorney's fees and costs in having to bring this motion.

Opposition

Contains debtor's declaration that he has "recently" given to his attorney "all available documents in my possession that, to the best of my ability, conform with Plaintiff's request." He also declares that no financial documents were ever prepared for Sweetwater. In addition, although the trust was formed in 2000, it had no assets until 2004 and as such, no financial documents exist covering the years 2002-04. The trust had no income until 2005 and did not file a tax return before that (the tax return has been provided to plaintiff). Plaintiff also declares that he cannot provide an accounting regarding the properties that were put into the trust because it would cost him \$5,000 which he does not have.

The opposition also contains a declaration by debtor's counsel that all the documents in his possession have been turned over to plaintiff and that debtor be allowed to prepare an accounting himself and submit it under penalty of perjury, since he does not have the funds to hire an accountant.

Analysis

To what extent have the documents produced to date resolved the issue? Is plaintiff satisfied with debtor's declaration as to the missing documents? If not, what else should be addressed? Will plaintiff accept an accounting prepared by the debtor?

As to sanctions, those must be granted pursuant to Rule 37(a)(5), even if the responses were provided after the motion was filed, unless (1) plaintiff had not attempted in good faith to obtain disclosure before filing the motion, (2) the nondisclosure was substantially justified or (3) an award of expenses is unjust. The opposition does not address the issue of sanctions directly but

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indirectly states that nondisclosure was substantially justified. If that is the case, why did defendants' counsel not provide that information to plaintiff's counsel before the motion was filed and kept ignoring plaintiff's counsel's requests?

Party Information

Attorney(s):

Richard S. Singer	Pro Se
Law Offices Of Raymond H. Aver,	Represented By Raymond H Aver

Debtor(s):

Glen E Pyle	Pro Se
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Defendant(s):

Glen E Pyle	Represented By Raymond H Aver
Sweetwater Management Company	Pro Se
Glen E Pyle Irrevocable Trust	Represented By Raymond H Aver

Movant(s):

Marc H Berry	Represented By Marc Berry
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Plaintiff(s):

Marc H Berry	Represented By Marc Berry
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Trustee(s):

Amy L Goldman (TR)	Represented By Amy L Goldman Amy L Goldman (TR)
Amy L Goldman (TR)	Pro Se

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US Trustee(s):

United States Trustee (SV)

Pro Se

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1:11-22424 Ronald Alvin Neff

Chapter 7

#16.00 Motion for New Trial to Amend/Alter Judgement
for Relief from Judgement/Order of January 4, 2018

fr. 3/27/18

Docket 390

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

It appears that for a short while Mr. Kwasigroch was substituted out as attorney for Neff and William Winfield replaced him. Then Winfield substituted out and Kwasigroch came back in. So Kwasigroch is now the attorney for Neff.

On 4/16, Mr. Kwasigroch filed a motion to continue this hearing due to his wife's physical condition. He needs additional time to respond to the motion for new trial. While Mr. Kwasigroch is often late in filing responses, etc., this is not his fault and certainly not the fault of his client. Although I would like to handle this matter without delay, it would be an abuse of discretion not to grant him this continuance.

Let's set a realistic date for his response and for Mr. DeNoce's reply and the hearing.

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

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1:16-11387 Real Estate Short Sales Inc

Chapter 7

#17.00 Motion for relief from stay

JOHN HUYNH

Docket 221

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

John Huynh sued Nancy Cueva, et al (including Real Estate Short Sales) in the superior court (PC057195) for fraud, conversion, negligence, etc. He wishes to rejoin the Debtor as a defendant in the state court action.

His action is under non-bankruptcy law. In brief he alleges that he gave Cueva checks totaling \$240,000 made payable to the debtor, never got the property for which they were intended, and never received his money back. The superior court case was filed on 7/20/16 without knowledge of the bankruptcy case, which was filed on 5/6/16. Huynh did not know of the bankruptcy until a notice of stay was filed in the state court action on 4/11/17. At that time his counsel filed a proof of claim for \$240,000.

Although counsel filed a §523 complaint, that was dismissed as this debtor is a corporation. He dismissed the debtor from the state court action - without prejudice. Only after he retained bankruptcy counsel did he find out that he had no needed to dismiss the debtor, but just stay the case and seek relief from the automatic stay.

On 8/23/17, one of the other defendants filed bankruptcy. The state court trial was delayed. Huynh seeks relief from stay to rejoin the state court action merely to liquidate his damages, thereby fixing the amount of his proof of claim. There is a hearing in the superior court on 5/9/18 when this matter can be set for trial.

No opposition has been received as of 4/16 at 10:00 a.m.

Grant. The claim against the debtor needs to be fixed and this is the most efficient way to fix it.

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CONT... Real Estate Short Sales Inc

Chapter 7

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:16-01166 Barlava et al v. Yashouafar

#18.00 Status Conference re: Complaint

fr. 2/21/17, 3/28/17; 5/30/17; 5/30/17,
10/3/17, 1/23/18

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

On 4/12/18 the Plaintiff filed a unilateral status report. Apparently there is a motion to compel that is being prepared and is ready for filing, but has not been filed as of 4/12/18. When will that be set for hearing?

prior tentative ruling (1/23/18)

The parties filed unilateral status reports. In the future, please try to file a joint status report. Plaintiffs anticipates a 2 week trial starting after June and wants this matter sent to mediation. Plaintiffs consent to this court entering a final judgment. Defendant, on the other hand, expects to complete discovery at the end of June and wants trial after 11/15/18. He expects a 3-5 day trial. Defendant is not interested in mediation, but also consents to this court entering a final judgment.

Let's talk about what can be done to try to resolve this matter. You are talking about expensive discovery and an expensive trial.

prior tentative ruling (10/3/17)

Nothing further received as of 9/28/17. What is the status of discovery?

prior tentative ruling (5/30/17)

Per the joint status report filed 5/11/17, set a discovery cutoff date of 9/11/17. The parties agree to do their initial disclosures by 6/5/17. There may be some objections to discovery.

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CONT... Solyman Yashouafar

Chapter 11

Continue without appearance to 10/3/17 at 10:00 a.m.

prior tentative ruling (3/28/17)

The parties stipulated that Massoud has until 2/17/17 to respond to the complaint. On 2/17, Massoud filed his answer. No status report has been filed as of 3/26.

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Massoud Aaron Yashouafar

Represented By
C John M Melissinos
Mark M Sharf

Defendant(s):

Massoud Aaron Yashouafar

Pro Se

Plaintiff(s):

Simon Barlava

Represented By
Andrew V Jablon

Morris Barlava

Represented By
Andrew V Jablon

Nasser Barlava

Represented By
Andrew V Jablon

Kefayat Barlava

Represented By
Andrew V Jablon

Figueroa Tower II, LP

Represented By
Andrew V Jablon

First National Buildings II, LLC

Represented By
Andrew V Jablon

Carla Ridge, LLC

Represented By

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CONT... Solyman Yashouafar

Andrew V Jablon

Chapter 11

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

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10:00 AM

1:09-23807 Shellie Melissa Halper

Chapter 7

#1.00 Motion RE: Objection to Claim Number 27
by Claimant Alisha Tamburri

Docket 223

Tentative Ruling:

The Trustee objects to the claim of Alisha Tamburri (claim #27) filed for breach of contract/fraud. The grounds of the objection are that the proof of claim does not include a writing on which it is based, the claim was scheduled by the Debtor as contingent and disputed, and there is no evidence that any funds were loaned to the Debtor in her individual capacity rather than to her wholly owned entity "Mortgage Center Inc."

No opposition received as of 4/28.

SUSTAIN.

No appearance necessary if you submit on the tentative ruling. Except in the case of a trustee's final report and simultaneous hearing on applications for approval of professional fees, the prevailing party is to lodge a proposed order in conformance with this tentative ruling within seven court days after the hearing, serving all interested parties with a copy of the proposed order.

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Movant(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss

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CONT... Shellie Melissa Halper

Chapter 7

Laura J Meltzer

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

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10:00 AM

1:09-23807 Shellie Melissa Halper

Chapter 7

#2.00 Motion RE: Objection to Claim Number 30
by Claimant Gloria Zindler and Mel Zindler

Docket 224

Tentative Ruling:

The Trustee objects to the claim of Gloria Zindler and Mel Zindler (claim #30). The loan in question appears to be to Paradise In Cortez, LLC and not the Debtor. There is no evidence that it was a loan to the Debtor. The Note was signed by Halper on behalf of Paradise In Cortez.

No opposition received as of 4/28.

SUSTAIN

No appearance necessary if you submit on the tentative ruling. Except in the case of a trustee's final report and simultaneous hearing on applications for approval of professional fees, the prevailing party is to lodge a proposed order in conformance with this tentative ruling within seven court days after the hearing, serving all interested parties with a copy of the proposed order.

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Movant(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

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CONT... Shellie Melissa Halper

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

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1:09-23807 Shellie Melissa Halper

Chapter 7

#3.00 Motion RE: Objection to Claim Number 31
by Claimant Barbara Bruno and John Beymer

Docket 225

Tentative Ruling:

The Trustee objects to the claim of Barbara Bruno and John Beymer (claim # 31) filed for breach of contract/fraud. The ground of the objection is that the promissory note attached to the proof of claim is by Mortgage Center Services, Inc. and the note is signed on behalf of that entity. There is no evidence that any funds were loaned to the Debtor in her individual capacity rather than to her wholly owned entity "Mortgage Center Services, Inc."

No opposition received as of 4/28.

SUSTAIN.

No appearance necessary if you submit on the tentative ruling. Except in the case of a trustee's final report and simultaneous hearing on applications for approval of professional fees, the prevailing party is to lodge a proposed order in conformance with this tentative ruling within seven court days after the hearing, serving all interested parties with a copy of the proposed order.

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Movant(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss

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CONT... Shellie Melissa Halper

Chapter 7

Laura J Meltzer

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

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1:09-23807 Shellie Melissa Halper

Chapter 7

#4.00 Motion RE: Objection to Claim Number 38
by Claimant Solomon Cohen

Docket 226

***** VACATED *** REASON: Ntc. of w/drawal filed 4/9/18 (eg)**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Movant(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

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1:09-23807 Shellie Melissa Halper

Chapter 7

#5.00 Motion RE: Objection to Claim Number 45
by Claimant Steve Van Eynde

Docket 227

Tentative Ruling:

The Trustee objects to the claim of Steve Van Eynde (claim #45). The grounds of the objection are that the proof of claim does not include a writing on which it is based and there is no evidence that any funds were loaned to the Debtor in her individual capacity rather than to her wholly owned entity "Mortgage Center Services, Inc."

No opposition received as of 4/28.

SUSTAIN.

No appearance necessary if you submit on the tentative ruling. Except in the case of a trustee's final report and simultaneous hearing on applications for approval of professional fees, the prevailing party is to lodge a proposed order in conformance with this tentative ruling within seven court days after the hearing, serving all interested parties with a copy of the proposed order.

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Movant(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss

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Chapter 7

Laura J Meltzer

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

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1:09-23807 Shellie Melissa Halper

Chapter 7

#6.00 Motion RE: Objection to Claim Number 47
by Claimant Norton Law Group

Docket 228

Tentative Ruling:

This claim of the Norton Law Group (claim #47) was filed on 10/1/10, which was after the 9/13/10 bar date. Further, it does not include any writing demonstrating that the fees, etc. are the liability of Halper in her personal capacity instead of Calabasas Treatment Center or other entities.

No opposition received as of 4/28.

SUSTAIN

No appearance necessary if you submit on the tentative ruling. Except in the case of a trustee's final report and simultaneous hearing on applications for approval of professional fees, the prevailing party is to lodge a proposed order in conformance with this tentative ruling within seven court days after the hearing, serving all interested parties with a copy of the proposed order.

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Movant(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

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Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

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1:09-23807 Shellie Melissa Halper

Chapter 7

#7.00 Motion RE: Objection to Claim Number 40
by Claimant Twin Palms Lending Group, LLC.

Docket 235

*** VACATED *** REASON: Ntc. of w/drawal filed 4/9/18 (eg)

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

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1:09-23807 Shellie Melissa Halper

Chapter 7

#8.00 Motion RE: Objection to Claim Number 46
by Claimant DACA, LLC.

Docket 236

Tentative Ruling:

This claim of DACA LLC (claim #46) was filed on 9/14/10, which was after the 9/13/10 bar date. Further, it does not include any writing demonstrating that the fees, etc. are the liability of Halper in her personal capacity instead of The Mortgage Center Services, Inc., which was the maker of the Note.

No opposition received as of 4/28.

SUSTAIN.

No appearance necessary if you submit on the tentative ruling. Except in the case of a trustee's final report and simultaneous hearing on applications for approval of professional fees, the prevailing party is to lodge a proposed order in conformance with this tentative ruling within seven court days after the hearing, serving all interested parties with a copy of the proposed order.

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

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1:09-23807 Shellie Melissa Halper

Chapter 7

#9.00 Motion RE: Objection to Claim Number 42
by Claimant Elizabeth Rose Agency, Inc..

Docket 237

Tentative Ruling:

The Trustee objects to the claim of Elizabeth Rose Agency, Inc. (claim #42) filed for breach of contract/fraud. The grounds of the objection are that the proof of claim does not include a writing on which it is based and there is no evidence that any funds were loaned to the Debtor in her individual capacity rather than to her wholly owned entity "Mortgage Center Inc."

No opposition received as of 4/28.

SUSTAIN.

No appearance necessary if you submit on the tentative ruling. Except in the case of a trustee's final report and simultaneous hearing on applications for approval of professional fees, the prevailing party is to lodge a proposed order in conformance with this tentative ruling within seven court days after the hearing, serving all interested parties with a copy of the proposed order.

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss

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Laura J Meltzer

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1:09-23807 Shellie Melissa Halper

Chapter 7

#10.00 Motion RE: Objection to Claim Number 34
by Claimant Deborah Rahm WIZ Industries.

Docket 238

Tentative Ruling:

The Trustee objects to the claim of WIZ Industries (claim #34). There is no evidence that it was a loan to the Debtor.

A \$105,000 loan was made on 11/29/07 from WIZ to The Mortgage Cetner Services. The Note was signed by Halper on behalf of The Mortgage Center Services. That same day Halper, on behalf of Paradise In Cortez, assigned the right to collect from sales escrow proceeds to WIZ Industries.

On 12/6/07 a second loan in the amount of \$157,500 was made from WIZ to The Mortgage Center Services. The Note was signed by Halper on behalf of The Mortgage Center Services. That same day Halper, on behalf of Paradise In Cortez, assigned the right to collect from sales escrow proceeds to WIZ Industries.

On 1/7/08 a third loan in the amount of \$105,000 was made from WIZ to The Mortgage Center Services. The Note was signed by Halper on behalf of The Mortgage Center Services. That same day Halper, on behalf of Paradise In Cortez, assigned the right to collect from sales escrow proceeds to WIZ Industries.

On 10/3/08 a fourth loan in the amount of \$242,650 was made from WIZ, but this time it was to Paradise In Cortez, LLC and Shellie Halper (individually). Halper is also named as a guarantor. The Note was signed by Halper on behalf of Paradise in Cortez, LLC, and also individually as "Personal guarantor." That same day Halper, on behalf of Paradise In Cortez, assigned the right to collect from sales escrow proceeds to WIZ Industries. These were proceeds of a different property than the prior assignments of escrow proceeds.

The objection is largely to the first three notes.

No opposition received as of 4/28.

SUSTAIN.

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Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

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1:10-10442 Victor Hugo Hernandez

Chapter 11

#11.00 Status Conference on Chapter 11 Case

fr. 1/11/11, 3/29/11, 4/12/11, 6/14/11, 8/23/11, 10/25/11,
1/17/12, 1/31/12, 2/28/12, 4/10/12, 6/12/12, 7/31/12,
9/11/12, 11/20/12, 12/11/12, 2/26/13, 4/30/13, 6/18/13,
8/27/13, 11/19/13, 1/14/14, 2/4/14, 3/11/14, 4/1/14, 6/24/14,
9/16/14, 11/18/14, 12/16/14, 1/20/15, 2/24/15; 3/31/15; 5/12/15
6/30/15; 8/18/15, 9/22/15, 2/9/16; 3/15/16; 4/26/16,
6/7/16, 7/12/16, 8/16/16; 9/13/16, 10/11/16; 10/25/16; 11/15/16,
12/20/16; 4/18/17, 5/16/17; 6/27/17, 8/1/17, 11/28/17, 2/13/18,
3/27/18

Docket 1

Tentative Ruling:

Off calendar. Final decree entered. Case closed on 4/17/18.

Party Information

Debtor(s):

Victor Hugo Hernandez

Represented By
David I Brownstein
Bonni S Mantovani

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1:13-10386 Shirley Foose McClure

Chapter 11

#12.00 Motion of John P. Reitman, Chapter 11 Trustee,
for Order Approving Settlement with Barrett S. Litt,
et al. Pursuant to Fed. R. Bankr. P. 9019

fr. 3/27/18

Docket 1344

Tentative Ruling:

This was continued to May 1 as a holding date. I am awaiting the proposed settlement figure for the Tidus matter before I can analyze the issue of surplus estate.

prior tentative ruling (3/27/18)

John Reitman chapter 11 trustee (the "Trustee") for the estate (the "Estate") of Shirley McClure (the "Debtor") moves for approval of a settlement between the Trustee and Barrett Litt and affiliated parties (the "Litt Parties").

Service: Appears to be in order.

Background

Initial Case

Debtor initially filed for chapter 11 relief in 1992 (1:92-bk-1371-GM; the "Initial Case"). Early in that case the Debtor confirmed a plan of reorganization, but the case remained open pending the outcome of federal court litigation against the City of Long Beach.

In 2006, the Debtor and her son received \$20 million in settlement of a lawsuit against the City of Long Beach – 95% for the Debtor and 5% for her son. Barrett Litt and his law firms ("Litt") had represented them in this lawsuit since 1993, but Debtor's and Litt's relationship broke down. In July 2008, the Debtor brought a malpractice action against Litt in Superior Court (BC-393584; the "Litt State Court Action"), which included, *inter alia*, malpractice claims for advising the Debtor and her son to make an IRC §1033 election for the majority of their settlement funds and to invest in various real estate rental properties pursuant to that election.

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Shirley Foose McClure

Chapter 11

In 2009, this Court granted Litt's final application and awarded fees of \$9,113,911.51 and costs of \$990,592.06 with a credit of \$9 million that had already been paid to Litt, so the remaining amount owed was \$1,104,503.57. (Initial Case dkt. 146). The Debtor appealed (Initial Case dkt 181), but the District Court and the Ninth Circuit upheld the fee award on appeal. McClure has brought another malpractice action against attorneys who represented her in this fee dispute with Litt. (McClure v. Tidus, et al. BC-443404).

In the meanwhile, Litt obtained and filed an abstract of judgment against thirteen real properties in which the Debtor had an interest. (Initial Case dkt 154, 155). The Court granted McClure a stay pending her appeal on certain conditions, including Litt's retention of his liens from the recorded abstracts of judgment. (Initial Case dkt. 218). The Initial Case was closed on August 16, 2016.

This Chapter 11

Debtor filed this case for Chapter 11 relief on December 21, 2012. The bulk of her estate's assets were comprised of her interest in multiple parcels of income producing residential real estate in Southern California, San Francisco, Maui, Indiana and Michigan (the "Properties"), most of which were 1033 Properties and owned 95% by the Debtor and 5% by her son. The major claims against the estate were (i) approximately \$460,000 in unsecured claims; (ii) secured lender claims of City National Bank ("CNB"), Pacific Mercantile Bank and its affiliate PM Asset Resolution, Inc. ("PMB"), and Shellpoint Mortgage Servicing for Bank of New York, as trustee ("Shellpoint Mortgage"), each secured by deeds of trust on various real estate, (iii) Litt's lien on most of the Properties (the "Litt Lien"), and (iv) a \$1,317,047 priority tax claim by the Franchise Tax Board ("FTB"). As the debtor-in-possession, the Debtor sold several Properties, using the money to repay some of her secured debt (CNB was paid off in full), for repairs and maintenance on other Properties, and to pay other expenses of the Properties and of this Chapter 11 case. Litt filed objections to most or all of these sales and filed appeals to the District Court when his objections were overruled.

On April 2, 2015, the Court entered an order limiting the Litt Lien to three Properties located at 910 Corbett St., Nos. 1, 2 and 3, San Francisco, CA. Litt appealed this order (the "Litt Lien Appeal") to the United States District Court, where it was assigned to Judge Wu and consolidated with related appeals that the Litt Parties had taken from the Court's orders

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(collectively, the "Litt Appeals"). In March 2017, the District Court remanded the Litt Lien Appeal for further consideration of the Ninth Circuit Court of Appeals decision in *Pacifica L 51 LLC v. New Investments, Inc. (In re New Investments Inc.)*, 840 F.3d 1137 (9th Cir. 2016).

The Trustee

On July 12, 2016, after this case had been pending for three years without confirmation of a plan and the Debtor had changed counsel repeatedly (often representing herself *pro se*),, the Court ordered the appointment of a chapter 11 trustee in this case (Dkt. 1090). The United States Trustee appointed Mr. Reitman as Chapter 11 Trustee of the Estate (Dkt. 1105). Mr. Reitman accepted – and the Court approved – the appointment. (Dkt. 1106, 1113).

Since his appointment, the Trustee has taken a number of actions to administer the assets of the Estate. He reached a court-approved Closing Agreement with the Franchise Tax Board, resolving the Debtor's dispute with the FTB over the validity of the Debtor's 1033 election (described above). He obtained court authorization to sell two properties in Michigan that were unencumbered but not operating on a net cash flow positive basis. He reached a settlement with PMB (the PMB Settlement"), which is expected to result in the reduction of PMB's secured claim by at least \$650,000. The Court entered on order, following notice and a hearing, approving the PMB Settlement. The Debtor objected to the PMB Settlement and appealed the Court's order approving it (the "McClure Appeal"). The Trustee elected to have the McClure Appeal heard by the District Court and it has also been assigned to Judge Wu.

The Trustee believes that the PMB Settlement is a key step on the road to proposing and funding a plan of reorganization. However, the PMB Settlement provides that PMB's claim must be paid in full by Jun 30, 2018, which requires sale of the Estate's properties in San Francisco, Southern California (other than the Debtor's residence in Fullerton), and Hawaii. In January 2018, the Court approved the Trustee's retention of brokers to market and sell these Properties.

The Proposed Settlement with the Litt Parties

The Trustee has reached a settlement with the Litt Parties, embodied in a settlement agreement (the "Litt Settlement Agreement"; Exhibit 1 to the

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Declaration of John Reitman), which provides for:

- the reduction of the \$1.1 million Litt Lien on the Corbett Properties (by more than \$800,000) to \$340,000 (the "Litt Settlement Secured Claim"), plus interest thereafter at the federal post-judgment interest rate of 0.45%,
- release of the Litt Lien on all other Properties,
- dismissal of the Litt State Court Case (although not the claims of Jason McClure),
- dismissal of Litt's appeals
- payment of the Litt Settlement Secured Claim upon the sale or refinancing of the Corbett Properties
- customary mutual releases.

The Trustee is seeking approval of the Litt Settlement Agreement. As discussed in the analysis section below, the Trustee argues that this proposed settlement with Litt is fair and equitable and should be approved under the standard set by the Ninth Circuit.

Joinder of Litt Parties

The Litt parties join in the Motion, and argue as follows:

The claims against Litt that the Trustee proposes to settle would not yield any real value for the estate. The Debtor had repeatedly been offered the opportunity to settle with Litt under a 2006 Agreement that would have limited Litt's fees to \$9 million; the Debtor instead chose to go forward with claims against Litt – using a variety of attorneys and in circumstances that indicate the weakness of the Debtor's claims against Litt. The Litt State Court Action has been stayed since 2008 and is barred by *res judicata* (the debtor has litigated every claim she has against Litt in this Court) and the statute of limitations. In particular, the claims against Litt for allegedly deficient tax advice are weak. The Debtor retained other tax counsel before filing the tax returns in question and buying more 1033 properties. The debtor's damages are limited: FTB has settled its claim for \$800,000 in taxes and \$288,000 in interest and the IRS has not filed a claim and the time to do so has passed.

Debtor's Opposition

The Debtor has filed an opposition, arguing as follows:

As the Court has acknowledged, this will be a surplus case. Thus, the settlement will be of no benefit to creditors (who will be paid in full anyway)

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and will affect only the amount of Debtor's recovery. At the November 28, 2017 hearing, in response to questioning by the Court, the Trustee's counsel stated that the Trustee's projections suggest that there would be a surplus. The Court then stated that if the sale of the Properties did yield a surplus, then the Litt State Court Action could be an asset for the Debtor to keep and pursue. This settlement would deprive the Debtor of the right to pursue these claims against the Litt parties, claims that the Court has said belong to the Debtor.

The Debtor's projections support the conclusion that this a surplus estate: the various properties are listed for sale by the Trustee at \$6.8 million, while secured claims are only \$2.7 million and the Trustee's latest report shows cash of \$950,000. On the other side, unpaid unsecured claims are \$300,000 (without Sulmeyer, Kupetz' disputed claim), the FTB is owed \$1.1 million, and Litt's \$1.1 fee claim should be considered an offset against the Debtor's malpractice claim. (Administrative claims have not yet been litigated, but Debtor's prior counsels have already been paid \$240,000.)

The Debtor and Litt were close to a settlement of the Litt State Court Action shortly after it was filed in 2008, until Litt's malpractice carrier sued Litt for rescission. The State Court Action has been stayed since 2009 - at the request of Litt - pending resolution of the Franchise Tax Board audit.

This Court's ruling and Judge Wu's affirmation of that ruling did not adjudicate the Debtor's claims against Litt, as Judge Wu expressly stated on the record at a July 8, 2012 hearing.

Since his appointment in July 2016, the Trustee has taken no steps to investigate the Litt State Court Action or Litt's disputed claims. He has not interviewed the Debtor, allowed the Farley firm to conduct discovery or file an amended complaint, requested the litigation files, or hired replacement counsel for Farley (except the Makarem firm, which had a conflict of interest as it had previously been retained by the Debtor and her son).

The Debtor does have experienced professional malpractice counsel willing to take the Litt State Court Action: Arie Spangler, who estimates that she will need 7-8 months to prepare for trial, assuming that discovery is still open.

The Debtor's claims against the Litt parties are meritorious. The Farley firm, which took the Litt State Court Action on a modified contingency basis in 2014, valued the litigation in the \$10 million range. The tax attorneys hired by the Debtor and her son, as well as the FTB, all concluded that Litt had

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committed malpractice.

If successful, the Debtor or the Trustee could recover against Litt. He was a multi-millionaire even before he received \$9 million from the Debtor's estate. He has \$3 million in litigation insurance and Arch's rescission action is still pending, awaiting the outcome of the Litt State Court Action. At a minimum, a judgment against Litt could be offset against his \$1.1 million claim.

To approve a compromise, the Court must make an independent determination that the compromise is reasonable, fair and equitable: it cannot merely rubber stamp the Trustee's conclusion.

To oppose a settlement, the Debtor must show that s/he is a "person aggrieved," *i.e.*, directly and adversely affected pecuniarily. This can be shown where there is a reasonable possibility of a surplus in the case. This Court has already acknowledged that this is a surplus case and that the Litt State Court Action accordingly belongs to the Debtor. In contrast, this settlement is not in the paramount interest of the unsecured creditors, because they will be paid in any event.

Furthermore, the Trustee has presented no evidence that he has made a substantive review of the merits of the Litt State Court Action, such that he could make an "informed judgment after diligent investigation." Nor has he presented any facts to allow this Court to determine whether the settlement falls above the "lowest point in the range of reasonableness." Nor has the Trustee presented any evidence that a judgment against Litt would not be collectible.

Reply by Trustee

The Court has made no finding that this is a surplus Estate, but was speaking hypothetically. The Trustee's counsel did not represent that the Estate is "unequivocally" surplus, but only that the Trustee's good faith projections show that a surplus is possible. On March 22 the Trustee will file the analysis requested by the Court in its email. Without the sale of the Debtor's current residence and/or the settlement with Litt, it is likely that it will not be surplus.

The Motion contains four pages of analysis of the claims in the Litt State Court Action. The Opposition is unsupported by admissible evidence and the documents that she attaches do not support her arguments: Litt did not admit that he committed malpractice, but he stated that he sought the

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advice from a tax attorney, who later represented the Debtor directly. The assertion that Litt was the architect of the 1033 program will be hotly litigated in the state court trial.

The damages are also questionable since the 1033 election does not eliminate taxes, but merely defers them.

As to the involvement of the Trustee in the case, the Trustee did meet with the Debtor on 8/18/16 and conducted an extensive interview with her at that time, including the issues of the Litt State Court Action. The Trustee, in consultation with the Farley Firm, decided not to proceed to discovery since the Litt State Court Action was stayed and Debtor's health and the ongoing settlement discussions meant that to go forward with discovery would not be in the best interest of the Debtor or the Estate. There was no need to have the Farley Firm turn over the litigation files since that firm represented the Trustee until it withdrew.

The Trustee agrees that difficulty in collecting a judgment is not a significant issue.

Reply by Litt Parties

There has been no determination that this is a surplus estate and that determination cannot be made until all of the professionals have filed their fee applications and had their fees allowed by the Court. The amount of income taxes would also need to be determined. If McClure wins on her appeal of the PMB settlement the Estate could end up owing \$650,000 more. She has done nothing to dispute the SulmeyerKupetz claim. And her assertion that Litt's claim is disputed is incorrect since it has been determined by a final judgment.

The settlement provides an immediate benefit to the estate of over \$800,000. Also the Court has never determined that the Litt State Court Action belong to her rather than to the Estate. Although Litt does not and has not agreed that he is liable to Ms. McClure, he is willing to reduce his secured claim by over \$800,000 to buy peace.

Further, there is no factual support for most of McClure's brief.

Litt Objections to Evidence

Shirley McClure Declaration – overrule all objections

Robert Wood Declaration (ex. B, ex. D) – overrule

Harold Winnett Declaration (ex. C) – overrule. It is clear from the complete

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declaration that it refers to a meeting held on or about 2/27/07.
Robert Wood Declaration (ex. O – sustain as it appears to be unsigned, however, this is a copy form 2008 and is part of something larger. There may be a signed copy somewhere.

Analysis

The Trustee is seeking approval of a compromise pursuant to Fed. R. Bankr. P. 9019, thus the question is whether the Litt Settlement Agreement is "fair and equitable." *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1986). The Court evaluates the fairness, reasonableness and adequacy to the estate under the factors articulated by the Ninth Circuit:

In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. Cal. 1986), *cert. denied sub nom.*, *Martin v. Robinson*, 479 U.S. 854 (1986). The Court should review the issues and determine whether the settlement falls below the lowest point in a range of reasonableness. *In re Teltronics Service, Inc.*, 762 F.2d 185, 189 (2nd Cir. 1985); *Spirtos v. Ray (In re Spirtos)*, 2006 Bankr. LEXIS 4894 at *32 (B.A.P. 9th Cir. May 19, 2006). Courts reviewing a proposed settlement generally accord deference to the Trustee's business judgment, although the Trustee has the burden of persuasion that the settlement is fair and equitable and should be approved. *Goodwin v. Mickey Thompson Entertainment Group (In re Mickey Thompson Entertainment Group)*, 292 B.R. 415, 420 (B.A.P. 9th Cir. 2003).

In essence, the proposed settlement gives up the estate's claims against Litt – valued by the Debtor at \$10 million - in exchange for an \$800,000 reduction in Litt's secured debt. The Trustee argues that probabilities of success in the Litt State Court Case and the complexity, inconvenience and delay in litigating it support approval of this compromise. Regarding complexity, the Debtor asserted numerous claims based on a wide variety of (sometimes conflicting) factual allegations. Litt has asserted a

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variety of defenses to these claims. (These claims, factual allegations, and defenses have been considered by the Trustee and are detailed in pages 9-11 of the Motion.) Regarding the probabilities of success, the difficulties in litigating the Litt State Court Case include the staleness of the matter (which has been stayed since 2009), the need for testimony from the Debtor (who is in ill health and may not be able to cooperate), and the Trustee's lack of counsel (after the Debtor opposed the employment of Ron Makarem and contacted Mr. Makarem directly, the Trustee has not been able to find counsel). Thus, while a jury might prove sympathetic to Ms. McClure (and there appear to be no difficulties in collection), the Trustee has made the business judgment that there is substantial risk that the Estate might not prevail in the Litt State Court Case and the interests of the estate are best served by the Litt Settlement Agreement (which also resolves the Litt Appeals and allows the Trustee to focus on effectuating the PMB Settlement and formulating a plan to bring this bankruptcy case to conclusion).

Ordinarily, this would be sufficient for the Court – in deference to the Trustee's business judgment – to find that that this proposed settlement is within the range of reasonableness and thus fair and equitable. However, two concerns in this case prevent the Court from drawing that conclusion: (i) the possibility that this will be a surplus estate and (ii) allegations that the Trustee has not duly investigated and pursued the State Court Action.

If the sale of the Properties alone would yield a surplus estate, then this settlement will not affect creditor recoveries – the creditors would be paid in full in any event. The settlement would not be in the "paramount interests of creditors." It would only affect the Debtor's recoveries and she is opposed to the settlement. And, if the Debtor pursues the litigation, then the cost, difficulty or uncertainty of litigation are irrelevant to the estate. Thus, if it appears likely that the estate will be surplus, the Court will not approve this proposed settlement, absent some other compelling reason to do. (For instance, the Trustee repeatedly states the importance of effectuating the PMB Settlement, but never directly states that this settlement is necessary to effectuate the PMB Settlement, which is solely to sell some of the properties and for which real estate broker(s) have been hired.)

Second, the Trustee has not retained counsel to pursue this matter and the Debtor alleges that the Trustee has not truly investigated the merits of the Litt State Court Action (*i.e.*, neither reviewed the case files nor interviewed the Debtor). It should be noted that although the Trustee states

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that he held a long meeting with the Debtor soon after he was appointed, he also indicates that this covered many topics and the Litt issues were only a part of those. And as to making an independent review of the files, he only alludes to his prior attorney and there is no showing as to whether he has actually made an independent determination (or had an expert review the files). The Court is also concerned about the fact that the Trustee has not hired a new attorney in the last months or – apparently – even tried to employ one. There is no showing that this litigation could not proceed expeditiously.

Litt and the Debtor have each argued the merits of the Debtor's claims against Litt (as described above). In the Motion, the Trustee discusses the difficulties of the litigation, but does not state any judgment on the merit of the underlying claims. This Court cannot determine the merits of these claims, but it does need to know that the Trustee's business judgment rests on an informed consideration of those merits. Thus, even if this estate is not surplus, the Court would need further information from the Trustee regarding his investigation of the actual merits of the Litt State Court Action in order to approve this settlement. Some was given in the Trustee's declaration filed in response to my email. Let's discuss this a bit more.

One further question deals with fees to be paid to prior litigation counsel. If this is settled, are any due? Do they agree to what they are to receive in an administrative claim? What will that be?

Tentative Ruling: Deal with the above questions. Motion denied if it is likely that the estate is surplus. See my comments on the email sent 3/23 for details of the calculation.

THE EMAIL:

Thank you, all, for the information that I requested. Based on that, I prepared a draft spreadsheet that I will be using as a basis of our discussion at the hearings on Tuesday. I attach a .pdf copy and an excel copy for your use.

(1) I prepared this in two forms: one without Ms. McClure's home and the other with it. As to this, the calculation that I prepared still protects her homestead of \$150,000 (though the home itself is sold). I used the most recent figure that I had - from 2014 - though it may be worth more (or less) now. If she were to also waive her homestead and allow the house to be sold, that would increase the amount available to unsecured creditors by an additional \$150,000.

(2) I note that Ms. McClure's figures do not include default interest to PMB, the PMB attorney fees, or the amounts of administrative claims. The estimate of \$1,307,585 provided by the

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Trustee may be high or low, but it is certain that there will be substantial attorney fees to be paid.

(3) Ms. McClure did not include the Litt lien. If she prevails on the settlement motion, it will remain at \$1,090,058.

(4) The amount of recovery on the Litt State Court Action is much too uncertain to include. However, since he is giving up about \$800,000 on his lien amount, the judgment would have to exceed that sum to make it meaningful for the Court to deny the settlement motion.

(5) Although there is a settlement pending in Tidus, the Court does not have any details. Ms. McClure is now offering to provide 50% of any net recovery if needed to pay unsecured creditors in full. Until I see the terms of the proposed settlement, it is hard to determine whether to abandon this. Since the Tidus State Court Case has been continued, there is no urgency in dealing with the abandonment motion, so perhaps that should be continued. I also do not fully understand the basis of this case.

(6) For some reason, my spreadsheet total on "Net from Sale of Properties" is about \$400 different from that of the Force 10 one [\$2,688,985 v. \$2,689,387]. I can't figure out why.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By

Andrew Goodman

Yi S Kim

Robert M Scholnick

James R Felton

Faye C Rasch

Faye C Rasch

Lisa Nelson

Michael G Spector

Movant(s):

John P. Reitman

Represented By

John P Reitman

Jon L Dalberg

Trustee(s):

John P. Reitman

Represented By

John P Reitman

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Jon L Dalberg

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#13.00 Motion to Compel Abandonment of State Court
Litigation Case BC443404 McClure v. Tidus

fr. 3/27/18

Docket 1355

Tentative Ruling:

This was continued to May 1 as a holding date. I am awaiting the proposed settlement figure for the Tidus matter before I can analyze the issue of surplus estate.

prior tentative ruling (3/27/18)

This motion concerns the state court trial in McClure v. Tidus, LASC BC443404. The trial is scheduled to begin on 3/26/18 (Judge Mark Mooney presiding) and there is a final pre-trial hearing set for 3/16/18. There is no attorney for the Plaintiff in that the Farley Law Firm was relieved as counsel on 10/16/17 and no new counsel has been employed. The Farley Law Firm had been employed as special litigation counsel to the Debtor.

The Trustee has known since June 2017 that the Farley Firm would be withdrawing because of a conflict. Nothing has been done by the Trustee.

McClure has been served with five motions in limine.

The fee agreement with the Farley Firm was \$150/hour and 20% of the recovery. The total billing for their work through 6/21/17 was \$22,450.50 fees and \$5,271.40 costs – mostly to defend the Tidus Defendant's motions for summary judgment heard on 1/5/17 and 1/6/17 and to respond to the defendant's discovery demands. No litigation preparation has been done since the Trustee was appointed.

There is insurance coverage for the Tidus Defendants and they are being defended by their insurance carriers. It therefore appears that a judgment against them would be collectible.

At the time of the motion for summary judgment (Jan. 2017), Judge

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Mooney divided the plaintiff's claims into two parts. Part 1 is her cause of action in the handling of the Litt fee motion. That is going to trial. Part 2 is the cause of action to amend the Litt complaint pending in state court – which was dismissed without prejudice as not being ripe since the Litt case was still pending.

At the time of the disclosure statement in April/May 2016, the Farley firm estimated the damages at \$10 million.

The Trustee does not want to pursue Plaintiff's claims in this case or the Litt one. The Trustee wanted to settle with the Tidus Defendants for a much reduced amount.

At this point, the motion goes into issue of hiring Makarem.

Also there is an issue about hiring Taylor to complete the negotiations for a payout with the FTB and an upcoming five-year statutory deadline.

The Debtor wishes the McClure v. Tidus case to be abandoned in that it is clearly burdensome to the Estate and is not being properly administered. §554 Abandonment is appropriate when the trustee delays in the administration of an asset. *Hyman v. Plotkin (in re Hyman)*, 967 F.2d 1316, 1321 (9th Cir. 1992).

Opposition

The Trustee is actively conducting negotiations with the parties in interest. Any agreement would be subject to Court approval. Therefore the Trustee requests a continuance to conclude his negotiations.

Because the Trustee is negotiating a resolution, this case is not burdensome to the Estate. And it certainly is not an inconsequential value and benefit. Thus the statutory standard for abandonment has not been met.

As to the \$10 million figure, that is the value placed by the Debtor for both the Tidus action and the Litt Action – not for the Tidus action alone. But she also indicates that the Tidus action has so little value that it should be abandoned.

The Debtor had hired by Farley Firm and the Trustee continued to act on the advice of that Firm. The Trustee is and has been fully aware of the

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bifurcated nature of the claim in the Tidus action.

The May 1, 2017 settlement demand made by the Trustee was no a "fire sale" demand. The amount of this demand (which is confidential) was prepared after consultation with the Farley Firm. It took into consideration the Debtor's poor health which made discovery and prosecution of the case more complicated. Anyway, the Defendants did not make a meaningful response.

Once the Farley Firm withdrew, the Trustee retained the Makarem Firm. When the Debtor contacted Ron Makarem and threatened to object to his employment, that firm withdrew. Since then, the Trustee has continued to seek qualified counsel, but without success. Thus, the fact that the Estate does not have litigation counsel in the Tidus Case is due to a combination of the Debtor's interference with the Trustee's efforts to retain the Makarem Firm and the difficulties that the Trustee has had in finding suitably qualified counsel to replace the Makarem Firm.

It is premature to determine that this is a surplus case. Hopefully it will be, but in the meantime whatever value resides in the Tidus Case should be preserved for the benefit of the Estate and not abandoned to the Debtor.

Reply

The State Court case has been continued to 7/16/18 by Judge Mooney. It is currently stayed.

After the Makaram Firm withdrew, the Trustee never suggested another law firm. The Trustee still has not prepared for trial.

However, the Debtor will retain Aire Spangler to represent her – if the case is abandoned – at a blended contingency rate and the Debtor will contribute up to 50% of the net proceeds to the estate if that is needed to pay creditors in full.

The Debtor then sets forth a calculation to show that this is a surplus estate.

Proposed Ruling

It appears that the trial has been taken off calendar and will not be

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reset until July 2018.

I am concerned that the Trustee has a weak negotiating position since he clearly is not ready to go to trial. And I do not understand why it is taking months and months to find new counsel.

It appears that Ms. McClure will be hiring new counsel on some sort of mixed contingency arrangement. She is now offering to provide the estate with up to 50% of her net recovery if needed to be sure that all creditors are paid in full. What is the situation as to fees owed to the Farley Firm or the Makaram Firm?

Per my email, both sides have provided me with a draft accounting of this estate. From that I have prepared a spreadsheet. See my comments from the email sent on 3/23.

THE EMAIL:

Thank you, all, for the information that I requested. Based on that, I prepared a draft spreadsheet that I will be using as a basis of our discussion at the hearings on Tuesday. I attach a .pdf copy and an excel copy for your use.

(1) I prepared this in two forms: one without Ms. McClure's home and the other with it. As to this, the calculation that I prepared still protects her homestead of \$150,000 (though the home itself is sold). I used the most recent figure that I had - from 2014 - though it may be worth more (or less) now. If she were to also waive her homestead and allow the house to be sold, that would increase the amount available to unsecured creditors by an additional \$150,000.

(2) I note that Ms. McClure's figures do not include default interest to PMB, the PMB attorney fees, or the amounts of administrative claims. The estimate of \$1,307,585 provided by the Trustee may be high or low, but it is certain that there will be substantial attorney fees to be paid.

(3) Ms. McClure did not include the Litt lien. If she prevails on the settlement motion, it will remain at \$1,090,058.

(4) The amount of recovery on the Litt State Court Action is much too uncertain to include. However, since he is giving up about \$800,000 on his lien amount, the judgment would have to exceed that sum to make it meaningful for the Court to deny the settlement motion.

(5) Although there is a settlement pending in Tidus, the Court does not have any details. Ms. McClure is now offering to provide 50% of any net recovery if needed to pay unsecured creditors in full. Until I see the terms of the proposed settlement, it is hard to determine whether to abandon this. Since the Tidus State Court Case has been continued, there is no

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urgency in dealing with the abandonment motion, so perhaps that should be continued. I also do not fully understand the basis of this case.

(6) For some reason, my spreadsheet total on "Net from Sale of Properties" is about \$400 different from that of the Force 10 one [\$2,688,985 v. \$2,689,387]. I can't figure out why.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
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Michael G Spector

Trustee(s):

John P. Reitman

Represented By
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#14.00 Hearing re: Valuation

fr. 1/24/2013, 4/30/13, 5/14/13, 7/23/13, 8/6/13,
9/17/13, 9/24/13, 11/19/13, 12/17/13, 1/21/14, 2/18/14,
3/11/14, 4/15/14, 5/6/14, 6/24/14, 9/9/14, 9/23/14,
10/7/14, 11/24/14, 1/6/15, 1/20/15, 2/10/15, 3/10/15,
4/28/15; 5/12/15; 9/29/15, 10/22/15, 12/8/15, 3/1/16,
6/7/16, 7/12/16, 8/16/16, 10/11/16; 12/20/16, 4/4/17,
5/16/17; 6/27/17, 7/11/17, 9/19/17, 11/14/17, 11/28/17,
12/19/17; 1/9/18, 3/19/18, 3/27/18

Docket 1

Tentative Ruling:

This will trail the motion to settle with Litt.

prior tentative ruling (1/9/18)

Per the status report filed on 1/3/18, the Trustee has assembled a team of real estate brokers to list and market the estate properties (except Gregory). This is through Coldwell Banker and the Trustee will soon be filing his motions to employ the brokers. The settlement with PMB became effective on 12/22 [*please note that on 1/4 Ms. McClure filed her appeal of that order*].

The Trustee is currently seeking new counsel for the state court actions.

In general nothing new has happened as to the Litt appeals. There is some communication between the Trustee and Litt as to a possible settlement.

I believe that I set this so that we can get a date for the reevaluation of the properties as to which ones the Litt lien will attach. Are we reDay to set a date?

prior tentative ruling (12/19/17)

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Per the status report filed on 12/14/17, discussions are or will take place between Litt and the Trustee to try to resolve the issue of Litt's lien. The Baycity appraisals have been completed. [Please note that on 12/13/17 Ms. McClure filed updated the appraisals of Corbett by Robert Magannam of Market Appraisal Group]

I would like to set a hearing on the issue of Litt's adequate protection. If you settle it in the meantime, that is fine. But let's set the date for a hearing.

prior tentative ruling (11/14/17):

The status report was filed on 11/13. Please try to be more timely in the future since this makes it hard for me to work-up my calendar.

There is a settlement pending with PMB, which is set for hearing on 11/28.

The sale of both Michigan properties have closed, bringing net proceeds to the estate of about \$530,000.

The Maui condo is listed for sale.

The Trustee seeks to employ new counsel in the Litt and Tidus state court litigation due to the departure of the current counsel. This is set for hearing on 12/19 due to the Litt objection.

As to the Litt appeal of the order removing the lien from some properties, the new appraisals have been completed and the Trustee sent a proposal to counsel for Litt as to a resolution. The discussion has been delayed due to spinal surgery of the Trustee and an emergency trip of Trustee's counsel. It is expected that a revised proposal will be forthcoming very soon.

The payment of the expert witness fee was not stayed by the District Court, so that has been paid.

proposed ruling:

Continue this without hearing to 11/28 at 10:00. No further status conference report will be needed for that hearing. At that hearing, I would like to discuss a method for dealing with the repetitive Litt objections being brought on the ground that it is a use of their cash collateral. I really see no reason to delay matters to set these on hearing each time. I am going to continue to rule the same way until instructed differently by an appellate court. Of course if there is an objection on other grounds, I may decide to hold a hearing.

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prior tentative ruling (9/19/17):

On 9/12/17 the Trustee filed a status report. The sale of the two Michigan properties have been concluded with net proceeds for Otsego of \$229,477.62 and for Invitational of \$299,615.53. The Maui condo is currently being marketed. All mortgage payments on the other properties are being made.

As to the Tidus litigation, trial is now set for 3/26/18. Because the attorney who was principally handling the case has left the Farley Law Firm for an in-house position, the Trustee has had to locate new counsel and will soon be filing an application to employ. Discovery is continuing and Ms. McClure is cooperating. She has filed a status report that she will be physically able to participate in the case.

The state court action against Litt is on hold.

The Litt lien issue was remanded by the District Court to do a new valuation in light of the Pacifica v. New Investments opinion. The Trustee obtained an order to employ Baycity as the appraiser. Litt appealed that order and sought a stay pending appeal. Judge Wu denied the stay. Baycity is in the process of preparing the appraisals.

Similarly, Litt appealed the order to pay the expert witness fees for the Tidus case. Judge Wu denied a stay pending appeal. He stayed action on the appeals of the expert witness fees and the Baycity order and has a set a status conference for 10/19/17.

On 8/24/17 the Trustee, his counsel and Litt's counsel discussed possible settlement and exchanged proposals. No settlement has been reached.

The parties may wish to appear in person or by phone.

prior tentative ruling (5/16/17)

Per the status report filed on 5/9/17, the Trustee is filing motions to sell each of the Michigan properties and the Maui Condo is listed for sales. All three Corbin properties are rented.

Ms. McClure is currently hospitalized. Discovery is continuing in the Tidus

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lawsuit.

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The Litt appeal in the district court has been remanded to this court to consider the *New Investments* opinion. The Trustee will be seeking to employ an appraiser as to the Corbett properties. PMB agrees that this can be the prior appraiser and just an update.

The Trustee has abandoned the Toyota Land Cruiser and Trailer.

The motion to sell that North Otsego, Gaylord property is set for 6/27/17.
Continue this status conference without appearance to 6/27/17 at 10:00 a.m. By then we should be also have a better idea on when the Corbett appraisals will be completed.

prior tentative ruling (4/4/17)

Per the Trustee's status report filed on 3/28/17:

Tidus Litigation - trial delayed due to Ms. McClure's illness. She just turned over voluminous documents in response to discovery request and that may delay the trial even longer.

McClure v. Litt - stayed by the superior court.

Litt Appeal - Judge Wu is trying to get a consensual resolution of the claims in the Litt litigation. As to the appeal, there has been supplemental briefing on the impact, if any, of *Pacifica L 51 LLC v. New Investments, Inc.* Judge Wu then remanded the Litt Appeal to the bankruptcy court for further consideration. Status conference continued in front of Judge Wu for 6/7/17.

Abandonment of Toyota Land Cruiser and Trailer - the Trustee just gave notice of his intent to abandon these.

As to the remand, we will discuss how to proceed at the 4/4/17 hearing. But it seems to me that it is probably appropriate to obtain new appraisals for the Corbett properties as well as new figures on the PMB liens. Even though property values have been rising, it seems that the Trustee would be wise to also select one or more other properties for a new appraisal, etc. in case the equity in the Corbett properties has fallen or is expected to fall below the 200% threshold. Please discuss this before the hearing.

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prior tentative ruling (12/20/16)

Per the status report filed on 12/13/16, the rental properties are all insured and PMB is being paid the amounts that were paid prior to the Trustee's appointment. There is a new lease on Hewitt, with one year of prepaid rent. Corbett #1 has been repaired and is ready to be leased. Corbett #2 tenant has renewed that lease through 12/17. A broker will be hired to sell the Michigan properties. The Trustee has settled with the California Franchise Tax Board - a 9019 motion is pending.

The Debtor is unwell and awaiting surgery, so cannot fully respond to the Trustee's inquiries. The Tidus trial is also being delayed due to Ms. McClure's health. The Trustee intends to proceed with that trial.

The Litt appeal is pending and Judge Wu ordered the Trustee to provide Litt's litigation counsel with a list of the Trustee's claim in the Litt Litigation. The Trustee is moving forward on this.

From the Court: There is a notice to compromise with the Franchise Tax Board. \$16,2 million will be recognized as gross income to the Debtor for tax year 2006 and is not subject to a valid 1033 Election. Debtor did not realize taxable Cancellation of Debt Income in connection with the foreclosure of the Long Beach properties. No opposition received as of 12/18. The Court will sign the order.

Continue the status conference to April 4, 2017 at 10:00 a.m. If the Trustee, McClure, Litt, and PNB all agree, no appearance will be needed on 12/20.

prior tentative ruling (10/11/16)

Mr. Reitman has been adding staff. I have no other indication of what is happening since no status report was filed. It may be that he has not calendared this hearing. If there is no appearance, I will continue it and make sure that he knows that date and to give notice to all interested parties.

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prior tentative ruling (8/16/16)

On 8/12 Mr. Reitman filed an application to employ his firm as counsel for the Trustee. No hearing was scheduled. I will hold this for the lodging period to see if there are any objections.

This is a case where the professional fees have become immense due to a variety of factors. I want to be sure that Mr. Reitman will keep a close handle on fees and will not pass on to attorneys work that is properly done by the Trustee himself. Also, Ms. McClure is able to provide some assistance, though her desire to run the case may interfere with her utility. Let's discuss this.

As to the overlaps in various matters which are disclosed in the application, I am sure that the Firm can set up a structure so that there is no conflict.

Party Information

Debtor(s):

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Represented By

Andrew Goodman

Yi S Kim

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Faye C Rasch

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Elaine Nguyen

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10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#15.00 Status Conference re: Ch 11 Case

fr. 1/24/2013, 4/30/13, 5/14/13, 7/23/13, 8/6/13,
9/17/13, 9/24/13, 11/19/13, 12/17/13, 1/21/14, 2/18/14,
3/11/14, 4/15/14, 5/6/14, 6/24/14, 9/9/14, 9/23/14,
10/7/14, 11/24/14, 1/6/15, 1/20/15, 2/10/15, 3/10/15,
4/28/15; 5/12/15; 9/29/15, 10/22/15, 12/8/15, 3/1/16,
6/7/16, 7/12/16, 8/16/16, 10/11/16; 12/20/16, 4/4/17,
5/16/17; 6/27/17, 7/11/17, 9/19/17, 11/14/17, 11/28/17,
12/19/17, 1/9/18, 3/19/18, 3/27/18

Docket 1

Tentative Ruling:

I would like to know the status of the sale of properties under the PMB settlement.

prior tentative ruling (3/27/18)

No tentative ruling. Let's see what happens on the motion to settle with Litt, the Tidus abandonment motion, and the sale of the properties under the PMB settlement.

prior tentative ruling (1/9/18)

Per the status report filed on 1/3/18, the Trustee has assembled a team of real estate brokers to list an market the estate properties (except Gregory). This is through Coldwell Banker and the Trustee will soon be filing his motions to employ the brokers. The settlement with PMB became effective on 12/22 [*please note that on 1/4 Ms. McClure filed her appeal of that order*].

The Trustee is currently seeking new counsel for the state court actions.

In general nothing new has happened as to the Litt appeals. There is some communication between the Trustee and Litt as to a possible settlement.

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CONT... Shirley Foose McClure

Chapter 11

I believe that I set this so that we can get a date for the reevaluation of the properties as to which ones the Litt lien will attach. Are we reDay to set a date?

prior tentative ruling (12/19/17)

Per the status report filed on 12/14/17, discussions are or will take place between Litt and the Trustee to try to resolve the issue of Litt's lien. The Baycity appraisals have been completed. [Please note that on 12/13/17 Ms. McClure filed updated the appraisals of Corbett by Robert Magannam of Market Appraisal Group]

I would like to set a hearing on the issue of Litt's adequate protection. If you settle it in the meantime, that is fine. But let's set the date for a hearing.

prior tentative ruling (11/14/17):

The status report was filed on 11/13. Please try to be more timely in the future since this makes it hard for me to work-up my calendar.

There is a settlement pending with PMB, which is set for hearing on 11/28.

The sale of both Michigan properties have closed, bringing net proceeds to the estate of about \$530,000.

The Maui condo is listed for sale.

The Trustee seeks to employ new counsel in the Litt and Tidus state court litigation due to the departure of the current counsel. This is set for hearing on 12/19 due to the Litt objection.

As to the Litt appeal of the order removing the lien from some properties, the new appraisals have been completed and the Trustee sent a proposal to counsel for Litt as to a resolution. The discussion has been delayed due to spinal surgery of the Trustee and an emergency trip of Trustee's counsel. It is expected that a revised proposal will be forthcoming very soon.

The payment of the expert witness fee was not stayed by the District Court, so that has been paid.

proposed ruling:

Continue this without hearing to 11/28 at 10:00. No further status conference report will be needed for that hearing. At that hearing, I would like

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CONT... Shirley Foose McClure

Chapter 11

to discuss a method for dealing with the repetitive Litt objections being brought on the ground that it is a use of their cash collateral. I really see no reason to delay matters to set these on hearing each time. I am going to continue to rule the same way until instructed differently by an appellate court. Of course is there is an objection on other grounds, I may decide to hold a hearing.

prior tentative ruling (9/19/17):

On 9/12/17 the Trustee filed a status report. The sale of the two Michigan properties have been concluded with net proceeds for Otsego of \$229,477.62 and for Invitational of \$299,615.53. The Maui condo is currently being marketed. All mortgage payments on the other properties are being made.

As to the Tidus litigation, trial is now set for 3/26/18. Because the attorney who was principally handling the case has left the Farley Law Firm for an in-house position, the Trustee has had to locate new counsel and will soon be filing an application to employ. Discovery is continuing and Ms. McClure is cooperating. She has filed a status report that she will be physically able to participate in the case.

The state court action against Litt is on hold.

The Litt lien issue was remanded by the District Court to do a new valuation in light of the Pacifica v. New Investments opinion. The Trustee obtained an order to employ Baycity as the appraiser. Litt appealed that order and sought a stay pending appeal. Judge Wu denied the stay. Baycity is in the process of preparing the appraisals.

Similarly, Litt appealed the order to pay the expert witness fees for the Tidus case. Judge Wu denied a stay pending appeal. He stayed action on the appeals of the expert witness fees and the Baycity order and has a set a status conference for 10/19/17.

On 8/24/17 the Trustee, his counsel and Litt's counsel discussed possible settlement and exchanged proposals. No settlement has been reached.

The parties may wish to appear in person or by phone.

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Chapter 11

prior tentative ruling (5/16/17)

Per the status report filed on 5/9/17, the Trustee is filing motions to sell each of the Michigan properties and the Maui Condo is listed for sales. All three Corbin properties are rented.

Ms. McClure is currently hospitalized. Discovery is continuing in the Tidus lawsuit.

The Litt appeal in the district court has been remanded to this court to consider the *New Investments* opinion. The Trustee will be seeking to employ an appraiser as to the Corbett properties. PMB agrees that this can be the prior appraiser and just an update.

The Trustee has abandoned the Toyota Land Cruiser and Trailer.

The motion to sell that North Otsego, Gaylord property is set for 6/27/17.

Continue this status conference without appearance to 6/27/17 at 10:00 a.m. By then we should be also have a better idea on when the Corbett appraisals will be completed.

prior tentative ruling (4/4/17)

Per the Trustee's status report filed on 3/28/17:

Tidus Litigation - trial delayed due to Ms. McClure's illness. She just turned over voluminous documents in response to discovery request and that may delay the trial even longer.

McClure v. Litt - stayed by the superior court.

Litt Appeal - Judge Wu is trying to get a consensual resolution of the claims in the Litt litigation. As to the appeal, there has been supplemental briefing on the impact, if any, of *Pacifica L 51 LLC v. New Investments, Inc.* Judge Wu then remanded the Litt Appeal to the bankruptcy court for further consideration. Status conference continued in front of Judge Wu for 6/7/17.

Abandonment of Toyota Land Cruiser and Trailer - the Trustee just gave notice of his intent to abandon these.

As to the remand, we will discuss how to proceed at the 4/4/17 hearing. But it

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CONT... Shirley Foose McClure

Chapter 11

seems to me that it is probably appropriate to obtain new appraisals for the Corbett properties as well as new figures on the PMB liens. Even though property values have been rising, it seems that the Trustee would be wise to also select one or more other properties for a new appraisal, etc. in case the equity in the Corbett properties has fallen or is expected to fall below the 200% threshold. Please discuss this before the hearing.

prior tentative ruling (12/20/16)

Per the status report filed on 12/13/16, the rental properties are all insured and PMB is being paid the amounts that were paid prior to the Trustee's appointment. There is a new lease on Hewitt, with one year of prepaid rent. Corbett #1 has been repaired and is ready to be leased. Corbett #2 tenant has renewed that lease through 12/17. A broker will be hired to sell the Michigan properties. The Trustee has settled with the California Franchise Tax Board - a 9019 motion is pending.

The Debtor is unwell and awaiting surgery, so cannot fully respond to the Trustee's inquiries. The Tidus trial is also being delayed due to Ms. McClure's health. The Trustee intends to proceed with that trial.

The Litt appeal is pending and Judge Wu ordered the Trustee to provide Litt's litigation counsel with a list of the Trustee's claim in the Litt Litigation. The Trustee is moving forward on this.

From the Court: There is a notice to compromise with the Franchise Tax Board. \$16,2 million will be recognized as gross income to the Debtor for tax year 2006 and is not subject to a valid 1033 Election. Debtor did not realize taxable Cancellation of Debt Income in connection with the foreclosure of the Long Beach properties. No opposition received as of 12/18. The Court will sign the order.

Continue the status conference to April 4, 2017 at 10:00 a.m. If the Trustee, McClure, Litt, and PNB all agree, no appearance will be needed on 12/20.

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CONT... Shirley Foose McClure

Chapter 11

prior tentative ruling (10/11/6)

Mr. Reitman has been adding staff. I have no other indication of what is happening since no status report was filed. It may be that he has not calendared this hearing. If there is no appearance, I will continue it and make sure that he knows that date and to give notice to all interested parties.

prior tentative ruling (8/16/16)

On 8/12 Mr. Reitman filed an application to employ his firm as counsel for the Trustee. No hearing was scheduled. I will hold this for the lodging period to see if there are any objections.

This is a case where the professional fees have become immense due to a variety of factors. I want to be sure that Mr. Reitman will keep a close handle on fees and will not pass on to attorneys work that is properly done by the Trustee himself. Also, Ms. McClure is able to provide some assistance, though her desire to run the case may interfere with her utility. Let's discuss this.

As to the overlaps in various matters which are disclosed in the application, I am sure that the Firm can set up a structure so that there is no conflict.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By

Andrew Goodman

Yi S Kim

Robert M Scholnick

James R Felton

Faye C Rasch

Faye C Rasch

Elaine Nguyen

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10:00 AM

1:14-15182 Mark Alan Shoemaker

Chapter 7

Adv#: 1:14-01206 U.S. Trustee v. Shoemaker

#16.00 Defendant's motion for relief of default and reconsideration of Court's order denying application to waive required fee on appeal

Docket 307

Tentative Ruling:

Mr. Shoemaker appealed the judgment to the BAP and requested a fee waiver (IFP). The BAP referred the IFP request to me on 2/27/18 and on 3/6/18 I ordered at hearing on 3/13/18. According to the motion, the notice of the hearing was not actually mailed until 3/8/18 and was only received on 3/14/18, the day after the hearing. Because no opposition was filed, the IFP application was denied. Shoemaker then contacted Kenneth Lau at the OUST and advised him that he would be filing the motion. Lau stated that the OUST did not take a position on this. Attached to this motion is a copy of a recent affidavit submitted in one of the Ninth Circuit appeals to show greater detail in the income and expenses. [He requests -sort of - that this be kept under seal for reasons of privacy.] He adds that his calculation of mailing fees for "these matters" (apparently those for other appeals) was \$75 per month and in actuality it will be over \$100 since January 2018. After the expenses listed in the affidavit, income would be \$90 per month. If the motion for IFP is denied, Shoemaker requests a payment plan of \$25 per month.

OUST Response

The statement of non-opposition was clearly only as to the filing of the motion to reconsider, not of the content of that motion. The affidavit discloses income and employment information that is in conflict with similar information contemporaneously disclosed in his IFP application filed in Shoemaker v. United States, CV 18-615. There are a list of discrepancies.

Reply

The OUST has no standing because this is between Shoemaker and the Court. Shoemaker admits to some income and has voluntarily provided the Ninth Circuit with additional information because it is more explanatory.

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CONT... Mark Alan Shoemaker

Chapter 7

[Shoemaker adds many comments about the integrity of the OUST, which is not relevant to this application.] Because of the cost, Shoemaker rests on the papers and will not be attending the hearing in person or by phone.
[Shoemaker also believes that the Court has animus towards this case.]

Proposed Ruling

To the extent that there is a request to file the affidavit under seal, that is denied. This this not meet the requirements of a document that qualifies to be filed under seal. 11 USC §107. Also, the papers on the Ninth Circuit docket are not under seal.

The present affidavit filed in the Ninth Circuit on 3/21/18 shows income received from 3/17-3/18 of \$2,622 per month average from employment and \$2,140 from unemployment benefits. This totals \$4,862 per month. However, Shoemaker states that the amount expected for April is \$2,140.

On his IFP application to the BAP (filed on 2/15/18), Shoemaker states under penalty of perjury that his average monthly income (take home pay) is \$1,800.

28 USC §1930(f) allows the bankruptcy court to waive filing fees if the debtor has income of less than 150% of the income official poverty line applicable to a family of that size and is unable to pay the fee in installments. The maximum income for a single person is \$1507.50 per month. No matter which calculation is used, Shoemaker exceeds this.

Even if he were to have met the income requirement, looking at the breakdown of expenses on the Ninth Circuit application, it appears that he can pay the filing fee at this time. He is spending \$225 per month for transportation (not including motor vehicle payments). This is a high amount. His claimed \$100 per month for mailing is also high. The BAP filing fee is \$298.

Deny the motion for reconsideration. The full filing fee is to be paid within 10 days of the entry of the order.

Party Information

Debtor(s):

Mark Alan Shoemaker

Represented By
William H Brownstein

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CONT... Mark Alan Shoemaker

Chapter 7

Defendant(s):

Mark Alan Shoemaker

Represented By
William H Brownstein

Movant(s):

Mark Alan Shoemaker

Represented By
William H Brownstein

Mark Alan Shoemaker

Pro Se

Plaintiff(s):

U.S. Trustee

Represented By
Kenneth G Lau
Hatty K Yip
Nancy S Goldenberg

Trustee(s):

Alfred H Siegel (TR)

Pro Se

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10:00 AM

1:16-11387 Real Estate Short Sales Inc

Chapter 7

#17.00 Motion for relief from stay

BARCELONA TOWER INC

fr. 11/14/17, 2/13/18

Docket 164

Tentative Ruling:

Cueva failed to tender the \$62,250 by 2/13/18, She then turned over to the Trustee the Berendo Condo. On 3/8/18 the Trustee filed a motion to approve a revised compromise, which was granted by an order entered on 3/26/18. The Trustee is to market and sell the Berendo Condo. What is the status of the marketing attempt?

prior tentative ruling (2/13/18)

This was brought by the Homeowners' Assn as to the Berendo St. property. At the time that this was filed (Oct. 2017), there was a prepetition delinquency of \$57,000+ and a post-petition one of \$7,685.70. This was continued by stipulation.

Under the compromise between the Trustee and the Debtor, approved on 2/5/18, upon receipt of the settlement payment of \$62,250, the Estate releases all interest in this property. The payment was to be received by 2/13/18 or the Debtor and others are to fully cooperate with the Trustee's marketing and sale of the property.

Has the payment been received? If so, this is no longer property of the Estate and relief from stay will be granted. If not, the property is to be sold and the HOA will be paid off at that time.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

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CONT... Real Estate Short Sales Inc

Chapter 7

Movant(s):

Barcelona Tower Inc

Represented By
Jill L Kim

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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Tuesday, May 01, 2018

Hearing Room 303

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

#18.00 Status Conference re: Chapter 11 case

fr. 9/1/16(xfr from Judge Tighe's calendar), 9/27/16,
10/11/16; 10/26/16; 11/15/16, 12/6/16, 3/28/16,
4/4/17; 5/30/17, 8/29/17, 9/19/17, 1/23/18

Docket 1

Tentative Ruling:

Nothing further received as of 4/28/

prior tentative ruling (1/23/18)

Per the status report filed on 1/16, there is a motion for summary judgment as to the JCBL Trust, set for hearing on 2/13/18 at 10:00 a.m. As to the Elkwood Associates adversary proceeding, Elkwood and Fieldbrook filed a motion to dismiss the second amended complaint, which is set for hearing on 2/27. The motion to withdraw the reference is still pending before Judge Walter. The Trustee is current with the OUST requirements.

Continue without appearance to May 1, 2018 at 10:00 a.m.

prior tentative ruling (/19/17)

On 9/6/17 the Trustee filed his status report. The Trustee is continuing to collect information about the Debtors and their estates.

The JCBL Trust is the subject of an adversary proceeding as to whether it is property of the estate. The Trustee expects to resolve this through a motion for summary judgment. [17-ap-01050 - status conference set on 10/17]

The settlement motion with the Abselets is pending.

The motion by defendants to dismiss the Elkwood adversary proceeding is pending [17-ap-01040 - cont. 10/3/17]

The Trustee is in compliance with OUST reporting requirements.

Continue without appearance to 1/23/18 at 10:00 a.m.

prior tentative ruling (5/30/17)

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CONT...

Solyman Yashouafar

Chapter 11

Per the Trustee's status report filed on 5/15/17, the Oklahoma action is proceeding and there is a status conference on 6/15/17. The Roosevelt Lofts proceeds are being held as various parties dispute ownership. There is a status conference in this court on that set for 7/11/17. The Trustee wants the Roosevelt Lofts' counsel to continue to hold the excess funds.

The Trustee filed 17-ap-01027 to determine the Debtor's estates' interest in the RLI stock. Abselet filed a motion to withdraw the reference, which is set for hearing in the district court on 5/22. Abselet's motion to dismiss is set for 6/27 in this court. The Trustee and Abselet have set a one day mediation in front of retired Judge Goldberg for 6/3.

Massoud's brother-in-law foreclosed on the Beverly Hills homes of Massoud and of Solyman and sold Solyman's for a substantial profit and rented Massoud's back to him at \$25,000/mo for two years. Massoud never paid any rent and the lease has expired. The Trustee filed 17-ap-1040 seeking quiet title to the Rexford home and to avoid the foreclosures of both homes.

Discovery is continuing in all matters. The Trustee requests a further status conference in 90 days.

It is probably wise to have appearances (in person or on the phone) on 5/30, but this will be continued to an agreeable date in August.

Party Information

Debtor(s):

Solyman Yashouafar

Pro Se

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10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:17-01040 GOTTLIEB v. Elkwood Associates, LLC et al

#19.00 Status Conference re: Seconde Amended Complaint
Complaint To (I) Quiet Title Of The Rexford Home,
(II) Set Aside Foreclosure Sale Of The Rexford Home,
(III) Avoid Actual And Constructive Fraudulent Transfer
Of Rexford Home And Actual Fraudulent Transfer Of
Chalette Home, (IV) Recover The Properties Or Value
Thereof, And (V) Related Relief by Jeremy V Richards
on behalf of David K Gottlieb against all defendants

fr. 12/19/17, 1/23/18, 2/27/18

Docket 39

Tentative Ruling:

Off calendar. A third amended complaint has been filed.

prior tentative ruling (2/27/18)

Prepared on 12/14. Will be updated before the 2/27 hearing.

The second amended complaint was filed on 10/18/17. A summons was issued on 11/7 and a date to respond was 12/7. The following were on new summonses:

Soda Partners (filed an answer on 11/7)

Quality Loan Service

Chase Manhattan Mortgage Co.

Howard Abselet (filed an answer on 12/6)

Israel Abselet (filed and answer on 12/6)

Citivist Financial Services (stipulation consenting to entry of judgment filed on 12/12)

There is stipulation between the Trustee (plaintiff) and Elkwood and Fieldbrook to extend time to respond to 12/7. On 12/7 they filed a motion to dismiss the first, second, eighth and ninth claims. This is set for hearing on 1/23/18 at 10:00 a.m.

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CONT... Solyman Yashouafar

Chapter 11

Meanwhile, the Abselets have filed a motion in the district court to withdraw the reference. Presumably that will be heard before the 1/23/18 date for the motion to dismiss. Unless the district court withdraws the reference, the 1/23 hearing will go forward. Even if the reference is withdrawn, there will still be a hearing on the motion to dismiss, although that will be set at the convenience of the district court. So please prepare to oppose that motion in a timely fashion.

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Defendant(s):

Fieldbrook, Inc.

Represented By
Daniel J McCarthy

Elkwood Associates, LLC

Represented By
Daniel J McCarthy

Plaintiff(s):

DAVID K GOTTLIEB

Represented By
Jeremy V Richards
John W Lucas

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

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10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:17-01040 GOTTlieb v. Elkwood Associates, LLC et al

- #20.00** Status Conferencere re: Third amended complaint to
1) Quiet Title of the Rexford Home, 2) Avoid actual and
constructive fraudulent transfers of Rexford home and
actual fraudulent transfer of Chalette Home,
3) Recover The Rexford Home and Value of the
Chalette Home, and 4) Related Reief

Docket 80

Tentative Ruling:

A third amended complaint has been filed and answers have been filed (as of 4/23) by Elkwood, Fieldbrook, and the Abselets. Per the joint status report, all parties who need to answer the complaint have done so. (the status conference says that Soda Partners LLC filed an answer to the TAC, but the Court does not find that on the docket. Plaintiff intends to file a motion for summary judgment.

As to a discovery cutoff, the Plaintiff estimates by September. The Defendants want it to be 12/3/18 with Expert discovery of 2/1/19.

Elkwood has also filed a counterclaim against the Trustee, which the Trustee has answered. Elkwood seeks \$600,000 from the Trustee as an administrative expense for the rent while Massoud and his family lived at Rexford rent-free.

There is a jury trial request and and Defendants do not consent to the bankruptcy court entering a final judgment. There may be a cross-motion for summary judgment. Trial estimates are given, but it is premature for that. Neither side wants mediation - which is not surprise to the Court.

proposed ruling:

Let's set a date by which the MSJ will be filed and heard. Give enough time so that the Defendants can file their own MSJ, if they decide to. Then continue the status conference to that hearing date.

As to discovery, let's use a cutoff of October 1.

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10:00 AM

CONT... Solyman Yashouafar

Chapter 11

Party Information

Debtor(s):

Solyman Yashouafar	Represented By Mark E Goodfriend
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Defendant(s):

Citivist financial Services, Inc.	Pro Se
Israel Abselet	Represented By Henry S David
Howard Abselet	Represented By Henry S David
Chase Manhattan Mortgage Co.	Pro Se
Quality Loan Service	Pro Se
Soda Partners, LLC	Represented By Ronald N Richards
Fieldbrook, Inc.	Represented By Daniel J McCarthy
Elkwood Associates, LLC	Represented By Daniel J McCarthy

Plaintiff(s):

DAVID K GOTTLIEB	Represented By Jeremy V Richards John W Lucas
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Trustee(s):

David Keith Gottlieb (TR)	Represented By Jeremy V Richards John W Lucas
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10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:17-01040 GOTTlieb v. Elkwood Associates, LLC et al

#20.01 Status Conference re: Counterclaim by Elkwood Associates, LLC,
against DAVID K GOTTlieb Demand for Jury Trial

Docket 83

Tentative Ruling:

See cal. #20. This concerns the cross claim and will trail the complaint.

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Defendant(s):

QUALITY LOAN SERVICE

Pro Se

Elkwood Associates, LLC

Represented By
Daniel J McCarthy

Fieldbrook, Inc.

Represented By
Daniel J McCarthy

Soda Partners, LLC

Represented By
Ronald N Richards

Quality Loan Service

Pro Se

Chase Manhattan Mortgage Co.

Pro Se

Howard Abselet

Represented By
Henry S David

Israel Abselet

Represented By
Henry S David

Citivist financial Services, Inc.

Pro Se

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10:00 AM

CONT... Solyman Yashouafar Chapter 11

State Street Bank and Trust Co. Pro Se

DMARC 2007-CD5 Garden Street, Pro Se

Plaintiff(s):

DAVID K GOTTLIEB

Represented By
Jeremy V Richards
John W Lucas

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

**United States Bankruptcy Court
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10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:17-01050 Gottlieb v. Yashouafar

#21.00 Motion of David K. Gottlieb, Chapter 11
Trustee, for Summary Judgment on All
Claims For Relief Against Defendant

fr. 1/23/18, 2/13/18

Docket 24

Tentative Ruling:

Off calender. Order entered on 4/9/18.

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Defendant(s):

Parinaz Yashouafar

Pro Se

Plaintiff(s):

David K. Gottlieb

Represented By
Jeremy V Richards
John W Lucas

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

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10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:17-01050 Gottlieb v. Yashouafar

#22.00 Status Conference re: Complaint

fr. 7/25/17, 10/17/17, 1/23/18, 2/13/18

Docket 1

***** VACATED *** REASON: order entered on msj 4/9/18 (eg)**

Tentative Ruling:

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Massoud Aaron Yashouafar

Represented By
C John M Melissinos
Mark M Sharf

Defendant(s):

Parinaz Yashouafar

Pro Se

Plaintiff(s):

David K. Gottlieb

Represented By
Jeremy V Richards

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

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Hearing Room 303

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:16-01169 Encino Corporate Plaza LP v. Yashouafar et al

#23.00 Status Conference Re:
First Amended Complaint by Encino Corporate
Plaza LP for:
1 - Nondischargeability of Debt (Count One
for Fraud [Deceit]-Pursuant to 11 USC Sec.
523(a)(2)(A));
2 - Nondischargeability of Debt (Count Two
for Fraud [Fraudulent Transfers]-Pursuant to
11 USC Sec. 523(a)(2)(A));
3 - NonDischargeability of Debt (Count Three
for Defalcation as a Fiduciary - Pursuant to
11 USC Sec. 523(a)(4));
4 - Nondischargeability of Debt (Count Four
for Willful and Malicious Injury [Conversion]-
Pursuant to 11 USC Sec. 523(a)(6)); and
5 - Nondischargeability of Debt (Count Five
for Willful and Malicious Injury [Fraudulent
Transfers]-Pursuant to 11 USC Sec.
523(a)(6))

fr. 2/21/17, 3/28/17; 6/27/17, 8/22/17, 1/23/18

Docket 30

Tentative Ruling:

On 4/25/18 Plaintiff filed a unilateral status report, noting that the Defendants have not responded to several communication. It expects to complete discovery by 9/1/18 and to be ready for trial by 11/1/18.

The parties should appear by phone. Why didn't the Defendants participate in the status report process? Set a discovery cutoff date of 9/1/18.

prior tentative ruling (1/23/18)

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10:00 AM

CONT... Solyman Yashouafar

Chapter 11

On 10/10/17, the Order granting the 9019 motion between the Trustee and Abselet was entered. Nothing further received in this adversary case as of 1/17/18. This is a §523 case and the settlement does not affect that.

prior tentative ruling (8/22/17)

On 7/18/17 the Court entered an order approving the stipulation of the parties to stay this action and vacate all dates and deadlines set by the Court. This was done so that the settlement between Abselet and the Trustee could be finalized. That settlement is now set for hearing on 8/22/17.

Abselet had brought this non-dischargeability action on behalf of Encino Corporate Plaza LP (ECPLP) by virtue of his execution on the Yashouafars' ownership interest in ECPLP. In the settlement agreement, Howard Abselet will continue to pursue the liquidation of ECPLP. Since this is a §523(a) complaint that - if the Plaintiff prevails - will merely give Howard Abselet a judgment that survives the discharge, it is not effected by the settlement agreement.

Are the parties ready to move forward on this case?

Motion to withdraw the reference was denied. The parties want a pretrial conference after 8/21/17 and anticipate trial in October. Plaintiff does not want to mediate - at least at this time. Both consent to a final judgment in this court, but this is probably irrelevant in a §523 case.

By stipulation, the Yashouafars have until 2/17 to respond to the complaint.

I would like to know what the discovery plan is and then I will continue this status conference. Let's get something in writing, please.

Party Information

Debtor(s):

Massoud Aaron Yashouafar

Represented By
C John M Melissinos
Mark M Sharf

Solyman Yashouafar

Represented By
Mark E Goodfriend

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CONT... Solyman Yashouafar

Chapter 11

Defendant(s):

Solyman Yashouafar Pro Se

Massoud Aaron Yashouafar Pro Se

Plaintiff(s):

Encino Corporate Plaza LP
Represented By
Jessica Mickelsen Simon
Henry S David
Andrew F Kim

Trustee(s):

David Keith Gottlieb (TR)
Represented By
Jeremy V Richards
John W Lucas

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

1:16-12408 Massoud Aron Yashouafar

Chapter 11

#24.00 Status Conference re: chapter 11 case

fr. 9/27/16, 10/25/16; 10/26/16; 11/15/16,
12/6/16, 3/28/17, 4/4/17; 5/30/17, 8/29/17,
9/19/17, 1/23/18

Docket 1

Tentative Ruling:

This case is being jointly administered with 16-12255.

See cal. #18

Party Information

Debtor(s):

Massoud Aron Yashouafar

Pro Se

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Hearing Room 303

10:00 AM

1:09-18409 Lenny Kyle Dykstra

Chapter 7

#1.00 Chapter 7 Trustee's Motion for Order Approving Settlement and Compromise of Disputes Under Federal Rule of Bankruptcy Procedure 9019 Between the Bankruptcy Estate and the Defendants in Adv. Case No. 1:10-ap-01183-GM.

Docket 548

Tentative Ruling:

The Trustee seeks to settle the adversary complaint against Simi Auto Spa Center, et. al. (10-ap-01183). This concerns a 2007 sale of certain car wash properties to the Shohed Group (1144 E. Los Angeles St., Simi Valley and 2315 California Ave., Corona), as well as a gas station and convenience store (2240 Compton Ave., Corona) and a shopping center (2363 California Ave, Corona). Simi Auto Spa Property, LLC executed a promissory note to Car Wash III and Simi Auto Spa Property, LP executed one to Car Wash III, each in the amount of \$2.5 million. These were secured by a deed of trust and a security agreement. The notes were for monthly interest payments of \$125,000 with principal of \$1 million due in 2012 and \$22 million due in 2017. The members of the Shohed Group personally guaranteed the notes.

Through 2008 the Shohed group complied with the terms of the notes and paid \$1,551,130 on the first note and \$198,870 on the second note. In August 2008, Dykstra and the Alter Ego Entities executed a Prepayment Agreement with the Shohed Group, which provide for a discounted payoff. Dykstra sought this to deal with cash flow problems from his purchase of Newbern. The agreement had the Shohed Group paying off certain obligations of Dykstra's. The effect of this was that the Defendants paid about \$12,850,000 rather than the unpaid principal balance of \$23 million.

The Trustee asserts that the Shohed Group failed to carry out some of their obligations, including timely assuming the Litt Loan or obtaining the release of the Litt lien on the Ladbrook Property. The Shohed Group also failed to pay off the Brodsky (BSI) loan. Thus the Trustee sued for fraudulent transfer, breach of contract, etc.

The Defendants answered and counterclaimed to the Trustee's Third Amended Complaint. They assert that Dykstra, et al, breached the Purchase

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CONT... **Lenny Kyle Dykstra**

Chapter 7

and Sale Agreement, misled them through false representations, concealed material facts, etc. They seek their attorney's fees and costs.

The Trustee has a motion for summary judgment pending and the Defendants have a motion to dismiss the third amended complaint. These are set for hearing on July 17.

Under the proposed settlement agreement, the Defendants will pay the Estate \$325,000 and the adversary case will be dismissed if this is received within 14 days after the order is entered.

The Trustee asserts that the settlement meets the requirements of "fair and equitable" as follows:

(1) Probability of Success - Although the Trustee believes that he will prevail on the MSJ, or certainly in trial, there is an inherent risk in any litigation regardless of the merit. This case is factually complex with multiple claims and defendants. There is also a lot of expense that will be required.

(2) Difficulty of Collection - The Trustee believes that the Defendants may have sufficient assets to collect on a judgment, but it may require forced sale of assets, judgment debtor examinations, etc. These add costs and delays.

(3) Complexity of Litigation as well as expense, inconvenience and delay - The Trustee would have to conduct formal discovery, prepare for trial, and deal with any appeals. This would be time consuming and expensive. The settlement provides certainty to the estate without additional litigation costs.

(4) Paramount Interest of the Creditors and the Proper Deference to the Reasonable Views - This preserves assets of the Estate and will bring about a faster closing of the bankruptcy case.

Festus Dada Opposition - Dr. Dada is a creditor and opposes the settlement. There is no analysis of the total potential recovery should the Estate prevail. It also does not analyze the likelihood that the Estate will prevail. There is no information regarding the estimated future legal costs. Thus it is impossible for the Creditors of the Court to determine whether this is in the best interest of Creditors.

Reply - In preparing the MSJ, the Trustee and his counsel worked extensively with an expert as to a solvency analysis and a reasonably equivalent value analysis. They found that it appears that Dykstra was not rendered "balance

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CONT... Lenny Kyle Dykstra

Chapter 7

sheet" insolvent as a result of the Prepayment Agreement. Thus the Trustee would be forced to prove that the Prepayment Agreement left the Debtor with insufficient capital and/or that he knew that he would subsequently incur debts beyond his ability to pay. Although the expert report states that, it is somewhat unusual in a bankruptcy case to use this measure of insolvency. Because the "great recession" intersected with the relevant timeframe, it adds uncertainty as to what the Debtor may or may not have know concerning his future finances.

As to reasonably equivalent value, the Trustee's expert stated that this is a sliding scale and it needs to take into consideration whether the Defendants properly assumed the Brodsky Loan and Litt Loan as required by the Prepayment Agreement. If they did not do so, the Defendants only paid 48.6% of the value of the Car Wash Notes. However, if they did properly assume these as the Defendants contend, the they paid up to 64.8% of the value of the Car wash Loans.

To add to the uncertainty, the Trustee's expert's opinion depends on the discount rate/interest rate applied to the face value of the Car Wash Notes. The Defendant's expert uses a markedly different discount rate/interest rate, which - in accurate - would support a finding that the Defendants paid reasonably equivalent value. Beyond that there is a dispute as to the value of the "release" the Defendants provided Dykstra. The Trustee's expert gave them no value and the Defendants' expert asserts that they are worth \$8.3 million. So there are many uncertainties in the litigation.

As to the cost of going forward, the need for preparation and trial (by jury) would likely cost another \$500,000, plus additional expert witness costs.

While it is possible that the Trustee could receive a judgment for about \$11 million, the potential valuation of the release provided the Debtor could entirely wipe out any prospective judgment. And other factors mentioned could result in a determination that the Defendants provided consideration at 70% or higher of the fair market value for the Car Wash Notes.

Analysis

The Trustee is seeking approval of a compromise pursuant to Fed. R. Bankr. P. 9019, thus the question is whether the Settlement Agreement is "fair and equitable." *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1986). The Court evaluates the fairness, reasonableness and adequacy to the estate under the factors articulated by the Ninth Circuit:

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Chapter 7

In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. Cal. 1986), *cert. denied sub nom.*, *Martin v. Robinson*, 479 U.S. 854 (1986). The Court should review the issues and determine whether the settlement falls below the lowest point in a range of reasonableness. *In re Teltronics Service, Inc.*, 762 F.2d 185, 189 (2nd Cir. 1985); *Spirtos v. Ray (In re Spirtos)*, 2006 Bankr. LEXIS 4894 at *32 (B.A.P. 9th Cir. May 19, 2006). Courts reviewing a proposed settlement generally accord deference to the Trustee's business judgment, although the Trustee has the burden of persuasion that the settlement is fair and equitable and should be approved. *Goodwin v. Mickey Thompson Entertainment Group (In re Mickey Thompson Entertainment Group)*, 292 B.R. 415, 420 (B.A.P. 9th Cir. 2003).

In this case, the Trustee (though the reply) provides sufficient information to show that the proposed settlement meets the standard of meeting at least the lowest standard of the level of reasonableness. The strongest elements are the probability of success in the litigation and the complexity of the litigation. This would be a complex case for a trial before a judge and it is very complex for a jury trial. There will be a battle of the experts on the rather esoteric issue of discount rates. The effect of the release will also be highly technical. There is really no certainty that the Trustee will prevail in a substantial amount or at all. Add to that the quality of Mr. Dykstra as a witness to his motivations and expectations of the future, as the case becomes much less certain. The Court clearly remembers the first testimony of Mr. Dykstra in his case in which he had great expectations concerning a magazine deal that would bring him many millions of dollars. The fact that his expectations were built on little or no foundation does not mean that he had reasonably knew that the would be incurring future debts beyond his ability to pay. And the economy in 2008 did not give the ordinary person the warnings of what was about to happen.

The expected cost of further litigation must also be considered. Given the meaningful possibility that the Trustee will not prevail at trial, or will do so

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in a fairly small amount, it is wise to marshall the assets and not expend them on the high fees for attorneys and experts.

In short, while the Court certainly wishes that this settlement agreement would be in a much greater amount, it does find that it meets the standards of "fair and equitable" as defined by Ninth Circuit precedence.

Approve the settlement.

Party Information

Debtor(s):

Lenny Kyle Dykstra

Represented By

Michael T Pines - DISBARRED -
Moshe Mortner

Trustee(s):

David Keith Gottlieb (TR)

Represented By

Howard M Ehrenberg
SulmeyerKupetz
Irena L Norton
Robert E Huttenhoff
Victor A Sahn
Leonard M Shulman
Ryan D ODea

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10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#2.00 Plaintiff's Motion for Order that Defendant's counsel Raymond H. Aver Pay Sanctions to Plaintiff's Counsel Marc H. Berry.

fr.5/4/18

Docket 199

***** VACATED *** REASON: Amendment filed by Atty. Berry moving matter to 6/26/18.**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Glen E Pyle

Pro Se

Defendant(s):

Glen E Pyle

Represented By
Raymond H. Aver

Sweetwater Management Company

Pro Se

Glen E Pyle Irrevocable Trust

Represented By
Raymond H. Aver

Plaintiff(s):

Marc H Berry

Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

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CONT... Glen E Pyle

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Hearing Room 303

10:00 AM

1:10-26168 John Michael Licursi

Chapter 7

Adv#: 1:15-01236 California Bank & Trust v. Licursi et al

#3.00 Status Conference re: Complaint

fr. 1/6/16; 1/12/16, 3/1/16, 6/7/16,
7/12/16, 10/11/16, 1/17/17; 3/21/17,
3/28/17; 6/27/17, 8/1/17, 9/12/17,
11/28/17, 3/27/18

Docket 1

Tentative Ruling:

Continued by stipulation to May 29, 2018 at 10:00 a.m. There were various dates for exchange of trial exhibits, etc. The joint pre-trial stipulation was to be filed by May 22. As of May 25 at noon, nothing new has been filed.

prior tentative ruling (11/28/17)

Per the status report filed on 11/21/17, Plaintiff intends to propound discovery on the value of the converted collateral and hold a one day trial to complete this case. The parties wish a pretrial conference after 2/28/18. Counsel for Defendants will be withdrawing and the Debtors will be proceeding pro se.

The discovery cutoff will be 2/28/18. There will be a pretrial conference on 3/27/18 at 10:00 a.m. I would like a modified pretrial stipulation setting forth the name of each witness and a paragraph as to what that person is to testify to. Also an exhibit list for each side (except exhibits to be used for purposes of impeachment). All exhibits are to be exchanged prior to 3/20.

By 3/15, Plaintiff is to also provide the Defendants with a spreadsheet as to the calculation of damages. Defendants are to list on that same spreadsheet their calculation of damages. This is to be attached to the proposed Joint Pretrial Stipulation. It is also to be in the form of an Excel spreadsheet and to be provided to the Court electronically prior to the trial.

Please plan to attend the 11/28 hearing in person or by phone so that I can ascertain that the parties are in agreement with these dates and procedures.

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CONT... John Michael Licursi

Chapter 7

prior tentative ruling (8/1/17)

Summary judgment was granted to Plaintiff as to (1) liability of Susan and John Licursi under §§523(a)(2)(A), 523(a)(2)(B), and 523(a)(6). It was also granted as to John Licursi under §523(a)(4). The measure of damages is yet to be resolved.

No status report has been received as of 7/30. How do the parties intend to proceed?

Party Information

Debtor(s):

John Michael Licursi

Represented By
Andrew Goodman
Yi S Kim
James R Felton

Defendant(s):

John Michael Licursi

Represented By
James R Felton
Yi S Kim

Susan Annette Licursi

Represented By
James R Felton
Yi S Kim

Joint Debtor(s):

Susan Annette Licursi

Represented By
Catherine Christiansen
Andrew Goodman
Yi S Kim
James R Felton

Plaintiff(s):

California Bank & Trust

Represented By
Anthony J Napolitano

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10:00 AM

CONT... John Michael Licursi

Chapter 7

Trustee(s):

Diane C Weil (TR)

Pro Se

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Hearing Room 303

10:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#4.00 Motion for New Trial to Amend/Alter Judgement
for Relief from Judgement/Order of January 4, 2018

fr. 3/27/18, 4/17/18

Docket 390

Tentative Ruling:

Pursuant to Local Bankruptcy Rule 9013-1(j)(3), the Court has dispensed with oral argument. The order granting in part and denying in part has been entered on 5/25 and is being emailed to both sides. Please carefully note the dates set forth in the ruling so that this trial can proceed to a final hearing.

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

1:13-10386 Shirley Foose McClure
Adv#: 1:18-01050 Reitman v. McClure

Chapter 11

**#5.00 Motion for Summary Judgment Against Defendant
Jason McClure**

Docket 4

Tentative Ruling:

Jason McClure has a 5% interest in the Maui condominium of which 95% is owned by the Debtor (his mother). Jason and Shirley McClure are tenants in common. Pursuant to the settlement with PMB, the Trustee seeks to sell the condominium. It is impractical to partition this single residential unit. A broker has been hired and a stalking horse bidder has offered \$410,000. The Trustee seeks to have the Court order Jason to transfer his interest to the Trustee pursuant to 11 USC §363(h)(j) and (i). The settlement with PMB is on appeal, but no stay has been requested or granted.

Jason Opposition

Counsel for the Trustee was aware as of March 2, 2018 that Jason would be out-of-state and unavailable between the middle of April and the middle of May. They were together at a superior court hearing that day and Mr. Dahlberg never mentioned this motion or tried to resolve the issues. Jason then describes the delays and lack of information that he has received. His mother prepared an opposition and Jason agrees with it and request a hearing. He returned to CA on May 13.

Shirley Opposition -

Shirley starts by recapping the issue that Jason was out of state and the Trustee was aware of this.

Jason has treated this as an IRC §1033 election property and there are potential negative tax consequences to him associated with the sale of the Maui property. He is entitled to the requested documentation on the Maui property.

Jason and his brother Jeff have spent many hours of work on the Estate properties including this Maui condominium. Jason also purchased the new furniture for Maui and did all the upgrades since 2012. Shirley and

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CONT... Shirley Foose McClure

Chapter 11

Jason are actually 50-50 partners on the rental properties. Jason is only on title for 5% because Litt structured the §1033 election that way.

In 2017 Jason booked the condo for his ownership use, but the Trustee - without talking to Shirley or Jason - has prevented his future use or booking. It is due to Jason's labor and funds that the Estate has had any income on this property since 2013. Prior to the appointment of the Trustee, Jason and Jeff kept the homeowners' fees current. The Trustee has let them fall into delinquency as about \$5,000.

The McClures want information on the income and expenses for 2016, 2017, and to date for 2018. The Trustee has not provided information on what marketing steps were taken by his agents. The last appraisal was in 2015-16 for \$525,000-\$535,000 and there is no information o what it is being sold for \$410,000.

There is no notice of default on the Maui condo. Jason's title share should be free and clear of either default interest or PMB attorney fees.

Jason has provided his services to repair various estate properties and has voluntarily allowed his liens to be transferred. He has been cooperative in every way.

On her own behalf, the Debtor states that the Trustee and not Dahlberg should be dealing with Jason, tenants, or the Debtor. That is part of his duties. Dahlberg charges in the mid-\$500/hour range and thus there are exorbitant legal fees. It was totally unnecessary to file this adversary proceeding since Jason had already given a proposal to Dahlberg and had requested documents and sale and tax information that he needed to review. In the past, the Trustee has given inaccurate information.

In short. Shirley argues that this property may generate no cash to the estate, but use up valuable net operating losses. The Debtor then sets forth a list of 11 specific items that the Trustee should provide.

No reply has been received as of May 25 at noon.

Analysis

[The Court is using first names for the McClures as a matter of clarity and not for any other reason.]

This motion for summary judgment deals with the right of the Trustee to sell the interest of a co-owner in property that is property of the Estate. It is

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CONT... Shirley Foose McClure

Chapter 11

not a finding that this particular sale will be approved. Most of the opposition deals with the rights of Jason to information of the impact of the proposed sale on his 5% interest. It also raises issue of whether Jason should have recompense for time, labor, and money that he has contributed to maintain the various estate properties.

None of that is really relevant to this motion. 11 USC §363(h) is quite specific as to when the Trustee can sell the interest of a co-owner. The Maui property fits all of these requirements. This is a single residential unit and it is not practical to partition it. Also it is certain that if only 95% were sold, it would bring a much lower price or might not be able to be sold at all. While Jason asserts that the sale will impact his §1033 election, that would occur at any time that this is sold. I do not understand why a delay would benefit him since I cannot see why he is entitled to a §1033 election when Shirley was not. Please explain this to show the detriment and why that outweighs paying off PMB and saving the Estate substantial money. And, of course, this is not used for energy production.

As noted in 11 USC §363(a)(and (j)), Jason has the right of first refusal. He can buy the estate's 95% interest (presumably at 95% of the \$410,000 price) and thus protect his §1033 election. If he does not do that, he will receive his 5% interest after the sale closes. Here I am not sure whether the liens on the property are apportioned to Jason, but since he has such a small interest, it might not be worth the effort.

While you are all here, let's talk about the motions that are coming up on June 5. I'm not sure what all this withdrawal of final motions are. Also are there any issues as to Jason's percent?

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

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CONT... Shirley Foose McClure

Chapter 11

Defendant(s):

Jason McClure

Pro Se

Plaintiff(s):

John P. Reitman

Represented By
Jon L Dalberg

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

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10:00 AM

1:15-12380 Lanker Partnership and First American Title Insurance

Chapter 11

#6.00 Scheduling and case management conference re
Chapter 11 Voluntary Petition

fr. 8/11/15, 12/15/15, 4/26/16; 4/27/16, 9/13/16(xfr
from Judge Barash calendar); 9/13/16; 10/25/16,
2/21/17; 5/2/17, 9/12/17, 11/14/17, 11/28/17, 12/19/17,
3/27/18

Docket 1

Tentative Ruling:

If the motion to dismiss is granted, this will be continued to 6/26 at 10:00 as a holding date to make sure that the dismissal order is entered.

Party Information

Debtor(s):

Lanker Partnership

Represented By
Charles Shamash
Joseph Caceres
Nedda Haeri
Stuart I Koenig

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1:15-12380 Lanker Partnership

Chapter 11

#7.00 First and Final Fee Application of Creim Macias Koenig & Frey, LLP for Stuart I Koenig, Special Counsel

Period: 8/1/2016 to 10/30/2016
Fees: \$15645.00 Expenses: \$259.67

Docket 170

Tentative Ruling:

Creim Macias Koenig & Frey was former special counsel for the Debtor in Possession in the case of Lanker Partnership v. First American Title; Washington Mutual Bank. It served in this capacity from August 1, 2016 through October 1, 2016, when the law firm ceased operations. Two of the attorneys who were responsible for this case moved to Leech Tishman Fuscaldo & Lampl, who took over the representation.

CMKF expended 26.4 hours on behalf of the Debtor and seeks fees of \$15,645 and costs of \$259.67.

No opposition received as of May 24. Approve as requested.

No appearance necessary if you submit on the tentative ruling. Except in the case of a trustee's final report and simultaneous hearing on applications for approval of professional fees, the prevailing party is to lodge a proposed order in conformance with this tentative ruling within seven court days after the hearing, serving all interested parties with a copy of the proposed order.

Party Information

Debtor(s):

Lanker Partnership

Represented By
Charles Shamash
Joseph Caceres
Nedda Haeri
Stuart I Koenig
Sandford L. Frey

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CONT... Lanker Partnership

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Movant(s):

Lanker Partnership

Represented By
Charles Shamash
Joseph Caceres
Nedda Haeri
Stuart I Koenig
Sandford L. Frey

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1:15-12380 Lanker Partnership

Chapter 11

#8.00 First and Final Fee Application of Leech Tishman
Fuscaldo & Lampl, Inc. for Stuart I Koenig, Special Counsel

Period: 10/1/2016 to 4/30/2018
Fees: \$96,882.50 Expenses: \$1302.39

Docket 171

Tentative Ruling:

Leech Tishman Fuscaldo & Lampl took over representation of the Lanker Partnership v. First American Title, etc. in October 2016. The firm expended 202.75 hours on behalf of the Debtor as special counsel. The firm seeks \$96,882.50 in fees and \$1,302.39 in costs.

No opposition received as of May 24.

Approve as requested on receipt of a statement of client approval. No appearance necessary if you submit on the tentative ruling. Except in the case of a trustee's final report and simultaneous hearing on applications for approval of professional fees, the prevailing party is to lodge a proposed order in conformance with this tentative ruling within seven court days after the hearing, serving all interested parties with a copy of the proposed order.

Party Information

Debtor(s):

Lanker Partnership

Represented By
Charles Shamash
Joseph Caceres
Nedda Haeri
Stuart I Koenig
Sandford L. Frey

Movant(s):

Lanker Partnership

Represented By
Charles Shamash
Joseph Caceres
Nedda Haeri

**United States Bankruptcy Court
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Tuesday, May 29, 2018

Hearing Room 303

10:00 AM

CONT... Lanker Partnership

Stuart I Koenig
Sandford L. Frey

Chapter 11

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Tuesday, May 29, 2018

Hearing Room 303

10:00 AM

1:15-12380 Lanker Partnership

Chapter 11

#9.00 First and Final Application of Caceres & Shamash, LLP
for Approval and Payment of Compensation and
Reimbursement of Expenses as Reorganization
Counsel for the Debtor

Period: 7/12/2015 to 5/29/2018
Fees: \$41,160.00 Expenses: \$2,582.85

Docket 172

Tentative Ruling:

Counsel for the Reorganized Debtor seeks \$41,160 fees and
\$2,582.85 costs. These amounts reflect some courtesy discounts.

No opposition received as of May 24.

Approve as requested on receipt of a client comment.

No appearance necessary if you submit on the tentative ruling. Except in the case of
a trustee's final report and simultaneous hearing on applications for approval of professional
fees, the prevailing party is to lodge a proposed order in conformance with this tentative ruling
within seven court days after the hearing, serving all interested parties with a copy of the
proposed order.

Party Information

Debtor(s):

Lanker Partnership

Represented By
Charles Shamash
Joseph Caceres
Nedda Haeri
Stuart I Koenig
Sandford L. Frey

Movant(s):

Caceres & Shamash LLP

Represented By
Joseph Caceres

**United States Bankruptcy Court
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1:15-12380 Lanker Partnership

Chapter 11

#10.00 Debtor's Motion to Dismiss Case

Docket 174

Tentative Ruling:

This case focused on the litigation with First American Title and Washington Mutual. The Debtor settled with First American Title, but not settlement could be approved as to Deutsche/WAMU/SLS so as to allow this case to go forward and confirm a plan. The sole asset of the Debtor has no equity.

As to April, the cash balance was \$79,226.46. There is clearly no money for creditors and not enough for the administrative claims. What will be done as to the fees that are being awarded at this time?

Party Information

Debtor(s):

Lanker Partnership

Represented By
Charles Shamash
Joseph Caceres
Nedda Haeri
Stuart I Koenig
Sandford L. Frey

Movant(s):

Lanker Partnership

Represented By
Charles Shamash
Joseph Caceres
Nedda Haeri
Stuart I Koenig
Sandford L. Frey

**United States Bankruptcy Court
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Tuesday, June 05, 2018

Hearing Room 303

10:00 AM

1:09-23807 Shellie Melissa Halper

Chapter 7

#1.00 Motion RE: Objection to Claim Number 47
by Claimant Norton Law Group

fr. 5/1/18

Docket 228

Tentative Ruling:

This claim of the Norton Law Group (claim #47) was filed on 10/1/10, which was after the 9/13/10 bar date. Further, it does not include any writing demonstrating that the fees, etc. are the liability of Halper in her personal capacity instead of Calabasas Treatment Center or other entities.

I'm not sure why this was continued from 5/1. No opposition received as of June 3.

SUSTAIN

No appearance necessary if you submit on the tentative ruling. Except in the case of a trustee's final report and simultaneous hearing on applications for approval of professional fees, the prevailing party is to lodge a proposed order in conformance with this tentative ruling within seven court days after the hearing, serving all interested parties with a copy of the proposed order.

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Movant(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss

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CONT... Shellie Melissa Halper

Chapter 7

Laura J Meltzer

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

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1:09-23807 Shellie Melissa Halper

Chapter 7

#2.00 Motion RE: Objection to Claim Number 34
by Claimant Deborah Rahm WIZ Industries.

fr. 5/1/18

Docket 238

Tentative Ruling:

Continued without appearance to June 26, 2018 at 10:00 a.m. The parties have been advised by email as follows:

Mr. Weiss is correct that it is improper to include me on this chain of emails. From this point forward, all communications with me (the Court) must be in writing and filed with the clerk's office with a copy sent to Mr. Weiss and a courtesy copy mailed or delivered to my inbox at court..

Ms. Rahm should consult the tentative ruling (for 6/5 - which includes the one for 5/1 - and the new one that I will post shortly before the 6/26 hearing). This is done through the court webpage at www.cacb.uscourts.gov. On the upper right-hand corner click on the red box that says "judges." Then go down to "tentative rulings/posted calendars," select me on the left-hand tab that says "select judge" and you can review my tentative rulings for the calendars that have been posted at the time that you check. As noted, I will post my tentative rulings for 6/26 a few days before the hearing, but no later than the afternoon of 6/25.

If Ms. Rahm wants to place opposition to the motion to be considered, she must do so by filing her opposition (with evidence attached) by June 14. This is to be emailed and also mailed to Mr. Weiss - first class mail - on the same day that it is sent to or brought to the courthouse. The copy to be filed may not be sent to the Court by email. Mr. Weiss will have until June 18 to file and serve (by email and mail) a reply. Since I will not be in court on June 21 or June 22, these dates are critical to me having time to review the papers.

I look forward to reading what you file and to deciding this motion.

prior tentative ruling (5/1/18)

The Trustee objects to the claim of WIZ Industries (claim #34). There is no evidence that it was a loan to the Debtor.

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CONT...

Shellie Melissa Halper

Chapter 7

A \$105,000 loan was made on 11/29/07 from WIZ to The Mortgage Center Services. The Note was signed by Halper on behalf of The Mortgage Center Services. That same day Halper, on behalf of Paradise In Cortez, assigned the right to collect from sales escrow proceeds to WIZ Industries.

On 12/6/07 a second loan in the amount of \$157,500 was made from WIZ to The Mortgage Center Services. The Note was signed by Halper on behalf of The Mortgage Center Services. That same day Halper, on behalf of Paradise In Cortez, assigned the right to collect from sales escrow proceeds to WIZ Industries.

On 1/7/08 a third loan in the amount of \$105,000 was made from WIZ to The Mortgage Center Services. The Note was signed by Halper on behalf of The Mortgage Center Services. That same day Halper, on behalf of Paradise In Cortez, assigned the right to collect from sales escrow proceeds to WIZ Industries.

On 10/3/08 a fourth loan in the amount of \$242,650 was made from WIZ, but this time it was to Paradise In Cortez, LLC and Shellie Halper (individually). Halper is also named as a guarantor. The Note was signed by Halper on behalf of Paradise in Cortez, LLC, and also individually as "Personal guarantor." That same day Halper, on behalf of Paradise In Cortez, assigned the right to collect from sales escrow proceeds to WIZ Industries. These were proceeds of a different property than the prior assignments of escrow proceeds.

The objection is largely to the first three notes.

On May 22, Ms. Rahm sent a letter to me. In summary, she says that all of her retirement money "went towards an investment with the debtor, Ms. Shellie Melissa Halper, and her solely owned S Corporation, The Mortgage Center Services, and her solely owned LLC, Paradise in Cortez." She received the notice of the initial hearing after that date and when she received the notice of continued hearing she called Trustee's counsel and Trustee and neither would speak to her. She cannot afford an attorney. She wants to know why her notes are being objected to. She notes that she had personal guarantees on some of them. She also wants to know why the objections to claims of Jay Friedman and Solomon Cohen were withdrawn. She also does not understand what happened on 5/1 as to other claimants and she is confused by the docket entries.

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Shellie Melissa Halper

Chapter 7

I have had the letter docketed and have sent a copy by email to the Trustee's counsel - with a copy to Ms. Rahn - and asked counsel to contact her. Also I urged her to come to court on June 5 and to provide the Trustee's counsel with copies of the personal guarantees that she referred to and to bring copies to the hearing..

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

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Hearing Room 302

10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#3.00 Motion of John P. Reitman, Chapter 11 Trustee,
for Order Approving Settlement with Barrett S. Litt,
et al. Pursuant to Fed. R. Bankr. P. 9019

fr. 3/27/18, 5/1/18

Docket 1344

Tentative Ruling:

This was continued to May 1 as a holding date. I am awaiting the proposed settlement figure for the Tidus matter before I can analyze the issue of surplus estate. Nothing has yet been received. Continued to August 7, 2018 at 10:00 as a holding date. I hope to have my decision out long before that time.

prior tentative ruling (3/27/18)

John Reitman chapter 11 trustee (the "Trustee") for the estate (the "Estate") of Shirley McClure (the "Debtor") moves for approval of a settlement between the Trustee and Barrett Litt and affiliated parties (the "Litt Parties").

Service: Appears to be in order.

Background

Initial Case

Debtor initially filed for chapter 11 relief in 1992 (1:92-bk-1371-GM; the "Initial Case"). Early in that case the Debtor confirmed a plan of reorganization, but the case remained open pending the outcome of federal court litigation against the City of Long Beach.

In 2006, the Debtor and her son received \$20 million in settlement of a lawsuit against the City of Long Beach – 95% for the Debtor and 5% for her son. Barrett Litt and his law firms ("Litt") had represented them in this lawsuit since 1993, but Debtor's and Litt's relationship broke down. In July 2008, the Debtor brought a malpractice action against Litt in Superior Court (BC-393584; the "Litt State Court Action"), which included, *inter alia*, malpractice claims for advising the Debtor and her son to make an IRC §1033 election for

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Chapter 11

the majority of their settlement funds and to invest in various real estate rental properties pursuant to that election.

In 2009, this Court granted Litt's final application and awarded fees of \$9,113,911.51 and costs of \$990,592.06 with a credit of \$9 million that had already been paid to Litt, so the remaining amount owed was \$1,104,503.57. (Initial Case dkt. 146). The Debtor appealed (Initial Case dkt 181), but the District Court and the Ninth Circuit upheld the fee award on appeal. McClure has brought another malpractice action against attorneys who represented her in this fee dispute with Litt. (McClure v. Tidus, et al. BC-443404).

In the meanwhile, Litt obtained and filed an abstract of judgment against thirteen real properties in which the Debtor had an interest. (Initial Case dkt 154, 155). The Court granted McClure a stay pending her appeal on certain conditions, including Litt's retention of his liens from the recorded abstracts of judgment. (Initial Case dkt. 218). The Initial Case was closed on August 16, 2016.

This Chapter 11

Debtor filed this case for Chapter 11 relief on December 21, 2012. The bulk of her estate's assets were comprised of her interest in multiple parcels of income producing residential real estate in Southern California, San Francisco, Maui, Indiana and Michigan (the "Properties"), most of which were 1033 Properties and owned 95% by the Debtor and 5% by her son. The major claims against the estate were (i) approximately \$460,000 in unsecured claims; (ii) secured lender claims of City National Bank ("CNB"), Pacific Mercantile Bank and its affiliate PM Asset Resolution, Inc. ("PMB"), and Shellpoint Mortgage Servicing for Bank of New York, as trustee ("Shellpoint Mortgage"), each secured by deeds of trust on various real estate, (iii) Litt's lien on most of the Properties (the "Litt Lien"), and (iv) a \$1,317,047 priority tax claim by the Franchise Tax Board ("FTB"). As the debtor-in-possession, the Debtor sold several Properties, using the money to repay some of her secured debt (CNB was paid off in full), for repairs and maintenance on other Properties, and to pay other expenses of the Properties and of this Chapter 11 case. Litt filed objections to most or all of these sales and filed appeals to the District Court when his objections were overruled.

On April 2, 2015, the Court entered an order limiting the Litt Lien to three Properties located at 910 Corbett St., Nos. 1, 2 and 3, San Francisco, CA. Litt appealed this order (the "Litt Lien Appeal") to the United States

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District Court, where it was assigned to Judge Wu and consolidated with related appeals that the Litt Parties had taken from the Court's orders (collectively, the "Litt Appeals"). In March 2017, the District Court remanded the Litt Lien Appeal for further consideration of the Ninth Circuit Court of Appeals decision in *Pacifica L 51 LLC v. New Investments, Inc. (In re New Investments Inc.)*, 840 F.3d 1137 (9th Cir. 2016).

The Trustee

On July 12, 2016, after this case had been pending for three years without confirmation of a plan and the Debtor had changed counsel repeatedly (often representing herself *pro se*), the Court ordered the appointment of a chapter 11 trustee in this case (Dkt. 1090). The United States Trustee appointed Mr. Reitman as Chapter 11 Trustee of the Estate (Dkt. 1105). Mr. Reitman accepted – and the Court approved – the appointment. (Dkt. 1106, 1113).

Since his appointment, the Trustee has taken a number of actions to administer the assets of the Estate. He reached a court-approved Closing Agreement with the Franchise Tax Board, resolving the Debtor's dispute with the FTB over the validity of the Debtor's 1033 election (described above). He obtained court authorization to sell two properties in Michigan that were unencumbered but not operating on a net cash flow positive basis. He reached a settlement with PMB (the PMB Settlement"), which is expected to result in the reduction of PMB's secured claim by at least \$650,000. The Court entered on order, following notice and a hearing, approving the PMB Settlement. The Debtor objected to the PMB Settlement and appealed the Court's order approving it (the "McClure Appeal"). The Trustee elected to have the McClure Appeal heard by the District Court and it has also been assigned to Judge Wu.

The Trustee believes that the PMB Settlement is a key step on the road to proposing and funding a plan of reorganization. However, the PMB Settlement provides that PMB's claim must be paid in full by Jun 30, 2018, which requires sale of the Estate's properties in San Francisco, Southern California (other than the Debtor's residence in Fullerton), and Hawaii. In January 2018, the Court approved the Trustee's retention of brokers to market and sell these Properties.

The Proposed Settlement with the Litt Parties

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The Trustee has reached a settlement with the Litt Parties, embodied in a settlement agreement (the "Litt Settlement Agreement"; Exhibit 1 to the Declaration of John Reitman), which provides for:

- the reduction of the \$1.1 million Litt Lien on the Corbett Properties (by more than \$800,000) to \$340,000 (the "Litt Settlement Secured Claim"), plus interest thereafter at the federal post-judgment interest rate of 0.45%,
- release of the Litt Lien on all other Properties,
- dismissal of the Litt State Court Case (although not the claims of Jason McClure),
- dismissal of Litt's appeals
- payment of the Litt Settlement Secured Claim upon the sale or refinancing of the Corbett Properties
- customary mutual releases.

The Trustee is seeking approval of the Litt Settlement Agreement. As discussed in the analysis section below, the Trustee argues that this proposed settlement with Litt is fair and equitable and should be approved under the standard set by the Ninth Circuit.

Joinder of Litt Parties

The Litt parties join in the Motion, and argue as follows:

The claims against Litt that the Trustee proposes to settle would not yield any real value for the estate. The Debtor had repeatedly been offered the opportunity to settle with Litt under a 2006 Agreement that would have limited Litt's fees to \$9 million; the Debtor instead chose to go forward with claims against Litt – using a variety of attorneys and in circumstances that indicate the weakness of the Debtor's claims against Litt. The Litt State Court Action has been stayed since 2008 and is barred by *res judicata* (the debtor has litigated every claim she has against Litt in this Court) and the statute of limitations. In particular, the claims against Litt for allegedly deficient tax advice are weak. The Debtor retained other tax counsel before filing the tax returns in question and buying more 1033 properties. The debtor's damages are limited: FTB has settled its claim for \$800,000 in taxes and \$288,000 in interest and the IRS has not filed a claim and the time to do so has passed.

Debtor's Opposition

The Debtor has filed an opposition, arguing as follows:

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Chapter 11

As the Court has acknowledged, this will be a surplus case. Thus, the settlement will be of no benefit to creditors (who will be paid in full anyway) and will affect only the amount of Debtor's recovery. At the November 28, 2017 hearing, in response to questioning by the Court, the Trustee's counsel stated that the Trustee's projections suggest that there would be a surplus. The Court then stated that if the sale of the Properties did yield a surplus, then the Litt State Court Action could be an asset for the Debtor to keep and pursue. This settlement would deprive the Debtor of the right to pursue these claims against the Litt parties, claims that the Court has said belong to the Debtor.

The Debtor's projections support the conclusion that this a surplus estate: the various properties are listed for sale by the Trustee at \$6.8 million, while secured claims are only \$2.7 million and the Trustee's latest report shows cash of \$950,000. On the other side, unpaid unsecured claims are \$300,000 (without Sulmeyer, Kupetz' disputed claim), the FTB is owed \$1.1 million, and Litt's \$1.1 fee claim should be considered an offset against the Debtor's malpractice claim. (Administrative claims have not yet been litigated, but Debtor's prior counsels have already been paid \$240,000.)

The Debtor and Litt were close to a settlement of the Litt State Court Action shortly after it was filed in 2008, until Litt's malpractice carrier sued Litt for rescission. The State Court Action has been stayed since 2009 - at the request of Litt - pending resolution of the Franchise Tax Board audit.

This Court's ruling and Judge Wu's affirmation of that ruling did not adjudicate the Debtor's claims against Litt, as Judge Wu expressly stated on the record at a July 8, 2012 hearing.

Since his appointment in July 2016, the Trustee has taken no steps to investigate the Litt State Court Action or Litt's disputed claims. He has not interviewed the Debtor, allowed the Farley firm to conduct discovery or file an amended complaint, requested the litigation files, or hired replacement counsel for Farley (except the Makarem firm, which had a conflict of interest as it had previously been retained by the Debtor and her son).

The Debtor does have experienced professional malpractice counsel willing to take the Litt State Court Action: Arie Spangler, who estimates that she will need 7-8 months to prepare for trial, assuming that discovery is still open.

The Debtor's claims against the Litt parties are meritorious. The Farley firm, which took the Litt State Court Action on a modified contingency basis in

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2014, valued the litigation in the \$10 million range. The tax attorneys hired by the Debtor and her son, as well as the FTB, all concluded that Litt had committed malpractice.

If successful, the Debtor or the Trustee could recover against Litt. He was a multi-millionaire even before he received \$9 million from the Debtor's estate. He has \$3 million in litigation insurance and Arch's rescission action is still pending, awaiting the outcome of the Litt State Court Action. At a minimum, a judgment against Litt could be offset against his \$1.1 million claim.

To approve a compromise, the Court must make an independent determination that the compromise is reasonable, fair and equitable: it cannot merely rubber stamp the Trustee's conclusion.

To oppose a settlement, the Debtor must show that s/he is a "person aggrieved," *i.e.*, directly and adversely affected pecuniarily. This can be shown where there is a reasonable possibility of a surplus in the case. This Court has already acknowledged that this is a surplus case and that the Litt State Court Action accordingly belongs to the Debtor. In contrast, this settlement is not in the paramount interest of the unsecured creditors, because they will be paid in any event.

Furthermore, the Trustee has presented no evidence that he has made a substantive review of the merits of the Litt State Court Action, such that he could make an "informed judgment after diligent investigation." Nor has he presented any facts to allow this Court to determine whether the settlement falls above the "lowest point in the range of reasonableness." Nor has the Trustee presented any evidence that a judgment against Litt would not be collectible.

Reply by Trustee

The Court has made no finding that this is a surplus Estate, but was speaking hypothetically. The Trustee's counsel did not represent that the Estate is "unequivocally" surplus, but only that the Trustee's good faith projections show that a surplus is possible. On March 22 the Trustee will file the analysis requested by the Court in its email. Without the sale of the Debtor's current residence and/or the settlement with Litt, it is likely that it will not be surplus.

The Motion contains four pages of analysis of the claims in the Litt State Court Action. The Opposition is unsupported by admissible evidence

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and the documents that she attaches do not support her arguments: Litt did not admit that he committed malpractice, but he stated that he sought the advice from a tax attorney, who later represented the Debtor directly. The assertion that Litt was the architect of the 1033 program will be hotly litigated in the state court trial.

The damages are also questionable since the 1033 election does not eliminate taxes, but merely defers them.

As to the involvement of the Trustee in the case, the Trustee did meet with the Debtor on 8/18/16 and conducted an extensive interview with her at that time, including the issues of the Litt State Court Action. The Trustee, in consultation with the Farley Firm, decided not to proceed to discovery since the Litt State Court Action was stayed and Debtor's health and the ongoing settlement discussions meant that to go forward with discovery would not be in the best interest of the Debtor or the Estate. There was no need to have the Farley Firm turn over the litigation files since that firm represented the Trustee until it withdrew.

The Trustee agrees that difficulty in collecting a judgment is not a significant issue.

Reply by Litt Parties

There has been no determination that this is a surplus estate and that determination cannot be made until all of the professionals have filed their fee applications and had their fees allowed by the Court. The amount of income taxes would also need to be determined. If McClure wins on her appeal of the PMB settlement the Estate could end up owing \$650,000 more. She has done nothing to dispute the SulmeyerKupetz claim. And her assertion that Litt's claim is disputed is incorrect since it has been determined by a final judgment.

The settlement provides an immediate benefit to the estate of over \$800,000. Also the Court has never determined that the Litt State Court Action belong to her rather than to the Estate. Although Litt does not and has not agreed that he is liable to Ms. McClure, he is willing to reduce his secured claim by over \$800,000 to buy peace.

Further, there is no factual support for most of McClure's brief.

Litt Objections to Evidence

Shirley McClure Declaration – overrule all objections

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Robert Wood Declaration (ex. B, ex. D) – overrule

Harold Winnett Declaration (ex. C) – overrule. It is clear from the complete declaration that it refers to a meeting held on or about 2/27/07.

Robert Wood Declaration (ex. O) – sustain as it appears to be unsigned, however, this is a copy form 2008 and is part of something larger. There may be a signed copy somewhere.

Analysis

The Trustee is seeking approval of a compromise pursuant to Fed. R. Bankr. P. 9019, thus the question is whether the Litt Settlement Agreement is "fair and equitable." *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1986). The Court evaluates the fairness, reasonableness and adequacy to the estate under the factors articulated by the Ninth Circuit:

In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. Cal. 1986), *cert. denied sub nom.*, *Martin v. Robinson*, 479 U.S. 854 (1986). The Court should review the issues and determine whether the settlement falls below the lowest point in a range of reasonableness. *In re Teltronics Service, Inc.*, 762 F.2d 185, 189 (2nd Cir. 1985); *Sirtos v. Ray (In re Sirtos)*, 2006 Bankr. LEXIS 4894 at *32 (B.A.P. 9th Cir. May 19, 2006). Courts reviewing a proposed settlement generally accord deference to the Trustee's business judgment, although the Trustee has the burden of persuasion that the settlement is fair and equitable and should be approved. *Goodwin v. Mickey Thompson Entertainment Group (In re Mickey Thompson Entertainment Group)*, 292 B.R. 415, 420 (B.A.P. 9th Cir. 2003).

In essence, the proposed settlement gives up the estate's claims against Litt – valued by the Debtor at \$10 million - in exchange for an \$800,000 reduction in Litt's secured debt. The Trustee argues that probabilities of success in the Litt State Court Case and the complexity, inconvenience and delay in litigating it support approval of this compromise.

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Regarding complexity, the Debtor asserted numerous claims based on a wide variety of (sometimes conflicting) factual allegations. Litt has asserted a variety of defenses to these claims. (These claims, factual allegations, and defenses have been considered by the Trustee and are detailed in pages 9-11 of the Motion.) Regarding the probabilities of success, the difficulties in litigating the Litt State Court Case include the staleness of the matter (which has been stayed since 2009), the need for testimony from the Debtor (who is in ill health and may not be able to cooperate), and the Trustee's lack of counsel (after the Debtor opposed the employment of Ron Makarem and contacted Mr. Makarem directly, the Trustee has not been able to find counsel). Thus, while a jury might prove sympathetic to Ms. McClure (and there appear to be no difficulties in collection), the Trustee has made the business judgment that there is substantial risk that the Estate might not prevail in the Litt State Court Case and the interests of the estate are best served by the Litt Settlement Agreement (which also resolves the Litt Appeals and allows the Trustee to focus on effectuating the PMB Settlement and formulating a plan to bring this bankruptcy case to conclusion).

Ordinarily, this would be sufficient for the Court – in deference to the Trustee's business judgment – to find that that this proposed settlement is within the range of reasonableness and thus fair and equitable. However, two concerns in this case prevent the Court from drawing that conclusion: (i) the possibility that this will be a surplus estate and (ii) allegations that the Trustee has not duly investigated and pursued the State Court Action.

If the sale of the Properties alone would yield a surplus estate, then this settlement will not affect creditor recoveries – the creditors would be paid in full in any event. The settlement would not be in the "paramount interests of creditors." It would only affect the Debtor's recoveries and she is opposed to the settlement. And, if the Debtor pursues the litigation, then the cost, difficulty or uncertainty of litigation are irrelevant to the estate. Thus, if it appears likely that the estate will be surplus, the Court will not approve this proposed settlement, absent some other compelling reason to do. (For instance, the Trustee repeatedly states the importance of effectuating the PMB Settlement, but never directly states that this settlement is necessary to effectuate the PMB Settlement, which is solely to sell some of the properties and for which real estate broker(s) have been hired.)

Second, the Trustee has not retained counsel to pursue this matter and the Debtor alleges that the Trustee has not truly investigated the merits

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of the Litt State Court Action (*i.e.*, neither reviewed the case files nor interviewed the Debtor). It should be noted that although the Trustee states that he held a long meeting with the Debtor soon after he was appointed, he also indicates that this covered many topics and the Litt issues were only a part of those. And as to making an independent review of the files, he only alludes to his prior attorney and there is no showing as to whether he has actually made an independent determination (or had an expert review the files). The Court is also concerned about the fact that the Trustee has not hired a new attorney in the last months or – apparently – even tried to employ one. There is no showing that this litigation could not proceed expeditiously.

Litt and the Debtor have each argued the merits of the Debtor's claims against Litt (as described above). In the Motion, the Trustee discusses the difficulties of the litigation, but does not state any judgment on the merit of the underlying claims. This Court cannot determine the merits of these claims, but it does need to know that the Trustee's business judgment rests on an informed consideration of those merits. Thus, even if this estate is not surplus, the Court would need further information from the Trustee regarding his investigation of the actual merits of the Litt State Court Action in order to approve this settlement. Some was given in the Trustee's declaration filed in response to my email. Let's discuss this a bit more.

One further question deals with fees to be paid to prior litigation counsel. If this is settled, are any due? Do they agree to what they are to receive in an administrative claim? What will that be?

Tentative Ruling: Deal with the above questions. Motion denied if it is likely that the estate is surplus. See my comments on the email sent 3/23 for details of the calculation.

THE EMAIL:

Thank you, all, for the information that I requested. Based on that, I prepared a draft spreadsheet that I will be using as a basis of our discussion at the hearings on Tuesday. I attach a .pdf copy and an excel copy for your use.

(1) I prepared this in two forms: one without Ms. McClure's home and the other with it. As to this, the calculation that I prepared still protects her homestead of \$150,000 (though the home itself is sold). I used the most recent figure that I had - from 2014 - though it may be worth more (or less) now. If she were to also waive her homestead and allow the house to be sold, that would increase the amount available to unsecured creditors by an additional \$150,000.

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(2) I note that Ms. McClure's figures do not include default interest to PMB, the PMB attorney fees, or the amounts of administrative claims. The estimate of \$1,307,585 provided by the Trustee may be high or low, but it is certain that there will be substantial attorney fees to be paid.

(3) Ms. McClure did not include the Litt lien. If she prevails on the settlement motion, it will remain at \$1,090,058.

(4) The amount of recovery on the Litt State Court Action is much too uncertain to include. However, since he is giving up about \$800,000 on his lien amount, the judgment would have to exceed that sum to make it meaningful for the Court to deny the settlement motion.

(5) Although there is a settlement pending in Tidus, the Court does not have any details. Ms. McClure is now offering to provide 50% of any net recovery if needed to pay unsecured creditors in full. Until I see the terms of the proposed settlement, it is hard to determine whether to abandon this. Since the Tidus State Court Case has been continued, there is no urgency in dealing with the abandonment motion, so perhaps that should be continued. I also do not fully understand the basis of this case.

(6) For some reason, my spreadsheet total on "Net from Sale of Properties" is about \$400 different from that of the Force 10 one [\$2,688,985 v. \$2,689,387]. I can't figure out why.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Movant(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

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Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

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#4.00 Motion to Compel Abandonment of State Court
Litigation Case BC443404 McClure v. Tidus

fr. 3/27/18, 5/1/18

Docket 1355

Tentative Ruling:

This was continued to May 1 as a holding date. I am awaiting the proposed settlement figure for the Tidus matter before I can analyze the issue of surplus estate. Nothing has yet been received. Continued to August 7, 2018 at 10:00 as a holding date. I hope to have my decision out long before that time.

prior tentative ruling (3/27/18)

This motion concerns the state court trial in McClure v. Tidus, LASC BC443404. The trial is scheduled to begin on 3/26/18 (Judge Mark Mooney presiding) and there is a final pre-trial hearing set for 3/16/18. There is no attorney for the Plaintiff in that the Farley Law Firm was relieved as counsel on 10/16/17 and no new counsel has been employed. The Farley Law Firm had been employed as special litigation counsel to the Debtor.

The Trustee has known since June 2017 that the Farley Firm would be withdrawing because of a conflict. Nothing has been done by the Trustee.

McClure has been served with five motions in limine.

The fee agreement with the Farley Firm was \$150/hour and 20% of the recovery. The total billing for their work through 6/21/17 was \$22,450.50 fees and \$5,271.40 costs – mostly to defend the Tidus Defendant's motions for summary judgment heard on 1/5/17 and 1/6/17 and to respond to the defendant's discovery demands. No litigation preparation has been done since the Trustee was appointed.

There is insurance coverage for the Tidus Defendants and they are being defended by their insurance carriers. It therefore appears that a

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judgment against them would be collectible.

At the time of the motion for summary judgment (Jan. 2017), Judge Mooney divided the plaintiff's claims into two parts. Part 1 is her cause of action in the handling of the Litt fee motion. That is going to trial. Part 2 is the cause of action to amend the Litt complaint pending in state court – which was dismissed without prejudice as not being ripe since the Litt case was still pending.

At the time of the disclosure statement in April/May 2016, the Farley firm estimated the damages at \$10 million.

The Trustee does not want to pursue Plaintiff's claims in this case or the Litt one. The Trustee wanted to settle with the Tidus Defendants for a much reduced amount.

At this point, the motion goes into issue of hiring Makarem.

Also there is an issue about hiring Taylor to complete the negotiations for a payout with the FTB and an upcoming five-year statutory deadline.

The Debtor wishes the McClure v. Tidus case to be abandoned in that it is clearly burdensome to the Estate and is not being properly administered. §554 Abandonment is appropriate when the trustee delays in the administration of an asset. *Hyman v. Plotkin (in re Hyman)*, 967 F.2d 1316, 1321 (9th Cir. 1992).

Opposition

The Trustee is actively conducting negotiations with the parties in interest. Any agreement would be subject to Court approval. Therefore the Trustee requests a continuance to conclude his negotiations.

Because the Trustee is negotiating a resolution, this case is not burdensome to the Estate. And it certainly is not a inconsequential value and benefit. Thus the statutory standard for abandonment has not been met.

As to the \$10 million figure, that is the value placed by the Debtor for both the Tidus action and the Litt Action – not for the Tidus action alone. But she also indicates that the Tidus action has so little value that it should be abandoned.

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The Debtor had hired by Farley Firm and the Trustee continued to act on the advice of that Firm. The Trustee is and has been fully aware of the bifurcated nature of the claim in the Tidus action.

The May 1, 2017 settlement demand made by the Trustee was not a "fire sale" demand. The amount of this demand (which is confidential) was prepared after consultation with the Farley Firm. It took into consideration the Debtor's poor health which made discovery and prosecution of the case more complicated. Anyway, the Defendants did not make a meaningful response.

Once the Farley Firm withdrew, the Trustee retained the Makarem Firm. When the Debtor contacted Ron Makarem and threatened to object to his employment, that firm withdrew. Since then, the Trustee has continued to seek qualified counsel, but without success. Thus, the fact that the Estate does not have litigation counsel in the Tidus Case is due to a combination of the Debtor's interference with the Trustee's efforts to retain the Makarem Firm and the difficulties that the Trustee has had in finding suitably qualified counsel to replace the Makarem Firm.

It is premature to determine that this is a surplus case. Hopefully it will be, but in the meantime whatever value resides in the Tidus Case should be preserved for the benefit of the Estate and not abandoned to the Debtor.

Reply

The State Court case has been continued to 7/16/18 by Judge Mooney. It is currently stayed.

After the Makaram Firm withdrew, the Trustee never suggested another law firm. The Trustee still has not prepared for trial.

However, the Debtor will retain Aire Spangler to represent her – if the case is abandoned – at a blended contingency rate and the Debtor will contribute up to 50% of the net proceeds to the estate if that is needed to pay creditors in full.

The Debtor then sets forth a calculation to show that this is a surplus estate.

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It appears that the trial has been taken off calendar and will not be reset until July 2018.

I am concerned that the Trustee has a weak negotiating position since he clearly is not ready to go to trial. And I do not understand why it is taking months and months to find new counsel.

It appears that Ms. McClure will be hiring new counsel on some sort of mixed contingency arrangement. She is now offering to provide the estate with up to 50% of her net recovery if needed to be sure that all creditors are paid in full. What is the situation as to fees owed to the Farley Firm or the Makaram Firm?

Per my email, both sides have provided me with a draft accounting of this estate. From that I have prepared a spreadsheet. See my comments from the email sent on 3/23.

THE EMAIL:

Thank you, all, for the information that I requested. Based on that, I prepared a draft spreadsheet that I will be using as a basis of our discussion at the hearings on Tuesday. I attach a .pdf copy and an excel copy for your use.

(1) I prepared this in two forms: one without Ms. McClure's home and the other with it. As to this, the calculation that I prepared still protects her homestead of \$150,000 (though the home itself is sold). I used the most recent figure that I had - from 2014 - though it may be worth more (or less) now. If she were to also waive her homestead and allow the house to be sold, that would increase the amount available to unsecured creditors by an additional \$150,000.

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(3) Ms. McClure did not include the Litt lien. If she prevails on the settlement motion, it will remain at \$1,090,058.

(4) The amount of recovery on the Litt State Court Action is much too uncertain to include. However, since he is giving up about \$800,000 on his lien amount, the judgment would have to exceed that sum to make it meaningful for the Court to deny the settlement motion.

(5) Although there is a settlement pending in Tidus, the Court does not have any details. Ms.

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McClure is now offering to provide 50% of any net recovery if needed to pay unsecured creditors in full. Until I see the terms of the proposed settlement, it is hard to determine whether to abandon this. Since the Tidus State Court Case has been continued, there is no urgency in dealing with the abandonment motion, so perhaps that should be continued. I also do not fully understand the basis of this case.

(6) For some reason, my spreadsheet total on "Net from Sale of Properties" is about \$400 different from that of the Force 10 one [\$2,688,985 v. \$2,689,387]. I can't figure out why.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

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#5.00 Motion of Joh P. Reitman, Chapter 11 Trustee,
for Order Authorizing Employment of Swicker &
Associates as Tax Accountants

Docket 1387

Tentative Ruling:

The Trustee wishes to hire the firm of Swicker & Associates as tax accountants to the Trustee. The firm will prepare state and federal tax returns for the estate and perform "such other tax related services as may be required by the Trustee." The billing will be at the firm's normal rate.

The estate needs to prepare tx returns. Previously Harold Winnett served as the tax accountant for the Debtor, but he does not want to do so for the Trustee. Swicker & Assoc. has not conflicts that would prevent employment. Employment would be effective as of 4/23/18.

Objection - Ms. McClure states that Mr. Winnett would have continued providing services to the estate, but that his new firm of Squar Milner LLP would have to be employed and the Trustee has refused to do so. Mr. Winnett made numerous requests of the Trustee to employ his new firm, but the Trustee has not done so. The 2016 tax returns, which should have been filed after the Trustee's appointment, have not been filed. Ms. McClure states that in 11/17, Mr. Dahlberg told her that Force 10 would do the estate's taxes. She does not know if the tax returns were filed and what Force 10's fees are for.

Specifically, there is not disclosure of Swicker's expertise in accounting for complex IRC §1033 and tax structure settlements. Swicker's hourly rate of \$475 per hour is far higher than what the estate was paying Winnett and Swicker would take more time since he is not familiar with the estate's complex tax issues and real property accounting. In fact, Winnett charged between \$6,000 and \$8,000 for the annual tax filings, in part because he worked closely with Robert Wood, the Debtor's tax attorney.

Beyond that, the MORs have many mistakes and need to be redone so that the estate's income is properly allocate to which property for tax filing.

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Reply

The application meets the requirements for employment. It is within the Trustee's sound discretion to replace the Debtor's former accountants with the firm that the Trustee feels is in the best interest of the estate.

The Trustee then recounts a somewhat different history of contacts with Winnett. The lack of responses and follow-up on Winnett's part leads the Trustee to believe that he is at least reluctant to serve as the Trustee's tax accountant.

As to the qualifications, Swicker is well-qualified and experiences in bankruptcy and insolvency related tax matters, where Winnett is less qualified (ie. Winnett never obtained a separate T.I.N. for the estate).

Proposed Ruling

It is obvious that the Trustee has no objection to employing Mr. Winnett and his new firm, but communication broke down. The Court is familiar with both Squar Milner and Swicker and Assoc. While Mr. Swicker is certainly an expert in bankruptcy and insolvency work, Squar Milner is a much larger firm with accountants who are trained in the more complex issues of real property as well as in bankruptcy. Since Mr. Winnett is familiar with this case, it would be a benefit if he would continue to serve as the point person, using bankruptcy specialists as needed. However, it is not certain what is happening here. It would be a benefit if he were to be available by phone for the hearing to clarify matters. Also, it seems that the hourly rate at Squar Milner may be substantially higher than what Mr. Winnett charged at his prior firm. That needs to be addressed.

In short, while the Court does not want to require the Trustee to hire a particular tax accountant, it appears that he would have hired Mr. Winnett had there been a certain level of communication.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By

Andrew Goodman

Yi S Kim

Robert M Scholnick

James R Felton

Faye C Rasch

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Faye C Rasch
Lisa Nelson
Michael G Spector

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

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#6.00 Motion of John P. Reitman, Chapter 11 Trustee, for Entry of an Order Authorizing Sale of Real Properties Located at 910 Corbett Avenue, Units 1, 2, and 3, San Francisco, California Free and Clear of Liens, Claims and Interests

Docket 1397

Tentative Ruling:

The estate owns three condominiums in San Francisco at 910 Corbett Ave (units 1, 2, and 3). The three properties are encumbered by a first trust deed in favor of Pacific Merchantile Bank (PMAR Allowed Corbett Secured Claim) with a principal balance of \$1,163,406.65 plus interest and attorneys' fees and other expenses. This will be paid through escrow. Further, Barton Litt has a judgment lien of \$1,104,503.57 plus interest at the federal judgment interest rate. If the settlement agreement with Litt is approved, this will be reduced to \$340,000. The Trustee requests that the money needed to pay the Litt lien be segregated until there is a final order on the Litt Settlement Motion. There are unpaid real estate taxes of \$16,507.88. These are to be paid through escrow. Real estate taxes for the current year will be prorated and paid.

The properties have been listed and extensively advertised since February 2018. This has been marketed as separate units and as a whole building. But it was determined that it would be best to sell it as a whole building, so starting on 4/9/18, it was marketed as a whole building.

No offers were received on individual units, but on 4/3 the Trustee agreed to an offer of \$3 million from Kul Wadwha, et al, to purchase all three units. These stalking horse bidders have made the deposit, escrow is open, and all purchaser contingencies have been satisfied or waived. Marketing has continued to attract over-bidders.

A bidding procedure is set forth in the motion.

The sale will be free and clear of all liens. Commission of up to 5% of the final purchase price will be paid from escrow, as will seller's customary costs of sale.

The Trustee requests a good faith finding under §363(m) and a waiver of the 6004(h) stay.

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Opposition by Wood LLP

Wood LLP opposes all of the Trustee's sale motions. Wood LLP is the largest unsecured creditor in the estate, holding 2 undisputed claims totaling \$181,864.01. Wood LLP also hold an administrative claim of \$105,333.75.

The motions to sell do not include a tax analysis of each sale or a liquidation analysis to determine the remaining cash to the estate to be distributed to each class of creditors. Wood LLP requests disclosures of all expenses including trustee fees, attorney fees, costs of sale, loan amounts, state and federal taxes, UST fees, and if these sales will trigger alternative minimum taxes.

Wood LLP also requests that the Trustee clarify whether the estate's 2016 and 2017 tax returns have been filed. The Trustee should disclose the current basis for each property, what the depreciation recapture is for each property, and how the net operating losses of 12/31/15 were applied in any of the 2016/17 real property sales. Also how much of the NOL is left to apply to these sales. Without this information, it is impossible to determine whether these sales are in the best interest of the estate.

[Wood LLP also opposes the Litt settlement.]

Opposition by Shirley McClure

Ms. McClure makes extensive comments on the motion. I have read them in detail, but am briefly summarizing them here.

(1) The 11/17 appraised value totals \$3.9 million, which is \$900,000 more than the current offer. The Trustee will not give the Debtor his appraisal from Baycity Appraisals done in 9/17.

(2) The Trustee says that the lower price is due to the need to sell the whole building, but he could have done what is needed to separate the units. He was appointed in 7/16.

(3) The Trustee could have created more interest by finding a lender for prospective purchasers of individual units within the building owned by a single person. Also there is only one water meter and is would cost \$10,000+ to install separate water meters or sub-meters, if that could even be done physically.

(4) The Trustee has not dealt with the negative tax implications of selling this building.

(5) The Trustee used the wrong broker to market this building and it

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was listed in the wrong places.

(6) A different shortened process would entice a §1031 buyer.

(7) This was never listed as a multi-family property.

(8) The Trustee did not have the property properly cleaned, looking well-maintained, and staged for viewing.

(9) The motion does not comply with LBR 6004-1(H) and (I) - it does not reveal the net price that the estate will receive and the tax implications. [This is set forth above in more detail in the summary of the Wood Inc. objection.]

(10) The MORs are not accurate.

(11) There is no time to get another broker because of the stipulation with PMB.

(12) Litt should not be paid until McClure's claims against him are fully litigated. She requests an evidentiary hearing before any funds are released to him.

(13) The 14 day rule should not be waived so that the Debtor can request a stay pending appeal.

Opposition by Litt Entities

Although on appeal, at the present time Litt's lien is limited to the Corbett Properties. It is not clear that there is enough entity in those units to pay the Litt lien in full (if the settlement between the Trustee and Litt is not approved). Because of this, the Court lacks jurisdiction to move the Litt lien to the sale proceeds. If the settlement is not approved, the Court should order the Trustee to pay the full Litt judgment. As to the sale of Harrington and Dalmation, if Litt prevails on his appeals, the Court may be required to return to Litt the sale proceeds for those properties.

There is no cause to waive the 14-day stay. There is enough time before the June 30 deadline. Litt will seek a stay pending appeal.

Trustee additional declarations

In response to the objections, on 6/4 the Trustee filed a series of declarations. Four are from the group of proposed purchasers to show that they qualify for §363(m) status. Heather Stoltz, the real estate agent, filed a supplemental declaration.

Ms. Stoltz declares that the \$3.9 million value does not reflect the current market. She attaches a list of recent sales to show that the only ones

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which sold for more than \$3 million are located in Pacific Heights and Presidio Heights, which are among the most exclusive and expensive neighborhoods in San Francisco. Further, the buyers will have to deal with deferred maintenance, evicting the remaining tenant, and properly setting up an HOA. The deferred maintenance will run in the tens of thousands of dollars. Before the building was marketed, the units were professionally cleaned and all smoke and carbon monoxide detectors were in working order.

Because Ms. Stoltz's family has owned/been involved in construction of large apartment buildings and hundreds of homes in San Francisco, she has many years of working knowledge from before she became a realtor. She has had many years of experience working for lenders in the listing and sale of distressed properties. She has also had broad experience in the sale of multi-unit buildings.

Each of the Corbett units has a separate APN and although they will be sold together, each must have its own escrow and close separately. Because they do not share a single APN, they are not eligible to be listed on the multi-family properties services.

As to finding lenders who would finance sales of the units separately, Ms. Stoltz did find multiple lenders and provide that information to potential buyers at the open houses and broker tours. The Stalking Horse Purchaser is using one of those lenders. No offers were received to purchase any of the units individually.

Individual water meters are not required. She has closed multiple condominium sales with single water meters. In those cases, the water charges are paid as part of the HOA dues.

In the past 2 weeks, she has had 3 inquiries on the Corbett Properties as the whole building buy. One indicated that he would not pay over \$2.8 million. The others were from brokers - one of which had a §1031 exchange buyer, who instead entered into an agreement to purchase a difference property.

Proposed Ruling

I am concerned about the discrepancy between the most recent appraisal and the lack of offers on the separate units. Briefly, it appears that Corbett can bring much more money as individual units rather than as a single unit. This is always how it has been appraised. Over the years, it has been increasing in value (see McClure opposition at dkt. 1433, p. 3 for a table

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of appraised values). The real estate market is continuing to rise. However, appraisals are only that. The real test of the market is what someone will pay. And it appears that right now people are not interested in offering on the individual units in this building.

The supplemental declaration of Ms. Stoltz provides sufficient evidence as to the marketing efforts as a single building. She also has shown that she has sufficient knowledge and experience to market this correctly. Apparently the price is in line with other properties in similar neighborhoods.

However, given the total sales price of \$3 million, the Trustee has not shown that it would be more beneficial to the estate to ignore the PMB stipulation and either do extensive marketing as a single income multi-unit income property or undertake the renovation needed to market each unit separately. It also is questionable whether the building would bring more money if there were no deadline. A bankruptcy sale does tend to lower the sales price and one with a looming deadline would seem to lower it even more.

The PMB settlement will save the estate an estimated \$800,000 (since interest is continuing to accrue after Nov. 2017). So it is a close call whether it is better to let the settlement slide, pay off part of the PMB loan through the sales of Dalmation and Harrington and thus reduce future interest accrual, or approve the Corbett sale for what seems to be a lower price than if the units are sold separately or the property is remarketed in another fashion.

As to fixing up the building and individual units, that would depend on how the building is being marketed.

It must also be remembered, that at least two of the units are vacant and bringing in no rent.

As to the 14 day stay - It is clear that there will be one or more requests for a stay pending appeal and this must be considered. If the matter is immediately ruled on, there is no need to waive the 14-day stay since there is sufficient time before June 30. If I need to delay the decision, I can continue the motion only if PMB extends its deadline. Otherwise I can deny the motion.

This group of stalking horse buyers qualifies under §363(m).

As to payment to Litt - I would hold enough in the various escrow accounts to pay him in full until I determine the settlement agreement between him and the Trustee. Once that is determined, there will need to be a motion to release the funds (in the amount of my ruling) and that will give

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McClure time to file an appeal and seek a stay on the ruling to release the funds.

Covering all three motions to sell - I agree with Wood Inc and McClure that there are missing facts which will go to the bottom line here. We can discuss what important matters need to be estimated and resolved.

However, having said this, it appears to be critical to continue selling these properties whether for purposes of the PMB stipulation or just to move this case forward. This is an estate that needs to have its assets liquidated to pay taxes, liens, etc. There simply is not enough profit from the rental business to do so.

Thus, the issues of taxes needs to be clarified. Is it the position of Wood LLC and McClure that the Trustee should simply abandon these properties and close the estate? What would be the effect of that? What is the strategy that they are seeking?

Without a realistic strategy other than liquidation, the only issue is the sale price and timing of these sales.

Party Information

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Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, June 05, 2018

Hearing Room 303

10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#7.00 Motion of John P. Reitman, Chapter 11 Trustee, for Entry of an Order Authorizing Sale of Real Property Located at 218 N. Harrington Drive, Fullerton, California Free and Clear of Liens, Claims and Interests

Docket 1400

Tentative Ruling:

The estate seeks to sell a single family residence at 218 N. Harrington Dr., Fullerton, which is encumbered by a first trust deed in favor of Pacific Merchantile Bank with a principal balance of \$218,832.65 plus interest and attorneys' fees and other expenses. This will be paid through escrow. There are unpaid real estate taxes of \$6,292.35. These are to be paid through escrow.

The property has been listed and extensively advertised since February 2018. The tenant is Joshua McClure and there was some difficulty with setting up appointments to show the interior of the house. The Trustee entered into an agreement with Mr. McClure in which the Trustee paid him \$12,500 to vacate the property, which he did on 4/22.

Eleven offers were initially received and eight followed through with their highest and best offers. The Trustee has accepted the offer of Max and Nicole Well to purchase the house for \$597,000 subject to overbid and approval by the Court. The Wells have paid a deposit of \$17,910, escrow has been opened, and all purchaser contingencies have been satisfied or waived. Marketing has continued to attract over-bidders.

A bidding procedure is set forth in the motion.

The sale will be free and clear of all liens. Commission of up to 5% of the final purchase price will be paid from escrow, as will seller's customary costs of sale.

The Trustee requests a good faith finding under §363(m) and a waiver of the 6004(h) stay.

Opposition by Wood LLP

Wood LLP opposes all of the Trustee's sale motions. Wood LLP is the largest unsecured creditor in the estate, holding 2 undisputed claims totaling

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Hearing Room 303

10:00 AM

CONT... Shirley Foose McClure

Chapter 11

\$181,864.01. Wood LLP also hold an administrative claim of \$105,333.75.

The motions to sell do not include a tax analysis of each sale or a liquidation analysis to determine the remaining cash to the estate to be distributed to each class of creditors. Wood LLP requests disclosures of all expenses including trustee fees, attorney fees, costs of sale, loan amounts, state and federal taxes, UST fees, and if these sales will trigger alternative minimum taxes.

Wood LLP also requests that the Trustee clarify whether the estate's 2016 and 2017 tax returns have been filed. The Trustee should disclose the current basis for each property, what the depreciation recapture is for each property, and how the net operating losses of 12/31/15 were applied in any of the 2016/17 real property sales. Also how much of the NOL is left to apply to these sales. Without this information, it is impossible to determine whether these sales are in the best interest of the estate.

[Wood LLP also opposes the Litt settlement.]

No opposition has been received from Ms. McClure as of June 4 at 11:00 a.m.

The buyers filed declarations and qualify under §363(m).

Proposed Ruling

Wood does not specifically oppose this sale, but opposes all sales as to whether they are in the best interest of the estate due to the taxes that must be paid. See the proposed ruling on Corbett.

However, this does not have the same issues as the Corbett sale. No one is objecting to the price, which is subject to overbid. Unless I find that none of these properties should be sold at this time and the PMB settlement should lapse, I will approve this sale subject to overbid.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick

**United States Bankruptcy Court
Central District of California
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10:00 AM

CONT... Shirley Foose McClure

Chapter 11

James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, June 05, 2018

Hearing Room 303

10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#8.00 Motion of John P. Reitman, Chapter 11 Trustee, For Entry of an Order Authorizing Sale Of Real Property Located At 13621 Dalmatian Ave., La Mirada, California Free and Clear of Liens, Claims and Interests

Docket 1404

Tentative Ruling:

The estate seeks to sell a single family residence at 13621 Dalmatian Ave., La Mirada, which is encumbered by a first trust deed in favor of Pacific Merchantile Bank with a principal balance of \$219,887.69 plus interest and attorneys' fees and other expenses. Weintraub & Selth hold a junior trust deed for \$75,000 on which \$51,525.27 is still owing. These trust deeds will be paid through escrow. There are unpaid real estate taxes of \$6,594.72. These are to be paid through escrow.

The property has been listed and extensively advertised since February 2018. Initially only one offer was received and, after negotiation, the Trustee accepted it, but then the proposed buyer cancelled the agreement. After that the Trustee negotiated a new agreement with an new proposed buyer, which is Adan Dadon. The purchase price the house for \$580,000 subject to overbid and approval by the Court. The proposed buyer has paid a deposit of \$17,400, escrow has been opened, and all purchaser contingencies have been satisfied or waived. Marketing has continued to attract over-bidders.

A bidding procedure is set forth in the motion.

The sale will be free and clear of all liens. Commission of up to 5% of the final purchase price will be paid from escrow, as will seller's customary costs of sale.

The Trustee requests a good faith finding under §363(m) and a waiver of the 6004(h) stay.

Opposition by Wood LLP

Wood LLP opposes all of the Trustee's sale motions. Wood LLP is the largest unsecured creditor in the estate, holding 2 undisputed claims totaling \$181,864.01. Wood LLP also hold an administrative claim of \$105,333.75.

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Central District of California
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Tuesday, June 05, 2018

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10:00 AM

CONT... Shirley Foose McClure

Chapter 11

The motions to sell do not include a tax analysis of each sale or a liquidation analysis to determine the remaining cash to the estate to be distributed to each class of creditors. Wood LLP requests disclosures of all expenses including trustee fees, attorney fees, costs of sale, loan amounts, state and federal taxes, UST fees, and if these sales will trigger alternative minimum taxes.

Wood LLP also requests that the Trustee clarify whether the estate's 2016 and 2017 tax returns have been filed. The Trustee should disclose the current basis for each property, what the depreciation recapture is for each property, and how the net operating losses of 12/31/15 were applied in any of the 2016/17 real property sales. Also how much of the NOL is left to apply to these sales. Without this information, it is impossible to determine whether these sales are in the best interest of the estate.

[Wood LLP also opposes the Litt settlement.]

No opposition has been received from Ms. McClure as of June 4 at 11:00 a.m.

The buyer filed a declaration and qualifies under §363(m).

Proposed Ruling

Wood does not specifically oppose this sale, but opposes all sales as to whether they are in the best interest of the estate due to the taxes that must be paid. See the proposed ruling on Corbett.

However, this does not have the same issues as the Corbett sale. No one is objecting to the price, which is subject to overbid. Unless I find that none of these properties should be sold at this time and the PMB settlement should lapse, I will approve this sale subject to overbid.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, June 05, 2018

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10:00 AM

CONT... Shirley Foose McClure

Chapter 11

Faye C Rasch
Lisa Nelson
Michael G Spector

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, June 05, 2018

Hearing Room 303

10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#9.00 Status Conference re: Ch 11 Case

fr. 1/24/2013, 4/30/13, 5/14/13, 7/23/13, 8/6/13,
9/17/13, 9/24/13, 11/19/13, 12/17/13, 1/21/14, 2/18/14,
3/11/14, 4/15/14, 5/6/14, 6/24/14, 9/9/14, 9/23/14,
10/7/14, 11/24/14, 1/6/15, 1/20/15, 2/10/15, 3/10/15,
4/28/15; 5/12/15; 9/29/15, 10/22/15, 12/8/15, 3/1/16,
6/7/16, 7/12/16, 8/16/16, 10/11/16; 12/20/16, 4/4/17,
5/16/17; 6/27/17, 7/11/17, 9/19/17, 11/14/17, 11/28/17,
12/19/17, 1/9/18, 3/19/18, 3/27/18, 5/1/18

Docket 1

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Elaine Nguyen

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, June 05, 2018

Hearing Room 303

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

#10.00 Motion for relief from stay

FIELDBROOK INC

Docket 594

Tentative Ruling:

Elkwood Assoc. and Fieldbrook, Inc. - the defendants in *Gottlieb v. Elkwood, et al* (1:17-ap-01040) - seek to execute and record a correcting Assignment, stating that Elkwood only assigned the Chalette DOT \$5.8 million of the PWB Note to Fieldbrook, with the balance to be secured by the Rexford DOT that was not assigned. The Movants assert that the automatic stay does not preclude this since Massoud's interest in the Rexford Home was foreclosed on 2/23/2015. Although the Trustee argues that the foreclosure sale was void as a matter of law, that does not make the Rexford Home property of Massoud's estate. Even if the estate does have an interest, that does not prevent Elkwood and Fieldbrook from recording a correcting Assignment because the correction concerns a matter between them.

A correcting Assignment would relate back to the original Assignment, even if the original Assignment was void. *Melgar v. Deutsche Bank Nat'l Tr. Co.*, 2016 WL 6677866 (Cal. Ct. App. Aug. 17, 2016).

Similarly, the Trustee's Deed can be reformed at a later date.

The Rexford Home is owned by Elkwood, per the recorded deed. The mere assertion that the Trustee is entitled to judgment does not make the Rexford Home property of the estate.

Cal. Civ. Code §3399 allows a written contract to be revised on application of the party aggrieved by the fraud or mutual mistake in the document, so as to express the intention. This is allowed so far as it can be done without prejudice to rights acquired by third persons, in good faith and for value.

Here the parties to the assignment agree to the reformation. There are many cases which allow voluntary reformation, such as *Melgar*. And it does not require a reformation action in court to reform a corrective trust deed either before the property is transferred or on a trustee's deed on sale. *Selby v. Burtch*, 193 Cal.App.3d 147 (1987) (subsequently ordered not to be

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CONT... Solyman Yashouafar

Chapter 11

officially published); *Coppage v. WMC Mortg.*, 2017 WL 1488759, at *2 (Cal.Ct.App. Apr. 26, 2017). Grant deeds and quitclaim deeds can also be corrected [numerous cases cited].

As to reformation post-petition, the debtor was not a party to the Assignment, so the automatic stay does not apply. All of the cases previously cited by the Trustee do not apply since in all of them the document was signed by the debtor.

Elkwood has record title to the Rexford Property. Merely asserting that the Trustee is entitled to a judgment that voids the foreclosure sale does not make Rexford property of the estate. And recording a correcting Assignment will not prejudice the Trustee's First Claim for Relief to quiet title. That claim is based on a "gotcha" theory that Elkwood and Fieldbrook are bound by a mistake in the original assignment. But that mistake is just a mistake and does not reflect the intention of the parties. The correcting Assignment would just eliminate the "gotcha" argument.

Even if the estate does have an interest, §544(a)(3) allows a remedy of reformation. The motion then goes on to discuss the rights under California law of Elkwood to split the note and the timing of the various actions taken by the parties.

Opposition

As a matter of law, the three year statute of limitations to reform the Assignment based on a "purported mistake" has already run because more than three years have passed since the Assignment was executed (2/18/15). Cal. Code Civ. Proc. §338(d). Thus, the Trustee has a complete defense in the adversary proceeding to the proposed assignment. Since the voluntary reformation would affect the Trustee, he must be a party to it and such a lawsuit is now time-barred.

Also, because of the Trustee's powers under §544(a)(3) as a hypothetical bona fide purchaser of the Rexford Home from Massoud as of the petition date, reformation would be prejudicial to his rights as a third party, in good faith, and for value. Cal Civ. Code §3399.

Reply

The three-year statute of limitations does not apply because this reformation is being done by cooperating parties. Further, a correcting instrument can be created even after a reformation claim might be barred by

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CONT... Solyman Yashouafar

Chapter 11

the three-year statute of limitations.

The mistake in the wording was not discovered until April 2017 and that is when the statute of limitations would begin to run.

If the Trustee must be named in a reformation action, the automatic stay tolls the statute of limitations.

The cases relied on by the Trustee as to reformation under §544(a)(3) all involve the debtor as a party to the instrument being reformed. Massoud was not a party to the assignment.

As to splitting the PWB note, that would not occur now, but it actually occurred in February 2015, prior to the foreclosure sales - though the assignment was incorrectly drafted. Splitting the note was allowed by the Debtors' Business Loan Agreement with PWB and there was no prejudice to the debtors because Elkwood could have accomplished the same result through its credit bid of a portion of the note on Chalette and then the balance on Rexford.

The Trustee was not a hypothetical BFP due to construction notice of Elkwood's interest in Rexford. Thus the cases that the Trustee relies on are not on point.

Elkwood, not Massoud, owns Elkwood as set forth in the recorded trustee's deed.

Proposed Ruling

The estate is clearly a party-in-interest. Allowing a "correcting Assignment" would strongly impact the Trustee's case in the adversary proceeding. If the sale of Rexford was improper, since the buyer is a BFP it has already been determined that the sale itself will not be voided, but that the seller will be liable for damages in at least the amount of money that it received. Under these circumstances, I do not at all agree that the estate has no interest. Thus, the automatic stay applies to any action that can hurt that interest.

Cutting through the process used, this is really a motion for summary judgment. Such a motion might be relevant at a later date after discovery and in the proper form. Effectively what the moving parties want the court to do is to determine that it is undisputed that the Fieldbrook Assignment was incorrect when drafted and that its terms do not reflect the intent of the parties to the assignment (Fieldbrook and Elkwood) - at that time. This is a question of fact and I am not ready to make that determination in this type of motion.

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10:00 AM

CONT...

Solyman Yashouafar

Chapter 11

As to the statute of limitations, it will have run from the time that the aggrieved party became aware of the error (if the court were to find that the Fieldbrook Assignment was in error). This seems to be no earlier than April 2017. But if the movants are concerned about time slipping away, I can grant a stay of some sort - just in case I am wrong about the automatic stay. But I doubt that this is necessary. The outcome of the adversary proceeding will determine the rights of the parties. If the defendants prevail, there will be no need to reform the Fieldbrook Assignment or - if they wish - there will be no barrier to recording a correcting assignment.

This is a motion seeking to confirm that there is no automatic stay and if there is for relief from the automatic stay. It is not a determination of whether the correcting Assignment should be recorded. The automatic stay prevents the recording of a "correcting Assignment." The motion does not meet the requirements for relief from the automatic stay as set forth in §362 (d).

Deny the motion.

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Movant(s):

Elkwood Associates, LLC

Represented By
Daniel J McCarthy

Fieldbrook, Inc.

Represented By
Daniel J McCarthy

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, June 05, 2018

Hearing Room 303

10:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#11.00 Request for Clarification of "Order Granting in Part and Denying in Part the Motion for New Trial;" Request for Permission to Add One Additional Doctor to Trial Witness List; and Response to Portion of Order Re Legality of Referring to Debtor as "Dr" Neff

Docket 418

Tentative Ruling:

On 6/1 I entered the following order, which was emailed to the parties:

*On June 1, 2018, Douglas DeNoce filed a Request for Clarification of the Order Granting in Part and Denying in Part the Motion for New Trial." As to his request to add Dr. Hersel to his witness list, unless Mr. Kwasigroch appears by phone or in person at the above hearing, the Court will grant that request for the reasons stated in the moving papers.
The issue of the title to be used for Ronald Neff will be determined at a later date.*

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Movant(s):

Douglas Denoce

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, June 05, 2018

Hearing Room 303

10:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#12.00 Status Conference re: Trial

Docket 0

Tentative Ruling:

Per my order entered on May 25, by June 4, Mr. Kwasigroch was to notify Mr. DeNoce as to any of the specified dates that he or Dr. Neff would not be available for trial and the reason for unavailability. Has to happened? What are the remaining useable dates? Are there at least 5 that are not all in contiguous weeks?

The next status conference will be on June 19 at 10:00 a.m. By June 15, DeNoce is to advise Kwasigroch and the Court of the possible trial dates and identify the doctor(s) he will be calling. At the hearing on June 19, Kwasigroch is to identify to DeNoce and the Court which doctor(s), if any, he may call for purposes of rebuttal. At that hearing the Court will determine whether the various doctors are being called a expert witnesses or percipient witnesses.

DeNoce and Kwasigroch are invited to attend these hearing by phone or in person.

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, June 19, 2018

Hearing Room 303

10:00 AM

1:06-12243 Edwin Perry Hinds

Chapter 7

#1.00 Status of Chapter 7 Case

fr. 8/29/17, 1/23/18

Docket 0

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Per the status report filed on 3/13/18, a claim has been submitted to the California State Bar Client Fund in an attempt to collect the \$100,000 from Mr. Isaacson. A current address for him has been found and he has been filed with a copy of the prior status reports.

Mr. Isaacson is being represented by Brian McMahon and there are ongoing settlement conferences. A settlement was reached in February 2018 and there will be a 9019 motion filed. At the State Bar, the claim is still under submission.

On June 12, 2018 the Trustee filed a further status report. Discussions with Mr. Isaacson have reached an impasse and there is no settlement likely. Mr. Isaacson is disputing the Trustee's claim in the Client Security Fund.

I will continue this without appearance to September 18, 2018 at 10:00 a.m.

prior tentative ruling (1/23/18)

On November 28, 2017, counsel for the Trustee filed a status report. The only update was that he believes that he located a current address for Mr. Isaacson. Then in late December, the Court received a copy of a letter addressed to the State Bar Client Security Fund Commission and sent by the Law Offices of Brian D. McMahon, attorney for Mr. Isaacson. While it requests that I recuse myself, at this point I have no part of these proceedings.

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Tuesday, June 19, 2018

Hearing Room 303

10:00 AM

CONT... Edwin Perry Hinds

Chapter 7

Continue this status conference without appearance to June 19, 2018 at 10:00 a.m.

prior tentative ruling (8/29/17)

This Chapter 7 case was filed on November 29, 2006. Debtor was discharged on October 24, 2012. On May 15, 2017, an Order was entered granting application to employ Brutzkus Gubner as Trustee's General Counsel effective March 31, 2017. Thereafter, on July 31, 2017, an Order Setting Status Conference Hearing was entered.

On August 10, 2017, Trustee filed a Unilateral Status Report. According to Trustee, Lon B. Isaacson (the "Isaacson Creditors") had obtained a judgment over an attorneys' fees dispute with Debtor pre-petition. The judgment was for \$107,969.16 plus interest. Thereafter, the Isaacson Creditors filed an adversary proceeding in this case. The parties reached a settlement and the Court set a hearing on the settlement. At the hearing, the Court determined that the Debtor would pay the \$100,000 settlement to the estate instead of directly to the Isaacson Creditors. Also, the Court entered an Order directing the Isaacson Creditors to turn over \$100,000 to the Trustee. The Isaacson Creditors failed to comply and thereafter, most recently, the Trustee learned that Lon Isaacson had begun to misappropriate client funds from his trust accounts. He was formally disbarred in May 2013. Trustee has been attempting to reach Mr. Isaacson but has not been successful. Trustee's counsel advised Trustee that it may be most cost efficient to attempt to collect the \$100,000 by submitting a claim to the California State Bar Client Fund. Trustee believes the case should remain open for approximately 90 to 180 days pending a response from the State Bar Client Fund.

This matter is now off calendar. No appearance is required and no hearing will be held. In the future, please file a status report every 90-180 days.

Party Information

Debtor(s):

Edwin Perry Hinds

Represented By

Jonathan R Ellowitz - DISBARRED -

Trustee(s):

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, June 19, 2018

Hearing Room 303

10:00 AM

CONT... Edwin Perry Hinds

Chapter 7

David R Hagen (TR)

Represented By
David Seror

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, June 19, 2018

Hearing Room 303

10:00 AM

1:07-13259 Home Savings Mortgage

Chapter 7

#2.00 Status of Chapter 7 Case

fr. 8/29/17, 1/23/18

Docket 0

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Off calendar. This case is closed.

Party Information

Debtor(s):

Home Savings Mortgage

Represented By
David S Hagen
Annie Verdries

Trustee(s):

David R Hagen (TR)

Represented By
Frank X Ruggier
Walter K Oetzell

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, June 19, 2018

Hearing Room 303

10:00 AM

1:09-19088 Tariq Kahn Afridi and Elizabeth Rose Afridi

Chapter 7

#3.00 Status Conference Hearing

fr. 8/29/17, 1/23/18

Docket 30

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Per the status report filed on 5/31/18, the estate is continuing to receive period payments from the Circuit City bankruptcy case. Continue without appearance to Dec. 18, 2018 at 10:00 a.m.

prior tentative ruling (1/23/18)

Per the status report filed on 12/27/17, the Trustee is receiving payments from the Circuit City bankruptcy estate and he does not know when these will cease. Continue without appearance to June 19, 2018 at 10:00 a.m.

Party Information

Debtor(s):

Tariq Kahn Afridi

Represented By
John D Monte

Joint Debtor(s):

Elizabeth Rose Afridi

Represented By
John D Monte

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Brad D Krasnoff (TR)

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, June 19, 2018

Hearing Room 303

10:00 AM

1:09-25922 Adam Cohen and Judith Cohen

Chapter 7

#4.00 Status Conference Hearing

fr. 8/29/17, 1/23/18

Docket 56

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Per the status report filed on 5/31/18, the Debtors have now completed their payment obligations under the amended agreement. The Trustee is moving this case toward closure. Continue without appearance to 12/18/18 at 10:00 a.m. so that the case can be finalized.

prior tentative ruling (1/23/18)

Per the status report, payments are still being received and the final one should be in about 5 months. Continue without appearance to 6/19/18 at 10:00 a.m.

Party Information

Debtor(s):

Adam Cohen

Represented By
Asher A Levin

Joint Debtor(s):

Judith Cohen

Represented By
Asher A Levin

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Scott Lee
Amy L Goldman
Michael T Delaney
Amy L Goldman

**United States Bankruptcy Court
Central District of California
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Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, June 19, 2018

Hearing Room 303

10:00 AM

CONT... Adam Cohen and Judith Cohen

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, June 19, 2018

Hearing Room 303

10:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#5.00 Status Conference to finalize continued trial date

Docket 0

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Per my Order, by June 15, DeNoce is to advise Kwasigroch and the Court of the possible trial dates and identify the doctor(s) he will be calling. This was filed on 6/14 and identifies August 27 as the trial date. At the hearing on June 19, Kwasigroch is to identify to DeNoce and the Court which doctor(s), if any, he may call for purposes of rebuttal. At that hearing the Court will determine whether the various doctors are being called as expert witnesses or percipient witnesses.

DeNoce and Kwasigroch are invited to attend these hearing by phone or in person.

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, June 19, 2018

Hearing Room 303

10:00 AM

1:16-11538 Majestic Air, Inc.

Chapter 11

#6.00 Status and Case Management Conference

fr. 8/4/16(xfr from Judge Tighe's calendar); 8/30/16,
9/27/16; 10/25/16; 11/15/16, 2/21/17, 5/16/17; 6/27/17,
8/29/17, 1/23/18

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Per the status report filed on 6/5, on 5/30/18 the California Court of Appeal affirmed the decision of the Superior Court in the Ansett Aircraft v. Cue appeal, but remanded the case for further proceedings.

Continue without appearance to Sept. 18, 2018 at 10:00 a.m. so that the Ansett claim can be finalized.

prior tentative ruling (1/23/18)

There is a state court appeal pending. Continue without appearance to June 19, 2018 at 10:00 a.m.

prior tentative ruling (2/21/17)

Per the status report filed on 2/7/17, the LTP parts have been sold and Debtor has moved to its new, less expensive, location. The appeal with the California Court of Appeal as to LTP is continuing. The Debtor expects to file a disclosure statement within the next 60 days.

The Debtor filed a month-by-month comparison of actual revenue and expenses and budgeted revenue and expenses for November, December, and January. They show a slight net profit of \$1,500-\$2,200 per month.

If there is no objection, I will continue this without appearance to May 16, 2017 at 10:00 a.m.

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Tuesday, June 19, 2018

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10:00 AM

CONT... Majestic Air, Inc.

Chapter 11

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

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Courtroom 303 Calendar**

Tuesday, June 26, 2018

Hearing Room 303

10:00 AM

1:10-15070 60th & K, LLC

Chapter 11

#1.00 Post Confirmation Status Conference

fr. 12/14/10, 3/8/10, 9/20/11, 12/13/11, 1/3/12, 4/10/12
7/3/12, 10/9/12, 1/15/13, 4/9/13, 7/9/13, 11/19/13, 2/4/14,
3/25/14, 4/22/14, 6/3/14, 9/2/14, 11/10/14, 2/10/15, 3/10/15,
4/14/15, 5/26/15, 7/21/15, 9/29/15, 11/17/15, 12/22/15,
2/9/16; 4/5/16; 6/21/16, 10/11/16; 12/20/16; 5/2/17, 9/12/17
1/23/18, 3/27/18

Docket 1

Tentative Ruling:

On 3/22, Mr. Aver filed a motion for final decree. There was no opposition. On 6/21 he lodged an order. This status conference will go off calendar without appearance.

prior tentative ruling (3/27/18)

Continue without appearance to June 26, 2018 at 10:00 a.m. It seems like it is time to seek either a final decree or just to close the case. Please file a status report at least a week before the 6/26 hearing to advise me as to what is happening.

prior tentative ruling (9/12/17):

Per the status report filed on 9/6, the Debtor is current under the Plan and the stipulation with LACTTC. Although the stream of payments has commenced, the Debtor thinks that it is too early to seek a final decree. Discharge occurs on substantial consummation. The payments to unsecured creditors will go for 12 years from the effective date (to 2028). Is there any reason to keep this case open for that long?

Please think about this. Continue the status conference without appearance to Jan. 23, 2018 at 10:00 a.m.

prior tentative ruling (5/2/17)

The Debtor and the LACTTC have reached a stipulation on the treatment of

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CONT... 60th & K, LLC

Chapter 11

the LACTTC claim that takes care of the additional amounts from the date of filing to the effective date. All payments under the plan appear to be current.

Continue without appearance to 9/12/17 at 10:00 a.m.

prior tentative ruling (12/20/16)

Per the status report filed 12/16, the Debtor is current under the plan.

Continue without appearance to 5/2/17 at 10:00 a.m.

prior tentative ruling (10/11/16)

Per the status report, the effective date of the Plan is 11/5/16. The Debtor has sufficient cash to comply with the Plan and pay its post-confirmation expenses.

Party Information

Debtor(s):

60th & K, LLC

Represented By
Raymond H Aver

Movant(s):

60th & K, LLC

Represented By
Raymond H Aver

**United States Bankruptcy Court
Central District of California
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Tuesday, June 26, 2018

Hearing Room 303

10:00 AM

1:15-12380 Lanker Partnership and First American Title Insurance

Chapter 11

#2.00 Scheduling and case management conference re
Chapter 11 Voluntary Petition

fr. 8/11/15, 12/15/15, 4/26/16; 4/27/16, 9/13/16(xfr
from Judge Barash calendar); 9/13/16; 10/25/16,
2/21/17; 5/2/17, 9/12/17, 11/14/17, 11/28/17, 12/19/17,
3/27/18; 5/29/18

Docket 1

Tentative Ruling:

Off calendar. The case was dismissed by order entered on 6/7/18.

Party Information

Debtor(s):

Lanker Partnership

Represented By
Charles Shamash
Joseph Caceres
Nedda Haeri
Stuart I Koenig

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Tuesday, June 26, 2018

Hearing Room 303

10:00 AM

1:09-23807 Shellie Melissa Halper

Chapter 7

#3.00 Motion RE: Objection to Claim Number 34
by Claimant Deborah Rahm WIZ Industries.

fr. 5/1/18, 6/5/18

Docket 238

Tentative Ruling:

As of June 24, Ms. Rahm has not filed anything with the court in compliance with my email which is included below. Unless she has provided Mr. Weiss with the documents described, the objection will be sustained and an order entered. The Court will prepare the order.

prior tentative ruling (6/5/18)

Continued without appearance to June 26, 2018 at 10:00 a.m. The parties have been advised by email as follows:

Mr. Weiss is correct that it is improper to include me on this chain of emails. From this point forward, all communications with me (the Court) must be in writing and filed with the clerk's office with a copy sent to Mr. Weiss and a courtesy copy mailed or delivered to my inbox at court..

Ms. Rahm should consult the tentative ruling (for 6/5 - which includes the one for 5/1 - and the new one that I will post shortly before the 6/26 hearing). This is done through the court webpage at www.cacb.uscourts.gov. On the upper right-hand corner click on the red box that says "judges." Then go down to "tentative rulings/posted calendars," select me on the left-hand tab that says "select judge" and you can review my tentative rulings for the calendars that have been posted at the time that you check. As noted, I will post my tentative rulings for 6/26 a few days before the hearing, but no later than the afternoon of 6/25.

If Ms. Rahm wants to place opposition to the motion to be considered, she must do so by filing her opposition (with evidence attached) by June 14. This is to be emailed and also mailed to Mr. Weiss - first class mail - on the same day that it is sent to or brought to the courthouse. The copy to be filed may not be sent to the Court by email. Mr. Weiss will have until June 18 to file and serve (by email and mail) a reply. Since I will not be in court on June 21 or June 22, these dates are critical to me having time to review the papers.

I look forward to reading what you file and to deciding this motion.

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10:00 AM

CONT... Shellie Melissa Halper

Chapter 7

prior tentative ruling (5/1/18)

The Trustee objects to the claim of WIZ Industries (claim #34). There is no evidence that it was a loan to the Debtor.

A \$105,000 loan was made on 11/29/07 from WIZ to The Mortgage Center Services. The Note was signed by Halper on behalf of The Mortgage Center Services. That same day Halper, on behalf of Paradise In Cortez, assigned the right to collect from sales escrow proceeds to WIZ Industries.

On 12/6/07 a second loan in the amount of \$157,500 was made from WIZ to The Mortgage Center Services. The Note was signed by Halper on behalf of The Mortgage Center Services. That same day Halper, on behalf of Paradise In Cortez, assigned the right to collect from sales escrow proceeds to WIZ Industries.

On 1/7/08 a third loan in the amount of \$105,000 was made from WIZ to The Mortgage Center Services. The Note was signed by Halper on behalf of The Mortgage Center Services. That same day Halper, on behalf of Paradise In Cortez, assigned the right to collect from sales escrow proceeds to WIZ Industries.

On 10/3/08 a fourth loan in the amount of \$242,650 was made from WIZ, but this time it was to Paradise In Cortez, LLC and Shellie Halper (individually). Halper is also named as a guarantor. The Note was signed by Halper on behalf of Paradise in Cortez, LLC, and also individually as "Personal guarantor." That same day Halper, on behalf of Paradise In Cortez, assigned the right to collect from sales escrow proceeds to WIZ Industries. These were proceeds of a different property than the prior assignments of escrow proceeds.

The objection is largely to the first three notes.

On May 22, Ms. Rahm sent a letter to me. In summary, she says that all of her retirement money "went towards an investment with the debtor, Ms. Shellie Melissa Halper, and her solely owned S Corporation, The Mortgage Center Services, and her solely owned LLC, Paradise in Cortez." She received the notice of the initial hearing after that date and when she received the notice of continued hearing she called Trustee's counsel and Trustee and neither would speak to her. She cannot afford an attorney. She wants to know why her notes are being objected to. She notes that she had personal

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CONT... Shellie Melissa Halper Chapter 7

guarantees on some of them. She also wants to know why the objections to claims of Jay Friedman and Solomon Cohen were withdrawn. She also does not understand what happened on 5/1 as to other claimants and she is confused by the docket entries.

I have had the letter docketed and have sent a copy by email to the Trustee's counsel - with a copy to Ms. Rahn - and asked counsel to contact her. Also I urged her to come to court on June 5 and to provide the Trustee's counsel with copies of the personal guarantees that she referred to and to bring copies to the hearing..

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

**United States Bankruptcy Court
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Tuesday, June 26, 2018

Hearing Room 303

10:00 AM

1:16-11387 Real Estate Short Sales Inc

Chapter 7

#4.00 Motion for relief from stay

BARCELONA TOWER INC

fr. 11/14/17, 2/13/18, 5/1/18

Docket 164

***** VACATED *** REASON: Order ent continuing hrg to 8/7/18 at 10:00 a.m. - jc**

Tentative Ruling:

Continued by stipulation to 8/7/18 at 10:00 a.m. The property is in escrow awaiting a ruling on a short sale by the senior lienholder.

prior tentative ruling (5/1/18)

This motion by the HOA was continued to 6/26. The servicing agent for Wells Fargo Bank filed a motion for relief from stay, that will be heard on 7/17/18. It asserts that it is owed \$815,000+, that it is not being paid its monthly payment of \$4,029.57 and that there are 85 payments in arrears. It states that the current market value is \$655,000.

prior tentative ruling (5/1/18)

Cueva failed to tender the \$62,250 by 2/13/18, She then turned over to the Trustee the Berendo Condo. On 3/8/18 the Trustee filed a motion to approve a revised compromise, which was granted by an order entered on 3/26/18. The Trustee is to market and sell the Berendo Condo. What is the status of the marketing attempt?

prior tentative ruling (2/13/18)

This was brought by the Homeowners' Assn as to the Berendo St. property. At the time that this was filed (Oct. 2017), there was a prepetition delinquency of \$57,000+ and a post-petition one of \$7,685.70. This was continued by stipulation.

Under the compromise between the Trustee and the Debtor, approved on 2/5/18, upon receipt of the settlement payment of \$62,250, the Estate

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10:00 AM

CONT... Real Estate Short Sales Inc

Chapter 7

releases all interest in this property. The payment was to be received by 2/13/18 or the Debtor and others are to fully cooperate with the Trustee's marketing and sale of the property.

Has the payment been received? If so, this is no longer property of the Estate and relief from stay will be granted. If not, the property is to be sold and the HOA will be paid off at that time.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Movant(s):

Barcelona Tower Inc

Represented By
Jill L Kim

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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Tuesday, June 26, 2018

Hearing Room 302

10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#5.00 First and Final Fee Application for Robert Scholnick and/or Grimm & Scholnick; Advisors and CPAs Inc

Fees: \$8423.00 Expenses: \$0.00

Docket 1436

Tentative Ruling:

Applicant is seeking fees for services provided to Ms. McClure as Special Real Estate Counsel and as Special Litigation Counsel in the Litt matters. The total amount sought is \$9,213 less the prior payments of \$790, leaving a balance owing of \$8,423.

The Trustee objects as this as premature in that no plan has been confirmed. It also does not comply with the UST guidelines. There is also an issue that the services were billed to Carrera Enterprises, Inc, which is an entity related to Ms. McClure, but is not the Estate. Beyond that, given the circumstances of the case, this application is premature. There may be insufficient money to pay professional and administrative creditors in full.

Proposed ruling

It would be beneficial to begin liquidating administrative claims - though not paying them. I assume that at the end of the case, the Trustee will be negotiating with the various administrative creditors to reduce fees, etc. However, this is a small amount when compared to the costs that are being incurred by other professionals and so it may not be worth negotiating with it.

As to who was the client, I would like to straighten that out. Although the billings might be to another entity, Scholnick was employed by the Court as counsel to the estate. So I don't really think there is an issue. Does the Trustee want to pursue it?

Does the Trustee wish me to continue this for a short while so that he can review the amounts? If not, I will approve the amounts as requested, but no payment is to occur without further order of the Court.

If you submit on this tentative ruling, no appearance is necessary. If you choose to appear and the final ruling is in conformance with the tentative ruling, no additional fees will be

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CONT... Shirley Foose McClure Chapter 11

allowed for this appearance. If the trustee's firm is representing the trustee, no attorney's fees will be allowed for an appearance on this matter, as the trustee would be expected to be present as part of the trustee's duties.

THE TRUSTEE/DEBTOR IN POSSESSION IS TO NOTIFY ALL PROFESSIONALS OF THIS TENTATIVE RULING.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

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10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#6.00 Status Conference re: Ch 11 Case

fr. 1/24/2013, 4/30/13, 5/14/13, 7/23/13, 8/6/13,
9/17/13, 9/24/13, 11/19/13, 12/17/13, 1/21/14, 2/18/14,
3/11/14, 4/15/14, 5/6/14, 6/24/14, 9/9/14, 9/23/14,
10/7/14, 11/24/14, 1/6/15, 1/20/15, 2/10/15, 3/10/15,
4/28/15; 5/12/15; 9/29/15, 10/22/15, 12/8/15, 3/1/16,
6/7/16, 7/12/16, 8/16/16, 10/11/16; 12/20/16, 4/4/17,
5/16/17; 6/27/17, 7/11/17, 9/19/17, 11/14/17, 11/28/17,
12/19/17, 1/9/18, 3/19/18, 3/27/18, 5/1/18, 6/5/18

Docket 1

Tentative Ruling:

Thank you for the extensive and detailed status report. In the future, you need only update what has happened unless you feel that it is necessary to incorporate all of this history.

I am most concerned about the status of paying off PMB, the closing of the escrows for the properties sold, and whether the settlement will be able to be enforced.

I also would like to know the status of the settlement negotiations with Tidus.

I have reviewed the responses of Ms. McClure, Mr. Litt, and the Trustee to my surplus calculation. I do not understand the attachment from the Trustee. Nothing is taken out of Corbett for the PMB attorney's fees and the amounts noted for Dalmation, Harrington, and Maui do not match the figures in the Order approving the settlement (dkt. 1304). Presumably the unallocated amount of \$162,766 is for the Corbett fees. How was this figure arrived at?

Does the estimated loan balance include full default interest and then some is credited back as an estimated reduction? Why is the Weintraub lien balance being held?

Party Information

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CONT... Shirley Foose McClure

Chapter 11

Debtor(s):

Shirley Foose McClure

Represented By

Andrew Goodman

Yi S Kim

Robert M Scholnick

James R Felton

Faye C Rasch

Faye C Rasch

Elaine Nguyen

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Tuesday, June 26, 2018

Hearing Room 303

10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#7.00 Motion Of Law Offices Of Raymond H. Aver, a Professional Corporation, to Withdraw as Attorneys for Defendants Glen E. Pyle and Glen E. Pyle Irrevocable Trust

Docket 206

Tentative Ruling:

Raymond Aver, attorney for Defendants Glen E. Pyle and the Glen E. Pyle Irrevocable Trust, seeks to withdraw as counsel for both entities. The reason stated is "[d]ue to matters covered by the attorney-client privilege, the relationship between the Pyle Defendants and the Aver Firm has suffered an irreparable, permanent breakdown." He states that he has taken all reasonable steps to avoid foreseeable prejudice to these defendants. Basically, Pyle is not returning his calls or responding to emails.

Mr. Berry objects in that no reason is stated and there will be harm since (1) this is close to trial and (2) the Trust must be represented by counsel.

As of 6/24, no reply has been received from Mr. Aver or Mr. Pyle.

Proposed ruling:

Mr. Aver substituted in as counsel on 3/18/13. On 5/11/15 he filed a motion to withdraw as counsel, basically because he had negotiated a settlement and then Pyle did not carry through on it. Pyle objected, focusing on fees. Hearings on the motion were set for some months, but it does not appear that a ruling was ever made, they worked out their differences, and Mr. Aver stayed in the case.

Mr. Pyle is a difficult client to represent or deal with. He simply drops out of participating. But we are now at a point where this needs to go to trial. He must either participate or face the prospect of a default being entered. As to the Trust, it must have counsel or be subject to a default.

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10:00 AM

CONT... **Glen E Pyle**

Chapter 7

A pretrial stipulation has been prepared and the defendants have not participated. The Court is aware that Mr. Aver cannot force Mr. Pyle to cooperate. I am ready to grant this motion so long as it is clear to Mr. Pyle that his lack of cooperation will certainly result in a default as to the Trust and may also result in a default as to him. To that end, I suggest that the Trustee serve Mr. Pyle directly with the proposed pretrial stipulation and with a motion for sanctions under Local Bankruptcy Rule 7016-1(f) as to both Pyle and the Trust. I will continue the motion to withdraw to the hearing date on that motion so that I am assured the Mr. Pyle has been given clear and sufficient notice of the result of granting the withdrawal. Notice should also be given to Mr. Pyle that if the Trust is not represented by counsel, it cannot participate in the trial and that its answer is subject to being struck and default entered.

Party Information

Debtor(s):

Glen E Pyle Pro Se

Defendant(s):

Glen E Pyle Represented By
Raymond H. Aver

Sweetwater Management Company Pro Se

Glen E Pyle Irrevocable Trust Represented By
Raymond H. Aver

Movant(s):

Law Offices Of Raymond H. Aver, A Represented By
Raymond H. Aver

Plaintiff(s):

Marc H Berry Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR) Represented By
Amy L Goldman

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10:00 AM

CONT...

Glen E Pyle

Amy L Goldman (TR)
Leonard Pena

Chapter 7

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Hearing Room 303

10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#8.00 Plaintiff's Motion for Order that Defendant's counsel Raymond H. Aver Pay Sanctions to Plaintiff's Counsel Marc H. Berry.

fr.5/29/18

Docket 199

Tentative Ruling:

On 4/5/18 Mr. Berry filed a motion for sanctions against Raymond Aver, counsel for Mr. Pyle. He sought \$5,373.50 for misconduct and an additional \$1,500 for work on the motion. The motion was brought under 28 USC §1927. The initial hearing set for 5/29/18 was continued to 6/26/18 because on 5/4/18 Mr. Berry filed an amended motion based on the inherent power of the court). On June 21, Mr. Aver filed his opposition.

The gravamen of the motion is that Mr. Aver was instrumental in delaying the deposition and document production in the following ways:

- (1) ignoring "several reasonable entreaties;"
- (2) failing to turn over documents that he admitted he was holding;
- (3) failing to produce signed deposition transcripts "sought for many months;"
- (4) failing to follow court orders to produce the above items;
- (5) having his staff agree to deposition dates and then at the last minute rescinding those dates claiming that he had never agreed to them.

Mr. Berry seeks joint and several sanctions against Mr. Aver and Mr. Pyle and the Trust.

The amount sought is comprised of 8.8 attorney hours (at \$425/hr) and 9.9 paralegal hours (at \$165/hr). It is largely based on Chambers v. Nasco, Inc., 501 U.S. 32 (1991), which held that a court has inherent power to impose sanctions for bad faith conduct. The actions (and lack of actions) taken by Mr. Aver constitute bad faith conduct. And some of this was done by or as a scheme with Mr. Pyle.

In support of this motion, Mr. Berry references prior declarations: 7/24/13 - dkt. 43 - Mr. Berry mailed Mr. Aver a proposed Findings and Order

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CONT... Glen E Pyle

Chapter 7

After Hearing and received no comments or response.

8/22/13 - dkt. 47 - A deposition was set for 6/14/13 and on 6/11 Aver first told Berry that Pyle was suffering from a heart condition and could not appear. The Court then ordered that Pyle submit certain documents as to his health and availability to be examined. Neither Pyle nor Aver ever did so. Berry sent Aver several emails and received no response. Finally Berry unilaterally set a date for the depositions and sent Aver letters and emails with no response.

11/13/13 - (this does not appear on the docket)

5/29/15 - dkt. 67 - At the hearing on 5/2/15, Aver was ordered to agree to one of the proposed dates for Pyle's deposition and notify Berry of his selection by 5/15/15. Mr. Aver did not do so.

8/26/15 - dkt. 82 - On 6/1/15, the Court ordered the deposition to resume on 7/13/15 and provide specific documents. Aver was present by phone and received a notice of the deposition. About 24 days later, Aver's legal assistant sent Berry an email that Aver was then in a meeting with Pyle. Two days later another lawyer in Aver's office sent an email that Pyle claimed he was unaware of the taking of the deposition and wanted a 30 day continuance - however, Pyle was present in court at the hearing where the deposition date was set and the court's order stated that no further notice of the deposition was required.

Berry agreed to the continuance on the condition that the records be furnished at least 10 court days before the deposition and that he receive back the original deposition transcripts by 7/16/15. Aver never responded to this email and did not comply to the conditions.

Berry's paralegal called Aver's office to confirm availability on three dates in August to resume the deposition, but never received a confirmation. However, after a second call, the paralegal was informed that Aver's calendar was clear for 8/26 and Berry's office sent an email to confirm that date. Aver's office refused to confirm the date. A variety of notices and attempts to confirm were made and on 8/24 Berry's paralegal spoke to Aver who said that he had not spoken to Pyle, though he had tried to call and Pyle had called back when Aver was not in the office.

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CONT...

Glen E Pyle

Chapter 7

This declaration is supported by that of Tammy Rasch, dkt. 83.

Opposition

The amended motion is still based on §1927 in that the movant has not cited 'some other authority' as directed in the 4/17 tentative ruling.

Although this case has been contentious between the parties, Aver has made every effort to respond to Berry's communications and discovery demands and has followed all of the Court's directives to the best of his ability.

Aver then cites to Ninth Circuit authority on when costs and fees can be awarded under §1927. The Court must find that the attorney acted "recklessly or in bad faith." T.W. Electrical Service, Inc. v. Pacific Electrical Contractors Assoc., 809 F.2d 626, 638 (9th Cir. 1987)

Aver coordinated the scheduling of and defended two sessions of Pyle's deposition despite sometimes having difficulty in reaching Pyle by phone or email. He also assisted Pyle in complying with the document requests. He assisted in the signing and returning of the deposition pages of volumes 2 and 3. He assisted Pyle in responding to interrogatories.

The case of Malautea v. Suzuki Motor Co., 987 F.2d 1536 (11th Cir. 1993) is clearly distinguishable. Aver committed none of the egregious acts of discovery abuses that were laid out in that case.

Aver then attaches a series of documents which are to show his involvement and cooperation in this case.

PROPOSED RULING

The Court is aware that Mr. Pyle is a difficult client. He has demonstrated this over and over again in his failure to communicate with Mr. Berry or the Court and his production of records in an unsorted fashion and of ledgers that are unintelligible. But that does not excuse Mr. Aver from his own failure to communicate with Mr. Berry. Unfortunately, this sloppiness (intentional or not) has been a hallmark of Mr. Aver's practice in other cases as well as this one. This is truly unfortunate for the Court has seen Mr. Aver at his best in a few cases and at his worse in all too many cases.

Here he must take responsibility for his own actions. It is simply not acceptable to fail to follow court orders, to ignore communications from opposing counsel, and to make discovery a true burden. Common courtesy requires that opposing counsel maintain ongoing communications when dates

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CONT...

Glen E Pyle

Chapter 7

are to be set as to discovery, hearing, etc. It is unfair to place the burden on the party seeking discovery to call again and again, to receive mixed messages from opposing counsel's office, etc. A few simple calls or emails were required to advise Mr. Berry of scheduling problems or of the status of communications between Aver and Pyle as to scheduling depositions or producing documents. Failure to do so places too much of a burden on Berry.

The amount requested by Mr. Berry is reasonable under the circumstances, and will be awarded against Mr. Aver. This award is not joint and several for it is limited to the actions of Mr. Aver and not of his client. There is a separate motion as to Mr. Pyle. To the extent that there is a duplicative award for time expended, we need to discuss this.

Party Information

Debtor(s):

Glen E Pyle

Pro Se

Defendant(s):

Glen E Pyle

Represented By
Raymond H. Aver

Sweetwater Management Company

Pro Se

Glen E Pyle Irrevocable Trust

Represented By
Raymond H. Aver

Plaintiff(s):

Marc H Berry

Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, June 26, 2018

Hearing Room 303

10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#9.00 Motion for Sanctions Against Glen Pyle, Sweetwater Management Company Inc and Glen E Pyle Irrevocable Trust

fr. 1/24/12, 4/10/12, 5/29/12, 6/19/12, 9/11/12, 10/2/12, 3/19/13, 6/4/13, 8/27/13, 11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14, 12/16/14, 3/10/15, 5/12/15, 6/2/15, 9/1/15, 9/8/15; 11/17/15; 1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16, 10/11/16, 1/17/17, 2/21/17, 3/28/17; 5/30/17; 7/25/17; 11/14/17; 2/27/17; 4/17/18

Docket 9

Tentative Ruling:

I have prepared a ruling on this, but have one issue that I need to deal with. This motion refers to docket #9, a motion to compel further responses and for sanctions (filed on 12/12/11). On 11/8/12, the Court entered its order (dkt #33) that the production was complete and that the request for further sanctions is denied. For some reason the motion to compete remained on calendar on 6/14/13 and morphed into an issue of completing Pyle's deposition (dkt. 44, 45). It was continued to 8/27/13 and on 8/22, Berry filed his declaration "re non-compliance and sanctions" in which he requested sanctions against Mr. Aver and Pyle for the willful failure to comply with the Court's order setting a deposition. (dkt. 47) This was part of the status report.

I then continued that and the "sanctions motion." Although the issue of sanctions as to Aver was discussed and an oral OSC re sanctions was set, this was allowed to lapse and later was replaced by dkt. 199 (see cal. #8).

The sanctions motion against Pyle continued to trail the status conference, still identified as dk.t #9. No new sanctions motion as to Pyle was ever filed, but it is clear that everyone acted as though there was such a motion.

The issue is whether I actually have a motion before me on which I can rule. There is no specific written motion since I had denied #9. But there is an oral motion (sort of). Can this suffice or does Mr. Berry need to file a new motion?

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prior tentative ruling (4/17/18)

I think that I should rule or should have ruled on this motion. But I am somewhat confused as to what is going on. From the joint status report (on which Mr. Berry was not a signatory), this motion may be part of the proposed settlement. But on 4/5/18, Mr. Berry filed a new motion for sanctions against Mr. Aver and that is set for hearing on May 29 at 10:00 a.m. Briefly reviewing that motion, I note that it is brought under 28 USC §1927 as applied to bankruptcy cases in *In re Schaefer Salt Recovery, Inc.*, 542 F.3d 90 (3d Cir. 2008). While I think that the reasoning of the Third Circuit is correct, I am bound by the holdings in the Ninth Circuit, specifically *In re Perroton*, 958 F.2d 889 (9th Cir. 1992); *Determan v. Sandoval (In re Sandoval)*, 186 B.R. 490 (9th Cir. BAP 1995); *In re DeVille*, 361 F.3d 539, 546 (9th Cir. 2004) (quoting with approval the BAP's summary that "28 U.S.C. § 1927 does not suffice because the Ninth Circuit does not regard a bankruptcy court as a 'court of the United States.'").

Thus, I can deny the motion for lack of jurisdiction (and suggest that Mr. Berry take an appeal and see if he can't make a new holding in the Ninth Circuit) or allow Mr. Berry to file an amended motion under some other authority.

Let's discuss a timetable for what decisions you want me to make. As always, phone appearances are allowed.

prior tentative ruling (7/25/17)

On July 21, Mr. Aver filed a status report as to discovery compliance. Pyle has appeared a three depositions for some 15 hours of questioning, In each case he has signed the deposition transcript without change. There were disputes as to whether Pyle or Aver ever received the original deposition transcripts.

Pyle has also produced almost 800 pages of documents. Pyle has responded to all interrogatories. There has been no intentional or purposeful failure to comply with discovery.

Mr. Aver then goes through the history of the sanctions requests, Pyle's

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difficulty in receiving mail, settlement efforts, and asks that the request for sanctions be summarily denied.

No status report has been received from Mr. Berry.

Proposed ruling: The issue here is not money, but whether I will strike the answer and enter default. Although Mr. Aver makes Mr. Pyle sound like the most cooperative defendant who ever existed and Mr. Berry like the most aggressive plaintiff, this is not true. Although Mr. Berry has been aggressive, he has not been abusive. Even before Mr. Aver was part of this case, the Court was aware that Mr. Pyle was angry and uncooperative. While he has apparently now made all discovery, it was like pulling teeth to get it, particularly in a complete and comprehensible form. Thus, Mr. Berry's frustration was reasonable.

However, I will not strike the answer. But monetary sanctions are warranted, though I am unable to tell in what amount. The initial request was for \$4,000. But that was during the first year of the case. And while Mr. Berry represents himself, he is still entitled to a reasonable rate of compensation for time spent. I need a set of time records from Mr. Berry so that I can see exactly what was done and for how long. The actual issues for which I will award compensation are the following:

- (1) the second deposition, which I believe was due to the lack of production of documents.
- (2) any motions for production of documents that request new copies of documents that were illegible or unorganized or not produced in a prior request for production.
- (3)

prior tentative ruling (5/30/17)

I would like to complete this motion. I believe that all discovery has been done and this case should be set for trial. How do you recommend that this be resolved?

prior tentative ruling (1/17/17)

Since the deposition took place, I am not sure what is left of this motion. I

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continued the motion for summary judgment to 2/21/17 at 10:00 a.m. on stipulation of the parties. Please advise me whether this motion should also be continued to that date or whether it will be heard on 1/17. If it is to be heard on 1/17, I need to know what issues remain.

If no one appears (in person or by phone) on 1/17, I will continue this to 2/21/17 at 10:00 a.m.

prepared on 7/29/16:

On July 25, Mr. Berry filed a supplemental declaration (note that dkt. 111 and 112 are identical, though filed on different dates). One of the conditions for continuing the deposition was that Mr. Aver provide a written response to the settlement proposal at least 10 days before the continued date. This was not done and no written response was ever provided although Berry sent a reminder email to Aver. The deposition did take place on 6/29/16.

Further, neither Aver nor Pyle has ever returned vol 1 and vol 2 of the original deposition transcripts, although the signed signature pages have been received. There is a significant cost to creating copies for the trial.

When Berry sent notices to Pyle on 3/22/16, 4/26/16, and 5/25/16, the envelopes were returned by the Post Office marked "Return to Sender, no mail receptacle, unable to forward." Then he sent two other envelopes to Pyle at the same address on 6/2/16 and 6/9/16, they were returned marked "return to sender, undeliverable as addressed, (or) no such street, unable to forward."

As noted in my order of 3/29/16 (dkt. 103), since Pyle has apparently interfered with the receipt of his mail, he is deemed to be aware of the content and the Court will make rulings accordingly.

He did appear at the agreed-to rescheduled date of the deposition. As to the documents to be produced, I do not know whether Mr. Berry gave a list, but none was filed with the Court as had been ordered in dkt. 103. Therefore apparently Mr. Pyle brought the required documents or none were actually required. As to the settlement offer, that is deemed rejected. I cannot force

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the parties to settle.

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As to the deposition, Mr. Aver is to bring the original to the hearing on August 2 or is to provide a copy for the Court at his own expense.

Let's set a trial date and complete this case. This sanctions motion is not completed. I will continue it and may still strike the answer, etc. if Mr. Pyle and his attorney do not cooperate in the trial preparations, etc.

prior tentative ruling (6/7/16)

An initial partial ruling was entered on 3/29/16 and this was continued to 6/7. The Court is concerned that Mr. Pyle is still not accepting the mailings from Mr. Berry. However, Mr. Pyle seems to be in touch with his attorney. The parties have agreed by email to continue the deposition to 6/29/16 and to other matters set forth in Berry's email:

I will agree to continue the deposition and the document production on the following conditions:

- 1. You agree that your client Glen Pyle will appear on the new date as I have no contact with him. All notices/correspondence to him are returned by the post office.*
- 2. The deposition and document production are continued to the earliest of June 16, 17, 21, 28 or 29, at 10:00 am. at my office [I am not available from June 30, 2016, to July 19, 2016].*
- 3. All orders remain in full force and effect including, but not limited to, all of Judge Mund's orders regarding the consequences if Mr. Pyle is not compliant with the May 27, 2016, deposition/document production date; provided those orders are modified only by changing the date of his appearance for deposition and document production.*
- 4. The status conference will be continued from June 7, 2016, to the earliest date set by Judge Mund's Clerk, and a copy of this letter will be sent to the clerk.*
- 5. You will give me a written response to the settlement proposal (still not an offer) at least ten days before the deposition.*
- 6. You fax or email me your agreement to the above before 4:00 p.m. today, the*

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earlier the better because of the court reporter.

Although Mr. Aver is to prepare a written stipulation to that effect, the Court finds that the email exchange is sufficient for the Court to enter an order and will do so without anything further from the parties.

The motion is continued without appearance to 8/2/16 at 10:00 a.m. If this is not an available date for the parties, please notify the other side and choose an agreeable date from my self-calendering notice or appear by phone on 6/7 to set the hearing.

prior tentative ruling (3/1/6)

On 2/24/16, Mr. Berry emailed the parties and the Court that he will be appearing by Court Call. Can we go to trial without further delays?

prior tentative ruling (1/12/16):

These matters will be continued due to the health of Mr. Berry. He proposed a date, but the Court has not yet had confirmation of it from Mr. Aver. Please appear by phone or file something showing and agreed-to continued date.

prior tentative ruling (11/17/15)

At the hearing on 9/8, the Court ordered Mr. Pyle to produce all responsive documents to Mr. Berry by 10/30/15. If Mr. Pyle fails to do so, he will be unable to use the documents at trial. The production is also to include a list of all documents submitted. Mr. Pyle and Mr. Avery are to retain a set of all of the documents that they are submitting to Mr. Berry.

prior tentative ruling (9/8/15)

On 8/26/15 Mr. Berry filed a declaration that shows that once again Mr. Aver is not responding to correspondence or phone calls. He requests \$1,024 in sanctions against Mr. Aver.

On 8/28 Mr. Pyle filed his opposition. I have reviewed this and I have heard it all before in this and other cases.

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No one should have to work as hard as Mr. Berry has to schedule discovery. The sanctions appear to be warranted assuming that Mr. Berry can link them to a code provision or other legal authority and follow the proper notice requirements for that code provision or other legal authority.

Per Mr. Aver's declaration, Mr. Pyle did not appear on 8/26 and no documentation provided?

Mr. Berry - do you really need this stuff? I know that a lot of things were previously provided. Is this enough for you to proceed? I would simply like to go to trial. I would give Mr. Pyle a few weeks to prepare his trial documentation and provide it. If there is anything that he does not provide, I would not let him put it in later.

prior tentative ruling (6/2/15)

At the last hearing, Mr. Aver was ordered to advise Mr. Berry of the date for Mr. Pyle's deposition. He was given a choice of dates and was to respond by 5/15. According to Mr. Berry, this did not occur. According to Mr. Aver, he notified Mr. Berry on 5/28 that he and Mr. Pyle would be available on July 8. Without having received this, Mr. Berry stated that he prefers 7/13/15, which is also an acceptable date for Mr. Mendoza. Since Mr. Aver is withdrawing, his wishes are no longer relevant and the deposition will take place on 7/13/15. Mr. Berry is to give written notice to Mr. Pyle and Mr. Mendoza of the time and date. If Mr. Aver does not withdraw, the deposition will still take place on 7/13 unless the parties agree to a different date.

As to sanctions, the ultimate one would be to strike Mr. Pyle's answer and enter a default. If he wishes to defend, he needs to appear for his deposition and cooperate in it.

prior tentative ruling (5/12/15)

I received emails that this matter had settled, but it was to be documented. Mr. Berry filed a unilateral status conference that this has not occurred. I believe that it was Mr. Aver's task to document this and on April 17, 2015 Mr. Berry sent him a letter to this effect. In his unilateral status report, Mr. Aver states that the Debtor is unable to perform the settlement and wants to proceed to trial. He also will be filing a motion to withdraw as counsel.

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Mr. Aver will be appearing by phone. Mr. Berry can also so appear. Let's set a date for Mr. Aver's motion to withdraw and a trial date if the Debtor is also on the phone. If he is not, then the motion to withdraw is to be filed no later than June 1 and will be heard on June 30 at 10:00 a.m. (Sorry for the delay, but I will be on vacation much of June.) I would like to get trial dates from Mr. Berry and these will be given to the Debtor and on June 30 we will set the actual trial. I will need a trial time estimate.

prior tentative ruling (3/10/15)

Mediation set for 3/24/15. Continue without appearance to 5/12/15 at 1:00 a.m.

prior tentative ruling (10/7/14)

The mediation has been delayed. Continue without appearance to 12/16/14 at 10:00 a.m.

prior tentative ruling (8/5/14)

This is scheduled for a settlement conference before Judge Ryan on 9/22/14. Continue without appearance to 10/7/14 at 10:00 a.m. I would like a status report for that hearing.

prior tentative ruling (3/11/4)

At the prior hearing this was continued to see if Mr. Pyle appeared for his deposition, which was scheduled for 2/10 at 10:00 a.m. at Mr. Berry's office. Per the status report filed 3/4, he did so and Berry intends to schedule another session at a mutually agreeable date. I will continue this as a holding date to make sure that future discovery is complied with.

prior tentative ruling (11/19/13)

At the hearing on 8/17 I determined that if Mr. Pyle is not well enough to be deposed, he is not well enough to be present at the trial. He is not to testify or be in the courtroom. Mr. Aver can defend and bring in other witnesses, but not documents that should have been produced and were not.

As of 11/18 at 8:27 a.m. Mr. Aver has not filed a status report. I have warned him many times about this and ordered him to respond to every email and

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letter that is sent by Mr. Berry. If this has not been done, I will set an OSC on sanctions as to Mr. Aver.

I want to set this for trial.

prior tentative ruling (8/27/13)

At the hearing on June 4 the issue arose of Mr. Pyle's health. I ordered Mr. Aver to contact Mr. Berry by 6/7 as to whether Pyle would be available for the scheduled 6/14 deposition. If not, Pyle was to submit a doctor's note to the Court as to the nature of the health disability and when he would be available. Once that was known, Aver and Berry were to reach a mutually agreeable date for the deposition.

Late filed status report states that Mr. Aver tried a variety of times to gain the cooperation of Mr. Pyle's treating physician, but did not receive anything until 8/19. The letter is attached. It says that Pyle had a heart attack. He is just started to be allowed some mild walking and it stay away from stress. He should stay away from stress for the "unforeseeable future given his guarded prognosis."

I will continue this and the sanctions motion to November 19 at 10:00 a.m. The parties will have the following choices:

- (1) Pyle - can be deposed in whatever reasonable location and time increments that he wishes and then we can set the matter for trial;
- (2) Berry - if Pyle is not able to be deposed, I will declare him unavailable and Berry can proceed to trial. Pyle will not be allowed to be present, to testify, or to provide any evidence not previously given in discovery. His attorney can call other witnesses and defend.

prior tentative ruling (3/19/13)

At the hearing on 10/2, Mr. Pyle was ordered to bring in the originals of the checks (or the copies that he has if he does not have the originals) from 2000 through 2008. He was told that the court would make copies at the hearing. If he has the checks and no additional copies, he is to give them to the court reporter, who will make two sets of copies (1 for Mr. Berry and 1 for me) and

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return the set to Mr. Pyle.

prior tentative ruling (10/2)

At the hearing on 9/11, Mr. Pyle was ordered to mail to Mr. Berry by 9/14 clean copies of everything that he gave his accountant starting with calendar year 2005. He had said that he gave the accountant a written accounting, so that is to be included.

Nothing further received by the court as of 9/30.

prior tentative ruling (9/11/12)

A transcript of the 6/19 hearing has been filed. Mr. Pyle and the Trust were represented by Richard Singer. Pyle did not fully comply with my prior order to turn over an accounting, but I ordered the deposition to take place anyway. It was agreed by the parties that it would be on 8/8. Counsel in the Campbell §523 action indicated that he might also attend the deposition. The status conference and motion to compel were continued to 9/11 to see what came happened at the deposition.

I also ordered that the tax returns for 2009, 2010, and 2011 of both Pyle and the Trust be prepared and filed by 8/3. These are to be complete tax returns, both state and federal. By August 3, he was also to give an accounting and checks for the period of 2006, 2007, and 2008.

Mr. Berry filed a proposed Order and Findings on the motion to compel, etc. Does Debtor's counsel have any objections to it? [Mr. Singer has filed a motion to withdraw as attorney for Pyle, which is set for hearing on 10/2 at 10:00 a.m.]

Berry also filed a declaration as to compliance. According to this, some but not all of the documents were received late. The tax returns were not signed by Pyle or his accountant and there is not evidence that they were filed. The accountings were not received. The accountings are necessary to ascertain if Pyle used trust monies for his own personal expenses. Berry wishes the court to strike Pyle's answer and enter default.

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prior tentative ruling (6/19)

A transcript of the 5/28 hearing has been filed. At that hearing I told Mr. Pyle that this was his last chance to provide complete and legible information or that I would not allow him to put on any evidence (written or oral) or income and expenses. I told him that I expected actual tax returns that had either been filed or where about to be filed and on the proper tax forms. Also as to the ledger sheets, he is to provide a check number and a statement as to where the money came from that was paid: the bank account number, the check number, and the date of the check.

The new accounting was due by 6/12 from 2009-2012. On 6/15 Berry filed a declaration as to the deficiency. We will go over this at the hearing.

prior tentative ruling (4/10)

On 4/3 Marc Berry filed a declaration of findings after hearing. These were mailed to debtor's counsel on 3/2 and he was asked about it on 3/12. No comments from debtor's counsel. Sanctions of \$4,000 were to be paid to plaintiff's counsel by 3/26, but nothing has been paid. Defendants were to provide an accounting of rental income from the date of transfer, but that was not provided.

Some documents were timely provided, but not the bank statements reflecting the rental income. Apparently many of these are in the possession of defendants' attorney, but have not yet been turned over to plaintiff.

Proposed findings are attached. I will sign these.

The deposition has been continued to May. Unless the sanctions are paid and the bank records turned over, I will strike the answer.

prior tentative ruling (1/24)

This adversary proceeding seeking to avoid fraudulent transfers was commenced against debtor and related entities on 3/7/11. An amended complaint was filed on 3/29/11 to which defendants filed an answer on 5/6/11.

On 5/11/11, the chapter 7 trustee brought a motion to sell her avoidance

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rights to plaintiff in connection with the debtor's 2006 transfer of certain real estate assets into a trust in exchange for 40% of any potential recovery. Oddly, the 6/17/11 order approving the sale refers to certain business assets sold by the debtor to an employee prepetition.

The last meeting of creditors on this case was set for 12/16/11 and the docket does not show whether that meeting was continued.

Argument

On 4/6/11, plaintiff propounded requests to produce on all defendants but received no response despite several attempts to contact defendants' counsel. On 7/27/11, debtor served an inadequate and incomplete response; no responses were ever provided on behalf of the other defendants (Sweetwater Management Co., Inc. and Glen E. Pyle Irrevocable Trust). On 8/26/11, plaintiff's counsel sent defendants' counsel a "meet and confer" letter explaining that the responses were inadequate but received no reply or objections to production.

Several meetings of creditors were continued due to debtor being unable to locate records required by the trustee. At the 9/23/11 meeting, debtor said that it is financially impossible to provide any more of the records.

Plaintiff requests that the court compel production of the records that have not been produced (as outlined on p.7-10 of the motion) or that defendants provide a declaration regarding their diligent search or reasonable inquiry. Further, pursuant to FRCP Rule 37(a)(5) plaintiff requests that \$4,000 in sanctions be assessed against defendants for plaintiff's attorney's fees and costs in having to bring this motion.

Opposition

Contains debtor's declaration that he has "recently" given to his attorney "all available documents in my possession that, to the best of my ability, conform with Plaintiff's request." He also declares that no financial documents were ever prepared for Sweetwater. In addition, although the trust was formed in 2000, it had no assets until 2004 and as such, no financial documents exist covering the years 2002-04. The trust had no income until 2005 and did not file a tax return before that (the tax return has been provided to plaintiff).

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Plaintiff also declares that he cannot provide an accounting regarding the properties that were put into the trust because it would cost him \$5,000 which he does not have.

The opposition also contains a declaration by debtor's counsel that all the documents in his possession have been turned over to plaintiff and that debtor be allowed to prepare an accounting himself and submit it under penalty of perjury, since he does not have the funds to hire an accountant.

Analysis

To what extent have the documents produced to date resolved the issue? Is plaintiff satisfied with debtor's declaration as to the missing documents? If not, what else should be addressed? Will plaintiff accept an accounting prepared by the debtor?

As to sanctions, those must be granted pursuant to Rule 37(a)(5), even if the responses were provided after the motion was filed, unless (1) plaintiff had not attempted in good faith to obtain disclosure before filing the motion, (2) the nondisclosure was substantially justified or (3) an award of expenses is unjust. The opposition does not address the issue of sanctions directly but indirectly states that nondisclosure was substantially justified. If that is the case, why did defendants' counsel not provide that information to plaintiff's counsel before the motion was filed and kept ignoring plaintiff's counsel's requests?

Party Information

Attorney(s):

Richard S. Singer	Pro Se
Law Offices Of Raymond H. Aver, A	Represented By Raymond H Aver

Debtor(s):

Glen E Pyle	Pro Se
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Defendant(s):

Glen E Pyle	Represented By
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Raymond H Aver

Sweetwater Management Company

Pro Se

Glen E Pyle Irrevocable Trust

Represented By
Raymond H Aver

Movant(s):

Marc H Berry

Represented By
Marc Berry

Plaintiff(s):

Marc H Berry

Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)

Amy L Goldman (TR)

Pro Se

US Trustee(s):

United States Trustee (SV)

Pro Se

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1:10-24968 Glen E Pyle

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Adv#: 1:11-01180 Berry v. Pyle et al

#10.00 Pre-trial Conference re: Complaint to Set Aside
or Annul Fraudulent Conveyances; Alter Ego;
and for Damages

fr. 4/27/11, 6/15/11, 10/4/11, 1/24/12, 4/10/12, 5/29/12,
6/19/12, 9/11/12, 10/2/12, 11/6/12, 3/19/13, 6/4/13, 8/27/13,
11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14,
12/16/14, 3/10/15, 5/12/15, 6/2/15, 9/1/15, 9/8/15; 11/17/15;
1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16, 10/11/16, 1/17/17,
2/21/17, 3/28/17, 5/30/17; 7/25/17; 11/14/17; 2/27/18; 4/17/18

Docket 1

Tentative Ruling:

The Trustee has filed a unilateral pretrial statement along with a declaration concerning the Defendant's failure to participate in the pretrial process. How does the Trustee wish to proceed? LBR 7016-1(f) lays out four options for sanctions for failure to comply with the pretrial statement process: continuance of the trial date (not relevant as no trial has been set); entry of the proposed pretrial order; an award of monetary sanctions against Pyle and/or Aver; or entry of judgment or striking of the answer and entering default.

prior tentative ruling (4/17/18)

It appears that the Trustee has taken over this adversary proceeding, which had been assigned to Mr. Berry. She now has counsel and a joint status report was filed. Pursuant to that status report, a settlement is in the works and is dependant on Mr. Pyle obtaining a reverse mortgage, which is in process. The parties stipulate to the following schedule:

5/10/18 - Trustee to submit a proposed Joint Pretrial Stipulation

5/24/18 - Defendants provide the Trustee with their portion of the Joint Pretrial Stipulation

6/1/18 - the Joint Pretrial Stipulation is filed.

**United States Bankruptcy Court
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Tuesday, June 26, 2018

Hearing Room 303

10:00 AM

CONT... Glen E Pyle Chapter 7

Those dates are fine and the joint pretrial conference will be continue to June 26, 2018 at 10:00 a.m.

I would appreciate it if the parties would appear on 4/17 (phone is fine) just so that I can straighten out the status of the Berry motion(s) for sanctions.

Party Information

Attorney(s):

Richard S. Singer	Pro Se
Law Offices Of Raymond H. Aver, A	Represented By Raymond H Aver

Debtor(s):

Glen E Pyle	Pro Se
-------------	--------

Defendant(s):

Glen E Pyle	Represented By Raymond H Aver
Sweetwater Management Company	Pro Se
Glen E Pyle Irrevocable Trust	Represented By Raymond H Aver

Plaintiff(s):

Marc H Berry	Represented By Marc Berry
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Trustee(s):

Amy L Goldman (TR)	Represented By Amy L Goldman Amy L Goldman (TR)
Amy L Goldman (TR)	Pro Se

US Trustee(s):

United States Trustee (SV)	Pro Se
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**United States Bankruptcy Court
Central District of California
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Tuesday, June 26, 2018

Hearing Room 303

10:00 AM

CONT... Glen E Pyle

Chapter 7

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Monday, July 9, 2018

Hearing Room 303

10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#1.00 Status Conference re: Ch 11 Case

fr. 1/24/2013, 4/30/13, 5/14/13, 7/23/13, 8/6/13,
9/17/13, 9/24/13, 11/19/13, 12/17/13, 1/21/14, 2/18/14,
3/11/14, 4/15/14, 5/6/14, 6/24/14, 9/9/14, 9/23/14,
10/7/14, 11/24/14, 1/6/15, 1/20/15, 2/10/15, 3/10/15,
4/28/15; 5/12/15; 9/29/15, 10/22/15, 12/8/15, 3/1/16,
6/7/16, 7/12/16, 8/16/16, 10/11/16; 12/20/16, 4/4/17,
5/16/17; 6/27/17, 7/11/17, 9/19/17, 11/14/17, 11/28/17,
12/19/17, 1/9/18, 3/19/18, 3/27/18, 5/1/18, 6/5/18; 6/26/18

Docket 1

Tentative Ruling:

FOR JULY 9

I received the updated status report that Corbett has closed and that PMB has extended the settlement date to July 13 to allow Dalmation and Harrington to close. Maui is still being marketed. Assuming that Dalmation and Harrington close on time, is there enough money in the estate to pay off the PMB liens under the settlement terms?

At the hearing on June 26, Ms. McClure orally moved that the Court hold an evidentiary hearing as to the Litt Settlement and also (presumably) her motion to abandon. The Court has given this some thought and would like to discuss it with the parties. The controlling law on motions to compromise is as follows:

The defining case concerning settlements is that of *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968), which mandates that a bankruptcy court apprise itself "of all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated. Further, the judge should form an educated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Basic to this process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of litigation." 390 U.S. at 424.

This mandate by the Supreme Court requires that the Court determine whether a compromise pursuant to Fed. R. Bankr. P. 9019 is "fair and equitable." *In re Woodson*, 839

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CONT... Shirley Foose McClure

Chapter 11

F.2d 610, 620 (9th Cir. 1986). The Court evaluates the fairness, reasonableness and adequacy to the estate under the factors articulated by the Ninth Circuit:

In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. Cal. 1986), cert. denied sub nom., *Martin v. Robinson*, 479 U.S. 854 (1986). The Court should review the issues and determine whether the settlement falls below the lowest point in a range of reasonableness. *In re Teltronics Service, Inc.*, 762 F.2d 185, 189 (2nd Cir. 1985); *Sirtos v. Ray (In re Sirtos)*, 2006 Bankr. LEXIS 4894 at *32 (B.A.P. 9th Cir. May 19, 2006). Courts reviewing a proposed settlement generally accord deference to the Trustee's business judgment, although the Trustee has the burden of persuasion that the settlement is fair and equitable and should be approved. *Goodwin v. Mickey Thompson Entm't Group (In re Mickey Thompson Entm't Group)*, 292 B.R. 415, 420 (B.A.P. 9th Cir. 2003).

The Court is not required to hold a full evidentiary hearing of a mini-trial before it can approve a compromise. The Court need only canvas the issues to see if the settlement falls below the lowest point of reasonableness. 10 Collier on Bankruptcy, 16th Ed., ¶ 9019.02, citing *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 493 (Bankr. S.D.N.Y. 1991) (quoting *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2^d Cir.), cert. denied sub nom. 464 U.S. 822, 104 S. Ct. 89, 78 L. Ed. 2d 97 (1983)); *In re Doctors Hospital of Hyde Park, Inc.*, 474 F.3d 421, 428–30 (7th Cir. 2007).

As noted, the Court is not only not required to hold an evidentiary hearing, but - to a large extent - it is discouraged from doing so. However, it seems appropriate to allow Ms. McClure to show the Court the most likely evidentiary facts that would be presented in the state court Litt case, should that go to trial. This concerns both liability and damages. While I am open to suggestions of how to do this, it seem that the first step would be to have Ms. McClure prepare and file her proposed summary of evidence. This will list each witness that she would call and a brief summary of the evidence that the witness will present. The Court is aware that there are several significant gaps in the evidence that she has presented to this date and those should be filled in. Thus, to the extent that she obtained legal or accounting guidance from others prior to her investments, those should be revealed along with a brief summary of the advice that she was given. Also the amount of asserted damages will need to take into account any benefit that she had from her § 1033 tax claim with the IRS.

The document in question is to be no longer than 15 pages. At this

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CONT... Shirley Foose McClure

Chapter 11

time, no attachments are needed except for a copy of her federal tax return for the year(s) in question, which I believe is 2006.

Once received, I will review this and see whether I believe that it would support (1) a judgment for McClure as to liability and (2) a damage award significantly in excess of the settlement amount. If I find that it meets these two tests, I will then allow Litt and the Trustee to point out omissions or misstatements and, if they wish, to file their own summaries of evidence.

Anyway, this is just a suggestion. Let's talk about it.

prior tentative ruling (6/26/18)

Thank you for the extensive and detailed status report. In the future, you need only update what has happened unless you feel that it is necessary to incorporate all of this history.

I am most concerned about the status of paying off PMB, the closing of the escrows for the properties sold, and whether the settlement will be able to be enforced.

I also would like to know the status of the settlement negotiations with Tidus.

I have reviewed the responses of Ms. McClure, Mr. Litt, and the Trustee to my surplus calculation. I do not understand the attachment from the Trustee. Nothing is taken out of Corbett for the PMB attorney's fees and the amounts noted for Dalmation, Harrington, and Maui do not match the figures in the Order approving the settlement (dkt. 1304). Presumably the unallocated amount of \$162,766 is for the Corbett fees. How was this figure arrived at?

Does the estimated loan balance include full default interest and then some is credited back as an estimated reduction? Why is the Weintraub lien balance being held?

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick

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CONT... Shirley Foose McClure

Chapter 11

James R Felton
Faye C Rasch
Faye C Rasch
Elaine Nguyen

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

1:95-19539 Ivds Interactive Acquisition Partners

Chapter 7

#1.00 Status of Chapter 7 Case

fr. 8/29/17, 1/23/18

Docket 0

***** VACATED *** REASON: Order ent continuing hrg to 7/17/18 at 10:00
a.m. - jc**

Party Information

Debtor(s):

Ivds Interactive Acquisition Partners

Represented By

Grant L Simmons

Uzzi O Raanan ESQ

Trustee(s):

Richard K Diamond (TR)

Represented By

J Jeffrey Craven

Uzzi O Raanan ESQ

Howard Kollitz

Richard K Diamond (TR)

Richard K Diamond

Ruba M Forno

**United States Bankruptcy Court
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Tuesday, July 10, 2018

Hearing Room 303

10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01181 Campbell v. Pyle

#2.00 Status Conference re: Complaint for
Determination that Debt is Nondischargeable
and/or to Recover Money

fr. 5/11/11, 6/22/11, 10/4/11, 1/24/12, 2/14/12,
4/24/12, 6/19/12, 9/11/12, 10/2/12, 11/6/12,
2/12/13, 3/19/13, 8/27/13, 8/27/13, 11/19/13,
2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14,
12/16/14, 3/10/15; 5/12/15; 6/2/15, 9/1/15,
9/8/15, 11/17/15; 1/12/16, 3/1/16, 6/7/16,
8/2/16, 9/27/16, 10/11/16, 1/17/17, 2/21/17,
3/28/17, 1/14/17, 12/19/17, 1/23/18, 3/27/18

Docket 1

***** VACATED *** REASON: Matter to be heard on 7/17/18 per order #80.
If**

Party Information

Attorney(s):

Klinedinst PC

Represented By
Hartford O Brown

Richard S. Singer

Pro Se

Debtor(s):

Glen E Pyle

Pro Se

Defendant(s):

Glen Pyle

Pro Se

Plaintiff(s):

Ian Campbell

Pro Se

Trustee(s):

Amy L Goldman (TR)

Pro Se

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10:00 AM

CONT... Glen E Pyle

Chapter 7

Amy L Goldman (TR)

Represented By

Amy L Goldman

Amy L Goldman (TR)

US Trustee(s):

United States Trustee (SV)

Pro Se

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Tuesday, July 17, 2018

Hearing Room 303

10:00 AM

1:95-19539 Ivds Interactive Acquisition Partners

Chapter 7

#1.00 Status of Chapter 7 Case

fr. 8/29/17, 1/23/18, 7/10/18

Docket 0

Tentative Ruling:

Per the status report filed on 6/19/18, the trustee will file a motion to close this case. He is negotiating with the OUST as to this.

Continue the status conference without appearance to Nov. 6, 2018 at 10:00 a.m. Feel free to schedule your motion on or before that date.

prior tentative ruling (1/23/18)

Per the status report filed on 12/28/17, the Trustee has previously made two interim distributions and hopes to make another one in 2018. The Trustee hopes to sell Vickery's home through a forced sale or, in the alternative, to sell the USDC Judgment against Vickery. Once the settlement with Michael and David is approved by the Court and the situation with Vickery is resolved, the Trustee will close the case.

Continue without appearance to 7/10/18 at 10:00 a.m.

prior tentative ruling (8/29/17)

This case was filed on December 1, 1995. It was originally filed as a Chapter 11. It was converted to Chapter 7 on November 3, 1997. The last activity on the docket was on October 20, 2016. On that date, an Order on Eighth Interim Application for Allowance of Fees to Green, Hasson & Janks was entered. On July 31, 2017, an Order Setting Status Conference Hearing was entered. On August 15, 2017, the Chapter 7 Trustee filed a Status Report in Bankruptcy Case. [dkt. 648]

Trustee's August 15, 2017 Status Report:

Debtor was a general partnership organized under Florida law and composed of approximately 645 individuals. Debtor was created by a group of organizers who used corporate entities controlled by them to raise money to exploit IVDS, a communications medium to be licensed by the FCC.

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CONT... Ivds Interactive Acquisition Partners

Chapter 7

Trustee has always believed that Debtor was a fraudulent telemarketing scheme. Trustee commenced a lawsuit against the organizers of Debtor alleging fraudulent transfer claims. Trustee went to trial against three principal Defendants: David Dambro, Michael Dambro, and Terry Vickery. Trustee obtained judgments against all three Defendants: David: \$5.1 million; Michael: \$4.1 million; and Vickery: \$4.6 million. Judgment will remain enforceable until 2027. Trustee continues to pursue collection activities through special counsel as Trustee believes David, Michael, and Vickery have hidden millions of dollars. Trustee has currently made two interim distributions in this case and hopes to make at least one more distribution after Trustee sells Vickery's home. Thereafter, Trustee will evaluate the possibility of a sale of the judgment at the end of 2017, which would allow Trustee to close the case.

This matter is now off calendar. No appearance is required and no hearing will be held. In the future, please file a status report every 90-180 days.

Party Information

Debtor(s):

Ivds Interactive Acquisition Partners

Represented By
Grant L Simmons
Uzzi O Raanan ESQ

Trustee(s):

Richard K Diamond (TR)

Represented By
J Jeffrey Craven
Uzzi O Raanan ESQ
Howard Kollitz
Richard K Diamond (TR)
Richard K Diamond
Ruba M Forno

**United States Bankruptcy Court
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Tuesday, July 17, 2018

Hearing Room 303

10:00 AM

1:09-18409 Lenny Kyle Dykstra

Chapter 7

Adv#: 1:10-01183 GOTTlieb v. Simi Auto Spa Center, LP et al

#2.00 Motion For Leave to Amend Answer and Counterclaims

fr. 3/27/18; 4/17/18

Docket 212

Tentative Ruling:

Order granting motion to approve compromise was entered on 6/8/18. There is no order in the adversary proceeding. Please check with my courtroom deputy as to what needs to be filed to close the adversary proceeding.

Party Information

Debtor(s):

Lenny Kyle Dykstra

Represented By
Michael T Pines - DISBARRED -
Moshe Mortner

Defendant(s):

Lenny Dykstra's Car Wash Corp., a
South Corona Center, LP

Pro Se
Represented By
Ramin Azadegan

Lenny Dykstra's Car Wash III, LP
Bahram Khadavi

Pro Se
Represented By
Ramin Azadegan

Kia Saidnia

Represented By
Ramin Azadegan

Karine Arditi

Represented By
Ramin Azadegan

Simone Shouhed

Represented By
Ramin Azadegan

**United States Bankruptcy Court
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Tuesday, July 17, 2018

Hearing Room 303

10:00 AM

CONT... Lenny Kyle Dykstra

Chapter 7

Shahram Shouhed	Represented By Ramin Azadegan
Hamid Shohed	Represented By Ramin Azadegan
Scott Arditi	Represented By Ramin Azadegan
Farshid Shohed	Represented By Ramin Azadegan
Shahriar Shouhed	Represented By Ramin Azadegan
National Car Washes, Inc.	Represented By Ramin Azadegan
Corona Petroleum, Inc.	Represented By Ramin Azadegan
Corona Lane Collection, I, LP	Represented By Ramin Azadegan
South Corona Auto Spa Property,	Represented By Ramin Azadegan
South Corona Auto Spa, LP	Represented By Ramin Azadegan
South Corona 76 Property, LLC	Represented By Ramin Azadegan
South Corona 76, LP	Represented By Ramin Azadegan
Simi Auto Spa Property, LLC	Represented By Ramin Azadegan Victor A Sahn
Simi Auto Spa Center, LP	Represented By Ramin Azadegan

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10:00 AM

CONT... Lenny Kyle Dykstra
Rafie O. Shouhed

Chapter 7

Represented By
Ramin Azadegan

Movant(s):

Simi Auto Spa Center, LP

Represented By
Ramin Azadegan

Simi Auto Spa Center, LP

Represented By
Ramin Azadegan

Simi Auto Spa Center, LP

Represented By
Ramin Azadegan

Plaintiff(s):

DAVID K GOTTLIEB

Represented By
Irena L Norton
Robert E Huttenhoff
Ryan D ODea

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Howard M Ehrenberg
SulmeyerKupetz
Irena L Norton
Robert E Huttenhoff
Victor A Sahn
Leonard M Shulman
Ryan D ODea

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

1:09-18409 Lenny Kyle Dykstra

Chapter 7

Adv#: 1:10-01183 GOTTlieb v. Simi Auto Spa Center, LP et al

#3.00 Motion to Dismiss Adversary Proceeding 2nd, 3rd, &
4th Claims of Third Amended Complaint Under FRCB 12(b)(1)

fr. 1/23/18; 4/17/18

Docket 193

Tentative Ruling:

See calendar #2

Party Information

Debtor(s):

Lenny Kyle Dykstra

Represented By
Michael T Pines - DISBARRED -
Moshe Mortner

Defendant(s):

Lenny Dykstra's Car Wash Corp., a

Pro Se

South Corona Center, LP

Represented By
Ramin Azadegan

Lenny Dykstra's Car Wash III, LP

Pro Se

Bahram Khadavi

Represented By
Ramin Azadegan

Kia Saidnia

Represented By
Ramin Azadegan

Karine Arditi

Represented By
Ramin Azadegan

Simone Shouhed

Represented By
Ramin Azadegan

**United States Bankruptcy Court
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10:00 AM

CONT... Lenny Kyle Dykstra

Chapter 7

Shahram Shouhed	Represented By Ramin Azadegan
Hamid Shohed	Represented By Ramin Azadegan
Farshid Shohed	Represented By Ramin Azadegan
Scott Arditi	Represented By Ramin Azadegan
Shahriar Shouhed	Represented By Ramin Azadegan
National Car Washes, Inc.	Represented By Ramin Azadegan
Corona Petroleum, Inc.	Represented By Ramin Azadegan
Corona Lane Collection, I, LP	Represented By Ramin Azadegan
South Corona Auto Spa Property,	Represented By Ramin Azadegan
South Corona Auto Spa, LP	Represented By Ramin Azadegan
South Corona 76 Property, LLC	Represented By Ramin Azadegan
South Corona 76, LP	Represented By Ramin Azadegan
Simi Auto Spa Property, LLC	Represented By Ramin Azadegan
Simi Auto Spa Center, LP	Represented By Ramin Azadegan
Rafie O. Shouhed	Represented By

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CONT... Lenny Kyle Dykstra

Chapter 7

Ramin Azadegan

Plaintiff(s):

DAVID K GOTTLIEB

Represented By
Irena L Norton
Robert E Huttenhoff
Ryan D ODea

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Howard M Ehrenberg
SulmeyerKupetz
Irena L Norton
Robert E Huttenhoff
Victor A Sahn
Leonard M Shulman
Ryan D ODea

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10:00 AM

1:09-18409 Lenny Kyle Dykstra

Chapter 7

Adv#: 1:10-01183 GOTTLIEB v. Simi Auto Spa Center, LP et al

#4.00 Plaintiff's Motion for Summary Judgment, or
in the Alternative, Partial Summary Judgment

fr. 11/14/17, 1/23/18; 4/17/18

Docket 175

Tentative Ruling:

See calendar #2

prior tentative ruling (1/23/18):

THE COURT HAS PREPARED ITS PROPOSED RULING AS TO UNDISPUTED AND DISPUTED FACTS AND EVIDENTIARY OBJECTIONS. THOSE ARE SET FORTH BELOW AS ARE THE LIST OF LEGAL ISSUES THAT THE COURT INTENDS TO RULE ON AT A LATER DATE. AT THE HEARING ON JANUARY 23, WE CAN DISCUSS THESE PROPOSED RULINGS AND WHETHER THE LIST OF ISSUES IS ACCURATE AND COMPLETE. THEREAFTER THE COURT WILL REVISE (AS NEEDED) AND THEN PROVIDE A WRITTEN MEMORANDUM COVERING ALL ISSUES. ISSUES RAISED BY THE DEFENDANTS' MOTION TO DISMISS IS INCLUDED IN THIS TENTATIVE RULING.

The Plaintiff has set forth his proposed undisputed facts, which have been responded to by the Defendants. The Court finds the following to be undisputed facts. Italics are used to discuss or rule on objections to the facts proposed by the Plaintiff.

UNDISPUTED FACTS

1. For purposes of this motion, the term "Consolidated Entities" refers to Lenny Dykstra's Car Wash Corp., Lenny Dykstra Car Wash III, LP, and South Corona Center. *This is stated in this fashion because the Complaint and Answer include Lenny Dykstra Estate*

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10:00 AM

CONT...

Lenny Kyle Dykstra

Chapter 7

as part of the "Consolidated Entities," but that Estate did not exist at the relevant times for this motion.

2. On June 6, 2007, Debtor Lenny Dykstra ("Debtor") and the "Consolidated Entities" entered into Purchase and Sale Agreements to sell real and personal property to the Shohed Group. The Shohed Group consists of individuals who are parties to the Purchase and Sale Agreements, as well as parties to the Prepayment Agreement that is discussed below. *The Defendants' response disputes that Dykstra was a party to the Purchase and Sale Agreements or Promissory Notes. It asserts that Car Wash III was the actual party to these transactions. However, paragraph ¶ 38 of the Answer "admits that the Debtor, the Shohed Group and others entered into agreements for the purchase of certain car wash properties and businesses [located on Los Angeles St., Compton Ave., and California Ave.]. RJN Ex. 7. Thus this fact is not in dispute.*
3. The Purchase and Sale Agreements provided for the purchase and sale of certain car wash properties, convenience store, gas station, and a shopping center (the "Corona Properties").
4. Defendants Simi Auto Spa Property and Simi Auto Spa Center executed promissory notes in favor of one of the Consolidated Entities (Car Wash III), in the original sums of \$2,500,000 ("Note 1") and \$20,500,000 ("Note 2"), together (the "Car Wash Notes"). The Car Wash Notes were secured by a Deed of Trust and Security Agreement encumbering the Simi Car Wash as well as Deeds of Trust and Security Agreements encumbering the Corona Properties. The Car Wash Notes provided for monthly interest payments of \$125,000 each. The principal balance payments came due in the amount of \$1 million on July 9, 2012 and \$22 million on July 9, 2017. Interest payments were made through

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CONT...

Lenny Kyle Dykstra

Chapter 7

August 9, 2008, totaling \$1,551,130 on Note 1 and \$198,870 on Note 2.

5. The Car Wash Notes were personally guaranteed by members of the Shohed Group.
6. On January 29, 2008, Debtor obtained a \$1,000,000 loan ("Bridge Loan") from the Shohed Group. The due date of the Bridge Loan was extended various times, with the final extension up to September 10, 2008.
7. On August 31, 2007, the Debtor purchased 1072 Newbern Ct., Thousand Oaks (the "Newbern Property") for \$17.425 million.
8. The Newbern Property was purchased with a \$12 million loan from Washington Mutual and a \$8.5 million loan from First Credit Bank. About \$3 million of the loan proceeds were used to pay off certain debt that existed from the car wash business. *The Court is not sure what car wash debt this refers to, but that does not seem relevant to this motion.*
9. On August 28, 2008, Debtor and the Consolidated Entities executed a Pre-Payment Agreement with the Shohed Group to obtain a discounted payoff of the Car Wash Notes.
10. The total debt consideration provided by Defendants to Debtor in the Pre-Payment Agreement is approximately \$12,850,000. However, the unpaid balance on the Car Wash Notes was \$23,000,000.
11. Among the terms of the Prepayment Agreement were the following:
 - a. The Shohed Group agreed to assume the First Credit Bank Loan and obtain a release of Dykstra's collateral [principal

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CONT...

Lenny Kyle Dykstra

Chapter 7

amount owed about \$8.5 million]

- b. The Shohed Group agreed to assume the Litt Loan in an amount of up to \$2.2 million and obtain the release of Dykstra's collateral
 - i. In February 2008, Debtor had borrowed approximately \$2,125,000 from the Litts (the "Litt Loan"). This loan was due on August 9, 2008 and had a 12% interest rate. The Litt Loan was secured by a third priority Deed of Trust recorded on the Ladbroke Property and the Car Wash Notes.
 - ii. As a condition to the Litt Loan, Car Wash III was required to pledge the Car Wash Notes and record an allonge to the Car Wash Notes requiring that the payment be made directly to the Litts and not to Car Wash III or Dykstra.
- c. The Shohed Group agreed to assume or pay off the Brodsky Loan in an amount of up to \$900,000
 - i. Between April 23, 2008 and May 29, 2008, Debtor borrowed approximately \$1,063,500 from BSI, LLC. This was through a series of loans. Some were to Dykstra, one to Car Wash III, and the final one on May 29, 2008 was a consolidated promissory note executed by both Dykstra and Car Wash III in the principal amount of \$1,063,500 (the "Brodsky Loan"). The Brodsky Loan matured on October 31, 2008. It carried an interest rate of 12% and a default interest rate of 24%. *It may not be important, but the Court is confused by the dates in that the final loan for \$5,000 was listed as being on May 29, 2008, but Exhibit 29 is*

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labeled as being done simultaneously, but is dated May 5, 2008. Nonetheless, it is undisputed that the principal amount due under the Brodsky Loan is \$1,063,500.

ii. Car Wash III was to execute in favor of BSI a Pledge and Security Agreement to secure the Brodsky Loan, which included a deed of trust. *There is no copy of the Pledge and Security Agreement in evidence and no copy of a recorded Deed of Trust. Exhibit 29 does not refer to a Pledge and Security Agreement or a Deed of Trust. Thus the Court does not find that these were ever executed, although there was an apparent intent to do so.*

d. The Shohed Group agreed to pay Dykstra \$1.250 million: \$500,000 by September 8, 2008 [but if it looked like the agreement would not close, Shohed was to stop payment of the \$500,000] and \$750,000 on closing. . *(The Terms of the Pre-Payment Agreement are detailed in the Motion at pgs. 12-13. Also, see Uncontroverted Fact ("UF") #24.)*

12. The Shohed Group did not assume the Litt Loan or obtain the release of Dykstra's collateral. *A dispute exists as to whether this was due to actions by the Shohed Group or by Dykstra or the Litts. However, a settlement between the Shohed Group and the Litt Group was reached as set forth in Ex. 12 to the declaration of Scott Arditi.*

13. At the time of the bankruptcy, the Litt Lien remained on the Ladbrook Property. Ultimately the senior secured creditor obtained relief from the automatic stay and foreclosed on Ladbrook. It its calculations as part of the motion for relief from stay, it included the

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Litt Loan.

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14. On January 22, 2009, BSI filed a state court action against Debtor, Car Wash III, and the Shohed Group for money due on default, tortious interference with contract, and third party beneficiary.
15. On July 7, 2009, Debtor filed a voluntary Chapter 11 petition.
16. On August 11, 2009, the state court granted summary judgment in favor of BSI against Car Wash III. The judgment was entered on September 22, 2009. However, the Bankruptcy Court set the judgment aside as void due to a violation of the automatic stay.
17. On November 10, 2009, BSI filed its proof of claim in Dykstra's bankruptcy case – in the amount of \$1,327,285. In January 2010 the Shohed Group settled with Brodsky. BSI was paid in full under the settlement in an amount which exceeded the proof of claim by \$1,334,987. Arditi Ex. 9, 10.
18. On October 27, 2009, Debtor's bankruptcy case was converted to Chapter 7.
19. On May 10, 2010, the instant adversary proceeding was initiated. Trustee's Third Amended Complaint was filed on July 29, 2011. Its claims for relief include: 1) breach of contract; 2) fraudulent transfer under Sections 544, 548(a)(1)(A), Cal. Civ. Code Sections 3439.04, 3439.05, 3439.07, and 3439.09; 3) fraudulent transfer under Sections 544, 548(a)(1)(B), 3439.04, 3439.05, 3439.07, and 3439.09; 4) recovery of avoided transfer; 5) breach of contract-purchase and sale agreement; and 5) declaratory relief.
20. After August 28, 2008, the Debtor was unable to pay his debts as they came due. He also had insufficient capital. *Defendants deny only as to whether this was due to the Prepayment Agreement. The proposed fact links it to the date of the Prepayment Agreement*

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("subsequent to the execution of ...), but not to the cause of these financial issues. Thus the Court finds this is an undisputed fact on August 29, 2008 and thereafter Dykstra was unable to pay his debts as they came due and had insufficient capital.

21. Numerous creditors have filed proofs of unsecured claim in Debtor's bankruptcy.

DISPUTED FACTS

1. *There is a dispute as to whether the Pre-Payment Agreement ever closed or, if it did, whether the Shohed Group was excused from performance in that Dykstra failed to perform or due to some other action(s) by Dykstra.*
2. *Plaintiff asserts that the existence of the Litt Lien prevented the Debtor from refinancing Ladbrook and removed all equity in the property. The Court is aware that the Litt Lien contributed to the granting of relief from stay allowing the senior lien to foreclose, but cannot find that this was the sole reason that Debtor could not refinance.*
3. *Plaintiff contends that Debtor's intent in entering into the Prepayment Agreement was to defraud his creditors. The Shohed Group filed an Answer to the Trustee's Third Amended Complaint and a Counterclaim against the Trustee. In Paragraphs 31-35 of the Counterclaim, the Shohed Group alleges that Dykstra entered into the Prepayment Agreement for the purpose of defrauding his creditors. However, this contention was denied in the Answer to ¶ 85 of the Third Amended Complaint and the allegations in the Sixth and Seventh Claims for Relief in the Counterclaim are alternative to those in the Eighth Claim for Relief for negligent misrepresentation.*

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Thus they are not binding admissions. The Court finds that this is a disputed issue of fact.

4. Debtor was not financially solvent between April 2008 and the date that he entered into the Prepayment Agreement. *The Shohed Group disputes this, but it also alleges in its Answer to the Third Amended Complaint that one of the false statements made by Dykstra was that he was financially solvent at the time of entering into the Prepayment Agreement. This is repeated in both the Seventh and Ninth Claims (fraud and negligent misrepresentation) and therefore is a fact that qualifies as judicial estoppel as to the time that the Prepayment Agreement was entered into. However, it is the burden of the Plaintiff to put forth evidence that supports its contentions. In the case the evidence is the report of Paul Shields. In Exhibit 30, Mr. Shields concludes that "it is my opinion that Mr. Dykstra was thinly solvent [as of August 28, 2008], and the amount of his solvency was approximately \$3.3 million." [Ex. 30, p.19].*
5. The consideration under the Prepayment Agreement that was actually paid by the Shohed Group is a disputed fact to be resolved after expert testimony at trial.
6. The reasonably equivalent value received by the Debtor from the Prepayment Agreement is a triable issue of fact.

EVIDENTIARY OBJECTIONS

Dykstra Declaration

All objections are overruled except as follows:

¶27

¶28 – the first sentence

¶33

Shields Declaration

BECAUSE THE PLAINTIFF AGREES THAT THERE IS A TRIABLE ISSUE OF FACT AS TO FAIR EQUIVALENT VALUE, WHICH WILL

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INCLUDE HOW MUCH THE DEFENDANTS ACTUALLY PAID, THE ADMISSIBILITY OF THE SHIELDS DECLARATION IS NOT RELEVANT AT THIS TIME. NONETHELESS, HERE IS THE RULING THAT THE COURT WOULD MAKE ON THE OBJECTIONS:

As to references to Ex. 32 and Ex. 33, the Declaration gives a general statement that these are the documents that he created in connection with the Solvency Report (ex. 30) and the Value Report (ex. 31). Each report states that it has appendices that list the documents relied on, but they are not attached here. HAVE THESE REPORTS BEEN FILED ELSEWHERE IN THE CASE SO THAT WE HAVE A COMPLETE RECORD? They are dated 9/19/17, so probably not.

The documents in Ex. 32 and Ex. 33 are not independently admissible. They are merely what the expert seems to have relied on. Some he may have prepared and those would be admissible. But it is not clear what he created.

As to the qualifications of the declarant to be an expert witness, it is hard for the Court to take the objections seriously. I have never seen an expert be required to produce membership certificates, graduation diplomas, proof of attendance of seminars, etc. If the objecting party has a good faith basis for this objection, I want to see it. If not, this was filed in bad faith and will be overruled with an admonition.

As to the use of other professionals, it is a fair objection to require sufficient information as to whether the declarant supervised the work, reviewed it, and the level and amount of review that he did.

At to Ex. 30 and 31, these are expert's reports. They are being offered as a declaration and are admissible for this motion for summary judgment. It will be up to the Defendants to show that there is a triable issue of fact as to the conclusions drawn by this expert.

All other objections are overruled.

Van Kalsbeek Declaration

The objection is to the overall declaration and to specific parts. The Court notes that Ms. Van Kalsbeek does not identify copies of any specific records. But she also does not take the contents of those records. Thus, the objection is overruled and the Court accepts this as background information and not as an attempt to put specific documents or content into evidence.

¶1 – Sustained in that she does not specify when she became the tax

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preparer. This would only go to any specific tax return. As custodian of records, she can verify that a tax return was filed and provide a copy of that tax return. As controller, she can verify that the contents of the tax return are accurate and specify her role in providing that information to the tax preparer. ¶3 – Overruled in that she is not seeking to admit the records. However, if it is necessary to show that she is in possession of certain records, this part of the declaration would have to be modified to specify which records she has and who else is the custodian of records.

¶4 – Overruled.

¶5 – Partially sustained. To the extent that it indicates that she prepared or provided the information to prepare the 2008 tax return, she has personal knowledge that it is inaccurate as to the gains on stocks. She needs to clarify her role in preparation of that return.

¶6 – Sustained. There is no indication that she has personal knowledge of this or was involved in the preparation of the 3/08 personal financial statement.

¶7 - Sustained. There is no indication that she has personal knowledge of this.

¶8 - Sustained. There is no indication that she has personal knowledge of this.

Declaration of Leonard Shulman

Sustained. A title report is hearsay and not admissible. Further, under California law a preliminary title report has little, if any, value as to how title to real property is held. *In re Massrock, Inc.* 2016 WL 4039659 (9th Cir. BAP 2016). If the ownership of Ladbroke is an issue that cannot be dealt with by stipulation, you need to get a certified copy of the deed of transfer or a proper declaration of a title company as to an abstract of title.

ISSUES TO BE DETERMINED

- I. **Other than the issue of reasonably equivalent value, which the parties agree is a disputed issue of fact, should the Court find that for the Trustee on all other issue under 11 USC §548(a)?**

Because Paul Shields did not include the Car Wash Notes or the Prepayment Agreement in his analysis of solvency (ex. 30 to his declaration)

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and he found that on the date of the transfer the Debtor was "thinly solvent" under the balance sheet test required by 11 USC §101(32)(A), do the Defendants prevail under §548(a)(1)(B) whether there was reasonably equivalent value or not?

- II. **Other than the issue of reasonably equivalent value, which the parties agree is a disputed issue of fact, should the Court find that for the Trustee on all other issue under Civil Code §3439.04(a)?**
- III. **Other than the issue of reasonably equivalent value, which the parties agree is a disputed issue of fact, should the Court find that for the Trustee on all other issue under Civil Code §3439.05?**
- IV. **Are the Defendants' Second, Third, Fourth, Sixth and Seventh Counterclaims barred by the applicable statute of limitations?**
- V. **Does the Trustee have standing to avoid or recover a fraudulent transfer because he never brought a separate motion to preserve his avoidance powers nunc pro tunc after substantive consolidation was granted in December 2010?**
- VI. **Does the Trustee have standing to sue third parties on an alter ego theory on behalf of the Estate's creditors?**
- VII. **Does Dykstra have an interest in the Car Wash III Notes and, if not, does this prevent the Trustee from bringing his avoidance claims?**
- VIII. **Should the Defendants' Motion to Dismiss the Second, Third, and Fourth Claim for Relief be granted?**

Party Information

Debtor(s):

Lenny Kyle Dykstra

Represented By

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Michael T Pines - DISBARRED -
Moshe Mortner

Defendant(s):

Lenny Dykstra's Car Wash Corp., a South Corona Center, LP	Pro Se Represented By Ramin Azadegan
Lenny Dykstra's Car Wash III, LP Bahram Khadavi	Pro Se Represented By Ramin Azadegan
Kia Saidnia	Represented By Ramin Azadegan
Karine Ardit	Represented By Ramin Azadegan
Simone Shouhed	Represented By Ramin Azadegan
Shahram Shouhed	Represented By Ramin Azadegan
Hamid Shohed	Represented By Ramin Azadegan
Scott Ardit	Represented By Ramin Azadegan
Farshid Shohed	Represented By Ramin Azadegan
Shahriar Shouhed	Represented By Ramin Azadegan
National Car Washes, Inc.	Represented By Ramin Azadegan
Corona Petroleum, Inc.	Represented By Ramin Azadegan

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Howard M Ehrenberg
SulmeyerKupetz
Irena L Norton
Robert E Huttenhoff
Victor A Sahn
Leonard M Shulman
Ryan D ODea

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1:09-18409 Lenny Kyle Dykstra

Chapter 7

Adv#: 1:10-01183 GOTTLIEB v. Simi Auto Spa Center, LP et al

- #5.00** Pretrial Conference on Trustees Third Amended Complaint for:
1) Breach of Contract;
2) Fraudulent Transfer [11 USC 544, 548(a)(1)(A);
California Civil Code 3439.04, 3439.05, 3439.07, 3439.09];
3) Fraudulent Transfer [11 USC. 544, 548 (a)(1)(B);
California Civil Code 3439.04, 3439.05, 3439.07, 3439.09];
4) Recovery of Avoided Transfer [11 USC 550];
5) Breach of Contract Purchase and Sale Agreement;
and 6) Declaratory Relief

fr. 9/27/11, 12/13/11, 1/3/12, 1/24/12, 5/15/12,
9/25/12, 12/11/12, 2/12/13, 6/4/13 per stip, 8/6/13,
10/22/13, 5/13/14, 7/14/14, 12/16/14; 3/31/15,
10/20/15, 1/26/16; 4/26/16, 8/2/16; 11/15/16, 12/20/16,
3/14/17, 3/21/17, 6/27/17; 11/14/17, 1/23/18; 4/17/18

Docket 86

Tentative Ruling:

See calendar #2

Prior tentative ruling:

Due to the complexity of a few of the issues and the fact that I have no law clerks to assist me and have other matters on calendar, it will take a while for me to complete the ruling on the motion for summary judgment and motion to dismiss. Unless I grant the motion to dismiss, we know that there will be an evidentiary hearing on the issue of reasonably equivalent value. I don't think that I will need a pretrial order on that since it has been fully briefed in the msj and the expert reports are in. Let's continue this to a status conference on March 27, 2018 at 9:00 a.m. If I have completed my ruling on the msj/motion to dismiss by that time, we can set the trial date. I think it will be a one day trial.

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3rd Party Defendant(s):

M.R.R., Inc. dba All Valley Trustee	Pro Se
Teresa Litt	Pro Se
David A. Litt	Pro Se
David A. Litt and Teresa Litt, in their	Pro Se

3rd Party Plaintiff(s):

South Corona Center, LP	Represented By Ramin Azadegan
South Corona Auto Spa, LP	Represented By Ramin Azadegan
South Corona Auto Spa Property,	Represented By Ramin Azadegan
South Corona 76, LP	Represented By Ramin Azadegan
South Corona 76 Property, LLC	Represented By Ramin Azadegan
Simi Auto Spa Property, LLC	Represented By Ramin Azadegan
Simi Auto Spa Center, LP	Represented By Ramin Azadegan
Shahriar Shouhed	Represented By Ramin Azadegan
Shahram Shouhed	Represented By Ramin Azadegan
Simone Shouhed	Represented By Ramin Azadegan
Hamid Shohed	Represented By Ramin Azadegan

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Rafie O. Shouhed
Represented By
Ramin Azadegan

Scott Arditi
Represented By
Ramin Azadegan

Corona Lane Collection, I, LP
Represented By
Ramin Azadegan

Corona Petroleum, Inc.
Represented By
Ramin Azadegan

Karine Arditi
Represented By
Ramin Azadegan

National Car Washes, Inc.
Represented By
Ramin Azadegan

Kia Saidnia
Represented By
Ramin Azadegan

Farshid Shohed
Represented By
Ramin Azadegan

Bahram Khadavi
Represented By
Ramin Azadegan

Counter-Claimant(s):

Shahriar Shouhed
Represented By
Ramin Azadegan

South Corona Center, LP
Represented By
Ramin Azadegan

South Corona Auto Spa, LP
Represented By
Ramin Azadegan

South Corona Auto Spa Property,
Represented By
Ramin Azadegan

South Corona 76, LP
Represented By
Ramin Azadegan

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South Corona 76 Property, LLC Represented By
Ramin Azadegan

Simi Auto Spa Property, LLC Represented By
Ramin Azadegan

Simi Auto Spa Center, LP Represented By
Ramin Azadegan

Shahram Shouhed Represented By
Ramin Azadegan

Simone Shouhed Represented By
Ramin Azadegan

Hamid Shohed Represented By
Ramin Azadegan

Farshid Shohed Represented By
Ramin Azadegan

Rafie O. Shouhed Represented By
Ramin Azadegan

Kia Saidnia Represented By
Ramin Azadegan

National Car Washes, Inc. Represented By
Ramin Azadegan

Bahram Khadavi Represented By
Ramin Azadegan

Corona Petroleum, Inc. Represented By
Ramin Azadegan

Corona Lane Collection, I, LP Represented By
Ramin Azadegan

Scott Arditi Represented By
Ramin Azadegan

Karine Arditi Represented By

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Chapter 7

Ramin Azadegan

Counter-Defendant(s):

DAVID K GOTTLIEB

Pro Se

Debtor(s):

Lenny Kyle Dykstra

Represented By
Michael T Pines - DISBARRED -
Moshe Mortner

Defendant(s):

South Corona Center, LP

Represented By
Ramin Azadegan

Lenny Dykstra's Car Wash III, LP

Pro Se

Bahram Khadavi

Represented By
Ramin Azadegan

Kia Saidnia

Represented By
Ramin Azadegan

Karine Ardit

Represented By
Ramin Azadegan

Simone Shouhed

Represented By
Ramin Azadegan

Shahram Shouhed

Represented By
Ramin Azadegan

Lenny Dykstra's Car Wash Corp., a

Pro Se

Hamid Shohed

Represented By
Ramin Azadegan

Farshid Shohed

Represented By
Ramin Azadegan

Scott Ardit

Represented By
Ramin Azadegan

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Corona Petroleum, Inc.

Represented By
Ramin Azadegan

Shahriar Shouhed

Represented By
Ramin Azadegan

National Car Washes, Inc.

Represented By
Ramin Azadegan

Corona Lane Collection, I, LP

Represented By
Ramin Azadegan

South Corona Auto Spa Property,

Represented By
Ramin Azadegan

South Corona Auto Spa, LP

Represented By
Ramin Azadegan

South Corona 76 Property, LLC

Represented By
Ramin Azadegan

South Corona 76, LP

Represented By
Ramin Azadegan

Simi Auto Spa Property, LLC

Represented By
Ramin Azadegan

Simi Auto Spa Center, LP

Represented By
Ramin Azadegan

Rafie O. Shouhed

Represented By
Ramin Azadegan

Plaintiff(s):

DAVID K GOTTLIEB

Represented By
Irena L Norton
Robert E Huttenhoff

Successor Trustee(s):

David K Gottlieb, Chapter 7 Trustee

Represented By
Irena L Norton

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Robert E Huttenhoff

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Howard M Ehrenberg
SulmeyerKupetz
Irena L Norton
Robert E Huttenhoff
Victor A Sahn
Leonard M Shulman

Arturo Cisneros (TR)

Represented By
Irena L Norton

David K Gottlieb

Represented By
Robert E Huttenhoff

US Trustee(s):

United States Trustee (SV)

Pro Se

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1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01181 Campbell v. Pyle

#6.00 Status Conference re: Complaint for
Determination that Debt is Nondischargeable
and/or to Recover Money

fr. 5/11/11, 6/22/11, 10/4/11, 1/24/12, 2/14/12,
4/24/12, 6/19/12, 9/11/12, 10/2/12, 11/6/12,
2/12/13, 3/19/13, 8/27/13, 8/27/13, 11/19/13,
2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14,
12/16/14, 3/10/15; 5/12/15; 6/2/15, 9/1/15,
9/8/15, 11/17/15; 1/12/16, 3/1/16, 6/7/16,
8/2/16, 9/27/16, 10/11/16, 1/17/17, 2/21/17,
3/28/17, 1/14/17, 12/19/17, 1/23/18, 3/27/18

Docket 1

***** VACATED *** REASON: Continued to 8/21/18 at 10:00a.m. on the
Court's own motion - jc**

Tentative Ruling:

The order granting relief from the automatic stay was entered on 1/30/18. On 3/6 Mr. Campbell appeared in Court and wanted to know about the order. He had not been served with a copy of the order - our fault. I directed him to my law clerk, but he left without seeing her. On March 1, 2018, Judge Hammock continued his OSC re: Dismissal (BC416442) to July 5 so that Campbell could seek a judgment (he already has a default) on declaration. As soon as he has obtained his judgment, I will be ready to proceed. When will he be filing his declaration, etc. in the Superior Court? Should this status conference be continued until after July 5 or can we proceed before that?

prior tentative ruling (1/23/18)

Mr. Campbell has filed the motion for relief from stay to complete the superior court case. Continue this status conference to March 27, 2018 at 9:00 a.m. to allow him to obtain his judgment in the superior court.

prior tentative ruling (12/19/17)

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I have been in contact with Judge. Hammock of the Superior Court. He advises me that all that is left to do in his case is for Mr. Campbell to file a motion for default judgment. The automatic stay is preventing this.

To move that case forward, Mr. Campbell is to file a motion in this court for relief from the automatic stay. This is to be filed and served no later than December 26. It is to be served by mail and by email on Mr. Pyle. The hearing will be on January 23, 2018 at 10:00 a.m. in courtroom 303. Mr. Campbell is to use the mandatory court form: F 4001-1.RFS.NONBK.MOTION. This is available on the Court website at www.cacb.uscourts.gov/forms/local_bankruptcy_rules_forms. Or you can obtain a copy at the filing window in the clerk's office.

prior tentative ruling (11/14/17)

The Court advised Mr. Campbell of the continuance of the Berry v. Pyle case. He does wish to appear on 11/14. The Court has called Mr. Aver's office and asked them to contact Mr. Pyle (who is pro se in this adversary proceeding) to advise him that the hearing on 11/14 is going forward and that Mr. Pyle is to appear on the phone or in person and instruct him on how to use Court Call. The Court was notified that he also wishes to appear.

What is the status of the state court matter?

prior tentative ruling (3/28/17)

This adversary proceeding has been trailing the Berry v. Pyle one, but it has some different issues. How does Mr. Campbell wish to proceed?

prior tentative ruling (1/17/17)

I believe that Mr. Campbell was trying to obtain counsel. It is best to keep this together with Berry v. Pyle. Therefore continue it without appearance to 2/21/17 at 10:00 a.m. when I have a hearing on the motion for summary judgment in the Berry v. Pyle case.

prior tentative ruling (8/2/16)

Mr. Campbell is now representing himself. How does he wish to proceed to

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get this ready for trial?

prior tentative ruling (3/1/16)

Per the status report filed by Plaintiff on 2/23/16, discovery is not complete. Plaintiff wants to take Mr. Pyle's deposition and audit the records.

This was trailing the Berry v. Pyle matter, but given Mr. Berry's health, I think that it should go forward alone and complete the discovery. Feel free to appear by phone at the status conference and let's get some dates to complete discovery. Please advise Mr. Pyle, who is not represented by counsel in this case, to appear in person or by phone.

prior tentative ruling (1/12/16)

This has nothing to do with Mr. Berry's health and Mr. Pyle is not represented by counsel. The 1/5/16 status report said that plaintiff will be ready for trial on 2/1. He figures 2-3 days. Let's set a trial date. Possible dates when there is a courtroom available are Feb. 16-17 and Mar. 23-24.

prior tentative ruling (9/8/15)

This has been trailing Berry v. Pyle. On 8/18/15 Plaintiff filed a status report. He is ready to go to trial in February 2016. He needs another 4-6 months to complete discovery, which includes Mr. Pyle's deposition and an audit of the records.

In htis case Mr. Pyle is not represented by counsel. So let's get a deposition date and move forward.

prior tentative ruling (3/10/15)

Mediation set for 3/24/15. Continue without appearance to 5/12/15 at 1:00 a.m

prior tentative ruling (10/7/14)

The mediation has been delayed. Continue without appearance to 12/16/14 at 10:00 a.m.

prior tentative ruling (8/5/14)

The Berry v. Pyle matter is scheduled for a settlement conference before

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CONT... Glen E Pyle

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Judge Ryan on 9/22/14. Is this case part of the settlement conference? If so, continue without appearance to 10/7/14 at 10:00 a.m. If not, the status report filed by Plaintiff on 7/21 requests mediation. How do you wish to proceed?

prior tentative ruling (4/22/14)

On 4/8/14, counsel for plaintiff filed a status report. He believes that he will be ready for trial in 6 months. There is still discovery to be done, including completing Debtor's deposition. A mediation will take place in May or June.
Continue without appearance to August 5, 2014 at 10:00 a.m.

prior tentative ruling (3/11/14)

This complaint is both under §523 and §727 as well as §§547 and 548. This has been trailing the Berry v. Pyle adversary proceeding. Mr. Mendoza attended the 2/10/14 deposition of Mr. Pyle, which is a joint deposition in both this case and the Berry v. Pyle case. Pyle is not represented by counsel in this adversary proceeding.

Mr. Mendoza, should this continue to trail the Berry adversary or are you ready to go forward on your own?

prior tentative ruling (4/24)

The parties have stipulated that plaintiff will have until 4/20 to file a Second Amended Complaint. A second amended complaint was filed on 4/20. Per the status report, the parties think that they need 4-5 months to complete discovery. The parties wish to mediate. Plaintiff has no co-counsel and may wish to propound more discovery and seek relief from stay as to certain trust assets.

Continue the status conference without appearance to June 19 at 10:00 a.m.

This will allow sufficient time for there to be a response to the second amended complaint and for new co-counsel to move forward. In the meantime, please complete a mediation order since it often takes weeks to schedule a mediation.

prior tentative ruling (2/14)

Per the status report filed on 1/24, the parties feel that they will not be ready

**United States Bankruptcy Court
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CONT... Glen E Pyle

Chapter 7

for trial until late in 2012. Set a discovery cutoff date of 7/30/12. Although neither party wants mediation at this time, plaintiff's counsel is willing to attend mediation.

As of 2/12 there is no response to the amended complaint. What is the status of that? When do the parties think that mediation might be beneficial?

prior tentative ruling (1/24)

An answer was filed on 7/15. Plaintiff filed an amended complaint on 1/12, but this was done without leave to amend.

Counsel, in the future please confer with knowledgeable bankruptcy counsel before filing things in bankruptcy court. Your original cover sheet indicated that this was only a complaint to recover money under §§547 and 548. That is incorrect. The original complaint is under §523 and §727 (although that is not mentioned on the caption) and may include §§547 and 548 (although the uploaded copy has some pages missing, so I can't tell for sure). The amended complaint has all of these claims for relief. The court picked up that there was a §727 claim, but we should not have to review the complaint to do this.

prior tentative ruling (10/4)

Nothing further received as of 10/2.

prior tentative ruling (6/22)

As of 5/9 there has been no return on service on the summons. The plaintiff has counsel. There is no status report as of 5/8. If there is no appearance at the 5/11 hearing, I will issue and OSC re: dismissal for failure to prosecute.

Party Information

Attorney(s):

Richard S. Singer

Pro Se

Klinedinst PC

Represented By
Hartford O Brown

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, July 17, 2018

Hearing Room 303

10:00 AM

CONT... Glen E Pyle

Chapter 7

Debtor(s):

Glen E Pyle Pro Se

Defendant(s):

Glen Pyle Pro Se

Plaintiff(s):

Ian Campbell Pro Se

Trustee(s):

Amy L Goldman (TR) Represented By
Amy L Goldman
Amy L Goldman (TR)

Amy L Goldman (TR) Pro Se

US Trustee(s):

United States Trustee (SV) Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, July 17, 2018

Hearing Room 302

10:00 AM

1:13-10386 Shirley Foose McClure
Adv#: 1:18-01050 Reitman v. McClure

Chapter 11

#7.00 Status Conference re Complaint

fr. 7/18/18

Docket 1

Tentative Ruling:

Off calendar. Summary judgment was granted by order entered on 6/8/18.
Judgment signed 7/16/18.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Defendant(s):

Jason McClure

Pro Se

Plaintiff(s):

John P. Reitman

Represented By
Jon L Dalberg

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

**United States Bankruptcy Court
Central District of California
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Judge Geraldine Mund, Presiding
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Tuesday, July 17, 2018

Hearing Room 302

10:00 AM

CONT... Shirley Foose McClure

Chapter 11

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, July 17, 2018

Hearing Room 303

10:00 AM

1:16-11387 Real Estate Short Sales Inc

Chapter 7

#8.00 Motion for relief from stay

U.S. BANK NATIONAL ASSOC.

fr. 1/23/18, 2/27/18

Docket 190

*** VACATED *** REASON: Order ent. continuing hrg to 9/18/18 at
10:00 a.m. - jc

Tentative Ruling:

Continued by stipulation to 9/18/18 at 10:00 a.m.

prior tentative ruling (2/27/18)

At the hearing on 2/13, the Court was informed that Ms. Cueva had not made the payment of the settlement amount. Berendo has been vacated and is being put on the market. The Trustee and Ms. Cueva are attempting to work out a modified compromise motion on the Oklahoma Ave. property. Nothing further filed as of 2/25.

prior tentative ruling (1/23/18)

This concerns the Oklahoma Ave. property. U.S. Bank has a secured claim of \$1.439+ million. It recorded its notice of default in 2/15 and a sale was scheduled, but never held. The current monthly payments as of 11/17 are \$7,057.47. A total of 73 payments were not made. The fair market value of the property is \$1.1 million.

The property was transferred by Cueva to Debtor without the Bank's consent. The Bank received relief from stay in the prior bankruptcy case.

In this case, there was an adequate protection order on which the Debtor defaulted multiple times.

Proposed Ruling

Under the proposed compromise, the Oklahoma Property will be released from the Estate. As to the stay concerning the Debtor, relief from stay will be granted. It is up to Cueva, et al, to work out something with the Bank.

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10:00 AM

CONT... Real Estate Short Sales Inc

Chapter 7

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, July 17, 2018

Hearing Room 303

10:00 AM

1:16-11387 Real Estate Short Sales Inc

Chapter 7

#9.00 Motion for relief from stay

WELLS FARGO BANK N.A.

Docket 233

***** VACATED *** REASON: Order ent. continuing hrg to 9/18/18 at
10:00 a.m. - jc**

Tentative Ruling:

Continued by stipulation to 9/18/18 at 10:00 a.m.

This concerns 625 S. Berendo. Wells Fargo asserts a total claim of \$815,000+ and has recorded its notice of default and notice of sale. The current monthly payments of \$4,029.47 and there are 85 now due and owing. Wells Fargo holds the first trust deed and has filed a broker price opinion that the value is \$655,000.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, July 17, 2018

Hearing Room 303

10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#10.00 Order to Appear and Advise the Court as to
the Handling of the Claim for Relief under
11 USC Sec. 727 in Campbell vs. Pyle

Docket 217

***** VACATED *** REASON: Continued to 8/21/18 at 10:00a.m. on the
Court's own motion - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Glen E Pyle Pro Se

Defendant(s):

Glen E Pyle Represented By
Raymond H. Aver

Sweetwater Management Company Pro Se

Glen E Pyle Irrevocable Trust Represented By
Raymond H. Aver

Plaintiff(s):

Marc H Berry Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR) Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, July 17, 2018

Hearing Room 303

10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01181 Campbell v. Pyle

#11.00 Order to Show Cause as to how to Proceed
with the Claim for Relief Under 11 USC Sec.
727

Docket 87

***** VACATED *** REASON: Continued to 8/21/18 at 10:00a.m. on the
Court's own motion - jc**

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Glen E Pyle Pro Se

Defendant(s):

Glen Pyle Pro Se

Plaintiff(s):

Ian Campbell Pro Se

Trustee(s):

Amy L Goldman (TR)	Represented By
	Amy L Goldman
	Amy L Goldman (TR)
	Leonard Pena

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 302 Calendar

Wednesday, July 18, 2018

Hearing Room 302

11:00 AM

1:13-10386 Shirley Foose McClure
Adv#: 1:18-01050 Reitman v. McClure

Chapter 11

#1.00 Status Conference re Complaint

Docket 1

*** VACATED *** REASON: Status conference moved to 7/17/18 at 10 am
(eg)

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Defendant(s):

Jason McClure

Pro Se

Plaintiff(s):

John P. Reitman

Represented By
Jon L Dalberg

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, August 7, 2018

Hearing Room 303

10:00 AM

:
Adv#: 1:16-01120 Speier v. SunCal Management LLC et al

Chapter 0

#1.00 Defendants' Motion for Summary Adjudication

fr. 1/23/18; 2/13/18, 3/6/18; 4/17/18

Docket 518

***** VACATED *** REASON: Case transferred back to Santa Ana
division; closed - jc**

Tentative Ruling:

Tentative ruling emailed to parties on 4/9. Too long to post.

Party Information

Defendant(s):

SunCal Management LLC

Represented By
Craig H Averch
Doah Kim
Aalok Sharma

Argent Management, LLC

Represented By
Craig H Averch
Doah Kim
Aalok Sharma

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

:
Adv#: 1:16-01121 Speier v. SunCal Management, LLC et al

Chapter 0

#2.00 Defendants' Motion For Summary of Adjudication

fr. 1/23/18; 2/13/18, 3/6/18; 4/17/18

**United States Bankruptcy Court
Central District of California
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Hearing Room 303

10:00 AM

CONT...

Chapter 0

Docket 407

***** VACATED *** REASON: Case transferred back to Santa Ana
division; closed - jc**

Tentative Ruling:

Tentative ruling emailed to parties on 4/9. Too long to post.

Party Information

Defendant(s):

SunCal Management, LLC

Represented By
Craig H Averch
Aalok Sharma

Argent Management, LLC

Represented By
Craig H Averch
Aalok Sharma

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

:

Adv#: 1:16-01121 Speier v. SunCal Management, LLC et al

Chapter 0

#3.00 Trustee's Motion For Partial Summary Adjudication of
his Restitution and/or Unjust Enrichment Claim for Relief

fr. 12/19/17; 1/23/18; 2/13/18, 3/6/18; 4/17/18

Docket 399

***** VACATED *** REASON: Case transferred back to Santa Ana
division; closed - jc**

Tentative Ruling:

**United States Bankruptcy Court
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San Fernando Valley
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CONT...

Chapter 0

Tentative ruling emailed to parties on 4/9. Too long to post.

Party Information

Defendant(s):

SunCal Management, LLC

Represented By
Craig H Averch

Argent Management, LLC

Represented By
Craig H Averch

Movant(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

:
Adv#: 1:16-01122 Speier v. SunCal Management LLC et al

Chapter 0

#4.00 Defendants' Motion for Summary Adjudication

fr. 12/19/17; 1/23/18; 2/13/18, 3/6/18; 4/17/18

Docket 399

***** VACATED *** REASON: Case transferred back to Santa Ana
division; closed - jc**

Tentative Ruling:

Tentative ruling emailed to parties on 4/9. Too long to post.

Party Information

**United States Bankruptcy Court
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CONT...

Chapter 0

Defendant(s):

SunCal Management LLC

Represented By
Craig H Averch
Aalok Sharma

Argent Management, LLC

Represented By
Craig H Averch
Aalok Sharma

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

:

Adv#: 1:16-01122 Speier v. SunCal Management LLC et al

Chapter 0

#5.00 Trustee's Motion For Partial Summary Adjudication of his Restitution and/or Unjust Enrichment Claim for Relief

fr. 12/19/17; 1/23/18; 2/13/18, 3/6/18; 4/17/18

Docket 391

***** VACATED *** REASON: Case transferred back to Santa Ana division; closed - jc**

Tentative Ruling:

Tentative ruling emailed to parties on 4/9. Too long to post.

Party Information

Defendant(s):

SunCal Management LLC

Represented By
Craig H Averch

Argent Management, LLC

Represented By
Craig H Averch

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, August 7, 2018

Hearing Room 303

10:00 AM

CONT...

Chapter 0

Movant(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

:
Adv#: 1:16-01123 Speier v. SunCal Management LLC et al

Chapter 0

#6.00 Defendants' Motion for Summary Adjudication

fr. 1/23/18; 2/13/18, 3/6/18; 4/17/18

Docket 396

*** VACATED *** REASON: Case transferred back to Santa Ana
division; closed - jc

Tentative Ruling:

Tentative ruling emailed to parties on 4/9. Too long to post.

Party Information

Defendant(s):

SunCal Management LLC

Represented By
Craig H Averch
Aalok Sharma

Argent Management, LLC

Represented By
Craig H Averch
Aalok Sharma

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, August 7, 2018

Hearing Room 303

10:00 AM

CONT...

Chapter 0

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

:

Adv#: 1:16-01123 Speier v. SunCal Management LLC et al

Chapter 11

#7.00 Trustee's Motion for Partial Summary Adjudication of his Restitution and/or Unjust Enrichment Claim for Relief

fr. 12/19/17; 1/23/18; 2/13/18, 3/6/18; 4/17/18

Docket 388

***** VACATED *** REASON: Case transferred back to Santa Ana division; closed - jc**

Tentative Ruling:

Tentative ruling emailed to parties on 4/9. Too long to post.

Party Information

Defendant(s):

SunCal Management LLC

Represented By
Craig H Averch

Argent Management, LLC

Represented By
Craig H Averch

Movant(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, August 7, 2018

Hearing Room 303

10:00 AM

CONT...

Chapter 11

Plaintiff(s):

Steven M Speier

Represented By

Mike D Neue

Gary A Pemberton

Heather B Dillion

:

Chapter 0

Adv#: 1:16-01124 Speier v. SunCal Management LLC et al

#8.00 Defendants' Motion for Summary Adjudication

fr. 1/23/18; 2/13/18, 3/6/18; 4/17/18

Docket 401

***** VACATED *** REASON: Case transferred back to Santa Ana
division; closed - jc**

Tentative Ruling:

Tentative ruling emailed to parties on 4/9. Too long to post.

Party Information

Defendant(s):

SunCal Management LLC

Represented By

Craig H Averch

Aalok Sharma

Argent Management, LLC

Represented By

Craig H Averch

Aalok Sharma

Plaintiff(s):

Steven M Speier

Represented By

Mike D Neue

Gary A Pemberton

Heather B Dillion

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:
Adv#: 1:16-01124 Speier v. SunCal Management LLC et al

Chapter 0

#9.00 Trustee's Motion For Partial Summary Adjudication of
his Restitution and/or Unjust Enrichment Claim for Relief

fr. 12/19/17; 1/23/18; 2/13/18, 3/6/18; 4/17/18

Docket 393

***** VACATED *** REASON: Case transferred back to Santa Ana
division; closed - jc**

Tentative Ruling:

Tentative ruling emailed to parties on 4/9. Too long to post.

Party Information

Defendant(s):

SunCal Management LLC

Represented By
Craig H Averch

Argent Management, LLC

Represented By
Craig H Averch

Movant(s):

Steven M Speier (TR)

Represented By
Mike D Neue
Gary A Pemberton

Plaintiff(s):

Steven M Speier

Represented By
Mike D Neue
Gary A Pemberton
Heather B Dillion

1:09-23807 Shellie Melissa Halper
Adv#: 1:11-01317 Cohen v. Halper

Chapter 7

#10.00 Motion To Vacate Default Judgment Pursuant to

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, August 7, 2018

Hearing Room 303

10:00 AM

CONT...

Shellie Melissa Halper

Chapter 7

Fed. R. Bankr. Proc. 9024 and Request For Indicative
Ruling Pursuant to Fed. R. Civ. Proc. 62.1

Docket 155

Tentative Ruling:

Defendant/Debtor Shellie Melissa Halper moves to vacate a default judgment and requests an indicative ruling under Fed. R. Civ. P. 62.1

Background

Halper filed for chapter 11 relief on October 19, 2009 and her case was later converted to chapter 7.

Plaintiffs Solomon M. Cohen and Twin Palms Lending Group, LLC ("Twin Palms" and with Cohen the "Plaintiffs") commenced these two adversary proceedings in April 2011, in each case seeking to have loans that they made to Halper be declared non-dischargeable under 523(a)(2)(A) on the grounds that Halper had fraudulently induced them to make the loans.

In September 2011, Halper moved to have these proceedings stayed, alleging that the FBI and US Attorney's Office were investigating her for possible criminal activity and her counsel had advised her to assert her Fifth Amendment rights. The Plaintiffs stipulated to a one-year stay, which was extended repeatedly by stipulation of the parties. In May 2015, the court terminated that stay upon request of the Plaintiffs.

In June 2015, after counsel for the Plaintiffs represented that the US Attorney's office told him that there was no formal proceeding ever pursued by the federal prosecutor and argued that the statute of limitations for any crimes by Halper had passed, the court told Halper's counsel that she would have to show a good faith basis for any further assertion of Fifth Amendment protections. The parties represented that Halper's deposition was set for August 20, 2015.

The Plaintiffs noticed Halper's August 20, 2015 deposition and propounded other discovery requests. However, the deposition date was repeatedly continued: because Halper retained new counsel, because she delayed in producing documents, due to developments in the main bankruptcy case, and finally because Cohen fell ill. Then, the parties could not agree upon a deposition date.

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CONT...

Shellie Melissa Halper

Chapter 7

At a status conference in April 2016, the court ordered that Halper's deposition take place in May. A week before the May date, Halper's counsel informed Plaintiff's counsel that Halper would not attend because she needed to care for her father after eye surgery. The deposition was scheduled for June, but Halper cancelled two days prior to the deposition, because she had undergone surgery and was unable to participate in "stressful activity" for at least two months. The Plaintiffs agreed to continue the deposition until September, but reserved the right to seek sanctions. An hour before Halper's September deposition, Halper's counsel informed the Plaintiffs' counsel that she would not appear because Plaintiff's counsel's statement the previous day - that he intended to prove that Halper "stole" millions of dollars - was a threat of criminal prosecution and Halper would invoke her Fifth Amendment protections.

The Plaintiffs then brought an order to show cause why Halper should not be held in contempt and requested terminating sanctions. The court granted this motion and issued an order to show cause why Halper should not be held in contempt for her repeated failures to sit for her deposition and "asserted bad faith delay tactics" and failure to comply with court orders.

At the December 2016 hearing on the OSC, the court indicated that it disapproved of Halper's "abusive conduct," but gave her one last chance to comply before issuing terminating sanctions. In a December 19, 2016 order, it required Ms. Halper to pay \$40,000 in monetary sanctions - under a payment plan - and to sit for her deposition on January 31, 2017, or terminating sanctions would be issued. Halper failed to make the second installment payment due January 13. On January 30, the court entered an order striking Halper's answers in the proceedings, directing the clerk to enter defaults against Halper, and stating that the Plaintiffs are entitled to default judgments and directing them to file evidence in support of damages. The court entered defaults against Halper on February 23, 2017. The Plaintiffs moved for default judgment, arguing that the allegation in the complaints were "deemed admitted" and offering declarations that they argued proved the elements of 523(a)(2)(A). Halper did not file a written response to the motions, but orally asked for more time to pay off the sanctions award. The court informed her that her efforts were "too little, too late." On May 30, 2017, the court entered default judgments (the "Default Judgments") against Halper in these adversary proceedings: awarding non-dischargeable damages of

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CONT... Shellie Melissa Halper

Chapter 7

approximately \$9.5 million to Cohen and approximately \$2.4 million to Twin Palms.

Halper timely appealed the Default Judgments, but on March 13, 2018, the Bankruptcy Appellate Panel affirmed the Default Judgments, ruling that the court did not err in granting the Default Judgments without an evidentiary hearing and that terminating sanctions were appropriate. On March 27 2018, Halper appealed the BAP's decision to the Ninth Circuit.

Motion

Halper argues that Fed. R. Civ. P. 62.1 gives the court the authority to issue an indicative ruling on a timely Fed. R. Civ. P. 60 motion to vacate, notwithstanding Halper's pending appeal to the Ninth Circuit. Halper's motion to vacate is timely under Rule 60, because it is filed within one year of the entry of the Default Judgments. Finally, she argues that relief is appropriate under Fed. R. Civ. P. 60(b)

- (1) - "mistake, inadvertence, surprise, or excusable neglect" - because Halper has finally secured the money that she did not previously have to pay the sanctions and because Halper was advised by her former attorney not to attend the deposition, but that attorney never sought a stay to preclude the need to attend;
- (2) - "newly discovered evidence" - in that on May 9 Halper learned from her criminal counsel of a pending investigation by the United States Attorney for the District of Washington;
- (5) - "applying [the judgment] prospectively is no longer equitable" - because Halper now has the ability to secure funds from a third party to pay the sanctions award;
- & (6) - "any other reason that justifies relief" - Halper's now available funds is a changed circumstance that justifies vacatur of the Default Judgment.

Opposition - The Plaintiffs argue as follows:

Halper's use of Rule 62.1 is a disingenuous attempt to preempt the Ninth Circuit's jurisdiction.

Halper has failed to carry the burden of proving cause to set aside the Default Judgments. Her evidence in support of the Motion is inadequate: based on hearsay and on conclusions offered without factual support. For instance, her "newly discovered evidence" is an unsupported allegation that Ronald Stover orchestrated the Plaintiffs' losses. She has not shown

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CONT... Shellie Melissa Halper

Chapter 7

excusable neglect, as avoiding her deposition was tactical. Her offer to sit for her deposition now is puzzling because she is also asserting that she has discovered a new criminal investigation against her. She is simply lying to the court.

The Plaintiffs have been prejudiced by Halper's delay tactics in general and specifically by her delay in seeking relief under Rule 60(b). They are incurring the costs of the initial appeal to the BAP (where Halper's brief was late-filed without extension), this motion, and the Ninth Circuit appeal.

Reply

The Reply again focuses on the various reasons for the delay and repeats that Ms. Halper can and will pay the \$30,000 balance to the sanctions. She wishes to defend against an unmeritorious judgment that will follow her all of her life and also impact her 11 year old daughter. She is submitting documents under seal that show that she can now testify and seeks no further delays.

There was fraud in prosecuting this case, though that would be better dealt with in an adversary proceeding and one may be brought. J. Bennett Friedman was the attorney for all of the parties in the underlying transactions and never had a conflict waiver. He has enlisted a seemingly endless cadre of his fellow Bankruptcy professionals (including recently substituted attorneys for the Plaintiffs) to conspire against Ms. Halper and put in motion actions to cause her financial ruin." It appears that they "ghost wrote" some pleadings apparently filed by Cohen in pro per.

Analysis

Federal Rule of Bankruptcy Procedure 8008 (which is very similar to Fed. R. Civ. P. 62.1) gives this court the authority either to deny this Rule 60 motion to vacate or to issue a ruling indicating that it would grant the motion upon remand.

If a party files a timely motion in the bankruptcy court for relief that the court lacks authority to grant because of an appeal that has been docketed and is pending, the bankruptcy court may:

- (1) defer considering the motion;
- (2) deny the motion; or

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CONT...

Shellie Melissa Halper

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(3) state that the court would grant the motion if the court where the appeal is pending remands for that purpose, or state that the motion raises a substantial issue.

Fed. R. Bankr. P. 8008.

However, the Court would need very compelling circumstances to issue such an indicative statement to the Ninth Circuit, effectively negating the Bankruptcy Appellate Panel's decision. Halper has not presented such grounds. Furthermore, Halper has not presented grounds to vacate the Default Judgments under Fed. R. Civ. P. 60(b) (applicable through Fed. R. Bankr. P. 9024).

Halper argues that newly available money to pay the outstanding sanctions justifies relief. These funds do not constitute a "mistake, inadvertence, surprise, or excusable neglect" under (b)(1), nor do they render the Default Judgments inequitable under (b)(5) nor are they "any other reason that justifies relief" under (b)(6). Since she is relying on money from third parties and not from her own assets (ie. an unexpected inheritance), that or some similar source of the money was presumably available when Halper offered to pay the outstanding sanctions at the hearing on the motion for a default judgment, *i.e.*, before the Default Judgments were ever entered. In fact, she was given a payment plan in order to obtain the money that she needed. This money is not a new development. The payment of the sanctions was "too little, too late" before the Default Judgments were entered; it is certainly too late after they have been entered, a full year has passed, and they have been upheld on appeal.

Halper offers "newly discovered evidence" of a pending criminal investigation under (b)(2). That investigation was admittedly unknown to Halper when she repeatedly failed to sit for her depositions, and thus does not justify that failure to sit for her deposition. Her May 2018 discovery of this investigation is likewise completely irrelevant to her January 2017 failure to pay sanctions under the OSC.

Finally, Halper cites attorney error - advising her not to attend her deposition, but failing to obtain a stay of that deposition - as "excusable neglect" under (b)(1). Her statement is too conclusory to have any evidentiary value, it - fails to specify which (of the many) times that Halper failed to sit for her deposition Ms. Halper is referring to. Furthermore, she is not alleging the "negligence so gross that it is inexcusable" and "virtual abandonment" by her

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attorney of the type cited by courts finding "excusable neglect." *Lal v. California*, 610 F.3d 518, 524-25 (9th Cir. 2010). Finally, by the time the OSC was issued Halper was certainly aware that her failure to sit for her deposition had not been excused and could well lead to sanctions. Halper then had repeated opportunity to raise the issue of her attorney's "neglect" with the court before the Default Judgments were entered. She failed to do so.

Given the history of discovery in these cases and Ms. Halper's repeated attempts to avoid her deposition, the Court simply does not see this motion as being filed in good faith. It is just one more delaying tactic on her part.

Beyond that, the motion fails to provide any information that Ms. Halper has a meritorious defense to the underlying lawsuit. *Falk v. Allen*, 739 F.2d 461 (9th Cir. 1984); *United States v. Aguilar*, 782 F.3d 1101 (9th Cir. 2015). She focuses solely on her reasons for not paying the \$30,000, etc. Her motion to file evidence under seal only deals with whether she has been the subject of a new ongoing criminal investigation, but now can testify. This is totally irrelevant to this motion in that she did not pay the sanctions and did not seek to delay the deposition (at that time) due to a new or ongoing criminal investigation. She did not appear and assert the Fifth Amendment once I ruled that no such investigation was taking place in Los Angeles. The document under seal is not evidence of a meritorious defense to the underlying lawsuit.

Under these circumstances it would be a waste of time and resources and an undue burden on the Plaintiff to set aside a default judgment in which the Plaintiff has provided evidence in support of its prima face case only to hold a trial and then grant judgment against Halper for a substantial lack of a defense. While the burden for her is fairly low in this regard, the fact that this is a judgment granted only after the Plaintiff presented its evidence and that it has been affirmed by the initial appellate court raises the issue of meritorious defense at least a bit higher. The Court would need at least some admissible evidence to counter the declaration of Scott Ferguson (dkt. 124). But Halper does not even meet the lowest level as no evidence has been presented on her behalf.

In any event, the Court also concludes that this motion to vacate is not timely under Fed. R. Civ. P. 60, which specifies that: "A motion under Rule 60(b) must be made within a reasonable time - and for reasons (1), (2),

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and (3) no more than a year after the entry of the judgment" While a year might not have passed, filing this motion after the judgment had been appealed and the appeal had been lost was not "within a reasonable time." The prejudice to the Plaintiffs from the increased delay and relitigation and the waste of court resources are far too great.

In short, this motion offers nothing new to this court that would cause a reconsideration of the Default Judgments. It is simply one more in a series of delaying tactics by Halper and her attorneys, needlessly increasing the costs incurred by these Plaintiffs and the time wasted by this court.

Ruling:

Motion denied.

Evidentiary Objections to Declaration of Shellie Melissa Halper

Objection #1 - sustained

Objection #2 - overruled

Objection #3 - sustained

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Defendant(s):

Shellie Melissa Halper

Represented By
David Brian Lally

Plaintiff(s):

Solomon M Cohen

Represented By
Craig G Margulies
Nina Z Javan
Meghann A Triplett
Allan D Sarver

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Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

1:09-23807 Shellie Melissa Halper

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Adv#: 1:11-01317 Cohen v. Halper

#10.01 Motion to Expedite Hearing on request to seal and submit documents confidentially and in camera to the Court

Docket 163

Tentative Ruling:

I have reviewed the document submitted confidentially and to be held under seal. She has already revealed that she is still under investigation and this deals with that. This issue is not relevant to the motion for an indicative ruling. The proffered document It is meant to be confidential, but does not fall under the code section cited. However, I have no problem with keeping it under seal or simply returning it to Ms. Halper.

As to revealing it to the other side, they are to see the declaration, but not the attachment.

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Defendant(s):

Shellie Melissa Halper

Represented By
David Brian Lally

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Blake J Lindemann

Movant(s):

Shellie Melissa Halper

Represented By
David Brian Lally
Blake J Lindemann

Plaintiff(s):

Solomon M Cohen

Represented By
Nina Z Javan
Meghann A Triplett
Allan D Sarver

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

1:09-23807 Shellie Melissa Halper

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Adv#: 1:11-01319 Twin Palms Lending Group, LLC v. Halper

#11.00 Motion To Vacate Default Judgment Pursuant to
Fed. R. Bankr. Proc. 9024 and Request For Indicative
Ruling Pursuant to Fed. R. Civ. Proc. 62.1;

Docket 173

Tentative Ruling:

See calendar #10.

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley

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Yi S Kim
David Brian Lally

Defendant(s):

Shellie Melissa Halper

Represented By
David Brian Lally

Plaintiff(s):

Twin Palms Lending Group, LLC

Represented By
J. Bennett Friedman
Craig G Margulies
Nina Z Javan
Meghann A Triplett
Allan D Sarver

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

1:13-10386 Shirley Foose McClure

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#12.00 Motion of John P. Reitman, Chapter 11 Trustee,
for Order Approving Settlement with Barrett S. Litt,
et al. Pursuant to Fed. R. Bankr. P. 9019

fr. 3/27/18, 5/1/18, 6/5/18

Docket 1344

Tentative Ruling:

The documents were just received and I am beginning to review them. This will be continued along with the status conference to a date agreeable to all parties.

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However, I do have a question that needs clarification. As presented by Ms. McClure, the lawsuit by Arch Insurance against Mr. Litt only deals with the extra \$1 million of coverage and not with the initial \$2 million. Thus, the \$2 million is not in issue. So when Litt is agreeing to reduce his lien by \$800,000 + to \$340,000, how does the \$2 million insurance police play into this?

prior tentative ruling (7/9/18)

This was continued to May 1 as a holding date. I am awaiting the proposed settlement figure for the Tidus matter before I can analyze the issue of surplus estate. Nothing has yet been received. Continued to August 7, 2018 at 10:00 as a holding date. I hope to have my decision out long before that time.

prior tentative ruling (3/27/18)

John Reitman chapter 11 trustee (the "Trustee") for the estate (the "Estate") of Shirley McClure (the "Debtor") moves for approval of a settlement between the Trustee and Barrett Litt and affiliated parties (the "Litt Parties").

Service: Appears to be in order.

Background

Initial Case

Debtor initially filed for chapter 11 relief in 1992 (1:92-bk-1371-GM; the "Initial Case"). Early in that case the Debtor confirmed a plan of reorganization, but the case remained open pending the outcome of federal court litigation against the City of Long Beach.

In 2006, the Debtor and her son received \$20 million in settlement of a lawsuit against the City of Long Beach – 95% for the Debtor and 5% for her son. Barrett Litt and his law firms ("Litt") had represented them in this lawsuit since 1993, but Debtor's and Litt's relationship broke down. In July 2008, the Debtor brought a malpractice action against Litt in Superior Court (BC-393584; the "Litt State Court Action"), which included, *inter alia*, malpractice claims for advising the Debtor and her son to make an IRC §1033 election for the majority of their settlement funds and to invest in various real estate rental properties pursuant to that election.

In 2009, this Court granted Litt's final application and awarded fees of \$9,113,911.51 and costs of \$990,592.06 with a credit of \$9 million that had

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already been paid to Litt, so the remaining amount owed was \$1,104,503.57. (Initial Case dkt. 146). The Debtor appealed (Initial Case dkt 181), but the District Court and the Ninth Circuit upheld the fee award on appeal. McClure has brought another malpractice action against attorneys who represented her in this fee dispute with Litt. (McClure v. Tidus, et al. BC-443404).

In the meanwhile, Litt obtained and filed an abstract of judgment against thirteen real properties in which the Debtor had an interest. (Initial Case dkt 154, 155). The Court granted McClure a stay pending her appeal on certain conditions, including Litt's retention of his liens from the recorded abstracts of judgment. (Initial Case dkt. 218). The Initial Case was closed on August 16, 2016.

This Chapter 11

Debtor filed this case for Chapter 11 relief on December 21, 2012. The bulk of her estate's assets were comprised of her interest in multiple parcels of income producing residential real estate in Southern California, San Francisco, Maui, Indiana and Michigan (the "Properties"), most of which were 1033 Properties and owned 95% by the Debtor and 5% by her son. The major claims against the estate were (i) approximately \$460,000 in unsecured claims; (ii) secured lender claims of City National Bank ("CNB"), Pacific Mercantile Bank and its affiliate PM Asset Resolution, Inc. ("PMB"), and Shellpoint Mortgage Servicing for Bank of New York, as trustee ("Shellpoint Mortgage"), each secured by deeds of trust on various real estate, (iii) Litt's lien on most of the Properties (the "Litt Lien"), and (iv) a \$1,317,047 priority tax claim by the Franchise Tax Board ("FTB"). As the debtor-in-possession, the Debtor sold several Properties, using the money to repay some of her secured debt (CNB was paid off in full), for repairs and maintenance on other Properties, and to pay other expenses of the Properties and of this Chapter 11 case. Litt filed objections to most or all of these sales and filed appeals to the District Court when his objections were overruled.

On April 2, 2015, the Court entered an order limiting the Litt Lien to three Properties located at 910 Corbett St., Nos. 1, 2 and 3, San Francisco, CA. Litt appealed this order (the "Litt Lien Appeal") to the United States District Court, where it was assigned to Judge Wu and consolidated with related appeals that the Litt Parties had taken from the Court's orders (collectively, the "Litt Appeals"). In March 2017, the District Court remanded the Litt Lien Appeal for further consideration of the Ninth Circuit Court of

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Appeals decision in *Pacifica L 51 LLC v. New Investments, Inc. (In re New Investments Inc.)*, 840 F.3d 1137 (9th Cir. 2016).

The Trustee

On July 12, 2016, after this case had been pending for three years without confirmation of a plan and the Debtor had changed counsel repeatedly (often representing herself *pro se*),, the Court ordered the appointment of a chapter 11 trustee in this case (Dkt. 1090). The United States Trustee appointed Mr. Reitman as Chapter 11 Trustee of the Estate (Dkt. 1105). Mr. Reitman accepted – and the Court approved – the appointment. (Dkt. 1106, 1113).

Since his appointment, the Trustee has taken a number of actions to administer the assets of the Estate. He reached a court-approved Closing Agreement with the Franchise Tax Board, resolving the Debtor's dispute with the FTB over the validity of the Debtor's 1033 election (described above). He obtained court authorization to sell two properties in Michigan that were unencumbered but not operating on a net cash flow positive basis. He reached a settlement with PMB (the "PMB Settlement"), which is expected to result in the reduction of PMB's secured claim by at least \$650,000. The Court entered on order, following notice and a hearing, approving the PMB Settlement. The Debtor objected to the PMB Settlement and appealed the Court's order approving it (the "McClure Appeal"). The Trustee elected to have the McClure Appeal heard by the District Court and it has also been assigned to Judge Wu.

The Trustee believes that the PMB Settlement is a key step on the road to proposing and funding a plan of reorganization. However, the PMB Settlement provides that PMB's claim must be paid in full by Jun 30, 2018, which requires sale of the Estate's properties in San Francisco, Southern California (other than the Debtor's residence in Fullerton), and Hawaii. In January 2018, the Court approved the Trustee's retention of brokers to market and sell these Properties.

The Proposed Settlement with the Litt Parties

The Trustee has reached a settlement with the Litt Parties, embodied in a settlement agreement (the "Litt Settlement Agreement"; Exhibit 1 to the Declaration of John Reitman), which provides for:

- the reduction of the \$1.1 million Litt Lien on the Corbett

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Properties (by more than \$800,000) to \$340,000 (the "Litt Settlement Secured Claim"), plus interest thereafter at the federal post-judgment interest rate of 0.45%,

- release of the Litt Lien on all other Properties,
- dismissal of the Litt State Court Case (although not the claims of Jason McClure),
- dismissal of Litt's appeals
- payment of the Litt Settlement Secured Claim upon the sale or refinancing of the Corbett Properties
- customary mutual releases.

The Trustee is seeking approval of the Litt Settlement Agreement. As discussed in the analysis section below, the Trustee argues that this proposed settlement with Litt is fair and equitable and should be approved under the standard set by the Ninth Circuit.

Joinder of Litt Parties

The Litt parties join in the Motion, and argue as follows:

The claims against Litt that the Trustee proposes to settle would not yield any real value for the estate. The Debtor had repeatedly been offered the opportunity to settle with Litt under a 2006 Agreement that would have limited Litt's fees to \$9 million; the Debtor instead chose to go forward with claims against Litt – using a variety of attorneys and in circumstances that indicate the weakness of the Debtor's claims against Litt. The Litt State Court Action has been stayed since 2008 and is barred by *res judicata* (the debtor has litigated every claim she has against Litt in this Court) and the statute of limitations. In particular, the claims against Litt for allegedly deficient tax advice are weak. The Debtor retained other tax counsel before filing the tax returns in question and buying more 1033 properties. The debtor's damages are limited: FTB has settled its claim for \$800,000 in taxes and \$288,000 in interest and the IRS has not filed a claim and the time to do so has passed.

Debtor's Opposition

The Debtor has filed an opposition, arguing as follows:

As the Court has acknowledged, this will be a surplus case. Thus, the settlement will be of no benefit to creditors (who will be paid in full anyway) and will affect only the amount of Debtor's recovery. At the November 28,

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2017 hearing, in response to questioning by the Court, the Trustee's counsel stated that the Trustee's projections suggest that there would be a surplus. The Court then stated that if the sale of the Properties did yield a surplus, then the Litt State Court Action could be an asset for the Debtor to keep and pursue. This settlement would deprive the Debtor of the right to pursue these claims against the Litt parties, claims that the Court has said belong to the Debtor.

The Debtor's projections support the conclusion that this a surplus estate: the various properties are listed for sale by the Trustee at \$6.8 million, while secured claims are only \$2.7 million and the Trustee's latest report shows cash of \$950,000. On the other side, unpaid unsecured claims are \$300,000 (without Sulmeyer, Kupetz' disputed claim), the FTB is owed \$1.1 million, and Litt's \$1.1 fee claim should be considered an offset against the Debtor's malpractice claim. (Administrative claims have not yet been litigated, but Debtor's prior counsels have already been paid \$240,000.)

The Debtor and Litt were close to a settlement of the Litt State Court Action shortly after it was filed in 2008, until Litt's malpractice carrier sued Litt for rescission. The State Court Action has been stayed since 2009 - at the request of Litt - pending resolution of the Franchise Tax Board audit.

This Court's ruling and Judge Wu's affirmation of that ruling did not adjudicate the Debtor's claims against Litt, as Judge Wu expressly stated on the record at a July 8, 2012 hearing.

Since his appointment in July 2016, the Trustee has taken no steps to investigate the Litt State Court Action or Litt's disputed claims. He has not interviewed the Debtor, allowed the Farley firm to conduct discovery or file an amended complaint, requested the litigation files, or hired replacement counsel for Farley (except the Makarem firm, which had a conflict of interest as it had previously been retained by the Debtor and her son).

The Debtor does have experienced professional malpractice counsel willing to take the Litt State Court Action: Arie Spangler, who estimates that she will need 7-8 months to prepare for trial, assuming that discovery is still open.

The Debtor's claims against the Litt parties are meritorious. The Farley firm, which took the Litt State Court Action on a modified contingency basis in 2014, valued the litigation in the \$10 million range. The tax attorneys hired by the Debtor and her son, as well as the FTB, all concluded that Litt had committed malpractice.

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If successful, the Debtor or the Trustee could recover against Litt. He was a multi-millionaire even before he received \$9 million from the Debtor's estate. He has \$3 million in litigation insurance and Arch's rescission action is still pending, awaiting the outcome of the Litt State Court Action. At a minimum, a judgment against Litt could be offset against his \$1.1 million claim.

To approve a compromise, the Court must make an independent determination that the compromise is reasonable, fair and equitable: it cannot merely rubber stamp the Trustee's conclusion.

To oppose a settlement, the Debtor must show that s/he is a "person aggrieved," *i.e.*, directly and adversely affected pecuniarily. This can be shown where there is a reasonable possibility of a surplus in the case. This Court has already acknowledged that this is a surplus case and that the Litt State Court Action accordingly belongs to the Debtor. In contrast, this settlement is not in the paramount interest of the unsecured creditors, because they will be paid in any event.

Furthermore, the Trustee has presented no evidence that he has made a substantive review of the merits of the Litt State Court Action, such that he could make an "informed judgment after diligent investigation." Nor has he presented any facts to allow this Court to determine whether the settlement falls above the "lowest point in the range of reasonableness." Nor has the Trustee presented any evidence that a judgment against Litt would not be collectible.

Reply by Trustee

The Court has made no finding that this is a surplus Estate, but was speaking hypothetically. The Trustee's counsel did not represent that the Estate is "unequivocally" surplus, but only that the Trustee's good faith projections show that a surplus is possible. On March 22 the Trustee will file the analysis requested by the Court in its email. Without the sale of the Debtor's current residence and/or the settlement with Litt, it is likely that it will not be surplus.

The Motion contains four pages of analysis of the claims in the Litt State Court Action. The Opposition is unsupported by admissible evidence and the documents that she attaches do not support her arguments: Litt did not admit that he committed malpractice, but he stated that he sought the advice from a tax attorney, who later represented the Debtor directly. The

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assertion that Litt was the architect of the 1033 program will be hotly litigated in the state court trial.

The damages are also questionable since the 1033 election does not eliminate taxes, but merely defers them.

As to the involvement of the Trustee in the case, the Trustee did meet with the Debtor on 8/18/16 and conducted an extensive interview with her at that time, including the issues of the Litt State Court Action. The Trustee, in consultation with the Farley Firm, decided not to proceed to discovery since the Litt State Court Action was stayed and Debtor's health and the ongoing settlement discussions meant that to go forward with discovery would not be in the best interest of the Debtor or the Estate. There was no need to have the Farley Firm turn over the litigation files since that firm represented the Trustee until it withdrew.

The Trustee agrees that difficulty in collecting a judgment is not a significant issue.

Reply by Litt Parties

There has been no determination that this is a surplus estate and that determination cannot be made until all of the professionals have filed their fee applications and had their fees allowed by the Court. The amount of income taxes would also need to be determined. If McClure wins on her appeal of the PMB settlement the Estate could end up owing \$650,000 more. She has done nothing to dispute the SulmeyerKupetz claim. And her assertion that Litt's claim is disputed is incorrect since it has been determined by a final judgment.

The settlement provides an immediate benefit to the estate of over \$800,000. Also the Court has never determined that the Litt State Court Action belong to her rather than to the Estate. Although Litt does not and has not agreed that he is liable to Ms. McClure, he is willing to reduce his secured claim by over \$800,000 to buy peace.

Further, there is no factual support for most of McClure's brief.

Litt Objections to Evidence

Shirley McClure Declaration – overrule all objections

Robert Wood Declaration (ex. B, ex. D) – overrule

Harold Winnett Declaration (ex. C) – overrule. It is clear from the complete declaration that it refers to a meeting held on or about 2/27/07.

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Robert Wood Declaration (ex. O – sustain as it appears to be unsigned, however, this is a copy form 2008 and is part of something larger. There may be a signed copy somewhere.

Analysis

The Trustee is seeking approval of a compromise pursuant to Fed. R. Bankr. P. 9019, thus the question is whether the Litt Settlement Agreement is "fair and equitable." *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1986). The Court evaluates the fairness, reasonableness and adequacy to the estate under the factors articulated by the Ninth Circuit:

In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. Cal. 1986), *cert. denied sub nom.*, *Martin v. Robinson*, 479 U.S. 854 (1986). The Court should review the issues and determine whether the settlement falls below the lowest point in a range of reasonableness. *In re Teltronics Service, Inc.*, 762 F.2d 185, 189 (2nd Cir. 1985); *Sirtos v. Ray (In re Sirtos)*, 2006 Bankr. LEXIS 4894 at *32 (B.A.P. 9th Cir. May 19, 2006). Courts reviewing a proposed settlement generally accord deference to the Trustee's business judgment, although the Trustee has the burden of persuasion that the settlement is fair and equitable and should be approved. *Goodwin v. Mickey Thompson Entertainment Group (In re Mickey Thompson Entertainment Group)*, 292 B.R. 415, 420 (B.A.P. 9th Cir. 2003).

In essence, the proposed settlement gives up the estate's claims against Litt – valued by the Debtor at \$10 million - in exchange for an \$800,000 reduction in Litt's secured debt. The Trustee argues that probabilities of success in the Litt State Court Case and the complexity, inconvenience and delay in litigating it support approval of this compromise. Regarding complexity, the Debtor asserted numerous claims based on a wide variety of (sometimes conflicting) factual allegations. Litt has asserted a variety of defenses to these claims. (These claims, factual allegations, and

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defenses have been considered by the Trustee and are detailed in pages 9-11 of the Motion.) Regarding the probabilities of success, the difficulties in litigating the Litt State Court Case include the staleness of the matter (which has been stayed since 2009), the need for testimony from the Debtor (who is in ill health and may not be able to cooperate), and the Trustee's lack of counsel (after the Debtor opposed the employment of Ron Makarem and contacted Mr. Makarem directly, the Trustee has not been able to find counsel). Thus, while a jury might prove sympathetic to Ms. McClure (and there appear to be no difficulties in collection), the Trustee has made the business judgment that there is substantial risk that the Estate might not prevail in the Litt State Court Case and the interests of the estate are best served by the Litt Settlement Agreement (which also resolves the Litt Appeals and allows the Trustee to focus on effectuating the PMB Settlement and formulating a plan to bring this bankruptcy case to conclusion).

Ordinarily, this would be sufficient for the Court – in deference to the Trustee's business judgment – to find that that this proposed settlement is within the range of reasonableness and thus fair and equitable. However, two concerns in this case prevent the Court from drawing that conclusion: (i) the possibility that this will be a surplus estate and (ii) allegations that the Trustee has not duly investigated and pursued the State Court Action.

If the sale of the Properties alone would yield a surplus estate, then this settlement will not affect creditor recoveries – the creditors would be paid in full in any event. The settlement would not be in the "paramount interests of creditors." It would only affect the Debtor's recoveries and she is opposed to the settlement. And, if the Debtor pursues the litigation, then the cost, difficulty or uncertainty of litigation are irrelevant to the estate. Thus, if it appears likely that the estate will be surplus, the Court will not approve this proposed settlement, absent some other compelling reason to do. (For instance, the Trustee repeatedly states the importance of effectuating the PMB Settlement, but never directly states that this settlement is necessary to effectuate the PMB Settlement, which is solely to sell some of the properties and for which real estate broker(s) have been hired.)

Second, the Trustee has not retained counsel to pursue this matter and the Debtor alleges that the Trustee has not truly investigated the merits of the Litt State Court Action (*i.e.*, neither reviewed the case files nor interviewed the Debtor). It should be noted that although the Trustee states that he held a long meeting with the Debtor soon after he was appointed, he

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also indicates that this covered many topics and the Litt issues were only a part of those. And as to making an independent review of the files, he only alludes to his prior attorney and there is no showing as to whether he has actually made an independent determination (or had an expert review the files). The Court is also concerned about the fact that the Trustee has not hired a new attorney in the last months or – apparently – even tried to employ one. There is no showing that this litigation could not proceed expeditiously.

Litt and the Debtor have each argued the merits of the Debtor's claims against Litt (as described above). In the Motion, the Trustee discusses the difficulties of the litigation, but does not state any judgment on the merit of the underlying claims. This Court cannot determine the merits of these claims, but it does need to know that the Trustee's business judgment rests on an informed consideration of those merits. Thus, even if this estate is not surplus, the Court would need further information from the Trustee regarding his investigation of the actual merits of the Litt State Court Action in order to approve this settlement. Some was given in the Trustee's declaration filed in response to my email. Let's discuss this a bit more.

One further question deals with fees to be paid to prior litigation counsel. If this is settled, are any due? Do they agree to what they are to receive in an administrative claim? What will that be?

Tentative Ruling: Deal with the above questions. Motion denied if it is likely that the estate is surplus. See my comments on the email sent 3/23 for details of the calculation.

THE EMAIL:

Thank you, all, for the information that I requested. Based on that, I prepared a draft spreadsheet that I will be using as a basis of our discussion at the hearings on Tuesday. I attach a .pdf copy and an excel copy for your use.

(1) I prepared this in two forms: one without Ms. McClure's home and the other with it. As to this, the calculation that I prepared still protects her homestead of \$150,000 (though the home itself is sold). I used the most recent figure that I had - from 2014 - though it may be worth more (or less) now. If she were to also waive her homestead and allow the house to be sold, that would increase the amount available to unsecured creditors by an additional \$150,000.

(2) I note that Ms. McClure's figures do not include default interest to PMB, the PMB attorney fees, or the amounts of administrative claims. The estimate of \$1,307,585 provided by the Trustee may be high or low, but it is certain that there will be substantial attorney fees to be paid.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

Tuesday, August 7, 2018

Hearing Room 302

10:00 AM

CONT... Shirley Foose McClure

Chapter 11

(3) Ms. McClure did not include the Litt lien. If she prevails on the settlement motion, it will remain at \$1,090,058.

(4) The amount of recovery on the Litt State Court Action is much too uncertain to include. However, since he is giving up about \$800,000 on his lien amount, the judgment would have to exceed that sum to make it meaningful for the Court to deny the settlement motion.

(5) Although there is a settlement pending in Tidus, the Court does not have any details. Ms. McClure is now offering to provide 50% of any net recovery if needed to pay unsecured creditors in full. Until I see the terms of the proposed settlement, it is hard to determine whether to abandon this. Since the Tidus State Court Case has been continued, there is no urgency in dealing with the abandonment motion, so perhaps that should be continued. I also do not fully understand the basis of this case.

(6) For some reason, my spreadsheet total on "Net from Sale of Properties" is about \$400 different from that of the Force 10 one [\$2,688,985 v. \$2,689,387]. I can't figure out why.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By

Andrew Goodman

Yi S Kim

Robert M Scholnick

James R Felton

Faye C Rasch

Faye C Rasch

Lisa Nelson

Michael G Spector

Movant(s):

John P. Reitman

Represented By

John P Reitman

Jon L Dalberg

Trustee(s):

John P. Reitman

Represented By

John P Reitman

Jon L Dalberg

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CONT... Shirley Foose McClure

Chapter 11

#13.00 Motion to Compel Abandonment of State Court
Litigation Case BC443404 McClure v. Tidus

fr. 3/27/18, 5/1/18, 6/5/18

Docket 1355

Tentative Ruling:

Continue to a date agreeable to the parties.

prior tentative ruling (7/9/18)

This was continued to May 1 as a holding date. I am awaiting the proposed settlement figure for the Tidus matter before I can analyze the issue of surplus estate. Nothing has yet been received. Continued to August 7, 2018 at 10:00 as a holding date. I hope to have my decision out long before that time.

prior tentative ruling (3/27/18)

This motion concerns the state court trial in McClure v. Tidus, LASC BC443404. The trial is scheduled to begin on 3/26/18 (Judge Mark Mooney presiding) and there is a final pre-trial hearing set for 3/16/18. There is no attorney for the Plaintiff in that the Farley Law Firm was relieved as counsel on 10/16/17 and no new counsel has been employed. The Farley Law Firm had been employed as special litigation counsel to the Debtor.

The Trustee has known since June 2017 that the Farley Firm would be withdrawing because of a conflict. Nothing has been done by the Trustee.

McClure has been served with five motions in limine.

The fee agreement with the Farley Firm was \$150/hour and 20% of the recovery. The total billing for their work through 6/21/17 was \$22,450.50 fees and \$5,271.40 costs – mostly to defend the Tidus Defendant's motions for summary judgment heard on 1/5/17 and 1/6/17 and to respond to the defendant's discovery demands. No litigation preparation has been done since the Trustee was appointed.

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CONT...

Shirley Foose McClure

Chapter 11

There is insurance coverage for the Tidus Defendants and they are being defended by their insurance carriers. It therefore appears that a judgment against them would be collectible.

At the time of the motion for summary judgment (Jan. 2017), Judge Mooney divided the plaintiff's claims into two parts. Part 1 is her cause of action in the handling of the Litt fee motion. That is going to trial. Part 2 is the cause of action to amend the Litt complaint pending in state court – which was dismissed without prejudice as not being ripe since the Litt case was still pending.

At the time of the disclosure statement in April/May 2016, the Farley firm estimated the damages at \$10 million.

The Trustee does not want to pursue Plaintiff's claims in this case or the Litt one. The Trustee wanted to settle with the Tidus Defendants for a much reduced amount.

At this point, the motion goes into issue of hiring Makarem.

Also there is an issue about hiring Taylor to complete the negotiations for a payout with the FTB and an upcoming five-year statutory deadline.

The Debtor wishes the McClure v. Tidus case to be abandoned in that it is clearly burdensome to the Estate and is not being properly administered. §554 Abandonment is appropriate when the trustee delays in the administration of an asset. *Hyman v. Plotkin (in re Hyman)*, 967 F.2d 1316, 1321 (9th Cir. 1992).

Opposition

The Trustee is actively conducting negotiations with the parties in interest. Any agreement would be subject to Court approval. Therefore the Trustee requests a continuance to conclude his negotiations.

Because the Trustee is negotiating a resolution, this case is not burdensome to the Estate. And it certainly is not an inconsequential value and benefit. Thus the statutory standard for abandonment has not been met.

As to the \$10 million figure, that is the value placed by the Debtor for both the Tidus action and the Litt Action – not for the Tidus action alone. But

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CONT... Shirley Foose McClure

Chapter 11

she also indicates that the Tidus action has so little value that it should be abandoned.

The Debtor had hired by Farley Firm and the Trustee continued to act on the advice of that Firm. The Trustee is and has been fully aware of the bifurcated nature of the claim in the Tidus action.

The May 1, 2017 settlement demand made by the Trustee was not a "fire sale" demand. The amount of this demand (which is confidential) was prepared after consultation with the Farley Firm. It took into consideration the Debtor's poor health which made discovery and prosecution of the case more complicated. Anyway, the Defendants did not make a meaningful response.

Once the Farley Firm withdrew, the Trustee retained the Makarem Firm. When the Debtor contacted Ron Makarem and threatened to object to his employment, that firm withdrew. Since then, the Trustee has continued to seek qualified counsel, but without success. Thus, the fact that the Estate does not have litigation counsel in the Tidus Case is due to a combination of the Debtor's interference with the Trustee's efforts to retain the Makarem Firm and the difficulties that the Trustee has had in finding suitably qualified counsel to replace the Makarem Firm.

It is premature to determine that this is a surplus case. Hopefully it will be, but in the meantime whatever value resides in the Tidus Case should be preserved for the benefit of the Estate and not abandoned to the Debtor.

Reply

The State Court case has been continued to 7/16/18 by Judge Mooney. It is currently stayed.

After the Makaram Firm withdrew, the Trustee never suggested another law firm. The Trustee still has not prepared for trial.

However, the Debtor will retain Aire Spangler to represent her – if the case is abandoned – at a blended contingency rate and the Debtor will contribute up to 50% of the net proceeds to the estate if that is needed to pay creditors in full.

The Debtor then sets forth a calculation to show that this is a surplus

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CONT... Shirley Foose McClure
estate.

Chapter 11

Proposed Ruling

It appears that the trial has been taken off calendar and will not be reset until July 2018.

I am concerned that the Trustee has a weak negotiating position since he clearly is not ready to go to trial. And I do not understand why it is taking months and months to find new counsel.

It appears that Ms. McClure will be hiring new counsel on some sort of mixed contingency arrangement. She is now offering to provide the estate with up to 50% of her net recovery if needed to be sure that all creditors are paid in full. What is the situation as to fees owed to the Farley Firm or the Makaram Firm?

Per my email, both sides have provided me with a draft accounting of this estate. From that I have prepared a spreadsheet. See my comments from the email sent on 3/23.

THE EMAIL:

Thank you, all, for the information that I requested. Based on that, I prepared a draft spreadsheet that I will be using as a basis of our discussion at the hearings on Tuesday. I attach a .pdf copy and an excel copy for your use.

(1) I prepared this in two forms: one without Ms. McClure's home and the other with it. As to this, the calculation that I prepared still protects her homestead of \$150,000 (though the home itself is sold). I used the most recent figure that I had - from 2014 - though it may be worth more (or less) now. If she were to also waive her homestead and allow the house to be sold, that would increase the amount available to unsecured creditors by an additional \$150,000.

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(3) Ms. McClure did not include the Litt lien. If she prevails on the settlement motion, it will remain at \$1,090,058.

(4) The amount of recovery on the Litt State Court Action is much too uncertain to include. However, since he is giving up about \$800,000 on his lien amount, the judgment would have to exceed that sum to make it meaningful for the Court to deny the settlement motion.

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Chapter 11

(5) Although there is a settlement pending in Tidus, the Court does not have any details. Ms. McClure is now offering to provide 50% of any net recovery if needed to pay unsecured creditors in full. Until I see the terms of the proposed settlement, it is hard to determine whether to abandon this. Since the Tidus State Court Case has been continued, there is no urgency in dealing with the abandonment motion, so perhaps that should be continued. I also do not fully understand the basis of this case.

(6) For some reason, my spreadsheet total on "Net from Sale of Properties" is about \$400 different from that of the Force 10 one [\$2,688,985 v. \$2,689,387]. I can't figure out why.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By

Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Trustee(s):

John P. Reitman

Represented By

John P Reitman
Jon L Dalberg

1:13-10386 Shirley Foose McClure

Chapter 11

#14.00 First and Final Fee Application for Robert Scholnick and/or Grimm & Scholnick; Advisors and CPAs Inc

Fees: \$8423.00 Expenses: \$0.00

fr. 6/26/18

Docket 1436

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CONT... Shirley Foose McClure

Chapter 11

Tentative Ruling:

Nothing further received as of 8/2/18. Is there any reason not to approve the amount as an administrative claim, but it will only be paid when other administrative claims are paid?

prior tentative ruling (6/26/18)

Applicant is seeking fees for services provided to Ms. McClure as Special Real Estate Counsel and as Special Litigation Counsel in the Litt matters. The total amount sought is \$9,213 less the prior payments of \$790, leaving a balance owing of \$8,423.

The Trustee objects as this as premature in that no plan has been confirmed. It also does not comply with the UST guidelines. There is also an issue that the services were billed to Carrera Enterprises, Inc, which is an entity related to Ms. McClure, but is not the Estate. Beyond that, given the circumstances of the case, this application is premature. There may be insufficient money to pay professional and administrative creditors in full.

Proposed ruling

It would be beneficial to begin liquidating administrative claims - though not paying them. I assume that at the end of the case, the Trustee will be negotiating with the various administrative creditors to reduce fees, etc. However, this is a small amount when compared to the costs that are being incurred by other professionals and so it may not be worth negotiating with it.

As to who was the client, I would like to straighten that out. Although the billings might be to another entity, Scholnick was employed by the Court as counsel to the estate. So I don't really think there is an issue. Does the Trustee want to pursue it?

Does the Trustee wish me to continue this for a short while so that he can review the amounts? If not, I will approve the amounts as requested, but no payment is to occur without further order of the Court.

If you submit on this tentative ruling, no appearance is necessary. If you choose to appear and the final ruling is in conformance with the tentative ruling, no additional fees will be allowed for this appearance. If the trustee's firm is representing the trustee, no attorney's fees will be allowed for an appearance on this matter, as the trustee would be expected to be present as part of the trustee's duties.

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CONT... **Shirley Foose McClure** **Chapter 11**
THE TRUSTEE/DEBTOR IN POSSESSION IS TO NOTIFY ALL PROFESSIONALS OF THIS
TENTATIVE RULING.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

1:13-10386 Shirley Foose McClure Chapter 11

#15.00 Status Conference re: Ch 11 Case

fr. 1/24/2013, 4/30/13, 5/14/13, 7/23/13, 8/6/13,
9/17/13, 9/24/13, 11/19/13, 12/17/13, 1/21/14, 2/18/14,
3/11/14, 4/15/14, 5/6/14, 6/24/14, 9/9/14, 9/23/14,
10/7/14, 11/24/14, 1/6/15, 1/20/15, 2/10/15, 3/10/15,
4/28/15; 5/12/15; 9/29/15, 10/22/15, 12/8/15, 3/1/16,
6/7/16, 7/12/16, 8/16/16, 10/11/16; 12/20/16, 4/4/17,
5/16/17; 6/27/17, 7/11/17, 9/19/17, 11/14/17, 11/28/17,
12/19/17, 1/9/18, 3/19/18, 3/27/18, 5/1/18, 6/5/18; 6/26/18,
7/9/18

Docket 1

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CONT... Shirley Foose McClure

Chapter 11

Tentative Ruling:

It appears that the confidentiality agreement was signed because Ms. McClure submitted her tax returns, though I have not yet reviewed them. What is the status of the payoff of PMB per the settlement? Does the money received back indicate that it has been paid in full?

McClure has given the Court a copy of tax returns and is awaiting a signed confidentiality agreement before giving copies to the Trustee and Litt. What is the status of this?

What is the status of the Tidus settlement?

prior tentative ruling (7/9/18)

I received the updated status report that Corbett has closed and that PMB has extended the settlement date to July 13 to allow Dalmation and Harrington to close. Maui is still being marketed. Assuming that Dalmation and Harrington close on time, is there enough money in the estate to pay off the PMB liens under the settlement terms?

At the hearing on June 26, Ms. McClure orally moved that the Court hold an evidentiary hearing as to the Litt Settlement and also (presumably) her motion to abandon. The Court has given this some thought and would like to discuss it with the parties. The controlling law on motions to compromise is as follows:

The defining case concerning settlements is that of *Protective Committee for Independent Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 88 S.Ct. 1157, 20 L.Ed.2d 1 (1968), which mandates that a bankruptcy court apprise itself "of all facts necessary for an intelligent and objective opinion of the probabilities of ultimate success should the claim be litigated. Further, the judge should form an educated estimate of the complexity, expense, and likely duration of such litigation, the possible difficulties of collecting on any judgment which might be obtained, and all other factors relevant to a full and fair assessment of the wisdom of the proposed compromise. Basic to this process in every instance, of course, is the need to compare the terms of the compromise with the likely rewards of litigation." 390 U.S. at 424.

This mandate by the Supreme Court requires that the Court determine whether a compromise pursuant to Fed. R. Bankr. P. 9019 is "fair and equitable." *In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1986). The Court evaluates the fairness, reasonableness and adequacy to the estate under the factors articulated by the Ninth Circuit:

In determining the fairness, reasonableness and adequacy of a proposed settlement agreement, the court must consider: (a) The probability of success in the litigation; (b)

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CONT...

Shirley Foose McClure

Chapter 11

the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. Cal. 1986), cert. denied sub nom., *Martin v. Robinson*, 479 U.S. 854 (1986). The Court should review the issues and determine whether the settlement falls below the lowest point in a range of reasonableness. *In re Teltronics Service, Inc.*, 762 F.2d 185, 189 (2nd Cir. 1985); *Sirtos v. Ray (In re Sirtos)*, 2006 Bankr. LEXIS 4894 at *32 (B.A.P. 9th Cir. May 19, 2006). Courts reviewing a proposed settlement generally accord deference to the Trustee's business judgment, although the Trustee has the burden of persuasion that the settlement is fair and equitable and should be approved. *Goodwin v. Mickey Thompson Entm't Group (In re Mickey Thompson Entm't Group)*, 292 B.R. 415, 420 (B.A.P. 9th Cir. 2003).

The Court is not required to hold a full evidentiary hearing of a mini-trial before it can approve a compromise. The Court need only canvas the issues to see if the settlement falls below the lowest point of reasonableness. 10 Collier on Bankruptcy, 16th Ed., ¶ 9019.02, citing *In re Drexel Burnham Lambert Group, Inc.*, 134 B.R. 493 (Bankr. S.D.N.Y. 1991) (quoting *In re W.T. Grant Co.*, 699 F.2d 599, 608 (2d Cir.), cert. denied sub nom. 464 U.S. 822, 104 S. Ct. 89, 78 L. Ed. 2d 97 (1983)); *In re Doctors Hospital of Hyde Park, Inc.*, 474 F.3d 421, 428–30 (7th Cir. 2007).

As noted, the Court is not only not required to hold an evidentiary hearing, but - to a large extent - it is discouraged from doing so. However, it seems appropriate to allow Ms. McClure to show the Court the most likely evidentiary facts that would be presented in the state court Litt case, should that go to trial. This concerns both liability and damages. While I am open to suggestions of how to do this, it seem that the first step would be to have Ms. McClure prepare and file her proposed summary of evidence. This will list each witness that she would call and a brief summary of the evidence that the witness will present. The Court is aware that there are several significant gaps in the evidence that she has presented to this date and those should be filled in. Thus, to the extent that she obtained legal or accounting guidance from others prior to her investments, those should be revealed along with a brief summary of the advice that she was given. Also the amount of asserted damages will need to take into account any benefit that she had from her § 1033 tax claim with the IRS.

The document in question is to be no longer than 15 pages. At this time, no attachments are needed except for a copy of her federal tax return for the year(s) in question, which I believe is 2006.

Once received, I will review this and see whether I believe that it wuld

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CONT... Shirley Foose McClure

Chapter 11

support (1) a judgment for McClure as to liability and (2) a damage award significantly in excess of the settlement amount. If I find that it meets these two tests, I will then allow Litt and the Trustee to point out omissions or mistatements and, if they wish, to file their own summaries of evidence.

Anyway, this is just a suggestion. Let's talk about it.

prior tentative ruling (6/26/18)

Thank you for the extensive and detailed status report. In the future, you need only update what has happened unless you feel that it is necessary to incorporate all of this history.

I am most concerned about the status of paying off PMB, the closing of the escrows for the properties sold, and whether the settlement will be able to be enforced.

I also would like to know the status of the settlement negotiations with Tidus.

I have reviewed the responses of Ms. McClure, Mr. Litt, and the Trustee to my surplus calculation. I do not understand the attachment from the Trustee. Nothing is taken out of Corbett for the PMB attorney's fees and the amounts noted for Dalmation, Harrington, and Maui do not match the figures in the Order approving the settlement (dkt. 1304). Presumably the unallocated amount of \$162,766 is for the Corbett fees. How was this figure arrived at?

Does the estimated loan balance include full default interest and then some is credited back as an estimated reduction? Why is the Weintraub lien balance being held?

Party Information

Debtor(s):

Shirley Foose McClure

Represented By

Andrew Goodman

Yi S Kim

Robert M Scholnick

James R Felton

Faye C Rasch

Faye C Rasch

**United States Bankruptcy Court
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CONT... **Shirley Foose McClure** Elaine Nguyen **Chapter 11**

1:16-11387 Real Estate Short Sales Inc **Chapter 7**

#16.00 Motion for relief from stay

BARCELONA TOWER INC

fr. 11/14/17, 2/13/18, 5/1/18, 6/26/18

Docket 164

***** VACATED *** REASON: Order ent continuing hrg to 10/23/18 at
10:00 a.m. - jc**

Tentative Ruling:

Continued by stipulation to **10/23/18** at 10:00 a.m. The property is in escrow awaiting a ruling on a short sale by the senior lienholder. Please note that your chosen date of 10/9 is not available. In the future, please check my online calendar in order to set continued dates.

prior tentative ruling (5/1/18)

This motion by the HOA was continued to 6/26. The servicing agent for Wells Fargo Bank filed a motion for relief from stay, that will be heard on 7/17/18. It asserts that it is owed \$815,000+, that it is not being paid its monthly payment of \$4,029.57 and that there are 85 payments in arrears. It states that the current market value is \$655,000.

prior tentative ruling (5/1/18)

Cueva failed to tender the \$62,250 by 2/13/18, She then turned over to the Trustee the Berendo Condo. On 3/8/18 the Trustee filed a motion to approve a revised compromise, which was granted by an order entered on 3/26/18. The Trustee is to market and sell the Berendo Condo. What is the status of the marketing attempt?

prior tentative ruling (2/13/18)

This was brought by the Homeowners' Assn as to the Berendo St. property. At the time that this was filed (Oct. 2017), there was a prepetition delinquency

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CONT... Real Estate Short Sales Inc

Chapter 7

of \$57,000+ and a post-petition one of \$7,685.70. This was continued by stipulation.

Under the compromise between the Trustee and the Debtor, approved on 2/5/18, upon receipt of the settlement payment of \$62,250, the Estate releases all interest in this property. The payment was to be received by 2/13/18 or the Debtor and others are to fully cooperate with the Trustee's marketing and sale of the property.

Has the payment been received? If so, this is no longer property of the Estate and relief from stay will be granted. If not, the property is to be sold and the HOA will be paid off at that time.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Movant(s):

Barcelona Tower Inc

Represented By
Jill L Kim

Trustee(s):

Nancy J Zamora (TR)

Pro Se

1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:17-01040 GOTTlieb v. Elkwood Associates, LLC et al

#17.00 Motion for Leave to File First Amended
Counterclaim and Cross-Claim

Docket 96

Tentative Ruling:

Elkwood Assoc. and Fieldbrook, Inc. (the "Movants") - defendants in

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CONT... Solyman Yashouafar

Chapter 11

this adversary proceeding Gottlieb v. Elkwood, et al (1:17-ap-01040) - seek to file a first amended counterclaim ad cross-claim to additionally allege a counterclaim and cross-claim for reformation of the recorded "Assignment of Deed of Trust and Promissory Note" from Elkwood to Fieldbrook (the "Fieldbrook Assignment").

Background

After several rounds of motions to dismiss, David Gottlieb as trustee (the "Trustee") for the chapter 11 estates of Massoud Yashouafar and Solyman Yashouafar (the "Debtors"), filed a Third Amended Complaint (the "TAC") against the Movants and other Defendants on March 5, 2018.

The Movants filed an answer to the TAC on April 9, 2018. Their answer included a counterclaim for administrative rents and the Trustee filed an answer to this counterclaim on April 27, 2018.

The Movants had previously brought a motion for relief from the automatic stay to file a corrective assignment, stating that Elkwood only assigned the Chalette DOT \$5.8 million of the PWB Note to Fieldbrook, with the balance to be secured by the Rexford DOT that was not assigned. The Movants asserted that the automatic stay does not preclude this since Massoud's interest in the Rexford Home was foreclosed on 2/23/2015. They argued that even if the estate does have an interest, that would not prevent Elkwood and Fieldbrook from recording a correcting Assignment because the correction concerns a matter between them.

At a June 5, 2018 hearing, the Court denied the motion for relief from stay, concluding that the estate is clearly a party-in-interest and that the motion was really a motion for summary judgment.

Such a motion might be relevant at a later date after discovery and in the proper form. Effectively what the moving parties want the court to do is to determine that it is undisputed that the Fieldbrook Assignment was incorrect when drafted and that its terms do not reflect the intent of the parties to the assignment (Fieldbrook and Elkwood) - at that time. This is a question of fact and I am not ready to make that determination in this type of motion.

As to the statute of limitations, it will have run from the time that the aggrieved party became aware of the error (if the court were to find that the Fieldbrook Assignment was in error). This seems to be no earlier than April 2017. But if the movants are concerned about time

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CONT...

Solyman Yashouafar

Chapter 11

slipping away, I can grant a stay of some sort - just in case I am wrong about the automatic stay. But I doubt that this is necessary. The outcome of the adversary proceeding will determine the rights of the parties. If the defendants prevail, there will be no need to reform the Fieldbrook Assignment or - if they wish - there will be no barrier to recording a correcting assignment.

June 5, 2018 Tentative Ruling. On June 18, 2018, the Court entered an order denying the Movant's stay relief motion.

Motion

As a result, the Movants now seek to allege reformation and quiet title claims against the Trustee and other interested parties, by counterclaims against the Trustee and cross-claims against lienholders in the Rexford Property.

Fed. R. Civ. P. 15(a)(2) applies and allows amendment of pleadings only with opposing parties' consent or leave of the court. "The court should freely give leave when justice so requires."

There is no prejudice to parties. The Movants' quiet title claim is essentially the reverse of the Trustee's quiet title claim.

Abselet Response

The only response to this motion was filed by defendants Howard Abselet and Israel Abselet (the "Abselets"). The Abselets do not oppose the motion *per se*, but do ask that leave to amend be conditioned on the Movants executing a stipulation for an order modifying the stay to provide for the dual captioning of discovery - to apply to both this adversary proceeding and the Abselets' action before Judge Walter in U.S. District Court (2:17-cv-08894-JFW; the "Abselet Action"), which has been stayed.

After they realized that the stay could lead to inefficiencies, the parties (and one non-party deponent) agreed that depositions would be taken in both actions, despite the stay. However, one deponent (Massoud Yashouafar) threatened to disobey this Court's order that he appear for his deposition if parties from the Abselet Action appeared. Although he did not carry through with this threat, it caused the parties wasted time and effort. As a result, the Abselets have suggested that all the parties formally stipulate to "dual caption discovery." The Abselets do not have reason to think that the parties will not reach agreement and that Judge Walter will decline to enter the order, but file

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CONT... Solyman Yashouafar

Chapter 11

this response out of an abundance of caution.

Reply to Abselet Response

The Movants and the Abselets have agreed to the form of such a stipulation and order, which has been circulated to other affected parties. The Movants are agreeable to a condition subsequent that their counsel execute this stipulation modifying the stay (such that discovery in this adversary proceeding would also constitute discovery in the Abselet Action), but the condition should not include approval by Judge Walter, as that relief would be in his discretion.

Given the lack of opposition to this motion, the Movants respectfully ask that the Motion be granted.

Conclusion

Fed. R. Civ. P. 15(a)(2) states that "The court should freely give leave when justice so requires." This motion shows good cause for this court to give the Movants leave to file amended counterclaim and cross-claim. No party has opposed this motion.

Ruling

Motion granted, subject only to the condition that counsel for the Movants execute the "joint discovery stipulation" in the form agreed to by the Movants and the Abselets. Obviously an order is required in both this Court and the District Court. Have you raised this with Judge Walter? Perhaps the best way is to make the order in this case be that any discovery done here or in the district court case(s) would be applicable in this case - then get a similar order from Judge Walter for his case(s). You can't really "dual caption" a matter in two different courts. Let's talk about the mechanics of this.

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Defendant(s):

QUALITY LOAN SERVICE

Pro Se

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CONT... Solyman Yashouafar Chapter 11

DMARC 2007-CD5 Garden Street,	Represented By Timothy C Aires
State Street Bank and Trust Co.	Pro Se
Israel Abselet	Represented By Henry S David
Howard Abselet	Represented By Henry S David
Citivist financial Services, Inc.	Pro Se
Quality Loan Service	Pro Se
Soda Partners, LLC	Represented By Ronald N Richards
Fieldbrook, Inc.	Represented By Daniel J McCarthy
Elkwood Associates, LLC	Represented By Daniel J McCarthy
Chase Manhattan Mortgage Co.	Pro Se

Movant(s):

Elkwood Associates, LLC	Represented By Daniel J McCarthy
Fieldbrook, Inc.	Represented By Daniel J McCarthy
Elkwood Associates, LLC	Represented By Daniel J McCarthy
Fieldbrook, Inc.	Pro Se

Plaintiff(s):

DAVID K GOTTLIEB	Represented By Jeremy V Richards John W Lucas
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CONT... Solyman Yashouafar

Chapter 11

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:16-01166 Barlava et al v. Yashouafar

#18.00 Status Conference re: Complaint

fr. 2/21/17, 3/28/17; 5/30/17; 5/30/17,
10/3/17, 1/23/18; 4/17/18

Docket 1

Tentative Ruling:

A stipulation to stay the action was filed on 8/3/18. Basically, there is a question whether the Plaintiffs would be able to collect on their claims even if they win a non-dischargeable judgment. So rather than continue to battle over discovery, the parties agree to stay this adversary complaint until the Trustee decides whether to challenge the Plaintiffs' claims. As I understand it, to the extent that the Trustee does not object to a claim or a portion of a claim, the claim or part thereof, will be dismissed from the §523 adversary and the claimant will accept whatever (if anything) it receives through the bankruptcy case. Also, to the extent that any claim is adjudicated by the Court or settled by the Plaintiffs, those claims will be dismissed from this §523 action. If the Trustee objects to a claim, the stay will be lifted and ex parte application to the Court and discovery will be completed within 6 months after the stay is lifted. While the Plaintiff cannot seek to lift the stay prematurely, the Defendant can do so at any time through an application to the Court.

This will be approved. So that the Court will not drop this case from the calendar, the status conference is continued without appearance to February 12, 2019 at 10:00 a.m.

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CONT... Solyman Yashouafar

Chapter 11

prior tentative ruling (4/17/18)

On 4/12/18 the Plaintiff filed a unilateral status report. Apparently there is a motion to compel that is being prepared and is ready for filing, but has not been filed as of 4/12/18. When will that be set for hearing?

prior tentative ruling (1/23/18)

The parties filed unilateral status reports. In the future, please try to file a joint status report. Plaintiffs anticipates a 2 week trial starting after June and wants this matter sent to mediation. Plaintiffs consent to this court entering a final judgment. Defendant, on the other hand, expects to complete discovery at the end of June and wants trial after 11/15/18. He expects a 3-5 day trial. Defendant is not interested in mediation, but also consents to this court entering a final judgment.

Let's talk about what can be done to try to resolve this matter. You are talking about expensive discovery and an expensive trial.

prior tentative ruling (10/3/17)

Nothing further received as of 9/28/17. What is the status of discovery?

prior tentative ruling (5/30/17)

Per the joint status report filed 5/11/17, set a discovery cutoff date of 9/11/17. The parties agree to do their initial disclosures by 6/5/17. There may be some objections to discovery.

Continue without appearance to 10/3/17 at 10:00 a.m.

prior tentative ruling (3/28/17)

The parties stipulated that Massoud has until 2/17/17 to respond to the complaint. On 2/17, Massoud filed his answer. No status report has been filed as of 3/26.

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Massoud Aaron Yashouafar

Represented By

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CONT... Solyman Yashouafar

Chapter 11

C John M Melissinos
Mark M Sharf

Defendant(s):

Massoud Aaron Yashouafar

Pro Se

Plaintiff(s):

Simon Barlava

Represented By
Andrew V Jablon

Morris Barlava

Represented By
Andrew V Jablon

Nasser Barlava

Represented By
Andrew V Jablon

Kefayat Barlava

Represented By
Andrew V Jablon

Figueroa Tower II, LP

Represented By
Andrew V Jablon

First National Buildings II, LLC

Represented By
Andrew V Jablon

Carla Ridge, LLC

Represented By
Andrew V Jablon

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

Friday, August 17, 2018

Hearing Room 302

9:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#1.00 Ex parte application by Douglas DeNoce
to Continue Trial/Evidentiary Hearing

Docket 429

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Movant(s):

Douglas Denoce

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
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Judge Geraldine Mund, Presiding
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Tuesday, August 21, 2018

Hearing Room 303

10:00 AM

1:06-12243 Edwin Perry Hinds

Chapter 7

#1.00 Motion to Clarify the Order for Immediate Turnover of Funds to the Chapter 7 Trustee [Docket No. 21]; and for an Order Directing the Clerk to Issue an Abstract of Judgment and Writ of Execution Against Lon B. Isaacson in Accordance Therewith

Docket 46

Tentative Ruling:

The Trustee obtained a turnover order on January 8, 2009 in the now-closed adversary proceeding (1:07-ap-01042). The Order is titled as being against Lon B. Isaacson Associates. The Trustee wants to clarify that the order is actually against both Lon B. Isaacson (individually) and the law firm of Lon B. Isaacson Associates [jointly "the Isaacson Parties"]. The facts are the Isaacson individually and Isaacson Associates had a state court judgment against the Debtor. After the Debtor filed bankruptcy, the Isaacson Parties brought the adversary action to deny discharge under §727. The Debtor agreed to pay the Isaacson Parties \$100,000 in satisfaction of the state court judgment and a settlement of the §727 adversary proceeding. The Debtor paid the money and the money was being held in the Isaacson firm trust account.

The motion asserts that the bankruptcy court did not approve the settlement and granted summary judgment under §727(a)(2) and ordered the "Isaacson Parties" to turn over the \$100,000 to the Trustee. The judgment is final and the money has not been turned over.

The Trustee wants to clarify the the January 9, 2009 Order applies to both the individual and the law firm and then wishes the court to issue an abstract of judgment or a writ of execution against Lon B. Isaacson the individual.

In 2012, Mr. Isaacson was disbarred, in part because his client trust account was short almost \$89,000. In pursuing a claim with the State Bar of California Client Security Fund, the Trustee determined that the the order needs to be clarified as to who exactly was ordered to turn over funds upon the entry of judgment. This motion is to clarify that.

Opposition

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10:00 AM

CONT...

Edwin Perry Hinds

Chapter 7

Mr. Isaacson opposes this motion. He and his law firm obtained a 2006 state court judgment against Hinds for \$226,000+ for unpaid attorney fees and costs of collection. The turnover order was only as to Lon B. Isaacson Associates, an Affiliation including a Professional Law Corporation, not against Lon B. Isaacson personally. This was 9 years ago. The Isaacson Firm gave the Trustee an itemized list of services performed - over \$100,000 of professional time was expended in obtaining the \$100,000 settlement.

He states that the shortfall in the client trust account probably did not occur. He goes on to argue "that if the Court fixes an equitable legal fee for the professional services which Isaacson Associates performed in achieving the \$100,000 settlement, this matter will resolve quickly and to the benefit of all parties."

Isaacson then goes on to argue that his firm is entitled to a 50% contingency fee for the work done to collect the \$100,000. He asks that this be mediated.

Reply

The Court should strike and disregard the settlement communications (ex. B, C, and D).

It is proper to use Rule 60 to clarify the prior court order to determine whether it applies to the individual as well as the law practice. It is a mere clerical error to name the adversary plaintiffs jointly in some parts of the turnover order and individually in other parts.

Whether Isaacson incurred legal fees to obtain the settlement funds is irrelevant since he was never employed on behalf of the bankruptcy estate. The Trustee has reason to believe that Isaacson personally has possession of the \$100,000.

The delays in going forward to collect were due to Isaacson's actions and inactions and failure to communicate. Further, it was economically better to put a claim in to the Client Security Fund.

Analysis and Proposed Ruling

The Trustee is correct as to the settlement discussions and that Isaacson is not entitled as a matter of law for any compensation for obtaining the \$100,000.

On March 2, 2007, Lon B. Isaacson Association, an Affiliation Including a Professional Law Corporation (Isaacson Association) and Lon B. Isaacson

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CONT... Edwin Perry Hinds

Chapter 7

(Isaacson Individual) filed an adversary complaint against Edwin Hinds and others to bar discharge and void deeds of trust (1:07-ap-01042 or adversary or adversary proceeding). This was based on a superior court judgment.

There was a motion for summary judgment brought by Isaacson Individual and by Isaacson Association (adversary dkt. 8), which the Court intended to grant (adversary dkt. 20). But this was delayed since the parties to the adversary proceeding were discussing settlement. Because this was a settlement of a § 727 complaint, the Court required notice to the chapter 7 Trustee, among others. In the order of the Court setting the hearing on the settlement agreement, the Court states that "[m]y review of this settlement agreement is that it is solely for the benefit of Lon B. Isaacson Associates. ... Lon B. Isaacson Associates is listed a [sic] disputed secured creditor. According to the claims register, eight claims have been filed with \$105,000 in unsecured amounts with the Lon B. Isaacson Associates claim as the sole secured claim in the the amount of \$269,913.34." (adversary dkt. 20, p. 4-5). No copy of the settlement agreement is on the docket.

The Order that the Trustee wishes to clarify is entitled "Order that Lon B. Isaacson Associates Immediately Turnover" (adversary dkt. 21) It starts by stating that a "complaint was filed by Lon B. Isaacson Associates et. al. against debtor...." "Upon review of the settlement agreement, the Court found that the debtor agreed to pay Lon B. Isaacson \$100,000 (which has been paid into Isaacson's Trust Account), to settle the indebtedness owed to Isaacson, who had obtained a Superior Court judgment in the amount of \$107,969.16 plus interest." "No appearance [at the hearing] was made on behalf of Lon B. Isaacson Associates."

The Order concludes: "... the Court hereby orders that the settlement funds are to be turned over by Lon B. Isaacson Associates...."

On February 2, 1009, the Isaacson Parties filed an emergency motion for an extension of time to file an appeal and other matters. This began: "Plaintiffs Lon B. Isaacson and Lon B. Isaacson Associates, An Affiliation including a Professional Law Corporation ("Plaintiffs") hereby requests that the Court, on an emergency basis, shorten time to hear their Motion" (adversary dkt. 22). The actual motion is also brought in the name of Isaacson Individual and Isaacson Association. (adversary dkt. 23).

On February 2, 2009, a notice of appeal was filed by "Lon Isaacson, individually & Lon B. Isaacson Assoc." to the January 8, 2009 Order (adversary

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CONT... Edwin Perry Hinds

Chapter 7

dkt. 24)

The Isaacson Parties also filed a notice of appeal of the denial of the motion to extend time to appeal (adversary dkt. 28), which states: "Please take notice that the petitioners Lon B. Isaacson and Lon Isaacson Associates, An Affiliation Including a Professional Law Corporation hereby file their notice of appeal"

It should be noted that the underlying judgment was on behalf of Lon B. Isaacson and the Law Firm of Lon B. Isaacson Associates. (this motion p. 52).

However, the proof of claim was filed solely by Isaacson Associates, even though the attached judgment was on behalf of both Isaacson Individual and Isaacson Associates (1:06-bk-12243, claim 5-1).

Thus the question is whether the Court intended to limit its turnover order to Isaacson Associates. It did not and this is demonstrated by the fact that Isaacson Individual knew that he was also the intended target of this turnover order, thus appealing and bringing a motion on his own behalf as well as that of Isaacson Associates. The reason that the Order was directed to Isaacson Associates alone was because the motion stated that Isaacson Individual had received the money, but that he had put it in his law firm's client trust account. Thus, to the extent that the money was there, the order was for the law firm to turn it over. But it certainly was the intent that if it was moved elsewhere, the entity holding the money was to turn it over.

The Court will be interested in how the movant suggests that this be expanded and resolved in the order on this motion.

Party Information

Debtor(s):

Edwin Perry Hinds

Represented By

Jonathan R Ellowitz - DISBARRED -

Trustee(s):

David R Hagen (TR)

Represented By

David Seror

Reagan E Boyce

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10:00 AM

1:16-11387 Real Estate Short Sales Inc

Chapter 7

#2.00 Motion for relief from stay

SANTANDER CONSUMER USA INC

Docket 245

Tentative Ruling:

This is a motion for relief from stay to recover a 2016 Mercedes-Benz E Class car, urchased by Nancy Cueva. Post-petition, the Debtor added this debt to its schedule D and listed Ms. Cueva as a co-debtor. Payments are now \$17,000+ in arrears. The monthly payment is \$1,343.18. The total claim is \$61,369.93. The value of the car is \$39,700.

The certificate of title is in the name of Ms. Cueva. She was the buyer and there is no co-buyer.

No opposition has been received as of August 16.

Proposed Ruling

There is no reason to think that this is property of the Estate or even used by the Estate, which only owns some real property for the use of Ms. Cueva and others. And the Estate is not a co-debtor with Ms. Cueva, who is not a debtor in bankruptcy. Thus, the automatis stay does not apply.

Grant.

Just in case there is a late opposition or appearance by Ms. Cueva, movant should plan to appear in person or by phone.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

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10:00 AM

CONT... Real Estate Short Sales Inc

Chapter 7

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
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Hearing Room 303

10:00 AM

1:16-12408 Massoud Aaron Yashouafar

Chapter 11

Adv#: 1:16-01168 Carino v. Yashouafar

#3.00 Status Conference Re: Complaint for
NonDischargeability of Debt Pursuant to
11 U.S.C. Sec. 523(a)(4) and 11 U.S.C.
Sec. 523(a)(6)

fr. 2/21/17, 3/21/17; 5/2/17, 5/30/17, 8/29/17,
1/23/18

Docket 1

Tentative Ruling:

Per the Plaintiff's status report, a settlement was reached in the Nevada state court case. Continue without appearance to 12/4/18 at 10:00 a.m.

prior tentative ruling (1/23/18)

Per the Plaintiff's status report filed on 1/11/18, the state court trial is now set to start in mid-March, but could be delayed. Continue without appearance to August 21, 2018 at 10:00 a.m.

prior tentative ruling (5/30/17)

Continue so that the state court trial can take place. Please give me some dates that this might take place.

prior tentative ruling (3/21/17)

This is a §523(a)(4) and (a)(6) complaint solely against Massoud. There is a class action pending in the Nevada State Court (Paradise Spa Owners Assn. v. Jim Pazargad). Carino filed this on behalf of the PSOA. Massud had served as Treasurer of the HOA and he caused significant damages to the class of homeowners. Discovery in the class action is closed and it is awaiting trial. Pre-petition the Nevada State Court adjudicated liability against the Debtor via summary judgment. It found that Massod committed fraud by concealing material facts that he had a duty to disclose regarding his personal use of PSOA insurance proceeds and by failing to pursue collection of assessments on some

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CONT... Massoud Aaron Yashouafar Chapter 11

of the condominiums that he owned. It also found a breach of fiduciary duty. Although the amount of damages has not yet been adjudicated, it is over \$2.5 million.

The Debtor filed an answer and admits that the findings set forth were as the State Court held. Debtor is representing himself pro per in this adversary proceeding.

No status report has been received as of 3/16. Has relief from stay been granted to proceed? Is it necessary?

It seems that the best thing would be to delay acting on this case until the resolution of the Nevada action, including all appeals. But if the parties believe that something should go forward here, I am willing to allow it.

Party Information

Debtor(s):

Massoud Aaron Yashouafar

Represented By
Brian L Davidoff
C John M Melissinos

Defendant(s):

Massoud Aaron Yashouafar

Pro Se

Plaintiff(s):

Raymund Carino

Represented By
Simon Aron

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards

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10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01181 Campbell v. Pyle

#4.00 Order to Show Cause as to how to Proceed
with the Claim for Relief Under 11 USC Sec.727

fr. 7/17/18

Docket 87

Tentative Ruling:

No response received as of 8/20/18 at 11:00 a.m..

Party Information

Debtor(s):

Glen E Pyle Pro Se

Defendant(s):

Glen Pyle Pro Se

Plaintiff(s):

Ian Campbell Pro Se

Trustee(s):

Amy L Goldman (TR) Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

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10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01181 Campbell v. Pyle

#5.00 Status Conference re: Complaint for
Determination that Debt is Nondischargeable
and/or to Recover Money

fr. 5/11/11, 6/22/11, 10/4/11, 1/24/12, 2/14/12,
4/24/12, 6/19/12, 9/11/12, 10/2/12, 11/6/12,
2/12/13, 3/19/13, 8/27/13, 8/27/13, 11/19/13,
2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14,
12/16/14, 3/10/15; 5/12/15; 6/2/15, 9/1/15,
9/8/15, 11/17/15; 1/12/16, 3/1/16, 6/7/16,
8/2/16, 9/27/16, 10/11/16, 1/17/17, 2/21/17,
3/28/17, 1/14/17, 12/19/17, 1/23/18, 3/27/18,
7/17/18

Docket 1

Tentative Ruling:

Nothing further received as of 8/20/a8 at 11:00 a.m.

prior tentative ruling (7/17/18)

The order granting relief from the automatic stay was entered on 1/30/18. On 3/6 Mr. Campbell appeared in Court and wanted to know about the order. He had not been served with a copy of the order - our fault. I directed him to my law clerk, but he left without seeing her. On March 1, 2018, Judge Hammock continued his OSC re: Dismissal (BC416442) to July 5 so that Campbell could seek a judgment (he already has a default) on declaration. As soon as he has obtained his judgment, I will be ready to proceed. When will he be filing his declaration, etc. in the Superior Court? Should this status conference be continued until after July 5 or can we proceed before that?

prior tentative ruling (1/23/18)

Mr. Campbell has filed the motion for relief from stay to complete the superior

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10:00 AM

CONT...

Glen E Pyle

Chapter 7

court case. Continue this status conference to March 27, 2018 at 9:00 a.m. to allow him to obtain his judgment in the superior court.

prior tentative ruling (12/19/17)

I have been in contact with Judge. Hammock of the Superior Court. He advises me that all that is left to do in his case is for Mr. Campbell to file a motion for default judgment. The automatic stay is preventing this.

To move that case forward, Mr. Campbell is to file a motion in this court for relief from the automatic stay. This is to be filed and served no later than December 26. It is to be served by mail and by email on Mr. Pyle. The hearing will be on January 23, 2018 at 10:00 a.m. in courtroom 303. Mr. Campbell is to use the mandatory court form: F 4001-1.RFS.NONBK.MOTION. This is available on the Court website at www.cacb.uscourts.gov/forms/local_bankruptcy_rules_forms. Or you can obtain a copy at the filing window in the clerk's office.

prior tentative ruling (11/14/17)

The Court advised Mr. Campbell of the continuance of the Berry v. Pyle case. He does wish to appear on 11/14. The Court has called Mr. Aver's office and asked them to contact Mr. Pyle (who is pro se in this adversary proceeding) to advise him that the hearing on 11/14 is going forward and that Mr. Pyle is to appear on the phone or in person and instruct him on how to use Court Call. The Court was notified that he also wishes to appear.

What is the status of the state court matter?

prior tentative ruling (3/28/17)

This adversary proceeding has been trailing the Berry v. Pyle one, but it has some different issues. How does Mr. Campbell wish to proceed?

prior tentative ruling (1/17/17)

I believe that Mr. Campbell was trying to obtain counsel. It is best to keep this together with Berry v. Pyle. Therefore continue it without appearance to 2/21/17 at 10:00 a.m. when I have a hearing on the motion for summary judgment in the Berry v. Pyle case.

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10:00 AM

CONT... **Glen E Pyle**

Chapter 7

prior tentative ruling (8/2/16)

Mr. Campbell is now representing himself. How does he wish to proceed to get this ready for trial?

prior tentative ruling (3/1/16)

Per the status report filed by Plaintiff on 2/23/16, discovery is not complete. Plaintiff wants to take Mr. Pyle's deposition and audit the records.

This was trailing the Berry v. Pyle matter, but given Mr. Berry's health, I think that it should go forward alone and complete the discovery. Feel free to appear by phone at the status conference and let's get some dates to complete discovery. Please advise Mr. Pyle, who is not represented by counsel in this case, to appear in person or by phone.

prior tentative ruling (1/12/16)

This has nothing to do with Mr. Berry's health and Mr. Pyle is not represented by counsel. The 1/5/16 status report said that plaintiff will be ready for trial on 2/1. He figures 2-3 days. Let's set a trial date. Possible dates when there is a courtroom available are Feb. 16-17 and Mar. 23-24.

prior tentative ruling (9/8/15)

This has been trailing Berry v. Pyle. On 8/18/18 Plaintiff filed a status report. He is ready to go to trial in February 2016. He needs another 4-6 months to complete discovery, which includes Mr. Pyle's deposition and an audit of the records.

In htis case Mr. Pyle is not represented by counsel. So let's get a deposition date and move forward.

prior tentative ruling (3/10/15)

Mediation set for 3/24/15. Continue without appearance to 5/12/15 at 1:00 a.m

prior tentative ruling (10/7/14)

The mediation has been delayed. Continue without appearance to 12/16/14 at 10:00 a.m.

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Tuesday, August 21, 2018

Hearing Room 303

10:00 AM

CONT... **Glen E Pyle**

Chapter 7

prior tentative ruling (8/5/14)

The Berry v. Pyle matter is scheduled for a settlement conference before Judge Ryan on 9/22/14. Is this case part of the settlement conference? If so, continue without appearance to 10/7/14 at 10:00 a.m. If not, the status report filed by Plaintiff on 7/21 requests mediation. How do you wish to proceed?

prior tentative ruling (4/22/14)

On 4/8/14, counsel for plaintiff filed a status report. He believes that he will be ready for trial in 6 months. There is still discovery to be done, including completing Debtor's deposition. A mediation will take place in May or June.
Continue without appearance to August 5, 2014 at 10:00 a.m.

prior tentative ruling (3/11/14)

This complaint is both under §523 and §727 as well as §§547 and 548. This has been trailing the Berry v. Pyle adversary proceeding. Mr. Mendoza attended the 2/10/14 deposition of Mr. Pyle, which is a joint deposition in both this case and the Berry v. Pyle case. Pyle is not represented by counsel in this adversary proceeding.

Mr. Mendoza, should this continue to trail the Berry adversary or are you ready to go forward on your own?

prior tentative ruling (4/24)

The parties have stipulated that plaintiff will have until 4/20 to file a Second Amended Complaint. A second amended complaint was filed on 4/20. Per the status report, the parties think that they need 4-5 months to complete discovery. The parties wish to mediate. Plaintiff has no co-counsel and may wish to propound more discovery and seek relief from stay as to certain trust assets.

Continue the status conference without appearance to June 19 at 10:00 a.m.

This will allow sufficient time for there to be a response to the second amended complaint and for new co-counsel to move forward. In the meantime, please complete a mediation order since it often takes weeks to schedule a mediation.

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San Fernando Valley
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10:00 AM

CONT... **Glen E Pyle**

Chapter 7

prior tentative ruling (2/14)

Per the status report filed on 1/24, the parties feel that they will not be ready for trial until late in 2012. Set a discovery cutoff date of 7/30/12. Although neither party wants mediation at this time, plaintiff's counsel is willing to attend mediation.

As of 2/12 there is no response to the amended complaint. What is the status of that? When do the parties think that mediation might be beneficial?

prior tentative ruling (1/24)

An answer was filed on 7/15. Plaintiff filed an amended complaint on 1/12, but this was done without leave to amend.

Counsel, in the future please confer with knowledgeable bankruptcy counsel before filing things in bankruptcy court. Your original cover sheet indicated that this was only a complaint to recover money under §§547 and 548. That is incorrect. The original complaint is under §523 and §727 (although that is not mentioned on the caption) and may include §§547 and 548 (although the uploaded copy has some pages missing, so I can't tell for sure). The amended complaint has all of these claims for relief. The court picked up that there was a §727 claim, but we should not have to review the complaint to do this.

prior tentative ruling (10/4)

Nothing further received as of 10/2.

prior tentative ruling (6/22)

As of 5/9 there has been no return on service on the summons. The plaintiff has counsel. There is no status report as of 5/8. If there is no appearance at the 5/11 hearing, I will issue and OSC re: dismissal for failure to prosecute.

Party Information

Attorney(s):

Richard S. Singer

Pro Se

Klinedinst PC

Represented By
Hartford O Brown

**United States Bankruptcy Court
Central District of California
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Tuesday, August 21, 2018

Hearing Room 303

10:00 AM

CONT... Glen E Pyle

Chapter 7

Debtor(s):

Glen E Pyle Pro Se

Defendant(s):

Glen Pyle Pro Se

Plaintiff(s):

Ian Campbell Pro Se

Trustee(s):

Amy L Goldman (TR) Represented By
Amy L Goldman
Amy L Goldman (TR)

Amy L Goldman (TR) Pro Se

US Trustee(s):

United States Trustee (SV) Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, August 21, 2018

Hearing Room 303

10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#6.00 Order to Appear and Advise the Court as to
the Handling of the Claim for Relief under
11 USC Sec. 727 in Campbell vs. Pyle

fr. 7/17/18

Docket 217

Tentative Ruling:

No response received as of 8/20/18 at 11:00 a.m..

Party Information

Debtor(s):

Glen E Pyle

Pro Se

Defendant(s):

Glen E Pyle

Represented By
Raymond H. Aver

Sweetwater Management Company

Pro Se

Glen E Pyle Irrevocable Trust

Represented By
Raymond H. Aver

Plaintiff(s):

Marc H Berry

Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, August 21, 2018

Hearing Room 303

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:16-01166 Barlava et al v. Yashouafar

#7.00 Status Conference re: Complaint

fr. 2/21/17, 3/28/17; 5/30/17; 5/30/17,
10/3/17, 1/23/18; 4/17/18; 8/7/18

Docket 1

***** VACATED *** REASON: Order continued to 2/26/19 @10am, (eg)**

Tentative Ruling:

A stipulation to stay the action was filed on 8/3/18. Basically, there is a question whether the Plaintiffs would be able to collect on their claims even if they win a non-dischargeable judgment. So rather than continue to battle over discovery, the parties agree to stay this adversary complaint until the Trustee decides whether to challenge the Plaintiffs' claims. As I understand it, to the extent that the Trustee does not object to a claim or a portion of a claim, the claim or part thereof, will be dismissed from the §523 adversary and the claimant will accept whatever (if anything) it receives through the bankruptcy case. Also, to the extent that any claim is adjudicated by the Court or settled by the Plaintiffs, those claims will be dismissed from this §523 action. If the Trustee objects to a claim, the stay will be lifted and ex parte application to the Court and discovery will be completed within 6 months after the stay is lifted. While the Plaintiff cannot seek to lift the stay prematurely, the Defendant can do so at any time through an application to the Court.

This will be approved. So that the Court will not drop this case from the calendar, the status conference is continued without appearance to February 12, 2019 at 10:00 a.m.

prior tentative ruling (4/17/18)

On 4/12/18 the Plaintiff filed a unilateral status report. Apparently there is a motion to compel that is being prepared and is ready for filing, but has not been filed as of 4/12/18. When will that be set for hearing?

prior tentative ruling (1/23/18)

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Tuesday, August 21, 2018

Hearing Room 303

10:00 AM

CONT... Solyman Yashouafar

Chapter 11

The parties filed unilateral status reports. In the future, please try to file a joint status report. Plaintiff anticipates a 2 week trial starting after June and wants this matter sent to mediation. Plaintiff consents to this court entering a final judgment. Defendant, on the other hand, expects to complete discovery at the end of June and wants trial after 11/15/18. He expects a 3-5 day trial. Defendant is not interested in mediation, but also consents to this court entering a final judgment.

Let's talk about what can be done to try to resolve this matter. You are talking about expensive discovery and an expensive trial.

prior tentative ruling (10/3/17)

Nothing further received as of 9/28/17. What is the status of discovery?

prior tentative ruling (5/30/17)

Per the joint status report filed 5/11/17, set a discovery cutoff date of 9/11/17. The parties agree to do their initial disclosures by 6/5/17. There may be some objections to discovery.

Continue without appearance to 10/3/17 at 10:00 a.m.

prior tentative ruling (3/28/17)

The parties stipulated that Massoud has until 2/17/17 to respond to the complaint. On 2/17, Massoud filed his answer. No status report has been filed as of 3/26.

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Massoud Aaron Yashouafar

Represented By
C John M Melissinos
Mark M Sharf

Defendant(s):

Massoud Aaron Yashouafar

Pro Se

**United States Bankruptcy Court
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Tuesday, August 21, 2018

Hearing Room 303

10:00 AM

CONT... Solyman Yashouafar

Chapter 11

Plaintiff(s):

Simon Barlava

Represented By
Andrew V Jablon

Morris Barlava

Represented By
Andrew V Jablon

Nasser Barlava

Represented By
Andrew V Jablon

Kefayat Barlava

Represented By
Andrew V Jablon

Figueroa Tower II, LP

Represented By
Andrew V Jablon

First National Buildings II, LLC

Represented By
Andrew V Jablon

Carla Ridge, LLC

Represented By
Andrew V Jablon

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Monday, August 27, 2018

Hearing Room 303

9:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#1.00 Trial

fr. 6/19/18

Docket 0

Tentative Ruling:

The subpoenaed witnesses are to appear by phone and will be ordered back for January 30, 2019 at 9:00 a.m. when the continued trial will actually take place. All parties may appear by phone.

The Court has a copy of the proof of service on Doctors Bilik, Okhovat and Hersel as well as on the Custodian of records of Canyon Medical Group. To the extent that any of them do not appear, Mr. DeNoce will be required to provide evidence that at the time that the subpoena was served, each witness was offered a witness fee of \$40 and reasonable mileage. The reasonable mileage will be waived as to all except Canyon Medical Group since the witnesses may appear by phone. FRCP 45(b)(1) as incorporated by FRBP 9016. See *CF&I Steel Corp. v. Mitsui & Co.*, 713 F2d 494, 496 (9th Cir. 1983).

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 18, 2018

Hearing Room 303

10:00 AM

1:06-12243 Edwin Perry Hinds

Chapter 7

#1.00 Status of Chapter 7 Case

fr. 8/29/17, 1/23/18; 6/19/18

Docket 0

Tentative Ruling:

The motion as to Lon Isaacson was heard on 8/21/18 and continued to 12/4/18 at 10:00 as a holding date. The order on the motion was entered on 8/23/18. The motion was granted. This status conference is continued without appearance to 12/4/18 at 10:00 a.m. to give the Trustee a chance to start collecting on its order and to advise the Court as to the status of those efforts.

prior tentative ruling (6/19/18)

Per the status report filed on 3/13/18, a claim has been submitted to the California State Bar Client Fund in an attempt to collect the \$100,000 from Mr. Isaacson. A current address for him has been found and he has been filed with a copy of the prior status reports.

Mr. Isaacson is being represented by Brian McMahon and there are ongoing settlement conferences. A settlement was reached in February 2018 and there will be a 9019 motion filed. At the State Bar, the claim is still under submission.

On June 12, 2018 the Trustee filed a further status report. Discussions with Mr. Isaacson have reached an impasse and there is no settlement likely. Mr. Isaacson is disputing the Trustee's claim in the Client Security Fund.

I will continue this without appearance to September 18, 2018 at 10:00 a.m.

prior tentative ruling (1/23/18)

On November 28, 2017, counsel for the Trustee filed a status report. The only update was that he believes that he located a current address for Mr. Isaacson. Then in late December, the Court received a copy of a letter addressed to the State Bar Client Security Fund Commission and sent by the Law Offices of Brian

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10:00 AM

CONT... Edwin Perry Hinds Chapter 7

D. McMahon, attorney for Mr. Isaacson. While it requests that I recuse myself, at this point I have no part of these proceedings.

Continue this status conference without appearance to June 19, 2018 at 10:00 a.m.

prior tentative ruling (8/29/17)

This Chapter 7 case was filed on November 29, 2006. Debtor was discharged on October 24, 2012. On May 15, 2017, an Order was entered granting application to employ Brutzkus Gubner as Trustee's General Counsel effective March 31, 2017. Thereafter, on July 31, 2017, an Order Setting Status Conference Hearing was entered.

On August 10, 2017, Trustee filed a Unilateral Status Report. According to Trustee, Lon B. Isaacson (the "Isaacson Creditors") had obtained a judgment over an attorneys' fees dispute with Debtor pre-petition. The judgment was for \$107,969.16 plus interest. Thereafter, the Isaacson Creditors filed an adversary proceeding in this case. The parties reached a settlement and the Court set a hearing on the settlement. At the hearing, the Court determined that the Debtor would pay the \$100,000 settlement to the estate instead of directly to the Isaacson Creditors. Also, the Court entered an Order directing the Isaacson Creditors to turn over \$100,000 to the Trustee. The Isaacson Creditors failed to comply and thereafter, most recently, the Trustee learned that Lon Isaacson had begun to misappropriate client funds from his trust accounts. He was formally disbarred in May 2013. Trustee has been attempting to reach Mr. Isaacson but has not been successful. Trustee's counsel advised Trustee that it may be most cost efficient to attempt to collect the \$100,000 by submitting a claim to the California State Bar Client Fund. Trustee believes the case should remain open for approximately 90 to 180 days pending a response from the State Bar Client Fund.

This matter is now off calendar. No appearance is required and no hearing will be held. In the future, please file a status report every 90-180 days.

Party Information

Debtor(s):

Edwin Perry Hinds

Represented By

**United States Bankruptcy Court
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Tuesday, September 18, 2018

Hearing Room 303

10:00 AM

CONT... Edwin Perry Hinds

Chapter 7

Jonathan R Elowitz - DISBARRED -

Trustee(s):

David R Hagen (TR)

Represented By
David Seror

**United States Bankruptcy Court
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Courtroom 303 Calendar**

Tuesday, September 18, 2018

Hearing Room 303

10:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#2.00 Trial (date to deal with subpoena issues)

fr. 6/19/18, 8/27/18

Docket 0

Tentative Ruling:

This is only as to Dr. Bilik and Canyon Medical Group, who did not appear on August 27.

The subpoenaed witnesses may appear by phone or in person and will be ordered back for January 30, 2019 at 9:00 a.m. when the continued trial will actually take place.

The Court has a copy of the proof of service on Doctor Bilik and on the Custodian of Records of Canyon Medical Group. If either of them do not appear, Mr. DeNoce will be required to provide evidence that at the time that the subpoena was served, each witness was offered a witness fee of \$40 and reasonable mileage. FRCP 45(b)(1) as incorporated by FRBP 9016. See *CF&I Steel Corp. v. Mitsui & Co.*, 713 F2d 494, 496 (9th Cir. 1983).

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
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Tuesday, September 18, 2018

Hearing Room 303

10:00 AM

1:16-11387 Real Estate Short Sales Inc

Chapter 7

#3.00 Motion for relief from stay

U.S. BANK NATIONAL ASSOC.

fr. 1/23/18, 2/27/18, 7/17/18

Docket 190

***** VACATED *** REASON: Order ent continuing hrg to 11/6/18 at 10:00 a.m. -jc**

Tentative Ruling:

THIS MOTION IS CONTINUED BY STIPULATION WITH THE TRUSTEE TO NOVEMBER 6, 2018 AT 10:00 A.M. HOWEVER, AS NOTED IN THE FOLLOWING WRITE-UP, THERE IS A SERIOUS QUESTION AS TO WHETHER THE OKLAHOMA STREET PROPERTY SHOULD BE ABANDONED. I ASSUME THAT MS. CUEVA WILL BE IN COURT ON SEPTEMBER 18. MS. ZAMORA, PLEASE ATTEND (BY PHONE IS FINE). I WANT TO SET A MOTION(S) TO ABANDON FOR NOVEMBER 18 AND WE NEED TO TALK ABOUT IT.

write-up for hearing on 9/18/18 created prior to the stipulation to continue
Per the statement filed on 9/7 by U.S. Bank, although the property is now in escrow, it is for a significantly lower sum than the payoff quote given by the Bank to the Trustee. There has been no request for a short sale proposal and the Bank has not approved a short sale. The Bank requests immediate relief from stay.

The Debtor has filed a statement. Basically, Ms. Cueva is saying that the Debtor is working out a loan modification with U.S. Bank and that this will be approved if the Trustee will abandon the property. There are some insurance issues. The Debtor is asking that Ms. Zamora abandon the property.

Where does the Trustee stand on this? Is there any reason not to abandon? The automatic stay will end when that occurs.

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10:00 AM

CONT... Real Estate Short Sales Inc

Chapter 7

prior tentative ruling (2/27/18)

At the hearing on 2/13, the Court was informed that Ms. Cueva had not made the payment of the settlement amount. Berendo has been vacated and is being put on the market. The Trustee and Ms. Cueva are attempting to work out a modified compromise motion on the Oklahoma Ave. property. Nothing further filed as of 2/25.

prior tentative ruling (1/23/18)

This concerns the Oklahoma Ave. property. U.S. Bank has a secured claim of \$1.439+ million. It recorded its notice of default in 2/15 and a sale was scheduled, but never held. The current monthly payments as of 11/17 are \$7,057.47. A total of 73 payments were not made. The fair market value of the property is \$1.1 million.

The property was transferred by Cueva to Debtor without the Bank's consent. The Bank received relief from stay in the prior bankruptcy case.

In this case, there was an adequate protection order on which the Debtor defaulted multiple times.

Proposed Ruling

Under the proposed compromise, the Oklahoma Property will be released from the Estate. As to the stay concerning the Debtor, relief from stay will be granted. It is up to Cueva, et al, to work out something with the Bank.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, September 18, 2018

Hearing Room 303

10:00 AM

1:16-11387 Real Estate Short Sales Inc

Chapter 7

#4.00 Motion for relief from stay

WELLS FARGO BANK N.A.

fr. 7/17/18

Docket 233

***** VACATED *** REASON: Stip. cont. to 12/18/18 @ 10am (e)**

Tentative Ruling:

Continued by stipulation to 12/18/18 at 10:00 a.m.

This concerns 625 S. Berendo. Wells Fargo asserts a total claim of \$815,000+ and has recorded its notice of default and notice of sale. The current monthly payments of \$4,029.47 and there are 85 now due and owing. Wells Fargo holds the first trust deed and has filed a broker price opinion that the value is \$655,000.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, September 18, 2018

Hearing Room 303

10:00 AM

1:16-11538 Majestic Air, Inc.

Chapter 11

#4.01 Motion to Approve Compromise Under Rule 9019
between the Debtor and Infinity Air, Inc.

Docket 234

Tentative Ruling:

This is a motion to compromise that involved the Debtor, its principal (Tessie Cue), and Infinity. In short, Infinity will pay Cue \$10,000 in connection with the costs that she has paid during the litigation, the lawsuits will be dismissed, Civ. Code §1542 will be waived.

The Debtor lost its appeal in the Superior Court, so the probability of success against Infinity is limited. Infinity has resources to pay (*please note that the motion only discusses the ability of Infinity to pay the settlement amount, not its ability to pay an ultimate judgment*). The Debtor is unable to pay the ongoing costs of continued litigation. The settlement will reduce the number of claims and disputes that must be resolved.

Opposition

Lufthansa Technik Philippines Inc. opposes this settlement. Not enough information is given to allow the Court to make a determination that this settlement is fair and equitable. For example, how much is the memorandum of costs and what other claims is Infinity being released from? Is there anything other than the memorandum of costs to be litigated?

Majestic is waiving its claims, but only Cue is being paid.

There is nothing particularly complex about litigating the memorandum of costs. And why is the president and CEO of Infinity excluded from the waiver claims?

The creditors of Majestic Air receive no benefit since all the money goes to Cue personally.

It is also harmful as to LTP since the settlement agreement carves out any claims by Debtor against LTP.

Reply

The background is as follows: Infinity filed suit against LTP, the Debtor,

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10:00 AM

CONT... **Majestic Air, Inc.**

Chapter 11

Tessie and Hiongbo Cue. Infinity and LTP settled, which ended up with the Debtor and the Cues being dismissed from that lawsuit. The Debtor and the Cues appealed, but the Court of Appeal affirmed the order granting the good faith settlement motions and awarded Infinity its costs of appeal. This settlement motion eliminates the risk that Majestic would be liable for those costs.

The major benefits are the general release that Infinity is granting to Majestic (as well as the Cues), Majestic does not have the money to litigate the costs, Majestic will not be subject to the ongoing litigation to determine the prevailing party. There would be significant costs in preparing for and opposing the motions as to the amount of costs and prevailing party.

As for the \$10,000 to Cue, she is the one who provided the consideration to Ansett in the form of her Ansett stock and that was worth far more than the \$10,000.

In the settlement, Majestic and Infinity release each other. The Infinity costs of appeal were about \$415, whereas the Cues incurred costs of about \$20,000 in connection with the Infinity case.

There is no reason that the settlement should benefit LTP as a party to the litigation. Majestic and LTP have claims against each other and they are not part of this settlement.

Analysis

I am not up to speed on the details of the litigation or the relationship of the parties. As to the direct settlement between Infinity, Cues, and the Debtor, that seems to be a good idea. Although LTP, which may somehow be a party to the state court action (I am confused as to the statement that the Debtor was previously dismissed and still seems to be a party), I have no information as how this impacts Majestic.

As to the payment going to Ms. Cue, that does not seem to be proper. If she has a claim against Majestic of participation in the costs of pre-petition litigation, she should have filed a proof of claim or maybe she can file one now. It seems that money coming in is property of the estate.

Anyway, you have a lot to clarify before I can rule.

Party Information

**United States Bankruptcy Court
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10:00 AM

CONT... Majestic Air, Inc.

Chapter 11

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

Movant(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

**United States Bankruptcy Court
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10:00 AM

1:16-11538 Majestic Air, Inc.

Chapter 11

#5.00 Status and Case Management Conference

fr. 8/4/16(xfr from Judge Tighe's calendar); 8/30/16,
9/27/16; 10/25/16; 11/15/16, 2/21/17, 5/16/17; 6/27/17,
8/29/17, 1/23/18; 6/19/18

Docket 1

Tentative Ruling:

Special counsel is being employed to resolve or litigate the LTP claim. This status conference will be continued.

prior tentative ruling (6/19/18)

Per the status report filed on 6/5, on 5/30/18 the California Court of Appeal affirmed the decision of the Superior Court in the Ansett Aircraft v. Cue appeal, but remanded the case for further proceedings.

Continue without appearance to Sept. 18, 2018 at 10:00 a.m. so that the Ansett claim can be finalized.

prior tentative ruling (1/23/18)

There is a state court appeal pending. Continue without appearance to June 19, 2018 at 10:00 a.m.

prior tentative ruling (2/21/17)

Per the status report filed on 2/7/17, the LTP parts have been sold and Debtor has moved to its new, less expensive, location. The appeal with the California Court of Appeal as to LTP is continuing. The Debtor expects to file a disclosure statement within the next 60 days.

The Debtor filed a month-by-month comparison of actual revenue and expenses and budgeted revenue and expenses for November, December, and January. They show a slight net profit of \$1,500-\$2,200 per month.

If there is no objection, I will continue this without appearance to May 16, 2017 at

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Tuesday, September 18, 2018

Hearing Room 303

10:00 AM

CONT... Majestic Air, Inc.
10:00 a.m.

Chapter 11

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

**United States Bankruptcy Court
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Tuesday, September 18, 2018

Hearing Room 303

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

#6.00 Status Conference re: Chapter 11 case

fr. 9/1/16(xfr from Judge Tighe's calendar), 9/27/16,
10/11/16; 10/26/16; 11/15/16, 12/6/16, 3/28/16,
4/4/17; 5/30/17, 8/29/17, 9/19/17, 1/23/18, 5/1/18

Docket 1

Tentative Ruling:

PLEASE NOTE THAT ALTHOUGH THE ELKWOOD ADVERSARY PROCEEDING WAS TRANSFERRED TO JUDGE TIGHE, I AM CONTINUING TO HANDLE ALL OTHER YASHOUAFAR MATTERS.

No status report received as of 9/16/18.

prior tentative ruling (1/23/18)

Per the status report filed on 1/16, there is a motion for summary judgment as to the JCBL Trust, set for hearing on 2/13/18 at 10:00 a.m. As to the Elkwood Associates adversary proceeding, Elkwood and Fieldbrook filed a motion to dismiss the second amended complaint, which is set for hearing on 2/27. The motion to withdraw the reference is still pending before Judge Walter. The Trustee is current with the OUST requirements.

Continue without appearance to May 1, 2018 at 10:00 a.m.

prior tentative ruling (/19/17)

On 9/6/17 the Trustee filed his status report. The Trustee is continuing to collect information about the Debtors and their estates.

The JCBL Trust is the subject of an adversary proceeding as to whether it is property of the estate. The Trustee expects to resolve this through a motion for summary judgment. [17-ap-01050 - status conference set on 10/17]

The settlement motion with the Abselets is pending.

The motion by defendants to dismiss the Elkwood adversary proceeding is pending [17-ap-01040 - cont. 10/3/17]

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Hearing Room 303

10:00 AM

CONT...

Solyman Yashouafar

Chapter 11

The Trustee is in compliance with OUST reporting requirements.
Continue without appearance to 1/23/18 at 10:00 a.m.

prior tentative ruling (5/30/17)

Per the Trustee's status report filed on 5/15/17, the Oklahoma action is proceeding and there is a status conference on 6/15/17. The Roosevelt Lofts proceeds are being held as various parties dispute ownership. There is a status conference in this court on that set for 7/11/17. The Trustee wants the Roosevelt Lofts' counsel to continue to hold the excess funds.

The Trustee filed 17-ap-01027 to determine the Debtor's estates' interest in the RLI stock. Abselet filed a motion to withdraw the reference, which is set for hearing in the district court on 5/22. Abselet's motion to dismiss is set for 6/27 in this court. The Trustee and Abselet have set a one day mediation in front of retired Judge Goldberg for 6/3.

Massoud's brother-in-law foreclosed on the Beverly Hills homes of Massoud and of Solyman and sold Solyman's for a substantial profit and rented Massoud's back to him at \$25,000/mo for two years. Massoud never paid any rent and the lease has expired. The Trustee filed 17-ap-1040 seeking quiet title to the Rexford home and to avoid the foreclosures of both homes.

Discovery is continuing in all matters. The Trustee requests a further status conference in 90 days.

It is probably wise to have appearances (in person or on the phone) on 5/30, but this will be continued to an agreeable date in August.

Party Information

Debtor(s):

Solyman Yashouafar

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 18, 2018

Hearing Room 303

10:00 AM

1:16-12408 Massoud Aron Yashouafar

Chapter 11

#7.00 Status Conference re: chapter 11 case

fr. 9/27/16, 10/25/16; 10/26/16; 11/15/16,
12/6/16, 3/28/17, 4/4/17; 5/30/17, 8/29/17,
9/19/17, 1/23/18, 5/1/18

Docket 1

Tentative Ruling:

PLEASE NOTE THAT ALTHOUGH THE ELKWOOD ADVERSARY
PROCEEDING WAS TRANSFERRED TO JUDGE TIGHE, I AM
CONTINUING TO HANDLE ALL OTHER YASHOUAFAR MATTERS.

This case is being jointly administered with 16-12255.

Party Information

Debtor(s):

Massoud Aron Yashouafar

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 18, 2018

Hearing Room 303

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:17-01040 GOTTlieb v. Elkwood Associates, LLC et al

#8.00 Status Conferencere re: Third amended complaint to
1) Quiet Title of the Rexford Home, 2) Avoid actual and
constructive fraudulent transfers of Rexford home and
actual fraudulent transfer of Chalette Home,
3) Recover The Rexford Home and Value of the
Chalette Home, and 4) Related Reief

fr. 5/1/18

Docket 80

***** VACATED *** REASON: case transferred to Judge Tighe (eg)**

Tentative Ruling:

This adversary proceeding has been transferred to Judge Tighe. The next hearing will be on October 10, 2018 at 1:00 p.m. in courtroom 302. Plaintiff to give notice of continued status conference.

APPEARANCES WAIVED ON 9/18/18

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Defendant(s):

Elkwood Associates, LLC

Represented By
Daniel J McCarthy

Fieldbrook, Inc.

Represented By
Daniel J McCarthy

Soda Partners, LLC

Represented By
Ronald N Richards

Quality Loan Service

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 18, 2018

Hearing Room 303

10:00 AM

CONT... Solyman Yashouafar Chapter 11

Chase Manhattan Mortgage Co. Pro Se

Howard Abselet Represented By
Henry S David

Israel Abselet Represented By
Henry S David

Citivist financial Services, Inc. Pro Se

Plaintiff(s):

DAVID K GOTTLIEB Represented By
Jeremy V Richards
John W Lucas

Trustee(s):

David Keith Gottlieb (TR) Represented By
Jeremy V Richards
John W Lucas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 18, 2018

Hearing Room 303

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:17-01040 GOTTlieb v. Elkwood Associates, LLC et al

#9.00 Status Conference re: Counterclaim by Elkwood Associates, LLC,
against DAVID K GOTTLIEB Demand for Jury Trial

fr. 5/1/18

Docket 83

***** VACATED *** REASON: case transferred to Judge Tighe (eg)**

Tentative Ruling:

This adversary proceeding has been transferred to Judge Tighe. The next hearing will be on October 10, 2018 at 1:00 p.m. in courtroom 302. Plaintiff to give notice of continued status conference.

APPEARANCES WAIVED ON 9/18/18

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Defendant(s):

Elkwood Associates, LLC

Represented By
Daniel J McCarthy

Fieldbrook, Inc.

Represented By
Daniel J McCarthy

Soda Partners, LLC

Represented By
Ronald N Richards

Quality Loan Service

Pro Se

Chase Manhattan Mortgage Co.

Pro Se

Howard Absalet

Represented By
Henry S David

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 18, 2018

Hearing Room 303

10:00 AM

CONT... Solyman Yashouafar

Chapter 11

Israel Abselet

Represented By
Henry S David

Citivist financial Services, Inc.

Pro Se

State Street Bank and Trust Co.

Pro Se

DMARC 2007-CD5 Garden Street,

Pro Se

QUALITY LOAN SERVICE

Pro Se

Plaintiff(s):

DAVID K GOTTLIEB

Represented By
Jeremy V Richards
John W Lucas

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 18, 2018

Hearing Room 303

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:16-01169 Encino Corporate Plaza LP v. Yashouafar et al

#10.00 Status Conference Re:
First Amended Complaint by Encino Corporate
Plaza LP for:
1 - Nondischargeability of Debt (Count One
for Fraud [Deceit]-Pursuant to 11 USC Sec.
523(a)(2)(A));
2 - Nondischargeability of Debt (Count Two
for Fraud [Fraudulent Transfers]-Pursuant to
11 USC Sec. 523(a)(2)(A));
3 - NonDischargeability of Debt (Count Three
for Defalcation as a Fiduciary - Pursuant to
11 USC Sec. 523(a)(4));
4 - Nondischargeability of Debt (Count Four
for Willful and Malicious Injury [Conversion]-
Pursuant to 11 USC Sec. 523(a)(6)); and
5 - Nondischargeability of Debt (Count Five
for Willful and Malicious Injury [Fraudulent
Transfers]-Pursuant to 11 USC Sec.
523(a)(6))

fr. 2/21/17, 3/28/17; 6/27/17, 8/22/17, 1/23/18,
5/1/18

Docket 30

Tentative Ruling:

Off calendar. Adversary dismissed by order entered on 6/18/18. This adversary is closed.

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 18, 2018

Hearing Room 303

10:00 AM

CONT... **Solyman Yashouafar**
Massoud Aaron Yashouafar

Chapter 11

Represented By
C John M Melissinos
Mark M Sharf

Defendant(s):

Massoud Aaron Yashouafar

Pro Se

Solyman Yashouafar

Pro Se

Plaintiff(s):

Encino Corporate Plaza LP

Represented By
Jessica Mickelsen Simon
Henry S David
Andrew F Kim

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 18, 2018

Hearing Room 303

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:17-01040 GOTTLIEB v. Elkwood Associates, LLC et al

#11.00 Motion of David K. Gottlieb, Chapter 11 Trustee, for Summary Judgment on First Claim for Relief (Quiet Title) Against Defendants Elkwood Associates, LLC and Fieldbrook, Inc.

Docket 98

***** VACATED *** REASON: Adv. Transferred to Judge Tighe, cont. hrg.
10/10/18 at 1pm (eg)**

Tentative Ruling:

This adversary proceeding has been transferred to Judge Tighe. The hearing will be on October 10, 2018 at 1:00 p.m. in courtroom 302.

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Defendant(s):

Elkwood Associates, LLC

Represented By
Daniel J McCarthy

Fieldbrook, Inc.

Represented By
Daniel J McCarthy

Soda Partners, LLC

Represented By
Ronald N Richards

Quality Loan Service

Pro Se

Chase Manhattan Mortgage Co.

Pro Se

Howard Abselet

Represented By
Henry S David

Israel Abselet

Represented By
Henry S David

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 18, 2018

Hearing Room 303

10:00 AM

CONT... Solyman Yashouafar Chapter 11

Citivist financial Services, Inc. Pro Se

State Street Bank and Trust Co. Pro Se

DMARC 2007-CD5 Garden Street,
Represented By
Timothy C Aires

QUALITY LOAN SERVICE Pro Se

Movant(s):

DAVID K GOTTLIEB Represented By
Jeremy V Richards
John W Lucas

DAVID K GOTTLIEB Pro Se

Plaintiff(s):

DAVID K GOTTLIEB Represented By
Jeremy V Richards
John W Lucas

Trustee(s):

David Keith Gottlieb (TR) Represented By
Jeremy V Richards
John W Lucas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 18, 2018

Hearing Room 303

10:00 AM

1:16-12255 Solyman Yashouafar

Chapter 11

Adv#: 1:17-01040 GOTTlieb v. Elkwood Associates, LLC et al

#12.00 Defendants' Cross-Motion for Summary Judgment on Plaintiffs
First Claim for Relief (Quiet Title)

Docket 102

***** VACATED *** REASON: Adv. Transferred to Judge Tighe, cont. hrg.
10/10/18 at 1pm (eg)**

Tentative Ruling:

This adversary proceeding has been transferred to Judge Tighe. The hearing will be on October 10, 2018 at 1:00 p.m. in courtroom 302.

Party Information

Debtor(s):

Solyman Yashouafar

Represented By
Mark E Goodfriend

Defendant(s):

Elkwood Associates, LLC

Represented By
Daniel J McCarthy

Fieldbrook, Inc.

Represented By
Daniel J McCarthy

Soda Partners, LLC

Represented By
Ronald N Richards

Quality Loan Service

Pro Se

Chase Manhattan Mortgage Co.

Pro Se

Howard Abselet

Represented By
Henry S David

Israel Abselet

Represented By
Henry S David

Citivest financial Services, Inc.

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 18, 2018

Hearing Room 303

10:00 AM

CONT... Solyman Yashouafar Chapter 11

State Street Bank and Trust Co.

Pro Se

DMARC 2007-CD5 Garden Street,

Represented By
Timothy C Aires

QUALITY LOAN SERVICE

Pro Se

Plaintiff(s):

DAVID K GOTTLIEB

Represented By
Jeremy V Richards
John W Lucas

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards
John W Lucas

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Monday, September 24, 2018

Hearing Room 303

9:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#1.00 Plaintiff's Motion for Order that Defendant's counsel Raymond H. Aver Pay Sanctions to Plaintiff's Counsel Marc H. Berry.

fr.5/29/18; 6/26/18

Docket 199

***** VACATED *** REASON: Cont. to 9/25/18 @10am (eg)**

Party Information

Debtor(s):

Glen E Pyle Pro Se

Defendant(s):

Glen E Pyle Irrevocable Trust Represented By
Raymond H. Aver

Sweetwater Management Company Pro Se

Glen E Pyle Represented By
Raymond H. Aver

Plaintiff(s):

Marc H Berry Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR) Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Monday, September 24, 2018

Hearing Room 303

9:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#2.00 Motion for Sanctions Against Glen Pyle, Sweetwater Management Company Inc and Glen E Pyle Irrevocable Trust

fr. 1/24/12, 4/10/12, 5/29/12, 6/19/12, 9/11/12, 10/2/12, 3/19/13, 6/4/13, 8/27/13, 11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14, 12/16/14, 3/10/15, 5/12/15, 6/2/15, 9/1/15, 9/8/15; 11/17/15; 1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16, 10/11/16, 1/17/17, 2/21/17, 3/28/17; 5/30/17; 7/25/17; 11/14/17; 2/27/17; 4/17/18; 6/26/18

Docket 9

***** VACATED *** REASON: Cont. to 9/25/18 @10am (eg)**

Party Information

Attorney(s):

Law Offices Of Raymond H. Aver, A Represented By
Raymond H Aver

Richard S. Singer Pro Se

Debtor(s):

Glen E Pyle Pro Se

Defendant(s):

Glen E Pyle Irrevocable Trust Represented By
Raymond H Aver

Sweetwater Management Company Pro Se

Glen E Pyle Represented By
Raymond H Aver

Movant(s):

Marc H Berry Represented By
Marc Berry

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Monday, September 24, 2018

Hearing Room 303

9:00 AM

CONT... Glen E Pyle

Chapter 7

Plaintiff(s):

Marc H Berry

Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR)

Pro Se

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)

US Trustee(s):

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Monday, September 24, 2018

Hearing Room 303

9:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#3.00 TRIAL re:
Complaint to Set Aside
or Annul Fraudulent Conveyances; Alter Ego;
and for Damages

fr. 4/27/11, 6/15/11, 10/4/11, 1/24/12, 4/10/12, 5/29/12,
6/19/12, 9/11/12, 10/2/12, 11/6/12, 3/19/13, 6/4/13, 8/27/13,
11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14,
12/16/14, 3/10/15, 5/12/15, 6/2/15, 9/1/15, 9/8/15; 11/17/15;
1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16, 10/11/16, 1/17/17,
2/21/17, 3/28/17, 5/30/17; 7/25/17; 11/14/17; 2/27/18; 4/17/18; 6/26/18

Docket 1

***** VACATED *** REASON: off calendar - jc**

Party Information

Attorney(s):

Richard S. Singer	Pro Se
Law Offices Of Raymond H. Aver, A	Represented By Raymond H Aver

Debtor(s):

Glen E Pyle	Pro Se
-------------	--------

Defendant(s):

Glen E Pyle	Represented By Raymond H Aver
Sweetwater Management Company	Pro Se
Glen E Pyle Irrevocable Trust	Represented By Raymond H Aver

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Monday, September 24, 2018

Hearing Room 303

9:00 AM

CONT... Glen E Pyle

Chapter 7

Plaintiff(s):

Marc H Berry

Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR)

Pro Se

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)

US Trustee(s):

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 25, 2018

Hearing Room 303

9:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#1.00 TRIAL re:
Complaint to Set Aside
or Annul Fraudulent Conveyances; Alter Ego;
and for Damages

fr. 4/27/11, 6/15/11, 10/4/11, 1/24/12, 4/10/12, 5/29/12,
6/19/12, 9/11/12, 10/2/12, 11/6/12, 3/19/13, 6/4/13, 8/27/13,
11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14,
12/16/14, 3/10/15, 5/12/15, 6/2/15, 9/1/15, 9/8/15; 11/17/15;
1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16, 10/11/16, 1/17/17,
2/21/17, 3/28/17, 5/30/17; 7/25/17; 11/14/17; 2/27/18; 4/17/18; 6/26/18

Docket 1

***** VACATED *** REASON: off calendar - jc**

Tentative Ruling:

The Trustee has filed a unilateral pretrial statement along with a declaration concerning the Defendant's failure to participate in the pretrial process. How does the Trustee wish to proceed? LBR 7016-1(f) lays out four options for sanctions for failure to comply with the pretrial statement process: continuance of the trial date (not relevant as no trial has been set); entry of the proposed pretrial order; an award of monetary sanctions against Pyle and/or Aver; or entry of judgment or striking of the answer and entering default.

prior tentative ruling (4/17/18)

It appears that the Trustee has taken over this adversary proceeding, which had been assigned to Mr. Berry. She now has counsel and a joint status report was filed. Pursuant to that status report, a settlement is in the works and is dependant on Mr. Pyle obtaining a reverse mortgage, which is in process. The parties stipulate to the following schedule:

5/10/18 - Trustee to submit a proposed Joint Pretrial Stipulation

5/24/18 - Defendants provide the Trustee with their portion of the Joint Pretrial Stipulation

6/1/18 - the Joint Pretrial Stipulation is filed.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 25, 2018

Hearing Room 303

9:00 AM

CONT... **Glen E Pyle**

Chapter 7

Those dates are fine and the joint pretrial conference will be continue to June 26, 2018 at 10:00 a.m.

I would appreciate it if the parties would appear on 4/17 (phone is fine) just so that I can straighten out the status of the Berry motion(s) for sanctions.

Party Information

Attorney(s):

Law Offices Of Raymond H. Aver, A	Represented By Raymond H Aver
Richard S. Singer	Pro Se

Debtor(s):

Glen E Pyle	Pro Se
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Defendant(s):

Glen E Pyle Irrevocable Trust	Represented By Raymond H Aver
Sweetwater Management Company	Pro Se
Glen E Pyle	Represented By Raymond H Aver

Plaintiff(s):

Marc H Berry	Represented By Marc Berry
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Trustee(s):

Amy L Goldman (TR)	Pro Se
Amy L Goldman (TR)	Represented By Amy L Goldman Amy L Goldman (TR)

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 25, 2018

Hearing Room 303

9:00 AM

CONT... Glen E Pyle

Chapter 7

US Trustee(s):

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 25, 2018

Hearing Room 303

10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01181 Campbell v. Pyle

#2.00 Order to Show Cause as to how to Proceed
with the Claim for Relief Under 11 USC Sec.727

fr. 7/17/18; 8/21/18

Docket 87

Tentative Ruling:

No response received as of 9/24/18. What is the status of the probate?

Party Information

Debtor(s):

Glen E Pyle Pro Se

Defendant(s):

Glen Pyle Pro Se

Plaintiff(s):

Ian Campbell Pro Se

Trustee(s):

Amy L Goldman (TR) Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 25, 2018

Hearing Room 303

10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01181 Campbell v. Pyle

#3.00 Status Conference re: Complaint for
Determination that Debt is Nondischargeable
and/or to Recover Money

fr. 5/11/11, 6/22/11, 10/4/11, 1/24/12, 2/14/12,
4/24/12, 6/19/12, 9/11/12, 10/2/12, 11/6/12,
2/12/13, 3/19/13, 8/27/13, 8/27/13, 11/19/13,
2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14,
12/16/14, 3/10/15; 5/12/15; 6/2/15, 9/1/15,
9/8/15, 11/17/15; 1/12/16, 3/1/16, 6/7/16,
8/2/16, 9/27/16, 10/11/16, 1/17/17, 2/21/17,
3/28/17, 1/14/17, 12/19/17, 1/23/18, 3/27/18,
7/17/18, 8/21/18

Docket 1

Tentative Ruling:

Nothing further received as of 9/24/18..

prior tentative ruling (7/17/18)

The order granting relief from the automatic stay was entered on 1/30/18. On 3/6 Mr. Campbell appeared in Court and wanted to know about the order. He had not been served with a copy of the order - our fault. I directed him to my law clerk, but he left without seeing her. On March 1, 2018, Judge Hammock continued his OSC re: Dismissal (BC416442) to July 5 so that Campbell could seek a judgment (he already has a default) on declaration. As soon as he has obtained his judgment, I will be ready to proceed. When will he be filing his declaration, etc. in the Superior Court? Should this status conference be continued until after July 5 or can we proceed before that?

prior tentative ruling (1/23/18)

Mr. Campbell has filed the motion for relief from stay to complete the superior

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 25, 2018

Hearing Room 303

10:00 AM

CONT...

Glen E Pyle

Chapter 7

court case. Continue this status conference to March 27, 2018 at 9:00 a.m. to allow him to obtain his judgment in the superior court.

prior tentative ruling (12/19/17)

I have been in contact with Judge. Hammock of the Superior Court. He advises me that all that is left to do in his case is for Mr. Campbell to file a motion for default judgment. The automatic stay is preventing this.

To move that case forward, Mr. Campbell is to file a motion in this court for relief from the automatic stay. This is to be filed and served no later than December 26. It is to be served by mail and by email on Mr. Pyle. The hearing will be on January 23, 2018 at 10:00 a.m. in courtroom 303. Mr. Campbell is to use the mandatory court form: F 4001-1.RFS.NONBK.MOTION. This is available on the Court website at www.cacb.uscourts.gov/forms/local_bankruptcy_rules_forms. Or you can obtain a copy at the filing window in the clerk's office.

prior tentative ruling (11/14/17)

The Court advised Mr. Campbell of the continuance of the Berry v. Pyle case. He does wish to appear on 11/14. The Court has called Mr. Aver's office and asked them to contact Mr. Pyle (who is pro se in this adversary proceeding) to advise him that the hearing on 11/14 is going forward and that Mr. Pyle is to appear on the phone or in person and instruct him on how to use Court Call. The Court was notified that he also wishes to appear.

What is the status of the state court matter?

prior tentative ruling (3/28/17)

This adversary proceeding has been trailing the Berry v. Pyle one, but it has some different issues. How does Mr. Campbell wish to proceed?

prior tentative ruling (1/17/17)

I believe that Mr. Campbell was trying to obtain counsel. It is best to keep this together with Berry v. Pyle. Therefore continue it without appearance to 2/21/17 at 10:00 a.m. when I have a hearing on the motion for summary judgment in the Berry v. Pyle case.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, September 25, 2018

Hearing Room 303

10:00 AM

CONT... **Glen E Pyle**

Chapter 7

prior tentative ruling (8/2/16)

Mr. Campbell is now representing himself. How does he wish to proceed to get this ready for trial?

prior tentative ruling (3/1/16)

Per the status report filed by Plaintiff on 2/23/16, discovery is not complete. Plaintiff wants to take Mr. Pyle's deposition and audit the records.

This was trailing the Berry v. Pyle matter, but given Mr. Berry's health, I think that it should go forward alone and complete the discovery. Feel free to appear by phone at the status conference and let's get some dates to complete discovery. Please advise Mr. Pyle, who is not represented by counsel in this case, to appear in person or by phone.

prior tentative ruling (1/12/16)

This has nothing to do with Mr. Berry's health and Mr. Pyle is not represented by counsel. The 1/5/16 status report said that plaintiff will be ready for trial on 2/1. He figures 2-3 days. Let's set a trial date. Possible dates when there is a courtroom available are Feb. 16-17 and Mar. 23-24.

prior tentative ruling (9/8/15)

This has been trailing Berry v. Pyle. On 8/18/18 Plaintiff filed a status report. He is ready to go to trial in February 2016. He needs another 4-6 months to complete discovery, which includes Mr. Pyle's deposition and an audit of the records.

In htis case Mr. Pyle is not represented by counsel. So let's get a deposition date and move forward.

prior tentative ruling (3/10/15)

Mediation set for 3/24/15. Continue without appearance to 5/12/15 at 1:00 a.m

prior tentative ruling (10/7/14)

The mediation has been delayed. Continue without appearance to 12/16/14 at 10:00 a.m.

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CONT... **Glen E Pyle**

Chapter 7

prior tentative ruling (8/5/14)

The Berry v. Pyle matter is scheduled for a settlement conference before Judge Ryan on 9/22/14. Is this case part of the settlement conference? If so, continue without appearance to 10/7/14 at 10:00 a.m. If not, the status report filed by Plaintiff on 7/21 requests mediation. How do you wish to proceed?

prior tentative ruling (4/22/14)

On 4/8/14, counsel for plaintiff filed a status report. He believes that he will be ready for trial in 6 months. There is still discovery to be done, including completing Debtor's deposition. A mediation will take place in May or June.
Continue without appearance to August 5, 2014 at 10:00 a.m.

prior tentative ruling (3/11/14)

This complaint is both under §523 and §727 as well as §§547 and 548. This has been trailing the Berry v. Pyle adversary proceeding. Mr. Mendoza attended the 2/10/14 deposition of Mr. Pyle, which is a joint deposition in both this case and the Berry v. Pyle case. Pyle is not represented by counsel in this adversary proceeding.

Mr. Mendoza, should this continue to trail the Berry adversary or are you ready to go forward on your own?

prior tentative ruling (4/24)

The parties have stipulated that plaintiff will have until 4/20 to file a Second Amended Complaint. A second amended complaint was filed on 4/20. Per the status report, the parties think that they need 4-5 months to complete discovery. The parties wish to mediate. Plaintiff has no co-counsel and may wish to propound more discovery and seek relief from stay as to certain trust assets.

Continue the status conference without appearance to June 19 at 10:00 a.m.

This will allow sufficient time for there to be a response to the second amended complaint and for new co-counsel to move forward. In the meantime, please complete a mediation order since it often takes weeks to schedule a mediation.

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prior tentative ruling (2/14)

Per the status report filed on 1/24, the parties feel that they will not be ready for trial until late in 2012. Set a discovery cutoff date of 7/30/12. Although neither party wants mediation at this time, plaintiff's counsel is willing to attend mediation.

As of 2/12 there is no response to the amended complaint. What is the status of that? When do the parties think that mediation might be beneficial?

prior tentative ruling (1/24)

An answer was filed on 7/15. Plaintiff filed an amended complaint on 1/12, but this was done without leave to amend.

Counsel, in the future please confer with knowledgeable bankruptcy counsel before filing things in bankruptcy court. Your original cover sheet indicated that this was only a complaint to recover money under §§547 and 548. That is incorrect. The original complaint is under §523 and §727 (although that is not mentioned on the caption) and may include §§547 and 548 (although the uploaded copy has some pages missing, so I can't tell for sure). The amended complaint has all of these claims for relief. The court picked up that there was a §727 claim, but we should not have to review the complaint to do this.

prior tentative ruling (10/4)

Nothing further received as of 10/2.

prior tentative ruling (6/22)

As of 5/9 there has been no return on service on the summons. The plaintiff has counsel. There is no status report as of 5/8. If there is no appearance at the 5/11 hearing, I will issue and OSC re: dismissal for failure to prosecute.

Party Information

Attorney(s):

Richard S. Singer

Pro Se

Klinedinst PC

Represented By
Hartford O Brown

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CONT... **Glen E Pyle**

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Debtor(s):

Glen E Pyle Pro Se

Defendant(s):

Glen Pyle Pro Se

Plaintiff(s):

Ian Campbell Pro Se

Trustee(s):

Amy L Goldman (TR) Represented By
Amy L Goldman
Amy L Goldman (TR)

Amy L Goldman (TR) Pro Se

US Trustee(s):

United States Trustee (SV) Pro Se

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1:10-24968 Glen E Pyle

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Adv#: 1:11-01180 Berry v. Pyle et al

#4.00 Trial Setting Conference
re: Complaint to Set Aside
or Annul Fraudulent Conveyances; Alter Ego;
and for Damages

fr. 4/27/11, 6/15/11, 10/4/11, 1/24/12, 4/10/12, 5/29/12,
6/19/12, 9/11/12, 10/2/12, 11/6/12, 3/19/13, 6/4/13, 8/27/13,
11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14,
12/16/14, 3/10/15, 5/12/15, 6/2/15, 9/1/15, 9/8/15; 11/17/15;
1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16, 10/11/16, 1/17/17,
2/21/17, 3/28/17, 5/30/17; 7/25/17; 11/14/17; 2/27/18; 4/17/18; 6/26/18

Docket 1

Tentative Ruling:

Nothing further received as of 9/24/18.

prior tentative ruling (6/26/18)

The Trustee has filed a unilateral pretrial statement along with a declaration concerning the Defendant's failure to participate in the pretrial process. How does the Trustee wish to proceed? LBR 7016-1(f) lays out four options for sanctions for failure to comply with the pretrial statement process: continuance of the trial date (not relevant as no trial has been set); entry of the proposed pretrial order; an award of monetary sanctions against Pyle and/or Aver; or entry of judgment or striking of the answer and entering default.

prior tentative ruling (4/17/18)

It appears that the Trustee has taken over this adversary proceeding, which had been assigned to Mr. Berry. She now has counsel and a joint status report was filed. Pursuant to that status report, a settlement is in the works and is dependant on Mr. Pyle obtaining a reverse mortgage, which is in process. The parties stipulate to the following schedule:

5/10/18 - Trustee to submit a proposed Joint Pretrial Stipulation

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5/24/18 - Defendants provide the Trustee with their portion of the Joint Pretrial Stipulation

6/1/18 - the Joint Pretrial Stipulation is filed.

Those dates are fine and the joint pretrial conference will be continue to June 26, 2018 at 10:00 a.m.

I would appreciate it if the parties would appear on 4/17 (phone is fine) just so that I can straighten out the status of the Berry motion(s) for sanctions.

Party Information

Attorney(s):

Richard S. Singer	Pro Se
Law Offices Of Raymond H. Aver, A	Represented By Raymond H Aver

Debtor(s):

Glen E Pyle	Pro Se
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Defendant(s):

Glen E Pyle	Represented By Raymond H Aver
Sweetwater Management Company	Pro Se
Glen E Pyle Irrevocable Trust	Represented By Raymond H Aver

Plaintiff(s):

Marc H Berry	Represented By Marc Berry
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Trustee(s):

Amy L Goldman (TR)	Represented By Amy L Goldman Amy L Goldman (TR)
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CONT... **Glen E Pyle**
Amy L Goldman (TR)

Pro Se

Chapter 7

US Trustee(s):

United States Trustee (SV)

Pro Se

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1:10-24968 Glen E Pyle

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Adv#: 1:11-01180 Berry v. Pyle et al

#5.00 Plaintiff's Motion for Order that Defendant's counsel Raymond H. Aver Pay Sanctions to Plaintiff's Counsel Marc H. Berry.

fr.5/29/18; 6/26/18; 9/24/18

Docket 199

Tentative Ruling:

This was settled at the prior hearing. However there is no order vacating the motion. What is the status?

prior tentative ruling (6/26/18)

On 4/5/18 Mr. Berry filed a motion for sanctions against Raymond Aver, counsel for Mr. Pyle. He sought \$5,373.50 for misconduct and an additional \$1,500 for work on the motion. The motion was brought under 28 USC §1927. The initial hearing set for 5/29/18 was continued to 6/26/18 because on 5/4/18 Mr. Berry filed an amended motion based on the inherent power of the court. On June 21, Mr. Aver filed his opposition.

The gravamen of the motion is that Mr. Aver was instrumental in delaying the deposition and document production in the following ways:

- (1) ignoring "several reasonable entreaties;"
- (2) failing to turn over documents that he admitted he was holding;
- (3) failing to produce signed deposition transcripts "sought for many months;"
- (4) failing to follow court orders to produce the above items;
- (5) having his staff agree to deposition dates and then at the last minute rescinding those dates claiming that he had never agreed to them.

Mr. Berry seeks joint and several sanctions against Mr. Aver and Mr. Pyle and the Trust.

The amount sought is comprised of 8.8 attorney hours (at \$425/hr) and 9.9 paralegal hours (at \$165/hr). It is largely based on Chambers v. Nasco, Inc., 501 U.S. 32 (1991), which held that a court has inherent power to impose

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sanctions for bad faith conduct. The actions (and lack of actions) taken by Mr. Aver constitute bad faith conduct. And some of this was done by or as a scheme with Mr. Pyle.

In support of this motion, Mr. Berry references prior declarations:
7/24/13 - dkt. 43 - Mr. Berry mailed Mr. Aver a proposed Findings and Order After Hearing and received no comments or response.

8/22/13 - dkt. 47 - A deposition was set for 6/14/13 and on 6/11 Aver first told Berry that Pyle was suffering from a heart condition and could not appear. The Court then ordered that Pyle submit certain documents as to his health and availability to be examined. Neither Pyle nor Aver ever did so. Berry sent Aver several emails and received no response. Finally Berry unilaterally set a date for the depositions and sent Aver letters and emails with no response.

11/13/13 - (this does not appear on the docket)

5/29/15 - dkt. 67 - At the hearing on 5/2/15, Aver was ordered to agree to one of the proposed dates for Pyle's deposition and notify Berry of his selection by 5/15/15. Mr. Aver did not do so.

8/26/15 - dkt. 82 - On 6/1/15, the Court ordered the deposition to resume on 7/13/15 and provide specific documents. Aver was present by phone and received a notice of the deposition. About 24 days later, Aver's legal assistant sent Berry an email that Aver was then in a meeting with Pyle. Two days later another lawyer in Aver's office sent an email that Pyle claimed he was unaware of the taking of the deposition and wanted a 30 day continuance - however, Pyle was present in court at the hearing where the deposition date was set and the court's order stated that no further notice of the deposition was required.

Berry agreed to the continuance on the condition that the records be furnished at least 10 court days before the deposition and that he receive back the original deposition transcripts by 7/16/15. Aver never responded to this email and did not comply to the conditions.

Berry's paralegal called Aver's office to confirm availability on three dates in August to resume the deposition, but never received a confirmation. However, after a second call, the paralegal was informed that Aver's calendar was clear for 8/26 and Berry's office sent an email to confirm that date. Aver's office refused

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to confirm the date. A variety of notices and attempts to confirm were made and on 8/24 Berry's paralegal spoke to Aver who said that he had not spoken to Pyle, though he had tried to call and Pyle had called back when Aver was not in the office.

This declaration is supported by that of Tammy Rasch, dkt. 83.

Opposition

The amended motion is still based on §1927 in that the movant has not cited 'some other authority' as directed in the 4/17 tentative ruling.

Although this case has been contentious between the parties, Aver has made every effort to respond to Berry's communications and discovery demands and has followed all of the Court's directives to the best of his ability.

Aver then cites to Ninth Circuit authority on when costs and fees can be awarded under §1927. The Court must find that the attorney acted "recklessly or in bad faith." T.W. Electrical Service, Inc. v. Pacific Electrical Contractors Assoc., 809 F.2d 626, 638 (9th Cir. 1987)

Aver coordinated the scheduling of and defended two sessions of Pyle's deposition despite sometimes having difficulty in reaching Pyle by phone or email. He also assisted Pyle in complying with the document requests. He assisted in the signing and returning of the deposition pages of volumes 2 and 3. He assisted Pyle in responding to interrogatories.

The case of Malautea v. Suzuki Motor Co., 987 F.2d 1536 (11th Cir. 1993) is clearly distinguishable. Aver committed none of the egregious acts of discovery abuses that were laid out in that case.

Aver then attaches a series of documents which are to show his involvement and cooperation in this case.

PROPOSED RULING

The Court is aware that Mr. Pyle is a difficult client. He has demonstrated this over and over again in his failure to communicate with Mr. Berry or the Court and his production of records in an unsorted fashion and of ledgers that are unintelligible. But that does not excuse Mr. Aver from his own failure to communicate with Mr. Berry. Unfortunately, this sloppiness (intentional or not) has been a hallmark of Mr. Aver's practice in other cases as well as this one. This is truly unfortunate for the Court has seen Mr. Aver at his best in a few cases and at his worst in all too many cases.

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Here he must take responsibility for his own actions. It is simply not acceptable to fail to follow court orders, to ignore communications from opposing counsel, and to make discovery a true burden. Common courtesy requires that opposing counsel maintain ongoing communications when dates are to be set as to discovery, hearing, etc. It is unfair to place the burden on the party seeking discovery to call again and again, to receive mixed messages from opposing counsel's office, etc. A few simple calls or emails were required to advise Mr. Berry of scheduling problems or of the status of communications between Aver and Pyle as to scheduling depositions or producing documents. Failure to do so places too much of a burden on Berry.

The amount requested by Mr. Berry is reasonable under the circumstances, and will be awarded against Mr. Aver. This award is not joint and several for it is limited to the actions of Mr. Aver and not of his client. There is a separate motion as to Mr. Pyle. To the extent that there is a duplicative award for time expended, we need to discuss this.

Party Information

Debtor(s):

Glen E Pyle

Pro Se

Defendant(s):

Glen E Pyle

Represented By
Raymond H. Aver

Sweetwater Management Company

Pro Se

Glen E Pyle Irrevocable Trust

Represented By
Raymond H. Aver

Plaintiff(s):

Marc H Berry

Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)

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Leonard Pena

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1:10-24968 Glen E Pyle

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Adv#: 1:11-01180 Berry v. Pyle et al

#6.00 Motion for Sanctions Against Glen Pyle, Sweetwater Management Company Inc and Glen E Pyle Irrevocable Trust

fr. 1/24/12, 4/10/12, 5/29/12, 6/19/12, 9/11/12, 10/2/12, 3/19/13, 6/4/13, 8/27/13, 11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14, 12/16/14, 3/10/15, 5/12/15, 6/2/15, 9/1/15, 9/8/15; 11/17/15; 1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16, 10/11/16, 1/17/17, 2/21/17, 3/28/17; 5/30/17; 7/25/17; 11/14/17; 2/27/17; 4/17/18; 6/26/18; 9/24/18

Docket 9

Tentative Ruling:

Nothing further received as of 9/24/18.

prior tentative ruling (6/26/18)

I have prepared a ruling on this, but have one issue that I need to deal with. This motion refers to docket #9, a motion to compel further responses and for sanctions (filed on 12/12/11). On 11/8/12, the Court entered its order (dkt # 33) that the production was complete and that the request for further sanctions is denied. For some reason the motion to compete remained on calendar on 6/14/13 and morphed into an issue of completing Pyle's deposition (dkt. 44, 45). It was continued to 8/27/13 and on 8/22, Berry filed his declaration "re non-compliance and sanctions" in which he requested sanctions against Mr. Aver and Pyle for the willful failure to comply with the Court's order setting a deposition. (dkt. 47) This was part of the status report.

I then continued that and the "sanctions motion." Although the issue of sanctions as to Aver was discussed and an oral OSC re sanctions was set, this was allowed to lapse and later was replaced by dkt. 199 (see cal. #8).

The sanctions motion against Pyle continued to trail the status conference, still identified as dk.t #9. No new sanctions motion as to Pyle was ever filed, but it is clear that everyone acted as though there was such a motion.

The issue is whether I actually have a motion before me on which I can

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rule. There is no specific written motion since I had denied #9. But there is an oral motion (sort of). Can this suffice or does Mr. Berry need to file a new motion?

prior tentative ruling (4/17/18)

I think that I should rule or should have ruled on this motion. But I am somewhat confused as to what is going on. From the joint status report (on which Mr. Berry was not a signatory), this motion may be part of the proposed settlement. But on 4/5/18, Mr. Berry filed a new motion for sanctions against Mr. Aver and that is set for hearing on May 29 at 10:00 a.m. Briefly reviewing that motion, I note that it is brought under 28 USC §1927 as applied to bankruptcy cases in *In re Schaefer Salt Recovery, Inc.*, 542 F.3d 90 (3d Cir. 2008). While I think that the reasoning of the Third Circuit is correct, I am bound by the holdings in the Ninth Circuit, specifically *In re Perroton*, 958 F.2d 889 (9th Cir. 1992); *Determan v. Sandoval (In re Sandoval)*, 186 B.R. 490 (9th Cir. BAP 1995); *In re DeVille*, 361 F.3d 539, 546 (9th Cir. 2004) (quoting with approval the BAP's summary that "28 U.S.C. § 1927 does not suffice because the Ninth Circuit does not regard a bankruptcy court as a 'court of the United States.'").

Thus, I can deny the motion for lack of jurisdiction (and suggest that Mr. Berry take an appeal and see if he can't make a new holding in the Ninth Circuit) or allow Mr. Berry to file an amended motion under some other authority.

Let's discuss a timetable for what decisions you want me to make. As always, phone appearances are allowed.

prior tentative ruling (7/25/17)

On July 21, Mr. Aver filed a status report as to discovery compliance. Pyle has appeared a three depositions for some 15 hours of questioning, In each case he has signed the deposition transcript without change. There were disputes as to whether Pyle or Aver ever received the original deposition transcripts.

Pyle has also produced almost 800 pages of documents. Pyle has responded to all interrogatories. There has been no intentional or purposeful failure to comply with discovery.

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Mr. Aver then goes through the history of the sanctions requests, Pyle's difficulty in receiving mail, settlement efforts, and asks that the request for sanctions be summarily denied.

No status report has been received from Mr. Berry.

Proposed ruling: The issue here is not money, but whether I will strike the answer and enter default. Although Mr. Aver makes Mr. Pyle sound like the most cooperative defendant who ever existed and Mr. Berry like the most aggressive plaintiff, this is not true. Although Mr. Berry has been aggressive, he has not been abusive. Even before Mr. Aver was part of this case, the Court was aware that Mr. Pyle was angry and uncooperative. While has apparently has now made all discovery, it was like pulling teeth to get it, particularly in a complete and comprehensible form. Thus, Mr. Berry's frustration was reasonable.

However, I will not strike the answer. But monetary sanctions are warranted, though I am unable to tell in what amount. The initial request was for \$4,000. But that was during the first year of the case. And while Mr. Berry represents himself, he is still entitled to a reasonable rate of compensation for time spent. I need a set of time records from Mr. Berry so that I can see exactly what was done and for how long. The actual issues for which I will award compensation are the following:

- (1) the second deposition, which I believe was due to the lack of production of documents.
- (2) any motions for production of documents that request new copies of documents that were illegible or unorganized or not produced in a prior request for production.
- (3)

prior tentative ruling (5/30/17)

I would like to complete this motion. I believe that all discovery has been done and this case should be set for trial. How do you recommend that this be resolved?

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prior tentative ruling (1/17/17)

Since the deposition took place, I am not sure what is left of this motion. I continued the motion for summary judgment to 2/21/17 at 10:00 a.m. on stipulation of the parties. Please advise me whether this motion should also be continued to that date or whether it will be heard on 1/17. If it is to be heard on 1/17, I need to know what issues remain.

If no one appears (in person or by phone) on 1/17, I will continue this to 2/21/17 at 10:00 a.m.

prepared on 7/29/16:

On July 25, Mr. Berry filed a supplemental declaration (note that dkt. 111 and 112 are identical, though filed on different dates). One of the conditions for continuing the deposition was that Mr. Aver provide a written response to the settlement proposal at least 10 days before the continued date. This was not done and no written response was ever provided although Berry sent a reminder email to Aver. The deposition did take place on 6/29/16.

Further, neither Aver nor Pyle has ever returned vol 1 and vol 2 of the original deposition transcripts, although the signed signature pages have been received. There is a significant cost to creating copies for the trial.

When Berry sent notices to Pyle on 3/22/16, 4/26/16, and 5/25/16, the envelopes were returned by the Post Office marked "Return to Sender, no mail receptacle, unable to forward." Then he sent two other envelopes to Pyle at the same address on 6/2/16 and 6/9/16, they were returned marked "return to sender, undeliverable as addressed, (or) no such street, unable to forward."

As noted in my order of 3/29/16 (dkt. 103), since Pyle has apparently interfered with the receipt of his mail, he is deemed to be aware of the content and the Court will make rulings accordingly.

He did appear at the agreed-to rescheduled date of the deposition. As to the documents to be produced, I do not know whether Mr. Berry gave a list, but none was filed with the Court as had been ordered in dkt. 103. Therefore apparently

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Mr. Pyle brought the required documents or none were actually required. As to the settlement offer, that is deemed rejected. I cannot force the parties to settle.

As to the deposition, Mr. Aver is to bring the original to the hearing on August 2 or is to provide a copy for the Court at his own expense.

Let's set a trial date and complete this case. This sanctions motion is not completed. I will continue it and may still strike the answer, etc. if Mr. Pyle and his attorney do not cooperate in the trial preparations, etc.

prior tentative ruling (6/7/16)

An initial partial ruling was entered on 3/29/16 and this was continued to 6/7. The Court is concerned that Mr. Pyle is still not accepting the mailings from Mr. Berry. However, Mr. Pyle seems to be in touch with his attorney. The parties have agreed by email to continue the deposition to 6/29/16 and to other matters set forth in Berry's email:

I will agree to continue the deposition and the document production on the following conditions:

- 1. You agree that your client Glen Pyle will appear on the new date as I have no contact with him. All notices/correspondence to him are returned by the post office.*
- 2. The deposition and document production are continued to the earliest of June 16, 17, 21, 28 or 29, at 10:00 am. at my office [I am not available from June 30, 2016, to July 19, 2016].*
- 3. All orders remain in full force and effect including, but not limited to, all of Judge Mund's orders regarding the consequences if Mr. Pyle is not compliant with the May 27, 2016, deposition/document production date; provided those orders are modified only by changing the date of his appearance for deposition and document production.*
- 4. The status conference will be continued from June 7, 2016, to the earliest date set by Judge Mund's Clerk, and a copy of this letter will be sent to the clerk.*
- 5. You will give me a written response to the settlement proposal (still not an offer) at least ten days before the deposition.*

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6. You fax or email me your agreement to the above before 4:00 p.m. today, the earlier the better because of the court reporter.

Although Mr. Aver is to prepare a written stipulation to that effect, the Court finds that the email exchange is sufficient for the Court to enter an order and will do so without anything further from the parties.

The motion is continued without appearance to 8/2/16 at 10:00 a.m. If this is not an available date for the parties, please notify the other side and choose an agreeable date from my self-calendering notice or appear by phone on 6/7 to set the hearing.

prior tentative ruling (3/1/6)

On 2/24/16, Mr. Berry emailed the parties and the Court that he will be appearing by Court Call. Can we go to trial without further delays?

prior tentative ruling (1/12/16):

These matters will be continued due to the health of Mr. Berry. He proposed a date, but the Court has not yet had confirmation of it from Mr. Aver. Please appear by phone or file something showing and agreed-to continued date.

prior tentative ruling (11/17/15)

At the hearing on 9/8, the Court ordered Mr. Pyle to produce all responsive documents to Mr. Berry by 10/30/15. If Mr. Pyle fails to do so, he will be unable to use the documents at trial. The production is also to include a list of all documents submitted. Mr. Pyle and Mr. Avery are to retain a set of all of the documents that they are submitting to Mr. Berry.

prior tentative ruling (9/8/15)

On 8/26/15 Mr. Berry filed a declaration that shows that once again Mr. Aver is not responding to correspondence or phone calls. He requests \$1,024 in sanctions against Mr. Aver.

On 8/28 Mr. Pyle filed his opposition. I have reviewed this and I have heard it all

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before in this and other cases.

No one should have to work as hard as Mr. Berry has to schedule discovery. The sanctions appear to be warranted assuming that Mr. Berry can link them to a code provision or other legal authority and follow the proper notice requirements for that code provision or other legal authority.

Per Mr. Aver's declaration, Mr. Pyle did not appear on 8/26 and no documentation provided?

Mr. Berry - do you really need this stuff? I know that a lot of things were previously provided. Is this enough for you to proceed? I would simply like to go to trial. I would give Mr. Pyle a few weeks to prepare his trial documentation and provide it. If there is anything that he does not provide, I would not let him put it in later.

prior tentative ruling (6/2/15)

At the last hearing, Mr. Aver was ordered to advise Mr. Berry of the date for Mr. Pyle's deposition. He was given a choice of dates and was to respond by 5/15. According to Mr. Berry, this did not occur. According to Mr. Aver, he notified Mr. Berry on 5/28 that he and Mr. Pyle would be available on July 8. Without having received this, Mr. Berry stated that he prefers 7/13/15, which is also an acceptable date for Mr. Mendoza. Since Mr. Aver is withdrawing, his wishes are no longer relevant and the deposition will take place on 7/13/15. Mr. Berry is to give written notice to Mr. Pyle and Mr. Mendoza of the time and date. If Mr. Aver does not withdraw, the deposition will still take place on 7/13 unless the parties agree to a different date.

As to sanctions, the ultimate one would be to strike Mr. Pyle's answer and enter a default. If he wishes to defend, he needs to appear for his deposition and cooperate in it.

prior tentative ruling (5/12/15)

I received emails that this matter had settled, but it was to be documented. Mr. Berry filed a unilateral status conference that this has not occurred. I believe that it was Mr. Aver's task to document this and on April 17, 2015 Mr. Berry sent him

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10:00 AM

CONT... Glen E Pyle

Chapter 7

a letter to this effect. In his unilateral status report, Mr. Aver states that the Debtor is unable to perform the settlement and wants to proceed to trial. He also will be filing a motion to withdraw as counsel.

Mr. Aver will be appearing by phone. Mr. Berry can also so appear. Let's set a date for Mr. Aver's motion to withdraw and a trial date if the Debtor is also on the phone. If he is not, then the motion to withdraw is to be filed no later than June 1 and will be heard on June 30 at 10:00 a.m. (Sorry for the delay, but I will be on vacation much of June.) I would like to get trial dates from Mr. Berry and these will be given to the Debtor and on June 30 we will set the actual trial. I will need a trial time estimate.

prior tentative ruling (3/10/15)

Mediation set for 3/24/15. Continue without appearance to 5/12/15 at 1:00 a.m.

prior tentative ruling (10/7/14)

The mediation has been delayed. Continue without appearance to 12/16/14 at 10:00 a.m.

prior tentative ruling (8/5/14)

This is scheduled for a settlement conference before Judge Ryan on 9/22/14. Continue without appearance to 10/7/14 at 10:00 a.m. I would like a status report for that hearing.

prior tentative ruling (3/11/4)

At the prior hearing this was continued to see if Mr. Pyle appeared for his deposition, which was scheduled for 2/10 at 10:00 a.m. at Mr. Berry's office. Per the status report filed 3/4, he did so and Berry intends to schedule another session at a mutually agreeable date. I will continue this as a holding date to make sure that future discovery is complied with.

prior tentative ruling (11/19/13)

At the hearing on 8/17 I determined that if Mr. Pyle is not well enough to be deposed, he is not well enough to be present at the trial. He is not to testify or be in the courtroom. Mr. Aver can defend and bring in other witnesses, but not documents that should have been produced and were not.

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CONT... Glen E Pyle

Chapter 7

As of 11/18 at 8:27 a.m. Mr. Aver has not filed a status report. I have warned him many times about this and ordered him to respond to every email and letter that is sent by Mr. Berry. If this has not been done, I will set an OSC on sanctions as to Mr. Aver.

I want to set this for trial.

prior tentative ruling (8/27/13)

At the hearing on June 4 the issue arose of Mr. Pyle's health. I ordered Mr. Aver to contact Mr. Berry by 6/7 as to whether Pyle would be available for the scheduled 6/14 deposition. If not, Pyle was to submit a doctor's note to the Court as to the nature of the health disability and when he would be available. Once that was known, Aver and Berry were to reach a mutually agreeable date for the deposition.

Late filed status report states that Mr. Aver tried a variety of times to gain the cooperation of Mr. Pyle's treating physician, but did not receive anything until 8/19. The letter is attached. It says that Pyle had a heart attack. He is just started to be allowed some mild walking and it stay away from stress. He should stay away from stress for the "unforeseeable future given his guarded prognosis."

I will continue this and the sanctions motion to November 19 at 10:00 a.m. The parties will have the following choices:

- (1) Pyle - can be deposed in whatever reasonable location and time increments that he wishes and then we can set the matter for trial;
- (2) Berry - if Pyle is not able to be deposed, I will declare him unavailable and Berry can proceed to trial. Pyle will not be allowed to be present, to testify, or to provide any evidence not previously given in discovery. His attorney can call other witnesses and defend.

prior tentative ruling (3/19/13)

At the hearing on 10/2, Mr. Pyle was ordered to bring in the originals of the

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CONT... Glen E Pyle

Chapter 7

checks (or the copies that he has if he does not have the originals) from 2000 through 2008. He was told that the court would make copies at the hearing. If he has the checks and no additional copies, he is to give them to the court reporter, who will make two sets of copies (1 for Mr. Berry and 1 for me) and return the set to Mr. Pyle.

prior tentative ruling (10/2)

At the hearing on 9/11, Mr. Pyle was ordered to mail to Mr. Berry by 9/14 clean copies of everything that he gave his accountant starting with calendar year 2005. He had said that he gave the accountant a written accounting, so that is to be included.

Nothing further received by the court as of 9/30.

prior tentative ruling (9/11/12)

A transcript of the 6/19 hearing has been filed. Mr. Pyle and the Trust were represented by Richard Singer. Pyle did not fully comply with my prior order to turn over an accounting, but I ordered the deposition to take place anyway. It was agreed by the parties that it would be on 8/8. Counsel in the Campbell §523 action indicated that he might also attend the deposition. The status conference and motion to compel were continued to 9/11 to see what came happened at the deposition.

I also ordered that the tax returns for 2009, 2010, and 2011 of both Pyle and the Trust be prepared and filed by 8/3. These are to be complete tax returns, both state and federal. By August 3, he was also to give an accounting and checks for the period of 2006, 2007, and 2008.

Mr. Berry filed a proposed Order and Findings on the motion to compel, etc. Does Debtor's counsel have any objections to it? [Mr. Singer has filed a motion to withdraw as attorney for Pyle, which is set for hearing on 10/2 at 10:00 a.m.]

Berry also filed a declaration as to compliance. According to this, some but not all of the documents were received late. The tax returns were not signed by Pyle or his accountant and there is not evidence that they were filed. The accountings were not received. The accountings are necessary to ascertain if Pyle used trust

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Glen E Pyle

Chapter 7

monies for his own personal expenses. Berry wishes the court to strike Pyle's answer and enter default.

prior tentative ruling (6/19)

A transcript of the 5/28 hearing has been filed. At that hearing I told Mr. Pyle that this was his last chance to provide complete and legible information or that I would not allow him to put on any evidence (written or oral) or income and expenses. I told him that I expected actual tax returns that had either been filed or where about to be filed and on the proper tax forms. Also as to the ledger sheets, he is to provide a check number and a statement as to where the money came from that was paid: the bank account number, the check number, and the date of the check.

The new accounting was due by 6/12 from 2009-2012. On 6/15 Berry filed a declaration as to the deficiency. We will go over this at the hearing.

prior tentative ruling (4/10)

On 4/3 Marc Berry filed a declaration of findings after hearing. These were mailed to debtor's counsel on 3/2 and he was asked about it on 3/12. No comments from debtor's counsel. Sanctions of \$4,000 were to be paid to plaintiff's counsel by 3/26, but nothing has been paid. Defendants were to provide an accounting of rental income from the date of transfer, but that was not provided.

Some documents were timely provided, but not the bank statements reflecting the rental income. Apparently many of these are in the possession of defendants' attorney, but have not yet been turned over to plaintiff.

Proposed findings are attached. I will sign these.

The deposition has been continued to May. Unless the sanctions are paid and the bank records turned over, I will strike the answer.

prior tentative ruling (1/24)

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CONT... Glen E Pyle

Chapter 7

This adversary proceeding seeking to avoid fraudulent transfers was commenced against debtor and related entities on 3/7/11. An amended complaint was filed on 3/29/11 to which defendants filed an answer on 5/6/11.

On 5/11/11, the chapter 7 trustee brought a motion to sell her avoidance rights to plaintiff in connection with the debtor's 2006 transfer of certain real estate assets into a trust in exchange for 40% of any potential recovery. Oddly, the 6/17/11 order approving the sale refers to certain business assets sold by the debtor to an employee prepetition.

The last meeting of creditors on this case was set for 12/16/11 and the docket does not show whether that meeting was continued.

Argument

On 4/6/11, plaintiff propounded requests to produce on all defendants but received no response despite several attempts to contact defendants' counsel. On 7/27/11, debtor served an inadequate and incomplete response; no responses were ever provided on behalf of the other defendants (Sweetwater Management Co., Inc. and Glen E. Pyle Irrevocable Trust). On 8/26/11, plaintiff's counsel sent defendants' counsel a "meet and confer" letter explaining that the responses were inadequate but received no reply or objections to production.

Several meetings of creditors were continued due to debtor being unable to locate records required by the trustee. At the 9/23/11 meeting, debtor said that it is financially impossible to provide any more of the records.

Plaintiff requests that the court compel production of the records that have not been produced (as outlined on p.7-10 of the motion) or that defendants provide a declaration regarding their diligent search or reasonable inquiry. Further, pursuant to FRCP Rule 37(a)(5) plaintiff requests that \$4,000 in sanctions be assessed against defendants for plaintiff's attorney's fees and costs in having to bring this motion.

Opposition

Contains debtor's declaration that he has "recently" given to his attorney "all available documents in my possession that, to the best of my ability, conform with

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CONT...

Glen E Pyle

Chapter 7

Plaintiff's request." He also declares that no financial documents were ever prepared for Sweetwater. In addition, although the trust was formed in 2000, it had no assets until 2004 and as such, no financial documents exist covering the years 2002-04. The trust had no income until 2005 and did not file a tax return before that (the tax return has been provided to plaintiff). Plaintiff also declares that he cannot provide an accounting regarding the properties that were put into the trust because it would cost him \$5,000 which he does not have.

The opposition also contains a declaration by debtor's counsel that all the documents in his possession have been turned over to plaintiff and that debtor be allowed to prepare an accounting himself and submit it under penalty of perjury, since he does not have the funds to hire an accountant.

Analysis

To what extent have the documents produced to date resolved the issue? Is plaintiff satisfied with debtor's declaration as to the missing documents? If not, what else should be addressed? Will plaintiff accept an accounting prepared by the debtor?

As to sanctions, those must be granted pursuant to Rule 37(a)(5), even if the responses were provided after the motion was filed, unless (1) plaintiff had not attempted in good faith to obtain disclosure before filing the motion, (2) the nondisclosure was substantially justified or (3) an award of expenses is unjust. The opposition does not address the issue of sanctions directly but indirectly states that nondisclosure was substantially justified. If that is the case, why did defendants' counsel not provide that information to plaintiff's counsel before the motion was filed and kept ignoring plaintiff's counsel's requests?

Party Information

Attorney(s):

Richard S. Singer

Pro Se

Law Offices Of Raymond H. Aver, A

Represented By
Raymond H Aver

Debtor(s):

Glen E Pyle

Pro Se

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CONT... Glen E Pyle

Chapter 7

Defendant(s):

Glen E Pyle

Represented By
Raymond H Aver

Sweetwater Management Company

Pro Se

Glen E Pyle Irrevocable Trust

Represented By
Raymond H Aver

Movant(s):

Marc H Berry

Represented By
Marc Berry

Plaintiff(s):

Marc H Berry

Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)

Amy L Goldman (TR)

Pro Se

US Trustee(s):

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
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Tuesday, September 25, 2018

Hearing Room 303

10:00 AM

1:10-16948 Nunzio Donato Ciaraulo

Chapter 7

#7.00 Motion For Compensatory Damages and Sanctions for willful and Continuing Violation of the Discharge Injunction against Rufus Construction & Remodeling, Inc. and its Principal Diego Pablo Diloretto

Docket 27

Tentative Ruling:

The Debtor received his discharge on 9/10/10. On 1/20/11, Rufus Construction & Remodeling, Inc ("Rufus") through its principal Diego Pablo Diloretto ("Diloretto") (jointly "Creditor") filed a mechanic's line against Debtor's property at 14545 Margate St., Sherman Oaks. This was for a prepetition debt of \$6,692.95 plus interest. The Debtor has demanded removal of the lien, but the Creditor has refused. Because of this, the Debtor has incurred significant attorney's fees. The Debtor requests that the Court (1) void the lien, (2) find that Diloretto is acting as the alter ego of Rufus, (3) grant an award against Rufus and Diloretto for compensatory damages (\$53,000), attorney fees and costs (\$4,260), and punitive sanctions (\$50,000), and (4) such other relief as is deemed necessary and proper.

There was an earlier motion to reopen to add creditors to the schedules, which was denied by the Court. The order of denial stated that "all otherwise dischargeable debts have been discharged, whether they were scheduled or not." Debtor has contacted the Creditor and asked that the lien be removed. This has not happened.

Rufus has an expired contractor's license and the corporation has been suspended by the California Secretary of State, thus it cannot defend this action. Diloretto is deliberately continuing the recover on this mechanic's lien and has shown a unity of interest with Rufus and to treat the acts to be of the corporation alone would lead to an inequitable result. He is the alter ego of Rufus and should be sanctioned for his conduct.

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CONT... Nunzio Donato Ciaraulo Chapter 7

Because of this void mechanic's lien, Debtor could not refinance the property until 2016, at which point the rate was 2% higher due to the mechanic's lien. This means that the monthly mortgage payment is currently \$2,218 higher, leading to approximately \$53,000 in damages, which are continuing to accrue. He paid a retainer of \$4,000. This situation has also caused Debtor emotional distress.

No opposition received as of 9/24/18.

tentative ruling

The attached exhibits do not show any communication after the 2011 denial of the motion to reopen. There is no evidence as to the increased refinance or the reason for it. Is 19135 Cantara St., Reseda the correct address for Diloretto?

Party Information

Debtor(s):

Nunzio Donato Ciaraulo

Represented By
Michael Jay Berger
Kevin Tang

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Wednesday, September 26, 2018

Hearing Room 303

9:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#1.00 TRIAL re:
Complaint to Set Aside
or Annul Fraudulent Conveyances; Alter Ego;
and for Damages

fr. 4/27/11, 6/15/11, 10/4/11, 1/24/12, 4/10/12, 5/29/12,
6/19/12, 9/11/12, 10/2/12, 11/6/12, 3/19/13, 6/4/13, 8/27/13,
11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14,
12/16/14, 3/10/15, 5/12/15, 6/2/15, 9/1/15, 9/8/15; 11/17/15;
1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16, 10/11/16, 1/17/17,
2/21/17, 3/28/17, 5/30/17; 7/25/17; 11/14/17; 2/27/18; 4/17/18; 6/26/18

Docket 1

***** VACATED *** REASON: off calendar - jc**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The Trustee has filed a unilateral pretrial statement along with a declaration concerning the Defendant's failure to participate in the pretrial process. How does the Trustee wish to proceed? LBR 7016-1(f) lays out four options for sanctions for failure to comply with the pretrial statement process: continuance of the trial date (not relevant as no trial has been set); entry of the proposed pretrial order; an award of monetary sanctions against Pyle and/or Aver; or entry of judgment or striking of the answer and entering default.

prior tentative ruling (4/17/18)

It appears that the Trustee has taken over this adversary proceeding, which had been assigned to Mr. Berry. She now has counsel and a joint status report was filed. Pursuant to that status report, a settlement is in the works and is dependant on Mr. Pyle obtaining a reverse mortgage, which is in process. The parties stipulate to the following schedule:
5/10/18 - Trustee to submit a proposed Joint Pretrial Stipulation

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CONT...

Glen E Pyle

Chapter 7

5/24/18 - Defendants provide the Trustee with their portion of the Joint Pretrial Stipulation
6/1/18 - the Joint Pretrial Stipulation is filed.

Those dates are fine and the joint pretrial conference will be continue to June 26, 2018 at 10:00 a.m.

I would appreciate it if the parties would appear on 4/17 (phone is fine) just so that I can straighten out the status of the Berry motion(s) for sanctions.

Party Information

Attorney(s):

Richard S. Singer	Pro Se
Law Offices Of Raymond H. Aver, A	Represented By Raymond H Aver

Debtor(s):

Glen E Pyle	Pro Se
-------------	--------

Defendant(s):

Glen E Pyle	Represented By Raymond H Aver
Sweetwater Management Company	Pro Se
Glen E Pyle Irrevocable Trust	Represented By Raymond H Aver

Plaintiff(s):

Marc H Berry	Represented By Marc Berry
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Trustee(s):

Amy L Goldman (TR)	Represented By Amy L Goldman Amy L Goldman (TR)
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9:00 AM

CONT...

Glen E Pyle

Chapter 7

Amy L Goldman (TR)

Pro Se

US Trustee(s):

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court
Central District of California
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Courtroom 303 Calendar**

Wednesday, September 26, 2018

Hearing Room 303

9:00 AM

1:10-26168 John Michael Licursi

Chapter 7

Adv#: 1:15-01236 California Bank & Trust v. Licursi et al

#2.00 Trial re: Complaint

fr. 1/6/16; 1/12/16, 3/1/16, 6/7/16,
7/12/16, 10/11/16, 1/17/17; 3/21/17,
3/28/17; 6/27/17, 8/1/17, 9/12/17,
11/28/17, 3/27/18; 5/29/18

Docket 1

Courtroom Deputy:

Tentative Ruling:

The joint pretrial stipulation was originally filed as a draft on 5/25/18 (dkt. #71) and then on 9/10/18 (dkt. #72). Trial will take place in courtroom 303.

Party Information

Debtor(s):

John Michael Licursi

Represented By
Andrew Goodman
Yi S Kim
James R Felton

Defendant(s):

John Michael Licursi

Represented By
James R Felton
Yi S Kim

Susan Annette Licursi

Represented By
James R Felton
Yi S Kim

Joint Debtor(s):

Susan Annette Licursi

Represented By
Catherine Christiansen

**United States Bankruptcy Court
Central District of California
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Wednesday, September 26, 2018

Hearing Room 303

9:00 AM

CONT... John Michael Licursi

Chapter 7

Andrew Goodman
Yi S Kim
James R Felton

Plaintiff(s):

California Bank & Trust

Represented By
Anthony J Napolitano

Trustee(s):

Diane C Weil (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Thursday, September 27, 2018

Hearing Room 303

9:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#1.00 TRIAL re:
Complaint to Set Aside
or Annul Fraudulent Conveyances; Alter Ego;
and for Damages

fr. 4/27/11, 6/15/11, 10/4/11, 1/24/12, 4/10/12, 5/29/12,
6/19/12, 9/11/12, 10/2/12, 11/6/12, 3/19/13, 6/4/13, 8/27/13,
11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14,
12/16/14, 3/10/15, 5/12/15, 6/2/15, 9/1/15, 9/8/15; 11/17/15;
1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16, 10/11/16, 1/17/17,
2/21/17, 3/28/17, 5/30/17; 7/25/17; 11/14/17; 2/27/18; 4/17/18; 6/26/18

Docket 1

***** VACATED *** REASON: off calendar - jc**

Party Information

Attorney(s):

Richard S. Singer	Pro Se
Law Offices Of Raymond H. Aver, A	Represented By Raymond H Aver

Debtor(s):

Glen E Pyle	Pro Se
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Defendant(s):

Glen E Pyle	Represented By Raymond H Aver
Sweetwater Management Company	Pro Se
Glen E Pyle Irrevocable Trust	Represented By Raymond H Aver

**United States Bankruptcy Court
Central District of California
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Thursday, September 27, 2018

Hearing Room 303

9:00 AM

CONT... Glen E Pyle

Chapter 7

Plaintiff(s):

Marc H Berry

Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)

Amy L Goldman (TR)

Pro Se

US Trustee(s):

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
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Courtroom 303 Calendar**

Friday, September 28, 2018

Hearing Room 303

9:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#1.00 TRIAL re:
Complaint to Set Aside
or Annul Fraudulent Conveyances; Alter Ego;
and for Damages

fr. 4/27/11, 6/15/11, 10/4/11, 1/24/12, 4/10/12, 5/29/12,
6/19/12, 9/11/12, 10/2/12, 11/6/12, 3/19/13, 6/4/13, 8/27/13,
11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14,
12/16/14, 3/10/15, 5/12/15, 6/2/15, 9/1/15, 9/8/15; 11/17/15;
1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16, 10/11/16, 1/17/17,
2/21/17, 3/28/17, 5/30/17; 7/25/17; 11/14/17; 2/27/18; 4/17/18; 6/26/18

Docket 1

***** VACATED *** REASON: off calendar - jc**

Party Information

Attorney(s):

Richard S. Singer	Pro Se
Law Offices Of Raymond H. Aver, A	Represented By Raymond H Aver

Debtor(s):

Glen E Pyle	Pro Se
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Defendant(s):

Glen E Pyle	Represented By Raymond H Aver
Sweetwater Management Company	Pro Se
Glen E Pyle Irrevocable Trust	Represented By Raymond H Aver

**United States Bankruptcy Court
Central District of California
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Friday, September 28, 2018

Hearing Room 303

9:00 AM

CONT... Glen E Pyle

Chapter 7

Plaintiff(s):

Marc H Berry

Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)

Amy L Goldman (TR)

Pro Se

US Trustee(s):

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, October 23, 2018

Hearing Room 303

10:00 AM

1:09-25922 Adam Cohen and Judith Cohen

Chapter 7

#1.00 Trustee's Final Report and Applications for Compensation

Docket 77

Tentative Ruling:

Brad Krasnoff, Trustee - Approve as requested.

Lewis Brisbois Bisgaard & Smith, LLP, attorney for Trustee - Approve as requested.

Menchaca & Co, accountant for Trustee - Approve as requested.

If you submit on this tentative ruling, no appearance is necessary. If you choose to appear and the final ruling is in conformance with the tentative ruling, no additional fees will be allowed for this appearance. If the trustee's firm is representing the trustee, no attorney's fees will be allowed for an appearance on this matter, as the trustee would be expected to be present as part of the trustee's duties.

THE TRUSTEE/DEBTOR IN POSSESSION IS TO NOTIFY ALL PROFESSIONALS OF THIS TENTATIVE RULING.

Party Information

Debtor(s):

Adam Cohen

Represented By
Asher A Levin

Joint Debtor(s):

Judith Cohen

Represented By
Asher A Levin

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Scott Lee
Amy L Goldman
Michael T Delaney
Amy L Goldman

**United States Bankruptcy Court
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CONT... Adam Cohen and Judith Cohen

Chapter 7

**United States Bankruptcy Court
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Tuesday, October 23, 2018

Hearing Room 303

10:00 AM

1:10-16948 Nunzio Donato Ciaraulo

Chapter 7

#2.00 Motion For Compensatory Damages and Sanctions for willful and Continuing Violation of the Discharge Injunction against Rufus Construction & Remodeling, Inc. and its Principal Diego Pablo Diloretto

fr. 9/25/18

Docket 27

Tentative Ruling:

At the prior hearing, the Court voided the mechanic's lien - order entered on 9/26/18. The remaining issue is the sanctions.

Opposition by Diego Diloretto:

Diloretto did not receive adequate notice of the case or of the order of discharge. The email that the Debtor sent did not include the case number. Since Diloretto was not included in the schedules or the mailing list, he never got notice from the court.

Even if the Court finds a violation of the discharge stay, there is no evidence of willfulness or bad faith, so no attorney's fees should be awarded. Diloretto recorded a Release of Mechanic's Lien on 9/5/18.

As to compensatory damages, there is no evidence that the existence of this lien caused a delay in refinance or a higher interest rate. There are three tax liens and an abstract of judgment on this property, which are more likely to have caused the delay.

As to punitive damages, general statements that the Debtor repeatedly told the Creditor that he had received a discharge is too general since particularity is needed.

Per the declaration of Mr. Diloretto, he continued to do work for the Debtor through July 2010. On 7/11/10, he received an email in response to a request for payment that Mr. Ciaraulo had filed bankruptcy under chapter 7 on 6/9/10. He never received notice from the bankruptcy court. The next contact that he had from the Debtor was in August 2018, when he received a phone call threatening him to remove the mechanic's lien.

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Courtroom 303 Calendar**

Tuesday, October 23, 2018

Hearing Room 303

10:00 AM

CONT...

Nunzio Donato Ciaraulo

Chapter 7

Diloretto then went to Michael Berger's office. Berger recommended that he release the lien and gave him a week to respond. Diloretto called Berger's office and told them to arrange the paperwork to release the lien and on 9/4/18 when he was going to sign that, he was informed by Berger's assistant that on 8/31/18 the Debtor had fired Berger because he was not happy that Berger did not file an action against him. The next day Diloretto went to the LA County Recorder's Office and recorded the Release of Lien.

On 9/10 he received a copy of this motion with no hearing date. When he contacted Tang and told him that he had released the lien, Tang advised him to get a lawyer, which he did. He was never told of the 9/25 hearing date and later found out that the notice of hearing was sent to the wrong address.

Debtor's Reply

Diloretto was served with the first motion to reopen in Jan. 2011 and thus knew of the case. He actually filed his post-discharge mechanic's lien after he received that service. Through 7/11, the parties were in email contact and Diloretto was referred to Michael Berger's office.

In and before 7/16/16, Debtor attempted to refinance the property, but was denied due to his history of slow payments, previous bankruptcy case, and the mechanic's lien. In July 2018, Debtor again retained Berger's office to resolve the issue of the mechanic's lien removal. When the mechanic's lien was still in place at the end of August, Debtor hired Tang to go forward with this motion. He paid \$2,000 to Berger and \$2,260 to Tang.

The service of this motion and the motion to reopen were made on the address for Rufus Construction as shown on the CA Secretary of State's website. The 9/7/18 service on Diloretto was made at 19135 Cantara St., Reseda. On 9/16, Tang received a call from Diloretto and confirmed the 9/25/18 hearing date. No opposition was filed or appearance made by Diloretto.

The requested attorneys' fees are reasonable and should be awarded.

Proposed Ruling

As to the issue of loss of a refinance, it is clear that this mechanic's lien was at most a minor issue. The Debtor had a history of bankruptcy and slow payments and there were five liens on the property (only one of which was this lien) and some were substantial tax liens as well as a judgment lien. Thus there is an insufficient showing of causation.

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CONT...

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As to the claim for emotional distress, there is no basis given the dates, etc. involved. At best the Debtor sought the removal of this lien over a period of a few months after 7 years since the filing. The lien was removed without substantial delay. The Debtor clearly had other issues to deal with including the remaining four liens on the property.

As to the issue of attorneys' fees, there may be justification of an award for the Berger fees (\$2,000), but there is no reason that the Debtor had to hire another attorney or go forward since the lien was removed on 9/5. In general I am not disposed to award any fees here. The failure to list Diloretto and Rufus in the original schedules was the fault of the Debtor and all of this could have been avoided. There is a question whether Diloretto received a copy of the original motion to reopen and the order. It was mailed to "Rufus" at 6545 Columbus Ave., Van Nuys 91411 on 1/6/11. The order was mailed to the same address. This is the correct address for Rufus Construction. Presumably he received this, but the order (dkt. #23) does not instruct that the liens were to be removed or no liens filed. It merely says that all dischargeable debts have been discharged. The Court does not expect a layman to understand what that means. However, the mechanic's lien was recorded on 1/20/11, presumably after Diloretto had notice of the bankruptcy, but before the order that the debt was discharged.

The Debtor then delayed seeking the removal of the lien. He apparently knew that it existed since he declares that in 2016 he was orally advised that this was one of the reasons that he was being turned down for a refinance. The delays were in his hands and he cannot lay them at the feet of Diloretto. I cannot sanction Diloretto for not releasing the mechanic's lien that he filed post-petition but before he had notice of the discharge. Had Debtor acted timely to have this removed and Diloretto refused or failed to do so, it would have been another matter. But Debtor just sat on his rights and he must bear the responsibility for that.

Deny the motion as to damages.

prior tentative ruling (9/25/18)

The Debtor received his discharge on 9/10/10. On 1/20/11, Rufus Construction & Remodeling, Inc ("Rufus") through its principal Diego Pablo Diloretto ("Diloretto") (jointly "Creditor") filed a mechanic's line against Debtor's property at 14545 Margate St., Sherman Oaks. This was for a

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CONT... Nunzio Donato Ciaraulo

Chapter 7

prepetition debt of \$6,692.95 plus interest. The Debtor has demanded removal of the lien, but the Creditor has refused. Because of this, the Debtor has incurred significant attorney's fees. The Debtor requests that the Court (1) void the lien, (2) find that Diloretto is acting as the alter ego of Rufus, (3) grant an award against Rufus and Diloretto for compensatory damages (\$53,000), attorney fees and costs (\$4,260), and punitive sanctions (\$50,000), and (4) such other relief as is deemed necessary and proper.

There was an earlier motion to reopen to add creditors to the schedules, which was denied by the Court. The order of denial stated that "all otherwise dischargeable debts have been discharged, whether they were scheduled or not." Debtor has contacted the Creditor and asked that the lien be removed. This has not happened.

Rufus has an expired contractor's license and the corporation has been suspended by the California Secretary of State, thus it cannot defend this action. Diloretto is deliberately continuing to recover on this mechanic's lien and has shown a unity of interest with Rufus and to treat the acts to be of the corporation alone would lead to an inequitable result. He is the alter ego of Rufus and should be sanctioned for his conduct.

Because of this void mechanic's lien, Debtor could not refinance the property until 2016, at which point the rate was 2% higher due to the mechanic's lien. This means that the monthly mortgage payment is currently \$2,218 higher, leading to approximately \$53,000 in damages, which are continuing to accrue. He paid a retainer of \$4,000. This situation has also caused Debtor emotional distress.

No opposition received as of 9/24/18.

tentative ruling

The attached exhibits do not show any communication after the 2011 denial of the motion to reopen. There is no evidence as to the increased refinance or the reason for it. Is 19135 Cantara St., Reseda the correct address for Diloretto?

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10:00 AM

CONT... Nunzio Donato Ciaraulo

Chapter 7

Debtor(s):

Nunzio Donato Ciaraulo

Represented By
Michael Jay Berger
Kevin Tang

Trustee(s):

David Keith Gottlieb (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, October 23, 2018

Hearing Room 303

10:00 AM

1:16-11387 Real Estate Short Sales Inc

Chapter 7

#3.00 Motion for relief from stay

BARCELONA TOWER INC

fr. 11/14/17, 2/13/18, 5/1/18, 6/26/18, 8/7/18

Docket 164

***** VACATED *** REASON: Cont'd to 12/4/18 per order #276. If**

Tentative Ruling:

Continued by stipulation to 12/4/18 at 10:00 a.m.

prior tentative ruling (8/7/18)

Continued by stipulation to **10/23/18** at 10:00 a.m. The property is in escrow awaiting a ruling on a short sale by the senior lienholder. Please note that your chosen date of 10/9 is not available. In the future, please check my online calendar in order to set continued dates.

prior tentative ruling (5/1/18)

This motion by the HOA was continued to 6/26. The servicing agent for Wells Fargo Bank filed a motion for relief from stay, that will be heard on 7/17/18. It asserts that it is owed \$815,000+, that it is not being paid its monthly payment of \$4,029.57 and that there are 85 payments in arrears. It states that the current market value is \$655,000.

prior tentative ruling (5/1/18)

Cueva failed to tender the \$62,250 by 2/13/18, She then turned over to the Trustee the Berendo Condo. On 3/8/18 the Trustee filed a motion to approve a revised compromise, which was granted by an order entered on 3/26/18. The Trustee is to market and sell the Berendo Condo. What is the status of the marketing attempt?

prior tentative ruling (2/13/18)

This was brought by the Homeowners' Assn as to the Berendo St. property. At the time that this was filed (Oct. 2017), there was a prepetition delinquency of \$57,000+ and a post-petition one of \$7,685.70. This was continued by

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CONT... Real Estate Short Sales Inc
stipulation.

Chapter 7

Under the compromise between the Trustee and the Debtor, approved on 2/5/18, upon receipt of the settlement payment of \$62,250, the Estate releases all interest in this property. The payment was to be received by 2/13/18 or the Debtor and others are to fully cooperate with the Trustee's marketing and sale of the property.

Has the payment been received? If so, this is no longer property of the Estate and relief from stay will be granted. If not, the property is to be sold and the HOA will be paid off at that time.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Movant(s):

Barcelona Tower Inc

Represented By
Jill L Kim

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

Tuesday, October 30, 2018

Hearing Room 302

10:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#1.00 Status of Subpoena on Social Security Administration re: Dr. Bilik

Docket 0

Courtroom Deputy:

Will be heard on courtroom 302

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, November 6, 2018

Hearing Room 303

10:00 AM

1:95-19539 Ivds Interactive Acquisition Partners

Chapter 7

#1.00 Motion to Approve Compromise Under Rule 9019
Motion For Agreement Providing For Assignment Of
The Remaining Estate Owned Litigation Rights To
Danning Gill Diamond & Kollitz, LLP; Memorandum Of
Points And Authorities; Declarations Of Richard K.
Diamond and Steven W. Kelly; Request For Judicial Notice

Docket 672

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

In 1997, the Trustee commenced an adversary proceeding against the organizers and promoters of the Debtor for fraudulent transfer claims, plus punitive damages. This was withdrawn to the District Court and in 2007 there was a jury trial that resulted in a judgment of \$5.1+ million against David Dambro, \$4.6+ million against Terry Vickery, and \$4.1+ million against Michael Dambro. The judgment has been renewed and is enforceable through 2027.

The Defendants have all filed bankruptcy and litigation as to dischargeability has taken place. The Trustee has been unable to locate assets owned by David and by Michael and reached a court-approved settlement with them for \$85,000, which the Trustee has received.

The Vickery non-dischargeability judgment is on appeal and there are other appeals as to the amount of the exemption for the Vickery home. These are in Colorado. All matters except as to the Vickerys have been administered. The Vickery judgments are \$6,285,000 against the husband, his family partnership, and a family trust, and \$25,000 against the wife. So far the Trustee's Colorado counsel has collected about \$650,000 gross (not deducting for pre-contingency fees). Colorado Counsel believes that the net recovery to the Bankruptcy Estate in the future will not exceed another \$500,000.

This bankruptcy case is 23 years old and the Trustee wants to close it. The available funds (exclusive of uncashed checks from prior distributions)

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CONT... Ivds Interactive Acquisition Partners

Chapter 7

is about \$119,421. Trustee's counsel (Danning Gill...) has an administrative claim for \$2,931,500+ in the chapter 7 case and \$23,741 in the chapter 11 case. Other administrative claims total about \$86,000. If the funds available to pay Danning Gill were distributed to creditors, this would be a 0.554% dividend - a payment of about \$33 for a claim of \$6,000.

Rather than keep the estate open for years in the hope of further collection from Vickery, the Trustee and Danning Gill agree to assign the Estate's right, title and interest to the Vickery Judgment to Danning Gill. This would be in full satisfaction of its unpaid fees and costs in the Bankruptcy Case. Danning Gill would also receive any remaining funds in the Estate after payment of the other administrative claims. Danning Gill would also use the funds to pay costs and contingency fees (40%) associated with the collection of these funds.

No opposition received as of 11/4.

Grant.

No appearance necessary if you submit on the tentative ruling. Except in the case of a trustee's final report and simultaneous hearing on applications for approval of professional fees, the prevailing party is to lodge a proposed order in conformance with this tentative ruling within seven court days after the hearing, serving all interested parties with a copy of the proposed order.

Party Information

Debtor(s):

Ivds Interactive Acquisition Partners

Represented By
Grant L Simmons
Uzzi O Raanan ESQ

Trustee(s):

Richard K Diamond (TR)

Represented By
J Jeffrey Craven
Uzzi O Raanan ESQ
Howard Kollitz

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10:00 AM

CONT... Ivds Interactive Acquisition Partners

Chapter 7

Richard K Diamond (TR)

Richard K Diamond

Ruba M Forno

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Tuesday, November 6, 2018

Hearing Room 303

10:00 AM

1:95-19539 Ivds Interactive Acquisition Partners

Chapter 7

#2.00 Status of Chapter 7 Case

fr. 8/29/17, 1/23/18, 7/10/18, 7/17/18

Docket 0

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The compromise motion is #1 on calendar. If it is granted, continue this without appearance to January 29, 2019 at 10:00 a.m. so that the Trustee can file the necessary papers to close the case.

prior tentative ruling (7/17/18)

Per the status report filed on 6/19/18, the trustee will file a motion to close this case. He is negotiating with the OUST as to this.

Continue the status conference without appearance to Nov. 6, 2018 at 10:00 a.m. Feel free to schedule your motion on or before that date.

prior tentative ruling (1/23/18)

Per the status report filed on 12/28/17, the Trustee has previously made two interim distributions and hopes to make another one in 2018. The Trustee hopes to sell Vickery's home through a forced sale or, in the alternative, to sell the USDC Judgment against Vickery. Once the settlement with Michael and David is approved by the Court and the situation with Vickery is resolved, the Trustee will close the case.

Continue without appearance to 7/10/18 at 10:00 a.m.

prior tentative ruling (8/29/17)

This case was filed on December 1, 1995. It was originally filed as a Chapter 11. It was converted to Chapter 7 on November 3, 1997. The last activity on the docket was on October 20, 2016. On that date, an Order on Eighth Interim Application for Allowance of Fees to Green, Hasson & Janks was entered. On July 31, 2017, an Order Setting Status Conference Hearing

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10:00 AM

CONT... Ivds Interactive Acquisition Partners

Chapter 7

was entered. On August 15, 2017, the Chapter 7 Trustee filed a Status Report in Bankruptcy Case. [dkt. 648]

Trustee's August 15, 2017 Status Report:

Debtor was a general partnership organized under Florida law and composed of approximately 645 individuals. Debtor was created by a group of organizers who used corporate entities controlled by them to raise money to exploit IVDS, a communications medium to be licensed by the FCC.

Trustee has always believed that Debtor was a fraudulent telemarketing scheme. Trustee commenced a lawsuit against the organizers of Debtor alleging fraudulent transfer claims. Trustee went to trial against three principal Defendants: David Dambro, Michael Dambro, and Terry Vickery. Trustee obtained judgments against all three Defendants: David: \$5.1 million; Michael: \$4.1 million; and Vickery: \$4.6 million. Judgment will remain enforceable until 2027. Trustee continues to pursue collection activities through special counsel as Trustee believes David, Michael, and Vickery have hidden millions of dollars. Trustee has currently made two interim distributions in this case and hopes to make at least one more distribution after Trustee sells Vickery's home. Thereafter, Trustee will evaluate the possibility of a sale of the judgment at the end of 2017, which would allow Trustee to close the case.

This matter is now off calendar. No appearance is required and no hearing will be held. In the future, please file a status report every 90-180 days.

Party Information

Debtor(s):

Ivds Interactive Acquisition Partners

Represented By
Grant L Simmons
Uzzi O Raanan ESQ

Trustee(s):

Richard K Diamond (TR)

Represented By
J Jeffrey Craven
Uzzi O Raanan ESQ

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10:00 AM

CONT... Ivds Interactive Acquisition Partners

Chapter 7

Howard Kollitz
Richard K Diamond (TR)
Richard K Diamond
Ruba M Forno

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Tuesday, November 6, 2018

Hearing Room 303

10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01181 Campbell v. Pyle

#3.00 Order to Show Cause as to how to Proceed
with the Claim for Relief Under 11 USC Sec.727

fr. 7/17/18; 8/21/18, 9/25/18

Docket 87

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

No response received as of 11/4/18. What is the status of the probate?

The next hearing in Berry v. Pyle is on 12/18/18 at 10:00 a.m. If there is no appearance, continue this to that date.

Party Information

Debtor(s):

Glen E Pyle Pro Se

Defendant(s):

Glen Pyle Pro Se

Plaintiff(s):

Ian Campbell Represented By
Barry P King

Trustee(s):

Amy L Goldman (TR) Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

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Tuesday, November 6, 2018

Hearing Room 303

10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01181 Campbell v. Pyle

#4.00 Status Conference re: Complaint for
Determination that Debt is Nondischargeable
and/or to Recover Money

fr. 5/11/11, 6/22/11, 10/4/11, 1/24/12, 2/14/12,
4/24/12, 6/19/12, 9/11/12, 10/2/12, 11/6/12,
2/12/13, 3/19/13, 8/27/13, 8/27/13, 11/19/13,
2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14,
12/16/14, 3/10/15; 5/12/15; 6/2/15, 9/1/15,
9/8/15, 11/17/15; 1/12/16, 3/1/16, 6/7/16,
8/2/16, 9/27/16, 10/11/16, 1/17/17, 2/21/17,
3/28/17, 1/14/17, 12/19/17, 1/23/18, 3/27/18,
7/17/18, 8/21/18, 9/25/18

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Nothing further received as of 11/4/18. The next hearing in Berry v. Pyle is on 12/18/18 at 10:00 a.m. If there is no appearance, continue this to that date.

prior tentative ruling (7/17/18)

The order granting relief from the automatic stay was entered on 1/30/18. On 3/6 Mr. Campbell appeared in Court and wanted to know about the order. He had not been served with a copy of the order - our fault. I directed him to my law clerk, but he left without seeing her. On March 1, 2018, Judge Hammock continued his OSC re: Dismissal (BC416442) to July 5 so that Campbell could seek a judgment (he already has a default) on declaration. As soon as he has obtained his judgment, I will be ready to proceed. When will he be filing his declaration, etc. in the Superior Court? Should this status conference be continued until after July 5 or can we proceed before that?

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CONT... Glen E Pyle

Chapter 7

prior tentative ruling (1/23/18)

Mr. Campbell has filed the motion for relief from stay to complete the superior court case. Continue this status conference to March 27, 2018 at 9:00 a.m. to allow him to obtain his judgment in the superior court.

prior tentative ruling (12/19/17)

I have been in contact with Judge. Hammock of the Superior Court. He advises me that all that is left to do in his case is for Mr. Campbell to file a motion for default judgment. The automatic stay is preventing this.

To move that case forward, Mr. Campbell is to file a motion in this court for relief from the automatic stay. This is to be filed and served no later than December 26. It is to be served by mail and by email on Mr. Pyle. The hearing will be on January 23, 2018 at 10:00 a.m. in courtroom 303. Mr. Campbell is to use the mandatory court form: F 4001-1.RFS.NONBK.MOTION. This is available on the Court website at www.cacb.uscourts.gov/forms/local_bankruptcy_rules_forms. Or you can obtain a copy at the filing window in the clerk's office.

prior tentative ruling (11/14/17)

The Court advised Mr. Campbell of the continuance of the Berry v. Pyle case. He does wish to appear on 11/14. The Court has called Mr. Aver's office and asked them to contact Mr. Pyle (who is pro se in this adversary proceeding) to advise him that the hearing on 11/14 is going forward and that Mr. Pyle is to appear on the phone or in person and instruct him on how to use Court Call. The Court was notified that he also wishes to appear.

What is the status of the state court matter?

prior tentative ruling (3/28/17)

This adversary proceeding has been trailing the Berry v. Pyle one, but it has some different issues. How does Mr. Campbell wish to proceed?

prior tentative ruling (1/17/17)

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CONT... Glen E Pyle

Chapter 7

I believe that Mr. Campbell was trying to obtain counsel. It is best to keep this together with Berry v. Pyle. Therefore continue it without appearance to 2/21/17 at 10:00 a.m. when I have a hearing on the motion for summary judgment in the Berry v. Pyle case.

prior tentative ruling (8/2/16)

Mr. Campbell is now representing himself. How does he wish to proceed to get this ready for trial?

prior tentative ruling (3/1/16)

Per the status report filed by Plaintiff on 2/23/16, discovery is not complete. Plaintiff wants to take Mr. Pyle's deposition and audit the records.

This was trailing the Berry v. Pyle matter, but given Mr. Berry's health, I think that it should go forward alone and complete the discovery. Feel free to appear by phone at the status conference and let's get some dates to complete discovery. Please advise Mr. Pyle, who is not represented by counsel in this case, to appear in person or by phone.

prior tentative ruling (1/12/16)

This has nothing to do with Mr. Berry's health and Mr. Pyle is not represented by counsel. The 1/5/16 status report said that plaintiff will be ready for trial on 2/1. He figures 2-3 days. Let's set a trial date. Possible dates when there is a courtroom available are Feb. 16-17 and Mar. 23-24.

prior tentative ruling (9/8/15)

This has been trailing Berry v. Pyle. On 8/18/18 Plaintiff filed a status report. He is ready to go to trial in February 2016. He needs another 4-6 months to complete discovery, which includes Mr. Pyle's deposition and an audit of the records.

In htis case Mr. Pyle is not represented by counsel. So let's get a deposition date and move forward.

prior tentative ruling (3/10/15)

Mediation set for 3/24/15. Continue without appearance to 5/12/15 at 1:00 a.m

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10:00 AM

CONT... Glen E Pyle

Chapter 7

prior tentative ruling (10/7/14)

The mediation has been delayed. Continue without appearance to 12/16/14 at 10:00 a.m.

prior tentative ruling (8/5/14)

The Berry v. Pyle matter is scheduled for a settlement conference before Judge Ryan on 9/22/14. Is this case part of the settlement conference? If so, continue without appearance to 10/7/14 at 10:00 a.m. If not, the status report filed by Plaintiff on 7/21 requests mediation. How do you wish to proceed?

prior tentative ruling (4/22/14)

On 4/8/14, counsel for plaintiff filed a status report. He believes that he will be ready for trial in 6 months. There is still discovery to be done, including completing Debtor's deposition. A mediation will take place in May or June. **Continue without appearance to August 5, 2014 at 10:00 a.m.**

prior tentative ruling (3/11/14)

This complaint is both under §523 and §727 as well as §§547 and 548. This has been trailing the Berry v. Pyle adversary proceeding. Mr. Mendoza attended the 2/10/14 deposition of Mr. Pyle, which is a joint deposition in both this case and the Berry v. Pyle case. Pyle is not represented by counsel in this adversary proceeding.

Mr. Mendoza, should this continue to trail the Berry adversary or are you ready to go forward on your own?

prior tentative ruling (4/24)

The parties have stipulated that plaintiff will have until 4/20 to file a Second Amended Complaint. A second amended complaint was filed on 4/20. Per the status report, the parties think that they need 4-5 months to complete discovery. The parties wish to mediate. Plaintiff has no co-counsel and may wish to propound more discovery and seek relief from stay as to certain trust assets.

Continue the status conference without appearance to June 19 at 10:00 a.m.

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10:00 AM

CONT... Glen E Pyle

Chapter 7

This will allow sufficient time for there to be a response to the second amended complaint and for new co-counsel to move forward. In the meantime, please complete a mediation order since it often takes weeks to schedule a mediation.

prior tentative ruling (2/14)

Per the status report filed on 1/24, the parties feel that they will not be ready for trial until late in 2012. Set a discovery cutoff date of 7/30/12. Although neither party wants mediation at this time, plaintiff's counsel is willing to attend mediation.

As of 2/12 there is no response to the amended complaint. What is the status of that? When do the parties think that mediation might be beneficial?

prior tentative ruling (1/24)

An answer was filed on 7/15. Plaintiff filed an amended complaint on 1/12, but this was done without leave to amend.

Counsel, in the future please confer with knowledgeable bankruptcy counsel before filing things in bankruptcy court. Your original cover sheet indicated that this was only a complaint to recover money under §§547 and 548. That is incorrect. The original complaint is under §523 and §727 (although that is not mentioned on the caption) and may include §§547 and 548 (although the uploaded copy has some pages missing, so I can't tell for sure). The amended complaint has all of these claims for relief. The court picked up that there was a §727 claim, but we should not have to review the complaint to do this.

prior tentative ruling (10/4)

Nothing further received as of 10/2.

prior tentative ruling (6/22)

As of 5/9 there has been no return on service on the summons. The plaintiff has counsel. There is no status report as of 5/8. If there is no appearance at the 5/11 hearing, I will issue and OSC re: dismissal for failure to prosecute.

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, November 6, 2018

Hearing Room 303

10:00 AM

CONT... Glen E Pyle

Chapter 7

Attorney(s):

Richard S. Singer

Pro Se

Klinedinst PC

Represented By
Hartford O Brown

Debtor(s):

Glen E Pyle

Pro Se

Defendant(s):

Glen Pyle

Pro Se

Plaintiff(s):

Ian Campbell

Pro Se

Trustee(s):

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)

Amy L Goldman (TR)

Pro Se

US Trustee(s):

United States Trustee (SV)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

Tuesday, November 6, 2018

Hearing Room 302

10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#5.00 Motion of John P. Reitman, Chapter 11 Trustee,
for Order Approving Settlement with Barrett S. Litt,
et al. Pursuant to Fed. R. Bankr. P. 9019

fr. 3/27/18, 5/1/18, 6/5/18; 8/7/18

Docket 1344

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Off calendar. Order entered 10/23/18.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Movant(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

Trustee(s):

John P. Reitman

Represented By
John P Reitman

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

Tuesday, November 6, 2018

Hearing Room 302

10:00 AM

CONT... Shirley Foose McClure

Jon L Dalberg

Chapter 11

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, November 6, 2018

Hearing Room 303

10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#6.00 Motion to Compel Abandonment of State Court
Litigation Case BC443404 McClure v. Tidus

fr. 3/27/18, 5/1/18, 6/5/18; 8/7/18

Docket 1355

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Off calendar. Order entered 10/23/18.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, November 6, 2018

Hearing Room 303

10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#7.00 Status Conference re: Ch 11 Case

fr. 1/24/2013, 4/30/13, 5/14/13, 7/23/13, 8/6/13,
9/17/13, 9/24/13, 11/19/13, 12/17/13, 1/21/14, 2/18/14,
3/11/14, 4/15/14, 5/6/14, 6/24/14, 9/9/14, 9/23/14,
10/7/14, 11/24/14, 1/6/15, 1/20/15, 2/10/15, 3/10/15,
4/28/15; 5/12/15; 9/29/15, 10/22/15, 12/8/15, 3/1/16,
6/7/16, 7/12/16, 8/16/16, 10/11/16; 12/20/16, 4/4/17,
5/16/17; 6/27/17, 7/11/17, 9/19/17, 11/14/17, 11/28/17,
12/19/17, 1/9/18, 3/19/18, 3/27/18, 5/1/18, 6/5/18; 6/26/18,
7/9/18; 8/7/18

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Ms. McClure has until Nov. 20 to file her motion for reconsideration. Meanwhile, she has filed an emergency motion for a stay pending the hearing on her motion for reconsideration. The Trustee opposes.

This would be a short stay, only so that the Court can adequately review the motion(s) to reconsider. While it took many months for the Court to do the detailed analysis and I believe that it is thorough and correct, it is appropriate to allow Ms. McClure to try to point out errors that may have been made. Given that the matters in the Superior Court are not immediate, the Court intends to grant the stay and will hear brief argument at the 11/6 status conference. It seems to me that the stay should expire 14 days after I enter my order on the motion(s) to reconsider.

Per the Trustee's status report filed on 10/31/18, the Maui property is in escrow.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, November 6, 2018

Hearing Room 303

10:00 AM

CONT... Shirley Foose McClure

Chapter 11

Party Information

Debtor(s):

Shirley Foose McClure

Represented By

Andrew Goodman

Yi S Kim

Robert M Scholnick

James R Felton

Faye C Rasch

Faye C Rasch

Elaine Nguyen

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, November 6, 2018

Hearing Room 303

10:00 AM

1:16-10443 Michel Kanaan Kanaan

Chapter 7

Adv#: 1:16-01077 Seyedan v. Kanaan et al

#8.00 Third Party Motion to Unseal Document;
Memorandum of Points and Authorities; Declaration of
Donna Dishbak

Docket 40

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Donna Dishbak represented Maryam Seyedan in this adversary proceeding. Because the complaint was not filed in a timely fashion, the Defendant filed a motion to dismiss. Ms. Dishbak opposed on the ground that there were extreme extraordinary factors that prevented her from meeting the filing deadline. and thus she should be excused under FRCP 60. The opposition did not contain information as to those factors.

Ms. Dishbak informed the Court that the extraordinary circumstances were extremely personal and requested to file the details under seal, which the Court allowed. [See tentative ruling of August 30, 2016, incorporated in dkt. 32.] This was done on 11/9/16 (dkt. 22, 23). Counsel for the Debtor was granted access to the declaration upon signing a confidentiality agreement. It was assumed by the Court that Ms. Dishbak's client would have seen the declaration and discussed the circumstances with Ms. Dishbak.

Having reviewed the declaration and the opposition, on 2/1/17, I issued a Memorandum of Opinion and Order granting the motion to dismiss, finding that the issues raised by Ms. Dishbak did not meet the requirements to excuse the late filing.

At the present time, there is an arbitration action that Ms. Seyedan has brought against Ms. Dishbak for malpractice. The Arbitrator has ordered Ms. Dishbak to provide a copy of her sealed declaration, but she has not complied. Ms. Seyedan thus wants the Court to unseal the declaration.

The only "opposition" by Ms. Dishbak is that the parties are close to agreeing to a mediation (apparently in this court) and she wants me to order

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, November 6, 2018

Hearing Room 303

10:00 AM

CONT... Michel Kanaan Kanaan

Chapter 7

them to mediation and maintain the protective order.

Proposed ruling

The purpose of sealing the document was not to prevent Ms. Dishbak's client from obtaining a copy and using it in a malpractice action, but to maintain the confidentiality so that the general public, opposing counsel of Ms. Dishbak in other cases, etc. would not have access to private information about her.

The sealing order will be modified so that Ms. Seyedan and her counsel in the arbitration matter can obtain a copy and can use it as part of the arbitration or any other proceeding against Ms. Dishbak for malpractice. It will be up to the arbitrator/trier of fact in each such proceeding to determine to whom copies can be given and what public access can be made.

As to a mediation, I am willing to order this to our mediation panel if both sides agree. But I believe that the mediator and Ms. Seyedan need access to the declaration so that they know the full extent of the issues.

Party Information

Debtor(s):

Michel Kanaan Kanaan

Represented By
Richard Mark Garber

Defendant(s):

Michel Kanaan Kanaan

Represented By
Richard Mark Garber

KANAAN INTERNATIONAL,

Represented By
Richard Mark Garber

Beauty Illusions, Inc.

Represented By
Richard Mark Garber

Beauty Live Forever, Inc.

Represented By
Richard Mark Garber

Oilan, Inc.

Represented By
Richard Mark Garber

Does 1 Through 50, Inclusive

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, November 6, 2018

Hearing Room 303

10:00 AM

CONT... Michel Kanaan Kanaan

Chapter 7

Richard Mark Garber

Plaintiff(s):

Maryam Seyedan

Represented By
Donna R Dishbak

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, November 6, 2018

Hearing Room 303

10:00 AM

1:16-11387 Real Estate Short Sales Inc

Chapter 7

#9.00 Motion for relief from stay

U.S. BANK NATIONAL ASSOC.

fr. 1/23/18, 2/27/18, 7/17/18, 9/18/18

Docket 190

***** VACATED *** REASON: Stip. cont. to 12/18/18, @10 am (eg)**

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Continued by stipulation to 12/18/18 at 10:00 a.m. Trustee is awaiting a short-sale approval.

prior tentative ruling (9/18/18)

THIS MOTION IS CONTINUED BY STIPULATION WITH THE TRUSTEE TO NOVEMBER 6, 2018 AT 10:00 A.M. HOWEVER, AS NOTED IN THE FOLLOWING WRITE-UP, THERE IS A SERIOUS QUESTION AS TO WHETHER THE OKLAHOMA STREET PROPERTY SHOULD BE ABANDONED. I ASSUME THAT MS. CUEVA WILL BE IN COURT ON SEPTEMBER 18. MS. ZAMORA, PLEASE ATTEND (BY PHONE IS FINE). I WANT TO SET A MOTION(S) TO ABANDON FOR NOVEMBER 18 AND WE NEED TO TALK ABOUT IT.

write-up for hearing on 9/18/18 created prior to the stipulation to continue

Per the statement filed on 9/7 by U.S. Bank, although the property is now in escrow, it is for a significantly lower sum than the payoff quote given by the Bank to the Trustee. There has been no request for a short sale proposal and the Bank has not approved a short sale. The Bank requests immediate relief from stay.

The Debtor has filed a statement. Basically, Ms. Cueva is saying that the Debtor is working out a loan modification with U.S. Bank and that this will be

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, November 6, 2018

Hearing Room 303

10:00 AM

CONT... Real Estate Short Sales Inc

Chapter 7

approved if the Trustee will abandon the property. There are some insurance issues. The Debtor is asking that Ms. Zamora abandon the property.

Where does the Trustee stand on this? Is there any reason not to abandon? The automatic stay will end when that occurs.

prior tentative ruling (2/27/18)

At the hearing on 2/13, the Court was informed that Ms. Cueva had not made the payment of the settlement amount. Berendo has been vacated and is being put on the market. The Trustee and Ms. Cueva are attempting to work out a modified compromise motion on the Oklahoma Ave. property. Nothing further filed as of 2/25.

prior tentative ruling (1/23/18)

This concerns the Oklahoma Ave. property. U.S. Bank has a secured claim of \$1.439+ million. It recorded its notice of default in 2/15 and a sale was scheduled, but never held. The current monthly payments as of 11/17 are \$7,057.47. A total of 73 payments were not made. The fair market value of the property is \$1.1 million.

The property was transferred by Cueva to Debtor without the Bank's consent. The Bank received relief from stay in the prior bankruptcy case.

In this case, there was an adequate protection order on which the Debtor defaulted multiple times.

Proposed Ruling

Under the proposed compromise, the Oklahoma Property will be released from the Estate. As to the stay concerning the Debtor, relief from stay will be granted. It is up to Cueva, et al, to work out something with the Bank.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, November 6, 2018

Hearing Room 303

10:00 AM

1:16-11387 Real Estate Short Sales Inc

Chapter 7

#10.00 Motion to Sell Property of the Estate Free and Clear
of Liens under Section 363(f) --

Docket 269

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The Trustee wishes to sell the Berendo property to Roshni Nelson and Jeffrey Kelsey for \$610,000. Wells Fargo Bank, as trustee for the first trust deed, agrees to accept a payoff of \$492,829.31 (a reduction from the actual balance of \$800,000+). The homeowners' association will accept \$36,300 (a reduction from the \$48,000+ owed). The broker's commission of \$30,500 will be paid. After paying the seller's closing costs, the Estate will have about \$36,300.

There is a second trust deed to Beneficial, which will not be paid and will be treated as an unsecured claim. The sale will be free and clear of liens.

The Trustee requests that the Court determine that the buyer is a "good faith purchaser" under §363(m) and needs to provide evidence of that status.

There will be no overbid procedure because the short sale approval was specific to this buyer and was negotiated over several months.

Proposed Ruling

The last day to object was Oct. 23. As of Nov. 4, no opposition has been received. Grant as requested. Please provide a declaration as to the qualification of the buyers as good faith purchasers.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, November 6, 2018

Hearing Room 303

10:00 AM

CONT... Real Estate Short Sales Inc

Chapter 7

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, November 6, 2018

Hearing Room 303

10:00 AM

1:16-11538 Majestic Air, Inc.

Chapter 11

#11.00 Application for Compensation Fourth Interim
Application by Havkin & Shrago for Fees and
Costs

Period: 1/21/2018 to 9/20/2018

Fee: \$6810

Expenses: \$167.85

Docket 251

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

This covers the period from 1/21/18 through 9/20/18 and seeks \$6,810 in fees and \$167.85 in costs. Debtor has filed a declaration in support of the application.

No opposition received as of 11/4/18.

Approve as requested.

If you submit on this tentative ruling, no appearance is necessary. If you choose to appear and the final ruling is in conformance with the tentative ruling, no additional fees will be allowed for this appearance. If the trustee's firm is representing the trustee, no attorney's fees will be allowed for an appearance on this matter, as the trustee would be expected to be present as part of the trustee's duties.

THE TRUSTEE/DEBTOR IN POSSESSION IS TO NOTIFY ALL PROFESSIONALS OF THIS TENTATIVE RULING.

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

Friday, November 9, 2018

Hearing Room 302

10:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#1.00 Status of Subpoena on Social Security Administration re: Dr. Bilik

fr.10/30/18

Docket 0

Courtroom Deputy:

Will be heard on courtroom 302

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

Friday, November 9, 2018

Hearing Room 302

10:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#2.00 Trial - DAY ONE

fr. 8/17/18, 8/27/18

Docket 429

*** VACATED *** REASON: This Trial is set for 1/30/19 at 9:00am (eg)

Courtroom Deputy:

will be heard in courtroom 302

CONTACT INFO FOR WITNESSES:

Dr. Mahyer Okhovat 818-918-2766 or 310-579-9082 (Dr. Okhovat's wife
[atty])

Alexander Hersell 805-557-096 (ofc) 310-808-4308 (cell)

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Movant(s):

Douglas Denoce

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, November 20, 2018

Hearing Room 303

10:00 AM

1:09-23807 Shellie Melissa Halper

Chapter 7

**#1.00 Trustee's Final Report and Application for
Compensation and Deadline to Object**

Docket 281

Tentative Ruling:

No opposition received as of 11/18/18.

Approve as requested.

If you submit on this tentative ruling, no appearance is necessary. If you choose to appear and the final ruling is in conformance with the tentative ruling, no additional fees will be allowed for this appearance. If the trustee's firm is representing the trustee, no attorney's fees will be allowed for an appearance on this matter, as the trustee would be expected to be present as part of the trustee's duties.

THE TRUSTEE/DEBTOR IN POSSESSION IS TO NOTIFY ALL PROFESSIONALS OF THIS TENTATIVE RULING.

Party Information

Debtor(s):

Shellie Melissa Halper

Represented By
Mark M Sharf
Alan W Forsley
Yi S Kim
David Brian Lally

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Michael H Weiss
Laura J Meltzer

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, November 20, 2018

Hearing Room 303

10:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#2.00 Trial (date to deal with subpoena issues)

fr. 6/19/18, 8/27/18, 9/18/18

Docket 0

Tentative Ruling:

Mr. DeNoce has filed copies of new subpoenae of Dr. Bilik and on Canyon Medical Group. Witness fees have been paid and these were personally served. Dr. Bilik is in Oakland. He can appear by phone for this initial appearance - although he was paid for a personal appearance. Records are to be produced in person or by mail. If by mail, with a declaration as required by law.

prior tentative ruling (9/18/18)

This is only as to Dr. Bilik and Canyon Medical Group, who did not appear on August 27.

The subpoenaed witnesses may appear by phone or in person and will be ordered back for January 30, 2019 at 9:00 a.m. when the continued trial will actually take place.

The Court has a copy of the proof of service on Doctor Bilik and on the Custodian of Records of Canyon Medical Group. If the either of them do not appear, Mr. DeNoce will be required to provide evidence that at the time that the subpoena was served, each witness was offered a witness fee of \$40 and reasonable mileage. FRCP 45(b)(1) as incorporated by FRBP 9016. See *CF&I Steel Corp. v. Mitsui & Co.*, 713 F2d 494, 496 (9th Cir. 1983).

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, November 20, 2018

Hearing Room 303

10:00 AM

CONT... Ronald Alvin Neff

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

Tuesday, November 20, 2018

Hearing Room 302

10:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#3.00 Status of Subpoena on Social Security Administration re: Dr. Bilik
fr.10/30/18; 11/9/18

Docket 0

Tentative Ruling:

Mr. DeNoce has filed copies of the subpoenas on Canyon Medical and on Dr. Bilik. See calendar #2. Is there anything that the Court needs to do to be sure that this trial goes forward as scheduled?

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, November 20, 2018

Hearing Room 303

10:00 AM

1:16-10443 Michel Kanaan Kanaan

Chapter 7

Adv#: 1:16-01077 Seyedan v. Kanaan et al

#4.00 Third Party Motion to Unseal Document;
Memorandum of Points and Authorities; Declaration of
Donna Dishbak

fr. 11/6/18

Docket 40

Tentative Ruling:

This was continued so that the parties could prepare an order. As of 11/18, no proposed order has been lodged.

prior tentative ruling (11/6/18)

Donna Dishbak represented Maryam Seyedan in this adversary proceeding. Because the complaint was not filed in a timely fashion, the Defendant filed a motion to dismiss. Ms. Dishbak opposed on the ground that there were extreme extraordinary factors that prevented her from meeting the filing deadline. and thus she should be excused under FRCP 60. The opposition did not contain information as to those factors.

Ms. Dishbak informed the Court that the extraordinary circumstances were extremely personal and requested to file the details under seal, which the Court allowed. [See tentative ruling of August 30, 2016, incorporated in dkt. 32.] This was done on 11/9/16 (dkt. 22, 23). Counsel for the Debtor was granted access to the declaration upon signing a confidentiality agreement. It was assumed by the Court that Ms. Dishbak's client would have seen the declaration and discussed the circumstances with Ms. Dishbak.

Having reviewed the declaration and the opposition, on 2/1/17, I issued a Memorandum of Opinion and Order granting the motion to dismiss, finding that the issues raised by Ms. Dishbak did not meet the requirements to excuse the late filing.

At the present time, there is an arbitration action that Ms. Seyedan has brought against Ms. Dishbak for malpractice. The Arbitrator has orderd Ms. Dishbak to provide a copy of her sealed declaration, but she has not complied. Ms. Seyedan thus wants the Court to unseal the declaration.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, November 20, 2018

Hearing Room 303

10:00 AM

CONT... Michel Kanaan Kanaan

Chapter 7

The only "opposition" by Ms. Dishbak is that the parties are close to agreeing to a mediation (apparently in this court) and she wants me to order them to mediation and maintain the protective order.

Proposed ruling

The purpose of sealing the document was not to prevent Ms. Dishbak's client from obtaining a copy and using it in a malpractice action, but to maintain the confidentiality so that the general public, opposing counsel of Ms. Dishbak in other cases, etc. would not have access to private information about her.

The sealing order will be modified so that Ms. Seyedan and her counsel in the arbitration matter can obtain a copy and can use it as part of the arbitration or any other proceeding against Ms. Dishbak for malpractice. It will be up to the arbitrator/trier of fact in each such proceeding to determine to whom copies can be given and what public access can be made.

As to a mediation, I am willing to order this to our mediation panel if both sides agree. But I believe that the mediator and Ms. Seyedan need access to the declaration so that they know the full extent of the issues.

Party Information

Debtor(s):

Michel Kanaan Kanaan

Represented By
Richard Mark Garber

Defendant(s):

Michel Kanaan Kanaan

Represented By
Richard Mark Garber

KANAAN INTERNATIONAL,

Represented By
Richard Mark Garber

Beauty Illusions, Inc.

Represented By
Richard Mark Garber

Beauty Live Forever, Inc.

Represented By
Richard Mark Garber

Oilan, Inc.

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, November 20, 2018

Hearing Room 303

10:00 AM

CONT... Michel Kanaan Kanaan

Chapter 7

Does 1 Through 50, Inclusive

Richard Mark Garber

Represented By
Richard Mark Garber

Plaintiff(s):

Maryam Seyedan

Represented By
Donna R Dishbak

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, December 4, 2018

Hearing Room 303

10:00 AM

1:06-12243 Edwin Perry Hinds

Chapter 7

#1.00 [holding date]

Motion to Clarify the Order for Immediate Turnover of Funds to the Chapter 7 Trustee [Docket No. 21]; and for an Order Directing the Clerk to Issue an Abstract of Judgment and Writ of Execution Against Lon B. Isaacson in Accordance Therewith

fr. 8/21/18

Docket 46

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

This is on appeal and the district court has denied a motion for stay. Because of the delay in enforcement due to the motion to stay, the Trustee requests that this be continued for about 90 days.

Continue to March 5, 2019 at 10:00 a.m.

Please check in by phone on December 4 to make sure that there is no opposing appearance.

Party Information

Debtor(s):

Edwin Perry Hinds

Represented By

Jonathan R Ellowitz - DISBARRED -

Trustee(s):

David R Hagen (TR)

Represented By

David Seror

Reagan E Boyce

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, December 4, 2018

Hearing Room 303

10:00 AM

1:06-12243 Edwin Perry Hinds

Chapter 7

#2.00 Status of Chapter 7 Case

fr. 8/29/17, 1/23/18; 6/19/18, 9/18/18

Docket 0

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Per the revised status report filed on 11/29, continue without appearance to March 5, 2019 at 10:00 a.m.

prior tentative ruling (9/18/18):

The motion as to Lon Isaacson was heard on 8/21/18 and continued to 12/4/18 at 10:00 as a holding date. The order on the motion was entered on 8/23/18. The motion was granted. This status conference is continued without appearance to 12/4/18 at 10:00 a.m. to give the Trustee a chance to start collecting on its order and to advise the Court as to the status of those efforts.

prior tentative ruling (6/19/18)

Per the status report filed on 3/13/18, a claim has been submitted to the California State Bar Client Fund in an attempt to collect the \$100,000 from Mr. Isaacson. A current address for him has been found and he has been filed with a copy of the prior status reports.

Mr. Isaacson is being represented by Brian McMahon and there are ongoing settlement conferences. A settlement was reached in February 2018 and there will be a 9019 motion filed. At the State Bar, the claim is still under submission.

On June 12, 2018 the Trustee filed a further status report. Discussions with Mr. Isaacson have reached an impasse and there is no settlement likely. Mr. Isaacson is disputing the Trustee's claim in the Client Security Fund.

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Tuesday, December 4, 2018

Hearing Room 303

10:00 AM

CONT... Edwin Perry Hinds

Chapter 7

I will continue this without appearance to September 18, 2018 at 10:00 a.m.

prior tentative ruling (1/23/18)

On November 28, 2017, counsel for the Trustee filed a status report. The only update was that he believes that he located a current address for Mr. Isaacson. Then in late December, the Court received a copy of a letter addressed to the State Bar Client Security Fund Commission and sent by the Law Offices of Brian D. McMahon, attorney for Mr. Isaacson. While it requests that I recuse myself, at this point I have no part of these proceedings.

Continue this status conference without appearance to June 19, 2018 at 10:00 a.m.

prior tentative ruling (8/29/17)

This Chapter 7 case was filed on November 29, 2006. Debtor was discharged on October 24, 2012. On May 15, 2017, an Order was entered granting application to employ Brutzkus Gubner as Trustee's General Counsel effective March 31, 2017. Thereafter, on July 31, 2017, an Order Setting Status Conference Hearing was entered.

On August 10, 2017, Trustee filed a Unilateral Status Report. According to Trustee, Lon B. Isaacson (the "Isaacson Creditors") had obtained a judgment over an attorneys' fees dispute with Debtor pre-petition. The judgment was for \$107,969.16 plus interest. Thereafter, the Isaacson Creditors filed an adversary proceeding in this case. The parties reached a settlement and the Court set a hearing on the settlement. At the hearing, the Court determined that the Debtor would pay the \$100,000 settlement to the estate instead of directly to the Isaacson Creditors. Also, the Court entered an Order directing the Isaacson Creditors to turn over \$100,000 to the Trustee. The Isaacson Creditors failed to comply and thereafter, most recently, the Trustee learned that Lon Isaacson had begun to misappropriate client funds from his trust accounts. He was formally disbarred in May 2013. Trustee has been attempting to reach Mr. Isaacson but has not been successful. Trustee's counsel advised Trustee that it may be most cost efficient to attempt to collect the \$100,000 by submitting a claim to the

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CONT... Edwin Perry Hinds

Chapter 7

California State Bar Client Fund. Trustee believes the case should remain open for approximately 90 to 180 days pending a response from the State Bar Client Fund.

This matter is now off calendar. No appearance is required and no hearing will be held. In the future, please file a status report every 90-180 days.

Party Information

Debtor(s):

Edwin Perry Hinds

Represented By
Jonathan R Elowitz - DISBARRED -

Trustee(s):

David R Hagen (TR)

Represented By
David Seror

**United States Bankruptcy Court
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10:00 AM

1:16-11387 Real Estate Short Sales Inc

Chapter 7

#3.00 Motion for relief from stay

BARCELONA TOWER INC

fr. 11/14/17, 2/13/18, 5/1/18, 6/26/18, 8/7/18,
10/23/18

Docket 164

***** VACATED *** REASON: Withdrawal filed on 11/28/18 doc. #298. If**

Courtroom Deputy:

Judge Mund will be hearing matters in courtroom 301

Tentative Ruling:

Continued by stipulation to 12/4/18 at 10:00 a.m.

prior tentative ruling (8/7/18)

Continued by stipulation to **10/23/18** at 10:00 a.m. The property is in escrow awaiting a ruling on a short sale by the senior lienholder. Please note that your chosen date of 10/9 is not available. In the future, please check my online calendar in order to set continued dates.

prior tentative ruling (5/1/18)

This motion by the HOA was continued to 6/26. The servicing agent for Wells Fargo Bank filed a motion for relief from stay, that will be heard on 7/17/18. It asserts that it is owed \$815,000+, that it is not being paid its monthly payment of \$4,029.57 and that there are 85 payments in arrears. It states that the current market value is \$655,000.

prior tentative ruling (5/1/18)

Cueva failed to tender the \$62,250 by 2/13/18, She then turned over to the Trustee the Berendo Condo. On 3/8/18 the Trustee filed a motion to approve a revised compromise, which was granted by an order entered on 3/26/18. The Trustee is to market and sell the Berendo Condo. What is the status of the marketing attempt?

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CONT... Real Estate Short Sales Inc

Chapter 7

prior tentative ruling (2/13/18)

This was brought by the Homeowners' Assn as to the Berendo St. property. At the time that this was filed (Oct. 2017), there was a prepetition delinquency of \$57,000+ and a post-petition one of \$7,685.70. This was continued by stipulation.

Under the compromise between the Trustee and the Debtor, approved on 2/5/18, upon receipt of the settlement payment of \$62,250, the Estate releases all interest in this property. The payment was to be received by 2/13/18 or the Debtor and others are to fully cooperate with the Trustee's marketing and sale of the property.

Has the payment been received? If so, this is no longer property of the Estate and relief from stay will be granted. If not, the property is to be sold and the HOA will be paid off at that time.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Movant(s):

Barcelona Tower Inc

Represented By
Jill L Kim

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
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Tuesday, December 4, 2018

Hearing Room 303

10:00 AM

1:16-11387 Real Estate Short Sales Inc

Chapter 7

#4.00 Motion for Order Authorizing Trustee to Sell Real Property Free and Clear of Liens, Subject to Short Sale Approval

Docket 289

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

The Trustee seeks to sell the Oklahoma Ave. property for \$950,000. This is to be a public sale free and clear of liens. The sale will take place in courtroom 303 on 12/4. The initial bidder is Sara Yavor. This is a "short sale" and the senior lienholder has agreed to release its lien and a full payoff of \$823,926.87 - it is owed \$1.496+ million. \$47,500 will be paid to the real estate broker. Another approximately \$18,000+ will be used for the seller's closing costs. The balance of about \$60,000 will go to the Estate. These are being treated as a carve-out granted by the Senior lienholder.

The junior liens will not be paid:
about \$310,00+ to Barry Cooper and Charles Fox Productions, Inc.
about \$234,000+ to Antoinette Weed
a judgment lien of Miller-DM, Inc.

These will be treated as unsecured claims.

The Trustee also asks that the sale order include a provision requiring Nancy Cueva and Julio Molica to vacate by 12/11/18. Also that the buyer be deemed a good faith purchaser under 11 USC §363(m).

Bank of America - the senior lien - does not oppose the sale.

Opposition by Antoinette Weed

The Trustee has not met the requirements of §363(f) and cannot sell free and clear of Ms. Weed's lien. Ms. Weed does not consent to the sale because her lien is not being paid in full.

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CONT... Real Estate Short Sales Inc

Chapter 7

Reply by the Trustee

This is a short sale with a carve out. If the senior TD holder had obtained relief from stay, it could have foreclosed and wiped out the junior liens. Instead, it is carving out money to pay the estate, broker's commission, and other required closing costs. *Clear Channel Outdoor, Inc. v. Knupfer (In re PW, LLC)*, 391 B.R. 26 (BAP 9th Cir. 2008) is thus inapplicable.

It is expected that there will be a distribution to unsecured creditors in this case, but this will be in an unknown amount.

Analysis and Proposed Ruling

Given the total lack of equity to secure the junior liens, it is unusual for a junior lienholder to object to the short sale in that some money is coming into the estate and she will most likely receive some distribution - minor though it is - rather than nothing when the senior lien forecloses. However, this is the fact presented here.

Clear Channel is not exhaustive on this fact pattern. And it is still being interpreted by other court. *In re Hassen Imps. P'Ship*, 502 B.R. 851 (Dist. CAC, 2013) gives a detailed analysis of the use of §363(f)(5) in the case of a sale free and clear of a junior interest in a hypothetical foreclosure when that junior interest is not being compensated from the sale proceeds. The court held that a foreclosure (whether actually occurring or just available as a matter of law) does qualify as a "legal or equitable" proceeding under §363(f)(5). It also noted that such a foreclosure by a senior lien would extinguish junior interests. However, §363(f)(5) also requires that the junior interest is satisfied by money. Although not on identical facts, the Court held that the lien would have to attach to any surplus cash obtained in the sale.

I have searched for a similar situation to this case - in which the junior underscored lienholder objects to the sale - and have found none. Nor has the Trustee cited any. As noted above, it makes sense that such a badly unsecured creditor would object. In this case, the Court finds that all proceeds of the sale are property of the senior lienholder. It has agreed to allow the Trustee to use some of its property to pay the broker, the costs of sale, and remain in the Estate. It has also not objected to the removal of its lien as to the property remaining in the Estate (the \$60,000). The liens of the junior creditors is extinguished in that the senior creditor has a legal right to foreclose and to credit bid sufficient to take the property with no surplus available to the junior liens.

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10:00 AM

CONT... Real Estate Short Sales Inc

Chapter 7

Grant the motion.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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Tuesday, December 4, 2018

Hearing Room 303

10:00 AM

1:16-11538 Majestic Air, Inc.

Chapter 11

#5.00 Status and Case Management Conference

fr. 8/4/16(xfr from Judge Tighe's calendar); 8/30/16,
9/27/16; 10/25/16; 11/15/16, 2/21/17, 5/16/17; 6/27/17,
8/29/17, 1/23/18; 6/19/18, 9/18/18

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Per the status report filed on 11/20, the remaining issues involve LTP. The parties are discussing mediation. If not, Debtor will file a objection to the LTP claim.

Continue without appearance to February 12, 2019 at 10:00 a.m.

prior tentative ruling (9/18)

Special counsel is being employed to resolve or litigate the LTP claim. This status conference will be continued.

prior tentative ruling (6/19/18)

Per the status report filed on 6/5, on 5/30/18 the California Court of Appeal affirmed the decision of the Superior Court in the Ansett Aircraft v. Cue appeal, but remanded the case for further proceedings.

Continue without appearance to Sept. 18, 2018 at 10:00 a.m. so that the Ansett claim can be finalized.

prior tentative ruling (1/23/18)

There is a state court appeal pending. Continue without appearance to June 19, 2018 at 10:00 a.m.

prior tentative ruling (2/21/17)

Per the status report filed on 2/7/17, the LTP parts have been sold and Debtor has moved to its new, less expensive, location. The appeal with the

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CONT... Majestic Air, Inc.

Chapter 11

California Court of Appeal as to LTP is continuing. The Debtor expects to file a disclosure statement within the next 60 days.

The Debtor filed a month-by-month comparison of actual revenue and expenses and budgeted revenue and expenses for November, December, and January. They show a slight net profit of \$1,500-\$2,200 per month.

If there is no objection, I will continue this without appearance to May 16, 2017 at 10:00 a.m.

Party Information

Debtor(s):

Majestic Air, Inc.

Represented By
Stella A Havkin

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Hearing Room 303

10:00 AM

1:16-12408 Massoud Aaron Yashouafar

Chapter 11

Adv#: 1:16-01168 Carino v. Yashouafar

#6.00 Status Conference Re: Complaint for
NonDischargeability of Debt Pursuant to
11 U.S.C. Sec. 523(a)(4) and 11 U.S.C.
Sec. 523(a)(6)

fr. 2/21/17, 3/21/17; 5/2/17, 5/30/17, 8/29/17,
1/23/18, 8/21/18

Docket 1

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Per the status report filed on 11/20, the Plaintiff will be shortly dismissing the adversary proceeding without prejudice, but understands that such dismissal would ultimately be with prejudice if the Debtor/Defendant obtains a discharge under §727.

Continue without appearance to January 8, 2019 at 10:00 a.m. to allow the Plaintiff to file the request to dismiss. Please have Yashouafar sign-off on the request to dismiss since he has filed an answer. Then I will not have to set a hearing.

prior tentative ruling (8/21/18)

Per the Plaintiff's status report, a settlement was reached in the Nevada state court case. Continue without appearance to 12/4/18 at 10:00 a.m.

prior tentative ruling (1/23/18)

Per the Plaintiff's status report filed on 1/11/18, the state court trial is now set to start in mid-March, but could be delayed. Continue without appearance to August 21, 2018 at 10:00 a.m.

prior tentative ruling (5/30/17)

Continue so that the state court trial can take place. Please give me some

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CONT... **Massoud Aaron Yashouafar**
dates that this might take place.

Chapter 11

prior tentative ruling (3/21/17)

This is a §523(a)(4) and (a)(6) complaint solely against Massoud. There is a class action pending in the Nevada State Court (Paradise Spa Owners Assn. v. Jim Pazargad). Carino filed this on behalf of the PSOA. Massud had served as Treasurer of the HOA and he caused significant damages to the class of homeowners. Discovery in the class action is closed and it is awaiting trial. Pre-petition the Nevada State Court adjudicated liability against the Debtor via summary judgment. It found that Massod committed fraud by concealing material facts that he had a duty to disclose regarding his personal use of PSOA insurance proceeds and by failing to pursue collection of assessments on some of the condominiums that he owned. It also found a breach of fiduciary duty. Although the amount of damages has not yet been adjudicated, it is over \$2.5 million.

The Debtor filed an answer and admits that the findings set forth were as the State Court held. Debtor is representing himself pro per in this adversary proceeding.

No status report has been received as of 3/16. Has relief from stay been granted to proceed? Is it necessary?

It seems that the best thing would be to delay acting on this case until the resolution of the Nevada action, including all appeals. But if the parties believe that something should go forward here, I am willing to allow it.

Party Information

Debtor(s):

Massoud Aaron Yashouafar

Represented By
Brian L Davidoff
C John M Melissinos

Defendant(s):

Massoud Aaron Yashouafar

Pro Se

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10:00 AM

CONT... Massoud Aaron Yashouafar

Chapter 11

Plaintiff(s):

Raymund Carino

Represented By
Simon Aron

Trustee(s):

David Keith Gottlieb (TR)

Represented By
Jeremy V Richards

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Hearing Room 303

10:00 AM

1:16-10443 Michel Kanaan Kanaan

Chapter 7

Adv#: 1:16-01077 Seyedan v. Kanaan et al

#7.00 Third Party Motion to Unseal Document;
Memorandum of Points and Authorities; Declaration of
Donna Dishbak

fr. 11/6/18; 11/20/18

Docket 40

Courtroom Deputy:

- NONE LISTED -

Tentative Ruling:

Off calendar. Stipulated form of order signed.

Party Information

Debtor(s):

Michel Kanaan Kanaan

Represented By
Richard Mark Garber

Defendant(s):

Michel Kanaan Kanaan

Represented By
Richard Mark Garber

KANAAN INTERNATIONAL,

Represented By
Richard Mark Garber

Beauty Illusions, Inc.

Represented By
Richard Mark Garber

Beauty Live Forever, Inc.

Represented By
Richard Mark Garber

Oilan, Inc.

Represented By
Richard Mark Garber

Does 1 Through 50, Inclusive

Represented By

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10:00 AM

CONT... Michel Kanaan Kanaan

Chapter 7

Richard Mark Garber

Plaintiff(s):

Maryam Seyedan

Represented By
Donna R Dishbak

Trustee(s):

David Seror (TR)

Represented By
Richard Burstein

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Hearing Room 303

10:00 AM

1:09-25922 Adam Cohen and Judith Cohen

Chapter 7

#1.00 Status conference re fourth status report

fr. 8/29/17, 1/23/18; 6/19/18

Docket 56

Tentative Ruling:

Per the status report filed on 11/19/18, all distributions of estate funds were made. One payment has not yet cleared the Trustee's account. When it does, the Trustee will prepare and submit a trustee distribution report to the OUST.

Since this is a chapter 7, there is no reason for the Court to continue to monitor it. No appearance is needed on 12/18 and no further status conferences will be scheduled.

prior tentative ruling (6/19/18)

Per the status report filed on 5/31/18, the Debtors have now completed their payment obligations under the amended agreement. The Trustee is moving this case toward closure. Continue without appearance to 12/18/18 at 10:00 a.m. so that the case can be finalized.

prior tentative ruling (1/23/18)

Per the status report, payments are still being received and the final one should be in about 5 months. Continue without appearance to 6/19/18 at 10:00 a.m.

Party Information

Debtor(s):

Adam Cohen

Represented By
Asher A Levin

Joint Debtor(s):

Judith Cohen

Represented By
Asher A Levin

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10:00 AM

CONT... Adam Cohen and Judith Cohen

Chapter 7

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Scott Lee
Amy L Goldman
Michael T Delaney
Amy L Goldman

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Hearing Room 303

10:00 AM

1:06-12243 Edwin Perry Hinds

Chapter 7

#2.00 Application and order for appearance and examination

Docket 57

*** VACATED *** REASON: ntc. of w/d filed 12/13/18 (eg)

Tentative Ruling:

Check in with the court recorder, who will swear the witness. Then go into one of the attorney rooms and conduct your examination. At the conclusion of the examination, come back to the courtroom so that the witness can be excused or ordered back. If the courtroom is locked, please come to my chambers.

Party Information

Debtor(s):

Edwin Perry Hinds

Represented By
Jonathan R Elowitz - DISBARRED -

Movant(s):

David R Hagen (TR)

Represented By
David Seror
Reagan E Boyce

Trustee(s):

David R Hagen (TR)

Represented By
David Seror
Reagan E Boyce

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Hearing Room 302

10:00 AM

1:16-12152 Massrock Inc

Chapter 7

#3.00 Motion for sale of property of the estate under section 363(b) and for order approving sale of promissory note & deed of trust

Docket 132

Tentative Ruling:

The Trustee seeks to sell the promissory note and trust deed to Crosscut Solutions, LLC for \$13,000, subject to overbid. He also wishes that the buyer be deemed a good faith purchaser under §363(m) and that the 14 day stay of FRBP 6004(h) be waived.

The note and TD concern 5066 Jefferson Blvd, LA. The face value is \$235,000. These appear to be a "sold out" junior interest pursuant to a foreclosure on the property by Harriet Goslins and Janey Sweet as trustees for two trusts. The proposed buyer has paid a \$5,000 deposit. The rules for overbidders are set out.

Although Richard Taxe has asserted an interest in the Note and in Lenders Assurance, it appears that his alleged interests are subject to a bona fide dispute.

The proposed buyer has filed a declaration that meets the requirements of §363(m).

Opposition by Goslins/Sweet

This is an opposition to a finding that the buyer be deemed to be a good good faith purchaser under §363(m). They have provided the buyer with all of the history of the property and the claims, etc. Thus the purchaser has actual knowledge of the facts relating to the property including the foreclosure sale. The purchaser has actual knowledge of adverse claims.

Reply to Opposition

The opposition shows that this sale if the result of an arm's-length transaction. There is sufficient evidence of good faith. The proposed bidding procedures are reasonable.

Supplemental Oppoiton by Goslins/Sweet

There is no evidence that the purchaser did not know of the adverse

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10:00 AM

CONT... Massrock Inc

Chapter 7

claims. The value of the asset (being sold) is unknown. Overbidding should be allowed by anyone attending the hearing with a cashier's check. Requiring a \$13,000 overbid is unreasonable given the amount of the required cashier's check.

wait for other opposition

proposed ruling

The only objection is from the senior creditors who have foreclosed on the property. The basis of the objection is that the proposed buyer is aware of the foreclosure and the state court lawsuit concerning it. While the Court guesses that the only reason that this buyer is interested in purchasing this junior note and deed of trust (which have been extinguished in the foreclosure sale) is because it believes that there is some value that it can obtain by pursuing either Goslins/Sweet or Taxe, this does not prevent it from qualifying under §363(m). Knowledge of the prior foreclosure and any irregularities that may or may not have occurred is not the type of knowledge that prevents a finding of good faith under §363(m).

Though the Bankruptcy Code and Rules do not provide a definition of good faith, courts generally have followed traditional equitable principles in holding that a good faith purchaser is one who buys "in good faith" and "for value." See, e.g., In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143, 147 (3rd Cir. 1986). Typically, lack of good faith is shown by "fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." In re Suchy, 786 F.2d 900, 902 (9th Cir. 1985).

In re Ewell, 958 F.2d 276, 281 (9th Cir. 1992)

Lack of good faith, however, is determined by fraudulent conduct during the sale proceedings. In re Exennium, 715 F.2d at 1404-05.

The requirement that a purchaser act in good faith, of course, speaks to the integrity of his conduct in the course of the sale proceedings. HN7 Typically, the misconduct that would destroy a purchaser's good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

*Prichard v. Sherwood & Roberts, Inc. (In re Kings Inn, Ltd.), 37 Bankr. 239, 243 (Bankr. 9th Cir. 1984) [**7] quoting In Re Rock Industries Machinery Corp., 572 F.2d 1195, 1198 (7th Cir. 1978).*

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CONT... **Massrock Inc**
In re Suchy, 786 F.2d 900, 902 (1985)

Chapter 7

There is nothing in this motion or opposition to show any fraud, collusion between the purchaser and other bidders or the Trustee, or an attempt to take grossly unfair advantage (or any advantage) of other bidders.

As to the value of the asset being sold, since this is a sold-out junior lien against property of a defunct corporation, there is not need to value it beyond what someone is willing to pay.

Thus the objection is overruled. It Goslins/Sweet wish to protect against this proposed buyer, they may decide to appear at the sale and attempt to overbid. As to the amount of the required overbid, there has been plenty of notice. The opening overbid must be \$14,000. It is not unreasonable to require that any overbidder deposit the \$13,000 minimum purchase price at least one day in advance. However, the Trustee may be willing to request that the sale be continued if an overbidder brings a cashier's check to the hearing in the amount of \$14,000, which would be non-refundable if that overbidder fails to appear at a continued hearing or is the successful bidder and fails to perform.

Party Information

Debtor(s):

Massrock Inc

Represented By
John Saba

Movant(s):

David M Goodrich (TR)

Represented By
Jeffrey S Shinbrot

Trustee(s):

David M Goodrich (TR)

Represented By
Jeffrey S Shinbrot

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10:00 AM

1:16-11387 Real Estate Short Sales Inc

Chapter 7

#4.00 Motion for relief from stay

WELLS FARGO BANK N.A.

fr. 7/17/18; 9/18/18

Docket 233

Tentative Ruling:

Off calendar. The sale has closed and is no longer property of the Estate.
(dkt. #294)

prior tentative ruling (9/18/18)

This concerns 625 S. Berendo. Wells Fargo asserts a total claim of \$815,000+ and has recorded its notice of default and notice of sale. The current monthly payments of \$4,029.47 and there are 85 now due and owing. Wells Fargo holds the first trust deed and has filed a broker price opinion that the value is \$655,000.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Movant(s):

WELLS FARGO BANK, N.A.,

Represented By
Sean C Ferry

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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1:16-11387 Real Estate Short Sales Inc

Chapter 7

#5.00 Motion for relief from stay

U.S. BANK NATIONAL ASSOC.

fr. 1/23/18, 2/27/18, 7/17/18, 9/18/18; 11/6/18

Docket 190

Tentative Ruling:

The Court approved the sale on 12/4/18. It is to close by a date certain in December. Continue without appearance to January 8, 2019 at 10:00 a.m. to make sure that the escrow closed.

prior tentative ruling (11/6/18):

Continued by stipulation to 12/18/18 at 10:00 a.m. Trustee is awaiting a short-sale approval.

prior tentative ruling (9/18/18)

THIS MOTION IS CONTINUED BY STIPULATION WITH THE TRUSTEE TO NOVEMBER 6, 2018 AT 10:00 A.M. HOWEVER, AS NOTED IN THE FOLLOWING WRITE-UP, THERE IS A SERIOUS QUESTION AS TO WHETHER THE OKLAHOMA STREET PROPERTY SHOULD BE ABANDONED. I ASSUME THAT MS. CUEVA WILL BE IN COURT ON SEPTEMBER 18. MS. ZAMORA, PLEASE ATTEND (BY PHONE IS FINE). I WANT TO SET A MOTION(S) TO ABANDON FOR NOVEMBER 18 AND WE NEED TO TALK ABOUT IT.

write-up for hearing on 9/18/18 created prior to the stipulation to continue

Per the statement filed on 9/7 by U.S. Bank, although the property is now in escrow, it is for a significantly lower sum than the payoff quote given by the Bank to the Trustee. There has been no request for a short sale proposal and the Bank has not approved a short sale. The Bank requests immediate relief from stay.

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Tuesday, December 18, 2018

Hearing Room 303

10:00 AM

CONT... Real Estate Short Sales Inc

Chapter 7

The Debtor has filed a statement. Basically, Ms. Cueva is saying that the Debtor is working out a loan modification with U.S. Bank and that this will be approved if the Trustee will abandon the property. There are some insurance issues. The Debtor is asking that Ms. Zamora abandon the property.

Where does the Trustee stand on this? Is there any reason not to abandon? The automatic stay will end when that occurs.

prior tentative ruling (2/27/18)

At the hearing on 2/13, the Court was informed that Ms. Cueva had not made the payment of the settlement amount. Berendo has been vacated and is being put on the market. The Trustee and Ms. Cueva are attempting to work out a modified compromise motion on the Oklahoma Ave. property. Nothing further filed as of 2/25.

prior tentative ruling (1/23/18)

This concerns the Oklahoma Ave. property. U.S. Bank has a secured claim of \$1.439+ million. It recorded its notice of default in 2/15 and a sale was scheduled, but never held. The current monthly payments as of 11/17 are \$7,057.47. A total of 73 payments were not made. The fair market value of the property is \$1.1 million.

The property was transferred by Cueva to Debtor without the Bank's consent. The Bank received relief from stay in the prior bankruptcy case.

In this case, there was an adequate protection order on which the Debtor defaulted multiple times.

Proposed Ruling

Under the proposed compromise, the Oklahoma Property will be released from the Estate. As to the stay concerning the Debtor, relief from stay will be granted. It is up to Cueva, et al, to work out something with the Bank.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

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CONT... Real Estate Short Sales Inc

Chapter 7

Movant(s):

U.S. Bank National Association,

Represented By
Kristin A Zilberstein
Kelly M Raftery
Merdaud Jafarnia

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

1:16-11387 Real Estate Short Sales Inc and Real Estate Short Sales, Inc.

Chapter 7

#5.01 Emergency Motion for Temporary Stay and for
Permanent Stay Pending Appeal

Docket 309

Tentative Ruling:

Debtor has filed a motion for stay pending appeal as to the sale of the Oklahoma Ave. property. The basis of the motion is that the order approving the sale was in violation of the ruling in *Clear Channel Outdoor, Inc. v. Knupfer (In re PW, LLC)*, 391 B.R. 25. 40 (BAP 9th Cir. 2008). Here only the administrative creditors will benefit - not the junior lienholders or other priority or unsecured creditors. Movant seeks a 30 day stay to allow the BAP to determine whether a longer stay should be given. This will resolve the issue of a rush to the courthouse.

The requirements for a permanent stay are met in this case:

(1) Appellants are likely to succeed on appeal as there was not overbid procedure and the sale was in violation of *Clear Channel*

(2) There will be irreparable injury to the appellants in that this is the long-time residence of Nancy Cueva and Julio Molica, who is very sick. The ownership of this corporation is closely held by the Molica/Cueva family. Once the sale closes, it will be difficult to unwind it.

(3) There is no substantial harm to Appellee. The property will still be there at the end of the appeal process.

(4) There is no harm to the public interest.

Trustee's Opposition

None of the moving parties have standing to file the notice of appeal since this is not a surplus case and none of the moving parties are creditors in this case. Further the opposition to the sale was not only late, but it was filed by the corporate debtor without counsel. The arguments are made on behalf of Cueva and Molica, who are equity holders.

There was a revised compromise order (dkt. 226), which Debtor and Cueva have violated and they should be held in contempt [a motion for this has been filed]. They were to cooperate fully with this sale and the marketing of the property. Instead they have interfered and opposed and obstructed

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CONT... **Real Estate Short Sales Inc and Real Estate Short Sales, Inc.** Chapter 7

the Trustee's efforts.

How was new counsel paid? If money from the Debtor, was that property of the estate? If from Cueva/Molica, they filed a chapter 13 on 12/3/18 (1:18-bk-12905-MB) and this payment should be disclosed there.

The Debtor, Cueva and/or Molica have now filed 11 cases in the last 20 years. They have not been paying mortgage, property taxes, or insurance on this property.

The deadline for the short sale is 1/18/19 and a stay would prevent that, causing the Estate to lose the \$60,000 that it will receive. Creditors are to share in the distribution of these funds.

As to the four elements:

(1) They will not succeed on the merits since they do not have standing to appeal. Further, in the late opposition, Cueva misrepresented that Jeffrey Hagen was her chapter 13 attorney, which is not the case. The two objections raised by new counsel were not raised in the Later Opposition and those are thus prohibited on appeal. Beyond that, they are not correct - no overbid procedure is required and the reasons are set forth in the sale motion papers. The *Clear Channel* argument was raised by Weed, who is not appealing and has now filed a claim (#8). The Court was correct as to the *Clear Channel* analysis. Also, there is harm to the Estate since the short-sale approval will soon expire.

(2) The moving parties will not suffer irreparable injury. They have no pecuniary interest in the property or in the estate. They have had months to arrange their move and they had agreed in March 2018 to provide full cooperation. Cueva and Molica have occupied this property for over 7 years without making mortgage payments.

(3) The Trustee, Estate's Creditors, and Buyer will suffer substantial harm in there is a stay of the sale order. The short sale approval will expire and the Senior Lender will proceed to obtain relief from stay and foreclose.

(4) There is a harm to the public interest. Stays are not favored. And there is a public interest in relying on decisions and order of the Court. The Trustee should be able to negotiate and sell assets to good faith purchasers in a timely manner with out indefinite delays.

Propose Ruling

The movants do not have standing. This is an insolvent debtor and Cueva/Molica are shareholders. Thus the motion can be denied for that

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CONT... **Real Estate Short Sales Inc and Real Estate Short Sales, Inc.** **Chapter 7**

reason alone.

However, it is also denied on other factual grounds. Cueva has managed through a series of bankruptcies to remain in this property for years without making mortgage payments. The equity that could have benefitted junior secured creditors and other creditors and perhaps the equity holders has been eaten up by the failure of she and her husband to pay "rent" to the Estate so that mortgage, tax, etc. payments could be made. Over the course of those years, she has made many promises, few (if any) have been fulfilled. The time has now run out.

Unless this sale closes under the terms of the short-sale agreement, there will be no money for anyone as the senior secured creditor will be granted relief from stay since there is no bar to that motion given the amount owed, the value of the property, and the lack of adequate protection. The Moving Parties will lose this property, no matter what. It is not unreasonable for there to be a carve-out for the Estate so that administrative claims are paid. It is an added benefit that there be some money left to pay priority and unsecured creditors some part of their claims. And the public interest is served by carrying through on Court orders and other agreements made by the parties.

As to *Clear Channel*, that is discussed in the tentative ruling on the motion to sell.

As to the request for contempt, etc. as to Cueva - please set that for a hearing.

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Real Estate Short Sales, Inc.

Represented By
Daniel J McCarthy

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
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10:00 AM

1:16-11387 Real Estate Short Sales Inc and Real Estate Short Sales, Inc.

Chapter 7

#5.03 Trustee's Emergency Motion for order to compel compliance with order approving revised compromise and sale order, hold Nancy Cuevas and Debtor in contempt and set OSC re Contempt

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Real Estate Short Sales, Inc.

Represented By
Daniel J McCarthy

Trustee(s):

Nancy J Zamora (TR)

Pro Se

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Chapter 7

#5.04 Emergency Motion by buyer and trustee for Writ of Execution for possession of real property commonly known as 10351 Oklahoma Ave Chatsworth, CA 91311

Docket 0

Tentative Ruling:

- NONE LISTED -

Party Information

Debtor(s):

Real Estate Short Sales Inc

Represented By
Stephen L Burton

Real Estate Short Sales, Inc.

Represented By
Daniel J McCarthy

Trustee(s):

Nancy J Zamora (TR)

Pro Se

**United States Bankruptcy Court
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1:11-22424 Ronald Alvin Neff

Chapter 7

#6.00 Application for issuance of order to show cause for failure to appear at trial pursuant to subpoena of custodian Jessica Pena, of records and for sanctions

Docket 454

Tentative Ruling:

This is controlled by LBR 9020-1. Let's look at that rule and make sure that every step is properly taken. Remember that each time that service is required, it must be by personal service.

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Movant(s):

Douglas Denoce

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
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10:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#7.00 Application for issuance of order to show cause for failure to appear at trial pursuant to subpoena of witness Harvey Bilik and for sanctions

Docket 455

Tentative Ruling:

This is controlled by LBR 9020-1. Let's look at that rule and make sure that every step is properly taken. Remember that each time that service is required, it must be by personal service.

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Movant(s):

Douglas Denoce

Pro Se

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
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1:11-22424 Ronald Alvin Neff

Chapter 7

#8.00 Trial (date to deal with subpoena issues)

fr. 6/19/18, 8/27/18, 9/18/18; 11/20/18

Docket 422

Tentative Ruling:

prior tentative ruling (11/20/18)

Mr. DeNoce has filed copies of new subpoenae of Dr. Bilik and on Canyon Medical Group. Witness fees have been paid and these were personally served. Dr. Bilik is in Oakland. He can appear by phone for this initial appearance - although he was paid for a personal appearance. Records are to be produced in person or by mail. If by mail, with a declaration as required by law.

prior tentative ruling (9/18/18)

This is only as to Dr. Bilik and Canyon Medical Group, who did not appear on August 27.

The subpoenaed witnesses may appear by phone or in person and will be ordered back for January 30, 2019 at 9:00 a.m. when the continued trial will actually take place.

The Court has a copy of the proof of service on Doctor Bilik and on the Custodian of Records of Canyon Medical Group. If the either of them do not appear, Mr. DeNoce will be required to provide evidence that at the time that the subpoena was served, each witness was offered a witness fee of \$40 and reasonable mileage. FRCP 45(b)(1) as incorporated by FRBP 9016. See *CF&I Steel Corp. v. Mitsui & Co.*, 713 F2d 494, 496 (9th Cir. 1983).

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

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CONT... Ronald Alvin Neff

Chapter 7

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

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10:00 AM

1:11-22424 Ronald Alvin Neff

Chapter 7

#9.00 Status of subpoena on social security administration re:
Dr. Bilik

fr.10/30/18; 11/9/18; 11/20/18

Docket 0

Tentative Ruling:

Have you heard from the SSA?

prior tentative ruling (11/20/18)

Mr. DeNoce has filed copies of the subpoenas on Canyon Medical and on Dr. Bilik. See calendar #2. Is there anything that the Court needs to do to be sure that this trial goes forward as scheduled?

Party Information

Debtor(s):

Ronald Alvin Neff

Represented By
Michael D Kwasigroch

Trustee(s):

David Keith Gottlieb (TR)

Represented By
M Douglas Flahaut

**United States Bankruptcy Court
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10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#10.00 Debtor's motion for reconsideration of John P. Reitman, chapter 11 trustee for order approving settlement with Barrett S. Litt, et al

Docket 1563

Tentative Ruling:

Per the email that I sent (dkt. 1578), I am continuing this motion without appearance. The hearing will be on Jan. 29, 2019 at 10:00 a.m. If this is an inconvenient date, please advise me and the other parties.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Movant(s):

Shirley Foose McClure

Represented By
Andrew Goodman
Andrew Goodman
Yi S Kim
Yi S Kim
Robert M Scholnick
Robert M Scholnick
James R Felton
James R Felton
Faye C Rasch

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CONT... Shirley Foose McClure

Chapter 11

Faye C Rasch
Faye C Rasch
Faye C Rasch
Lisa Nelson
Lisa Nelson
Michael G Spector
Michael G Spector

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

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1:13-10386 Shirley Foose McClure

Chapter 11

#11.00 Opposition and motion to strike debtor's supplemental pleading to motion for reconsideration

Docket 1579

Tentative Ruling:

I am limiting this to the dates of filing and not to the content of these documents except as noted below.

From what I can ascertain from Ms. McClure's email, her opposition to the motion to strike, and from the clerk's office, on 11/20 McClure's helper attempted to file the exhibit package, which was part of the Motion to Reconsider, but did not have the motion itself with her. The clerk's office refused to take the exhibits because there was no motion to link them to. The helper came back the next day with the motion and everything was filed that day.

This was a technical error and because of the nature of the electronic docket we were not able to take the exhibits, which were clearly part of the motion. Had we still used paper dockets, they would have been filed on 11/20. Thus I am denying any motion to strike as to the Motion for Reconsideration filed on 11/21 on the grounds that it was late-filed.

However, the first supplemental pleading filed on 12/4/18 is another matter. Ms. McClure was given even more extra time than she requested to file her motion. There had not yet been an opposition filed - Litt's opposition and the Trustee's opposition to the motion to reconsider were both filed on 12/4 - so this cannot be seen as a reply to the opposition.

The motion to stike the First Supplemental Pleading and the errata and exhibits thereto will be granted. Should Ms. McClure seek to file these as a reply to the oppositions, she must tailor them to the issues raised in those oppositions.

Party Information

Debtor(s):

Shirley Foose McClure

Represented By

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CONT... Shirley Foose McClure

Chapter 11

Andrew Goodman
Yi S Kim
Robert M Scholnick
James R Felton
Faye C Rasch
Faye C Rasch
Lisa Nelson
Michael G Spector

Trustee(s):

John P. Reitman

Represented By
John P Reitman
Jon L Dalberg

**United States Bankruptcy Court
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10:00 AM

1:13-10386 Shirley Foose McClure

Chapter 11

#12.00 Status conference re: ch 11 case

fr. 1/24/2013, 4/30/13, 5/14/13, 7/23/13, 8/6/13,
9/17/13, 9/24/13, 11/19/13, 12/17/13, 1/21/14, 2/18/14,
3/11/14, 4/15/14, 5/6/14, 6/24/14, 9/9/14, 9/23/14,
10/7/14, 11/24/14, 1/6/15, 1/20/15, 2/10/15, 3/10/15,
4/28/15; 5/12/15; 9/29/15, 10/22/15, 12/8/15, 3/1/16,
6/7/16, 7/12/16, 8/16/16, 10/11/16; 12/20/16, 4/4/17,
5/16/17; 6/27/17, 7/11/17, 9/19/17, 11/14/17, 11/28/17,
12/19/17, 1/9/18, 3/19/18, 3/27/18, 5/1/18, 6/5/18; 6/26/18,
7/9/18; 8/7/18, 11/6/18

Docket 1

Tentative Ruling:

Continue without appearance to 1/29/19 at 10:00 a.m.

prior tentative ruling (11/6/18)

Ms. McClure has until Nov. 20 to file her motion for reconsideration. Meanwhile, she has filed an emergency motion for a stay pending the hearing on her motion for reconsideration. The Trustee opposes.

This would be a short stay, only so that the Court can adequately review the motion(s) to reconsider. While it took many months for the Court to do the detailed analysis and I believe that it is thorough and correct, it is appropriate to allow Ms. McClure to try to point out errors that may have been made. Given that the matters in the Superior Court are not immediate, the Court intends to grant the stay and will hear brief argument at the 11/6 status conference. It seems to me that the stay should expire 14 days after I enter my order on the motion(s) to reconsider.

Per the Trustee's status report filed on 10/31/18, the Maui property is in escrow.

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10:00 AM

CONT... Shirley Foose McClure

Chapter 11

Party Information

Debtor(s):

Shirley Foose McClure

Represented By

Andrew Goodman

Yi S Kim

Robert M Scholnick

James R Felton

Faye C Rasch

Faye C Rasch

Lisa Nelson

Michael G Spector

Trustee(s):

John P. Reitman

Represented By

John P Reitman

Jon L Dalberg

**United States Bankruptcy Court
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10:00 AM

1:09-19088 Tariq Kahn Afridi and Elizabeth Rose Afridi

Chapter 7

#13.00 Trustee's third status report

fr. 8/29/17, 1/23/18; 6/19/18

Docket 30

Tentative Ruling:

Per the status report filed on 11/19/18, the collection from Circuit City is continuing and the Trustee does not know for how long. Continue without appearance to Dec. 3, 2019 at 10:00 a.m.

prior tentative ruling (6/19/18)

Per the status report filed on 5/31/18, the estate is continuing to receive period payments from the Circuit City bankruptcy case. Continue without appearance to Dec. 18, 2018 at 10:00 a.m.

prior tentative ruling (1/23/18)

Per the status report filed on 12/27/17, the Trustee is receiving payments from the Circuit City bankruptcy estate and he does not know when these will cease. Continue without appearance to June 19, 2018 at 10:00 a.m.

Party Information

Debtor(s):

Tariq Kahn Afridi

Represented By
John D Monte

Joint Debtor(s):

Elizabeth Rose Afridi

Represented By
John D Monte

Trustee(s):

Brad D Krasnoff (TR)

Represented By
Brad D Krasnoff (TR)

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10:00 AM

:
Adv#: 1:05-01246 Christopher R. Barclay v. Saffas et al

Chapter 07

#14.00 Motion for leave to renew judgment

Docket 50

Tentative Ruling:

The Motion

On April 11, 2008, the assignor obtained a judgment against George and Kathleen Saffas and Specialized Building and Maintenance in the amount of \$213,967.61. The Defendants filed two bankruptcies, which stayed the execution for about 81 days. The judgment expired on 4/11/18. Counsel mis-calendared the renewal date and now wishes to renew the judgment. The prior bankruptcies terminated without discharge.

The statutory bankruptcy stay should not be counted as part of the limitation period.

The Opposition

On 12/3/18 the judgment debtors filed an opposition. [*Comment by the Court: The issue of receiving late notice of this motion is moot since the Court will consider the opposition that was filed. Also, given the issue, the meet and confer rule will not be enforced.*] As to the two grounds in the motion, the opposition asserts that neither the extension due to the bankruptcy nor the claim of excusable neglect are actionable.

The Reply

Since the judgment, the Saffases have been uncooperative in any attempts to collect. George did not even list this judgment in his bankruptcy filings. Only George Saffas filed a complete opposition. Specialized Building Maintenance did not respond to this motion and Kathleen did not file a declaratio of prejudice.

The papers were properly mailed to the P.O. Box. It is not relevant that George only received them two weeks later. So no extension to respond should be granted.

Proposed Ruling

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CONT...

Chapter 07

The life of a judgment is controlled by Cal.Civ.Proc. §683.020, which provides:

Except as otherwise provided by statute, upon the expiration of 10 years after the date of entry of a money judgment or a judgment for possession or sale of property:

- (a) The judgment may not be enforced.
- (b) All enforcement procedures pursuant to the judgment or to a writ or order issued pursuant to the judgment shall cease.
- (c) Any lien created by an enforcement procedure pursuant to the judgment is extinguished.

The Law Revision Commission comment states that "the 10-year period provided by Section 683.020 is not extended because enforcement of the judgment has been stayed or enjoined by court order or by operation of law." This 10-year period is not tolled for any reason, though the judgment can be extended through a timely separate lawsuit on the judgment under Cal.Civ.Proc. 683.050. *Pratali v. Gates*, 4 Cal.App.4th 632, 638 (Cal. Ct. of App. 2d App. Dist. 1992). Here no separate lawsuit was filed.

The filing of a bankruptcy might serve to extend the time to the extent that the automatic stay is in existence, but it is more likely that the extension only occurs if the automatic stay is in effect at the time that the judgment creditor seeks to renew the judgment. *In re Lobherr*, 282 B.R. 912 (Bankr. C.D.Cal. 2002). However, the later opinion of the California Court of Appeal in *Kertesz* is not so clear and it is possible that - notwithstanding the language of the Law Revision Commission, the existence of a bankruptcy at any time during the 10 years period might extend the time to renew and it is also possible that this will be extended by an additional 30 days under 11 USC § 108.

Either way, it is too late to renew the judgment under Cal.Civ.Proc. 683.020, for the 111 day maximum stay (only as to George) expired no later than 7/31/18 and this motion was filed on 11/9/18.

The analysis under *Kertesz v. Ostrovesky*, 115 Cal.App.4th 369 (Cal. Ct. of App. 4th App. Dist. 2004) does not save this judgment in terms of a renewal motion or as to a new judgment against Kathleen or Specialized Building Maintenance, neither of whom filed bankruptcy during the 10 year period. It also does not give the judgment creditor sufficient additional time to file a new complaint against George Saffas under Cal.Civ.Proc. 683.050.

The movant incorrectly used the California statute as to when a civil

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CONT...

Chapter 07

judgment is not longer subject to appeal and thus becomes "final." This judgment is pursuant to federal law. While there might be a discussion as to the finality of a federal judgment during the appeal period, that is not needed here. Fed.R.Bankr.Proc. 8002(a) requires that a notice of appeal be filed within 14 days after entry of the judgment. The judgment was entered on 4/11/08 and the extension referred to in the reply as an appeal period for a "unlimited civil case" has no relevance to this judgment. No appeal having been taken, the judgment became final no later than 4/26/08. Even adding an additional 111 days due to the bankruptcy stay when dealing with George, the latest possible date for an action under Cal.Civ.Code 683.050 as to George was 8/5/18 [81 days of the automatic stay plus an additional 30 days under 11 USC §108(c) plus an additional 14 days because the judgment was not final.] **Please note that the Court does not assert that the mathematics as to the calendar is correct.**

As to this motion, *Kertesz* does not apply since the judgment creditor did not seek a new judgment under Cal.Civ.Proc. 683.050. It also appears that it cannot file a new complaint during the relevant time extension even as to George Saffas and certainly not to Kathleen Saffas or Specialized Building and Maintenance since neither of them filed bankruptcy. [Obviously if either did file bankruptcy during the relevant period, there would be an applicable extension.]

As to the lack of response by Kathleen and Specialized - this is not relevant in that the burden is on the judgment creditor to show that the renewal of judgment falls within the boundaries of the statute. It has not done so as to Kathleen or as to Specialized.

The only remaining issue is whether the asserted miscalendaring constitutes excusable neglect so as to extend the statute of limitations until at least 11/9/18. There is no information as to how this occurred. A review of the docket for this adversary proceeding shows negligence, but not excusable negligence.

In 2010 the Trustee assigned this judgment to SM Financial Services Corp. By 10/15/13 the judgment was being held by Collection at Law, Inc. (the movant in this case), which requested and received an abstract of judgment. At that same time, they requested and received a writ of execution. In 2016 they sought a new writ of execution and did this yet again in 2017. On 10/21/17 they filed an updated memorandum of costs for accrued post-judgment interest of \$27,297.57. Attached was a "judgment interest

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calculator" that they had prepared which stated that the judgment was entered on 4/11/08. On 6/7/18 - some months after the judgment had expired - they filed another request for issuance of a writ of execution. Attached to this was a copy of the expired judgment. And yet they waited 5 months to seek this renewal.

Thus the Court finds that this does not qualify as a "miscalendaring" error or excusable neglect.

Deny this motion to renew under Cal.Civ.Proc. 683.020. The ruling as to Cal.Civ.Proc. 683.050 is dicta, but if the judgment creditor seeks to file a complaint under that provision it must do so with a motion that deals with the issues discussed here.

Adding the 81 days to the April 11, 2018 termination date for enforcement of the judgment extends it to July 1, 2018. This motion was filed on Nov. 9, 2018. the fact that the attorney miscalendared the date is not grounds to extend the filing time. There were months before the expiration date that the renewal could have been filed, but wasn't. The movant has not provided any authority that a miscalendared date serves this purpose.

While Cal.Civ.Proc. 473(b) speaks of excusable neglect by the attorney, it is clearly in the context of an ongoing litigation and does not apply to statutes of limitation. *Jackson v. Doe*, 192 Cal.App.4th 742, 755 (Cal. Ct. of App. 1st App Dist. 2011); *Maynard v. Brandon*, 36 Cal.4th 364, 372 (2005).

Deny the Motion.

Party Information

Defendant(s):

Kathleen Saffas

Represented By
Christopher Peters

Specialized Buildingmaintenan

Pro Se

George A Saffas

Represented By
Christopher Peters

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Movant(s):

Christopher R. Barclay

Represented By
John P Reitman
Peter J Mastan
Donald P Brigham
Jeffery Mukai

Plaintiff(s):

Christopher R. Barclay

Represented By
John P Reitman
Peter J Mastan
Donald P Brigham
Jeffery Mukai

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1:10-24968 Glen E Pyle

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Adv#: 1:11-01180 Berry v. Pyle et al

#15.00 Plaintiff's motion for order allowing plaintiff to file second amended complaint.

Docket 238

Tentative Ruling:

In the motion, Mr. Berry explains why he has delayed filing this amended complaint. It adds no new causes of action except those under bankruptcy law which correspond to the state law fraudulent conveyance ones. It also adds a claim for alter ego. It is still solely for the transfer of the property and does not seek non-dischargeability or denial of discharge.

No opposition received as of 12/16. Grant. Set a date for a response to the complaint.

Party Information

Debtor(s):

Glen E Pyle	Pro Se
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Defendant(s):

Glen E Pyle	Represented By Raymond H. Aver
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Sweetwater Management Company	Pro Se
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Glen E Pyle Irrevocable Trust	Represented By Raymond H. Aver
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Movant(s):

Marc H Berry	Represented By Marc Berry
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Plaintiff(s):

Marc H Berry	Represented By
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Marc Berry

Trustee(s):

Amy L Goldman (TR)

Represented By

Amy L Goldman

Amy L Goldman (TR)

Leonard Pena

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1:10-24968 Glen E Pyle

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Adv#: 1:11-01180 Berry v. Pyle et al

#16.00 Motion for sanctions against Glen Pyle, Sweetwater Management Company Inc and Glen E Pyle Irrevocable Trust

fr. 1/24/12, 4/10/12, 5/29/12, 6/19/12, 9/11/12, 10/2/12, 3/19/13, 6/4/13, 8/27/13, 11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14, 12/16/14, 3/10/15, 5/12/15, 6/2/15, 9/1/15, 9/8/15; 11/17/15; 1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16, 10/11/16, 1/17/17, 2/21/17, 3/28/17; 5/30/17; 7/25/17; 11/14/17; 2/27/17; 4/17/18; 6/26/18; 9/24/18, 9/25/18

Docket 9

Tentative Ruling:

I believe that this has been superseded by cal. #17 (dkt. #235). Thus it will go off-calendar.

prior tentative ruling (6/26/18)

I have prepared a ruling on this, but have one issue that I need to deal with. This motion refers to docket #9, a motion to compel further responses and for sanctions (filed on 12/12/11). On 11/8/12, the Court entered its order (dkt #33) that the production was complete and that the request for further sanctions is denied. For some reason the motion to compete remained on calendar on 6/14/13 and morphed into an issue of completing Pyle's deposition (dkt. 44, 45). It was continued to 8/27/13 and on 8/22, Berry filed his declaration "re non-compliance and sanctions" in which he requested sanctions against Mr. Aver and Pyle for the willful failure to comply with the Court's order setting a deposition. (dkt. 47) This was part of the status report.

I then continued that and the "sanctions motion." Although the issue of sanctions as to Aver was discussed and an oral OSC re sanctions was set, this was allowed to lapse and later was replaced by dkt. 199 (see cal. #8).

The sanctions motion against Pyle continued to trail the status conference, still identified as dk.t #9. No new sanctions motion as to Pyle was ever filed, but it is clear that everyone acted as though there was such a

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motion.

The issue is whether I actually have a motion before me on which I can rule. There is no specific written motion since I had denied #9. But there is an oral motion (sort of). Can this suffice or does Mr. Berry need to file a new motion?

prior tentative ruling (4/17/18)

I think that I should rule or should have ruled on this motion. But I am somewhat confused as to what is going on. From the joint status report (on which Mr. Berry was not a signatory), this motion may be part of the proposed settlement. But on 4/5/18, Mr. Berry filed a new motion for sanctions against Mr. Aver and that is set for hearing on May 29 at 10:00 a.m. Briefly reviewing that motion, I note that it is brought under 28 USC §1927 as applied to bankruptcy cases in *In re Schaefer Salt Recovery, Inc.*, 542 F.3d 90 (3d Cir. 2008). While I think that the reasoning of the Third Circuit is correct, I am bound by the holdings in the Ninth Circuit, specifically *In re Perroton*, 958 F.2d 889 (9th Cir. 1992); *Determan v. Sandoval (In re Sandoval)*, 186 B.R. 490 (9th Cir. BAP 1995); *In re DeVille*, 361 F.3d 539, 546 (9th Cir. 2004) (quoting with approval the BAP's summary that "28 U.S.C. § 1927 does not suffice because the Ninth Circuit does not regard a bankruptcy court as a 'court of the United States.'").

Thus, I can deny the motion for lack of jurisdiction (and suggest that Mr. Berry take an appeal and see if he can't make a new holding in the Ninth Circuit) or allow Mr. Berry to file an amended motion under some other authority.

Let's discuss a timetable for what decisions you want me to make. As always, phone appearances are allowed.

prior tentative ruling (7/25/17)

On July 21, Mr. Aver filed a status report as to discovery compliance. Pyle has appeared a three depositions for some 15 hours of questioning, In each case he has signed the deposition transcript without change. There were disputes as to whether Pyle or Aver ever received the original deposition transcripts.

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Pyle has also produced almost 800 pages of documents. Pyle has responded to all interrogatories. There has been no intentional or purposeful failure to comply with discovery.

Mr. Aver then goes through the history of the sanctions requests, Pyle's difficulty in receiving mail, settlement efforts, and asks that the request for sanctions be summarily denied.

No status report has been received from Mr. Berry.

Proposed ruling: The issue here is not money, but whether I will strike the answer and enter default. Although Mr. Aver makes Mr. Pyle sound like the most cooperative defendant who ever existed and Mr. Berry like the most aggressive plaintiff, this is not true. Although Mr. Berry has been aggressive, he has not been abusive. Even before Mr. Aver was part of this case, the Court was aware that Mr. Pyle was angry and uncooperative. While he has apparently now made all discovery, it was like pulling teeth to get it, particularly in a complete and comprehensible form. Thus, Mr. Berry's frustration was reasonable.

However, I will not strike the answer. But monetary sanctions are warranted, though I am unable to tell in what amount. The initial request was for \$4,000. But that was during the first year of the case. And while Mr. Berry represents himself, he is still entitled to a reasonable rate of compensation for time spent. I need a set of time records from Mr. Berry so that I can see exactly what was done and for how long. The actual issues for which I will award compensation are the following:

- (1) the second deposition, which I believe was due to the lack of production of documents.
- (2) any motions for production of documents that request new copies of documents that were illegible or unorganized or not produced in a prior request for production.
- (3)

prior tentative ruling (5/30/17)

I would like to complete this motion. I believe that all discovery has been

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done and this case should be set for trial. How do you recommend that this be resolved?

prior tentative ruling (1/17/17)

Since the deposition took place, I am not sure what is left of this motion. I continued the motion for summary judgment to 2/21/17 at 10:00 a.m. on stipulation of the parties. Please advise me whether this motion should also be continued to that date or whether it will be heard on 1/17. If it is to be heard on 1/17, I need to know what issues remain.

If no one appears (in person or by phone) on 1/17, I will continue this to 2/21/17 at 10:00 a.m.

prepared on 7/29/16:

On July 25, Mr. Berry filed a supplemental declaration (note that dkt. 111 and 112 are identical, though filed on different dates). One of the conditions for continuing the deposition was that Mr. Aver provide a written response to the settlement proposal at least 10 days before the continued date. This was not done and no written response was ever provided although Berry sent a reminder email to Aver. The deposition did take place on 6/29/16.

Further, neither Aver nor Pyle has ever returned vol 1 and vol 2 of the original deposition transcripts, although the signed signature pages have been received. There is be significant cost to creating copies for the trial.

When Berry sent notices to Pyle on 3/22/16, 4/26/16, and 5/25/16, the envelopes were returned by the Post Office marked "Return to Sender, no mail receptacle, unable to forward." Then he sent two other envelopes to Pyle at the same address on 6/2/16 and 6/9/16, they were returned marked "return to sender, undeliverable as addressed, (or) no such street, unable to forward."

As noted in my order of 3/29/16 (dkt. 103), since Pyle has apparently interfered with the receipt of his mail, he is deemed to be aware of the content and the Court will make rulings accordingly.

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He did appear at the agreed-to rescheduled date of the deposition. As to the documents to be produced, I do not know whether Mr. Berry gave a list, but none was filed with the Court as had been ordered in dkt. 103. Therefore apparently Mr. Pyle brought the required documents or none were actually required. As to the settlement offer, that is deemed rejected. I cannot force the parties to settle.

As to the deposition, Mr. Aver is to bring the original to the hearing on August 2 or is to provide a copy for the Court at his own expense.

Let's set a trial date and complete this case. This sanctions motion is not completed. I will continue it and may still strike the answer, etc. if Mr. Pyle and his attorney do not cooperate in the trial preparations, etc.

prior tentative ruling (6/7/16)

An initial partial ruling was entered on 3/29/16 and this was continued to 6/7. The Court is concerned that Mr. Pyle is still not accepting the mailings from Mr. Berry. However, Mr. Pyle seems to be in touch with his attorney. The parties have agreed by email to continue the deposition to 6/29/16 and to other matters set forth in Berry's email:

I will agree to continue the deposition and the document production on the following conditions:

- 1. You agree that your client Glen Pyle will appear on the new date as I have no contact with him. All notices/correspondence to him are returned by the post office.*
- 2. The deposition and document production are continued to the earliest of June 16, 17, 21, 28 or 29, at 10:00 am. at my office [I am not available from June 30, 2016, to July 19, 2016].*
- 3. All orders remain in full force and effect including, but not limited to, all of Judge Mund's orders regarding the consequences if Mr. Pyle is not compliant with the May 27, 2016, deposition/document production date; provided those orders are modified only by changing the date of his appearance for deposition and document production.*
- 4. The status conference will be continued from June 7, 2016, to the earliest date set*

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by Judge Mund's Clerk, and a copy of this letter will be sent to the clerk.

5. You will give me a written response to the settlement proposal (still not an offer) at least ten days before the deposition.

6. You fax or email me your agreement to the above before 4:00 p.m. today, the earlier the better because of the court reporter.

Although Mr. Aver is to prepare a written stipulation to that effect, the Court finds that the email exchange is sufficient for the Court to enter an order and will do so without anything further from the parties.

The motion is continued without appearance to 8/2/16 at 10:00 a.m. If this is not an available date for the parties, please notify the other side and choose an agreeable date from my self-calendering notice or appear by phone on 6/7 to set the hearing.

prior tentative ruling (3/1/6)

On 2/24/16, Mr. Berry emailed the parties and the Court that he will be appearing by Court Call. Can we go to trial without further delays?

prior tentative ruling (1/12/16):

These matters will be continued due to the health of Mr. Berry. He proposed a date, but the Court has not yet had confirmation of it from Mr. Aver. Please appear by phone or file something showing and agreed-to continued date.

prior tentative ruling (11/17/15)

At the hearing on 9/8, the Court ordered Mr. Pyle to produce all responsive documents to Mr. Berry by 10/30/15. If Mr. Pyle fails to do so, he will be unable to use the documents at trial. The production is also to include a list of all documents submitted. Mr. Pyle and Mr. Avery are to retain a set of all of the documents that they are submitting to Mr. Berry.

prior tentative ruling (9/8/15)

On 8/26/15 Mr. Berry filed a declaration that shows that once again Mr. Aver

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is not responding to correspondence or phone calls. He requests \$1,024 in sanctions against Mr. Aver.

On 8/28 Mr. Pyle filed his opposition. I have reviewed this and I have heard it all before in this and other cases.

No one should have to work as hard as Mr. Berry has to schedule discovery. The sanctions appear to be warranted assuming that Mr. Berry can link them to a code provision or other legal authority and follow the proper notice requirements for that code provision or other legal authority.

Per Mr. Aver's declaration, Mr. Pyle did not appear on 8/26 and no documentation provided?

Mr. Berry - do you really need this stuff? I know that a lot of things were previously provided. Is this enough for you to proceed? I would simply like to go to trial. I would give Mr. Pyle a few weeks to prepare his trial documentation and provide it. If there is anything that he does not provide, I would not let him put it in later.

prior tentative ruling (6/2/15)

At the last hearing, Mr. Aver was ordered to advise Mr. Berry of the date for Mr. Pyle's deposition. He was given a choice of dates and was to respond by 5/15. According to Mr. Berry, this did not occur. According to Mr. Aver, he notified Mr. Berry on 5/28 that he and Mr. Pyle would be available on July 8. Without having received this, Mr. Berry stated that he prefers 7/13/15, which is also an acceptable date for Mr. Mendoza. Since Mr. Aver is withdrawing, his wishes are no longer relevant and the deposition will take place on 7/13/15. Mr. Berry is to give written notice to Mr. Pyle and Mr. Mendoza of the time and date. If Mr. Aver does not withdraw, the deposition will still take place on 7/13 unless the parties agree to a different date.

As to sanctions, the ultimate one would be to strike Mr. Pyle's answer and enter a default. If he wishes to defend, he needs to appear for his deposition and cooperate in it.

prior tentative ruling (5/12/15)

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I received emails that this matter had settled, but it was to be documented. Mr. Berry filed a unilateral status conference that this has not occurred. I believe that it was Mr. Aver's task to document this and on April 17, 2015 Mr. Berry sent him a letter to this effect. In his unilateral status report, Mr. Aver states that the Debtor is unable to perform the settlement and wants to proceed to trial. He also will be filing a motion to withdraw as counsel.

Mr. Aver will be appearing by phone. Mr. Berry can also so appear. Let's set a date for Mr. Aver's motion to withdraw and a trial date if the Debtor is also on the phone. If he is not, then the motion to withdraw is to be filed no later than June 1 and will be heard on June 30 at 10:00 a.m. (Sorry for the delay, but I will be on vacation much of June.) I would like to get trial dates from Mr. Berry and these will be given to the Debtor and on June 30 we will set the actual trial. I will need a trial time estimate.

prior tentative ruling (3/10/15)

Mediation set for 3/24/15. Continue without appearance to 5/12/15 at 1:00 a.m.

prior tentative ruling (10/7/14)

The mediation has been delayed. Continue without appearance to 12/16/14 at 10:00 a.m.

prior tentative ruling (8/5/14)

This is scheduled for a settlement conference before Judge Ryan on 9/22/14. Continue without appearance to 10/7/14 at 10:00 a.m. I would like a status report for that hearing.

prior tentative ruling (3/11/4)

At the prior hearing this was continued to see if Mr. Pyle appeared for his deposition, which was scheduled for 2/10 at 10:00 a.m. at Mr. Berry's office. Per the status report filed 3/4, he did so and Berry intends to schedule another session at a mutually agreeable date. I will continue this as a holding date to make sure that future discovery is complied with.

prior tentative ruling (11/19/13)

At the hearing on 8/17 I determined that if Mr. Pyle is not well enough to be

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deposed, he is not well enough to be present at the trial. He is not to testify or be in the courtroom. Mr. Aver can defend and bring in other witnesses, but not documents that should have been produced and were not.

As of 11/18 at 8:27 a.m. Mr. Aver has not filed a status report. I have warned him many times about this and ordered him to respond to every email and letter that is sent by Mr. Berry. If this has not been done, I will set an OSC on sanctions as to Mr. Aver.

I want to set this for trial.

prior tentative ruling (8/27/13)

At the hearing on June 4 the issue arose of Mr. Pyle's health. I ordered Mr. Aver to contact Mr. Berry by 6/7 as to whether Pyle would be available for the scheduled 6/14 deposition. If not, Pyle was to submit a doctor's note to the Court as to the nature of the health disability and when he would be available. Once that was known, Aver and Berry were to reach a mutually agreeable date for the deposition.

Late filed status report states that Mr. Aver tried a variety of times to gain the cooperation of Mr. Pyle's treating physician, but did not receive anything until 8/19. The letter is attached. It says that Pyle had a heart attack. He is just started to be allowed some mild walking and it stay away from stress. He should stay away from stress for the "unforeseeable future given his guarded prognosis."

I will continue this and the sanctions motion to November 19 at 10:00 a.m. The parties will have the following choices:

- (1) Pyle - can be deposed in whatever reasonable location and time increments that he wishes and then we can set the matter for trial;
- (2) Berry - if Pyle is not able to be deposed, I will declare him unavailable and Berry can proceed to trial. Pyle will not be allowed to be present, to testify, or to provide any evidence not previously given in discovery. His attorney can call other witnesses and defend.

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prior tentative ruling (3/19/13)

At the hearing on 10/2, Mr. Pyle was ordered to bring in the originals of the checks (or the copies that he has if he does not have the originals) from 2000 through 2008. He was told that the court would make copies at the hearing. If he has the checks and no additional copies, he is to give them to the court reporter, who will make two sets of copies (1 for Mr. Berry and 1 for me) and return the set to Mr. Pyle.

prior tentative ruling (10/2)

At the hearing on 9/11, Mr. Pyle was ordered to mail to Mr. Berry by 9/14 clean copies of everything that he gave his accountant starting with calendar year 2005. He had said that he gave the accountant a written accounting, so that is to be included.

Nothing further received by the court as of 9/30.

prior tentative ruling (9/11/12)

A transcript of the 6/19 hearing has been filed. Mr. Pyle and the Trust were represented by Richard Singer. Pyle did not fully comply with my prior order to turn over an accounting, but I ordered the deposition to take place anyway. It was agreed by the parties that it would be on 8/8. Counsel in the Campbell §523 action indicated that he might also attend the deposition. The status conference and motion to compel were continued to 9/11 to see what came happened at the deposition.

I also ordered that the tax returns for 2009, 2010, and 2011 of both Pyle and the Trust be prepared and filed by 8/3. These are to be complete tax returns, both state and federal. By August 3, he was also to give an accounting and checks for the period of 2006, 2007, and 2008.

Mr. Berry filed a proposed Order and Findings on the motion to compel, etc. Does Debtor's counsel have any objections to it? [Mr. Singer has filed a motion to withdraw as attorney for Pyle, which is set for hearing on 10/2 at 10:00 a.m.]

Berry also filed a declaration as to compliance. According to this, some but not all of the documents were received late. The tax returns were not signed

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by Pyle or his accountant and there is not evidence that they were filed. The accountings were not received. The accountings are necessary to ascertain if Pyle used trust monies for his own personal expenses. Berry wishes the court to strike Pyle's answer and enter default.

prior tentative ruling (6/19)

A transcript of the 5/28 hearing has been filed. At that hearing I told Mr. Pyle that this was his last chance to provide complete and legible information or that I would not allow him to put on any evidence (written or oral) or income and expenses. I told him that I expected actual tax returns that had either been filed or where about to be filed and on the proper tax forms. Also as to the ledger sheets, he is to provide a check number and a statement as to where the money came from that was paid: the bank account number, the check number, and the date of the check.

The new accounting was due by 6/12 from 2009-2012. On 6/15 Berry filed a declaration as to the deficiency. We will go over this at the hearing.

prior tentative ruling (4/10)

On 4/3 Marc Berry filed a declaration of findings after hearing. These were mailed to debtor's counsel on 3/2 and he was asked about it on 3/12. No comments from debtor's counsel. Sanctions of \$4,000 were to be paid to plaintiff's counsel by 3/26, but nothing has been paid. Defendants were to provide an accounting of rental income from the date of transfer, but that was not provided.

Some documents were timely provided, but not the bank statements reflecting the rental income. Apparently many of these are in the possession of defendants' attorney, but have not yet been turned over to plaintiff.

Proposed findings are attached. I will sign these.

The deposition has been continued to May. Unless the sanctions are paid and the bank records turned over, I will strike the answer.

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prior tentative ruling (1/24)

This adversary proceeding seeking to avoid fraudulent transfers was commenced against debtor and related entities on 3/7/11. An amended complaint was filed on 3/29/11 to which defendants filed an answer on 5/6/11.

On 5/11/11, the chapter 7 trustee brought a motion to sell her avoidance rights to plaintiff in connection with the debtor's 2006 transfer of certain real estate assets into a trust in exchange for 40% of any potential recovery. Oddly, the 6/17/11 order approving the sale refers to certain business assets sold by the debtor to an employee prepetition.

The last meeting of creditors on this case was set for 12/16/11 and the docket does not show whether that meeting was continued.

Argument

On 4/6/11, plaintiff propounded requests to produce on all defendants but received no response despite several attempts to contact defendants' counsel. On 7/27/11, debtor served an inadequate and incomplete response; no responses were ever provided on behalf of the other defendants (Sweetwater Management Co., Inc. and Glen E. Pyle Irrevocable Trust). On 8/26/11, plaintiff's counsel sent defendants' counsel a "meet and confer" letter explaining that the responses were inadequate but received no reply or objections to production.

Several meetings of creditors were continued due to debtor being unable to locate records required by the trustee. At the 9/23/11 meeting, debtor said that it is financially impossible to provide any more of the records.

Plaintiff requests that the court compel production of the records that have not been produced (as outlined on p.7-10 of the motion) or that defendants provide a declaration regarding their diligent search or reasonable inquiry. Further, pursuant to FRCP Rule 37(a)(5) plaintiff requests that \$4,000 in sanctions be assessed against defendants for plaintiff's attorney's fees and costs in having to bring this motion.

Opposition

Contains debtor's declaration that he has "recently" given to his attorney "all

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available documents in my possession that, to the best of my ability, conform with Plaintiff's request." He also declares that no financial documents were ever prepared for Sweetwater. In addition, although the trust was formed in 2000, it had no assets until 2004 and as such, no financial documents exist covering the years 2002-04. The trust had no income until 2005 and did not file a tax return before that (the tax return has been provided to plaintiff). Plaintiff also declares that he cannot provide an accounting regarding the properties that were put into the trust because it would cost him \$5,000 which he does not have.

The opposition also contains a declaration by debtor's counsel that all the documents in his possession have been turned over to plaintiff and that debtor be allowed to prepare an accounting himself and submit it under penalty of perjury, since he does not have the funds to hire an accountant.

Analysis

To what extent have the documents produced to date resolved the issue? Is plaintiff satisfied with debtor's declaration as to the missing documents? If not, what else should be addressed? Will plaintiff accept an accounting prepared by the debtor?

As to sanctions, those must be granted pursuant to Rule 37(a)(5), even if the responses were provided after the motion was filed, unless (1) plaintiff had not attempted in good faith to obtain disclosure before filing the motion, (2) the nondisclosure was substantially justified or (3) an award of expenses is unjust. The opposition does not address the issue of sanctions directly but indirectly states that nondisclosure was substantially justified. If that is the case, why did defendants' counsel not provide that information to plaintiff's counsel before the motion was filed and kept ignoring plaintiff's counsel's requests?

Party Information

Debtor(s):

Glen E Pyle

Pro Se

Defendant(s):

Glen E Pyle

Represented By

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, December 18, 2018

Hearing Room 303

10:00 AM

CONT... Glen E Pyle

Chapter 7

Raymond H. Aver

Sweetwater Management Company

Pro Se

Glen E Pyle Irrevocable Trust

Represented By
Raymond H. Aver

Movant(s):

Marc H Berry

Represented By
Marc Berry

Plaintiff(s):

Marc H Berry

Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

Tuesday, December 18, 2018

Hearing Room 302

10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

- #17.00** Motion for order that defendants Glen Pyle and Glen E. Pyle irrevocable trust pay sanctions to plaintiff's counsel Marc H. Berry; and/or reinstate motion for sanctions filed 12-12-11 as amended there after by additional evidence proffered in the mutual belief that said motion was still pending

Docket 235

Tentative Ruling:

The initial sanctions motion was filed in 2011 and \$4,000 was awarded, but never paid. The balance of th motion was denied by "morphed into an issue of completing Pyle's deposition." Everyone believed that the initial sanctions motion was still alive. Because it is not clear that it is, Mr. Berry seeks to file this new motion to either restore the original motion to the calendar or to seek a new order. It is not requesting the document production and it is not seeking sanctions as to Mr. Aver or to the Sweetwater Management Company.

Mr. Berry is seeking \$22,233 in fees and also non-monetary sanctions in the manner of issue preclusion and deeming the allegations of the first amended complaint to be true and correct. [See docket 185 for the details of time records.]

No opposition received as of 12/16.

It seems to me that some of this is sanctionable and some is just the normal work needed on an adversary proceeding. It is hard to divide it up, but a fair guess would be 50%. Some of the delays were for possible settlements, which never came to fruition. Some were due to Pyle's lack of cooperation. Some are just office procedures such as instructing the paralegal to calendar and prepare orders.

Party Information

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 302 Calendar**

Tuesday, December 18, 2018

Hearing Room 302

10:00 AM

CONT... Glen E Pyle

Chapter 7

Debtor(s):

Glen E Pyle

Pro Se

Defendant(s):

Glen E Pyle

Represented By
Raymond H. Aver

Sweetwater Management Company

Pro Se

Glen E Pyle Irrevocable Trust

Represented By
Raymond H. Aver

Movant(s):

Marc H Berry

Represented By
Marc Berry

Plaintiff(s):

Marc H Berry

Represented By
Marc Berry

Trustee(s):

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, December 18, 2018

Hearing Room 303

10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#18.00 Pre-trial conference re: complaint to set aside or annul fraudulent conveyances; alter ego; and for damages

fr. 4/27/11, 6/15/11, 10/4/11, 1/24/12, 4/10/12, 5/29/12, 6/19/12, 9/11/12, 10/2/12, 11/6/12, 3/19/13, 6/4/13, 8/27/13, 11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14, 12/16/14, 3/10/15, 5/12/15, 6/2/15, 9/1/15, 9/8/15; 11/17/15; 1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16, 10/11/16, 1/17/17, 2/21/17, 3/28/17, 5/30/17; 7/25/17; 11/14/17; 2/27/18; 4/17/18, 9/25/18

Docket 1

Tentative Ruling:

Nothing further received as of 12/16/18.

prior tentative ruling (9/25/18)

The Trustee has filed a unilateral pretrial statement along with a declaration concerning the Defendant's failure to participate in the pretrial process. How does the Trustee wish to proceed? LBR 7016-1(f) lays out four options for sanctions for failure to comply with the pretrial statement process: continuance of the trial date (not relevant as no trial has been set); entry of the proposed pretrial order; an award of monetary sanctions against Pyle and/or Aver; or entry of judgment or striking of the answer and entering default.

prior tentative ruling (4/17/18)

It appears that the Trustee has taken over this adversary proceeding, which had been assigned to Mr. Berry. She now has counsel and a joint status report was filed. Pursuant to that status report, a settlement is in the works and is dependant on Mr. Pyle obtaining a reverse mortgage, which is in process. The parties stipulate to the following schedule:
5/10/18 - Trustee to submit a proposed Joint Pretrial Stipulation

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, December 18, 2018

Hearing Room 303

10:00 AM

CONT... Glen E Pyle

Chapter 7

5/24/18 - Defendants provide the Trustee with their portion of the Joint Pretrial Stipulation
6/1/18 - the Joint Pretrial Stipulation is filed.

Those dates are fine and the joint pretrial conference will be continue to June 26, 2018 at 10:00 a.m.

I would appreciate it if the parties would appear on 4/17 (phone is fine) just so that I can straighten out the status of the Berry motion(s) for sanctions.

Party Information

Debtor(s):

Glen E Pyle	Pro Se
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Defendant(s):

Glen E Pyle	Represented By Raymond H. Aver
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Sweetwater Management Company	Pro Se
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Glen E Pyle Irrevocable Trust	Represented By Raymond H. Aver
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Plaintiff(s):

Marc H Berry	Represented By Marc Berry
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Trustee(s):

Amy L Goldman (TR)	Represented By Amy L Goldman Amy L Goldman (TR) Leonard Pena
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, December 18, 2018

Hearing Room 303

10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01180 Berry v. Pyle et al

#19.00 Trial setting conference re: complaint
to set aside or annul fraudulent conveyances
alter ego and for damages

fr. 4/27/11, 6/15/11, 10/4/11, 1/24/12, 4/10/12, 5/29/12,
6/19/12, 9/11/12, 10/2/12, 11/6/12, 3/19/13, 6/4/13, 8/27/13,
11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14,
12/16/14, 3/10/15, 5/12/15, 6/2/15, 9/1/15, 9/8/15; 11/17/15;
1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16, 10/11/16, 1/17/17,
2/21/17, 3/28/17, 5/30/17; 7/25/17; 11/14/17; 2/27/18; 4/17/18,
6/26/18, 9/25/18

Docket 1

Tentative Ruling:

Nothing further received as of 12/16/18.

prior tentative ruling (6/26/18)

The Trustee has filed a unilateral pretrial statement along with a declaration concerning the Defendant's failure to participate in the pretrial process. How does the Trustee wish to proceed? LBR 7016-1(f) lays out four options for sanctions for failure to comply with the pretrial statement process: continuance of the trial date (not relevant as no trial has been set); entry of the proposed pretrial order; an award of monetary sanctions against Pyle and/or Aver; or entry of judgment or striking of the answer and entering default.

prior tentative ruling (4/17/18)

It appears that the Trustee has taken over this adversary proceeding, which had been assigned to Mr. Berry. She now has counsel and a joint status report was filed. Pursuant to that status report, a settlement is in the works and is dependant on Mr. Pyle obtaining a reverse mortgage, which is in process. The parties stipulate to the following schedule:
5/10/18 - Trustee to submit a proposed Joint Pretrial Stipulation

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, December 18, 2018

Hearing Room 303

10:00 AM

CONT... Glen E Pyle

Chapter 7

5/24/18 - Defendants provide the Trustee with their portion of the Joint Pretrial Stipulation
6/1/18 - the Joint Pretrial Stipulation is filed.

Those dates are fine and the joint pretrial conference will be continue to June 26, 2018 at 10:00 a.m.

I would appreciate it if the parties would appear on 4/17 (phone is fine) just so that I can straighten out the status of the Berry motion(s) for sanctions.

Party Information

Debtor(s):

Glen E Pyle	Pro Se
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Defendant(s):

Glen E Pyle	Represented By Raymond H. Aver
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Sweetwater Management Company	Pro Se
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Glen E Pyle Irrevocable Trust	Represented By Raymond H. Aver
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Plaintiff(s):

Marc H Berry	Represented By Marc Berry
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Trustee(s):

Amy L Goldman (TR)	Represented By Amy L Goldman Amy L Goldman (TR) Leonard Pena
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**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, December 18, 2018

Hearing Room 303

10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01181 Campbell v. Pyle

#20.00 Motion for order permitting plaintiff to file a third amended complaint

Docket 97

Tentative Ruling:

The Estate of Ian Campbell moves to file a third amended complaint. Counsel for the Estate has obtained a judgment in the superior court in the amount of \$154,342.58. Discovery is pending in this case.

The proposed amended complaint clarifies some of the entries as to "Trust" and names Pyle as an individual and as the trustee in place of that term. It then goes on to summarize the superior court action and attaches a copy of that judgment. It adds an assertion that Pyle is the alter ego of the Pyle Irrevocable Trust and that the Trust was created for a fraudulent purpose. It states that Pyle is an insider as to the Trust property. It then lays out more detail than exists in the second amended complaint. It retains the claims for relief under §523(a)(2) and §523(a)(4) and greatly expands the allegations under §727 as well as adding a claim for alter ego.

No opposition received as of 12/16/18. Grant set a date for response to the complaint.

Party Information

Debtor(s):

Glen E Pyle Pro Se

Defendant(s):

Glen Pyle Pro Se

Movant(s):

Ian Campbell Represented By
Barry P King

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, December 18, 2018

Hearing Room 303

10:00 AM

CONT... Glen E Pyle

Chapter 7

Plaintiff(s):

Ian Campbell

Represented By
Barry P King

Trustee(s):

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, December 18, 2018

Hearing Room 303

10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01181 Campbell v. Pyle

#21.00 Order to show cause as to how to proceed
with the claim for relief under 11 USC Sec.727

fr. 7/17/18; 8/21/18, 9/25/18, 11/6/18

Docket 87

Tentative Ruling:

Off calendar. The representative of the estate of Ian Campbell has taken over this case and is seeking judgment under §727 as well as §523.

Party Information

Debtor(s):

Glen E Pyle Pro Se

Defendant(s):

Glen Pyle Pro Se

Plaintiff(s):

Ian Campbell Represented By
Barry P King

Trustee(s):

Amy L Goldman (TR) Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, December 18, 2018

Hearing Room 303

10:00 AM

1:10-24968 Glen E Pyle

Chapter 7

Adv#: 1:11-01181 Campbell v. Pyle

#22.00 Status conference re: complaint for determination that debt is nondischargeable and/or to recover money

fr. 5/11/11, 6/22/11, 10/4/11, 1/24/12, 2/14/12, 4/24/12, 6/19/12, 9/11/12, 10/2/12, 11/6/12, 2/12/13, 3/19/13, 8/27/13, 8/27/13, 11/19/13, 2/25/14, 3/11/14, 4/22/14, 8/5/14, 10/7/14, 12/16/14, 3/10/15; 5/12/15; 6/2/15, 9/1/15, 9/8/15, 11/17/15; 1/12/16, 3/1/16, 6/7/16, 8/2/16, 9/27/16, 10/11/16, 1/17/17, 2/21/17, 3/28/17, 1/14/17, 12/19/17, 1/23/18, 3/27/18, 7/17/18, 8/21/18, 9/25/18, 11/6/18

Docket 1

Tentative Ruling:

The case is now proceeding. Continue to a future date.

prior tentative ruling (7/17/18)

The order granting relief from the automatic stay was entered on 1/30/18. On 3/6 Mr. Campbell appeared in Court and wanted to know about the order. He had not been served with a copy of the order - our fault. I directed him to my law clerk, but he left without seeing her. On March 1, 2018, Judge Hammock continued his OSC re: Dismissal (BC416442) to July 5 so that Campbell could seek a judgment (he already has a default) on declaration. As soon as he has obtained his judgment, I will be ready to proceed. When will he be filing his declaration, etc. in the Superior Court? Should this status conference be continued until after July 5 or can we proceed before that?

prior tentative ruling (1/23/18)

Mr. Campbell has filed the motion for relief from stay to complete the superior court case. Continue this status conference to March 27, 2018 at 9:00 a.m.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, December 18, 2018

Hearing Room 303

10:00 AM

CONT... Glen E Pyle

Chapter 7

to allow him to obtain his judgment in the superior court.

prior tentative ruling (12/19/17)

I have been in contact with Judge. Hammock of the Superior Court. He advises me that all that is left to do in his case is for Mr. Campbell to file a motion for default judgment. The automatic stay is preventing this.

To move that case forward, Mr. Campbell is to file a motion in this court for relief from the automatic stay. This is to be filed and served no later than December 26. It is to be served by mail and by email on Mr. Pyle. The hearing will be on January 23, 2018 at 10:00 a.m. in courtroom 303. Mr. Campbell is to use the mandatory court form: F 4001-1.RFS.NONBK.MOTION. This is available on the Court website at www.cacb.uscourts.gov/forms/local_bankruptcy_rules_forms. Or you can obtain a copy at the filing window in the clerk's office.

prior tentative ruling (11/14/17)

The Court advised Mr. Campbell of the continuance of the Berry v. Pyle case. He does wish to appear on 11/14. The Court has called Mr. Aver's office and asked them to contact Mr. Pyle (who is pro se in this adversary proceeding) to advise him that the hearing on 11/14 is going forward and that Mr. Pyle is to appear on the phone or in person and instruct him on how to use Court Call. The Court was notified that he also wishes to appear.

What is the status of the state court matter?

prior tentative ruling (3/28/17)

This adversary proceeding has been trailing the Berry v. Pyle one, but it has some different issues. How does Mr. Campbell wish to proceed?

prior tentative ruling (1/17/17)

I believe that Mr. Campbell was trying to obtain counsel. It is best to keep this together with Berry v. Pyle. Therefore continue it without appearance to 2/21/17 at 10:00 a.m. when I have a hearing on the motion for summary judgment in the Berry v. Pyle case.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, December 18, 2018

Hearing Room 303

10:00 AM

CONT... Glen E Pyle

Chapter 7

prior tentative ruling (8/2/16)

Mr. Campbell is now representing himself. How does he wish to proceed to get this ready for trial?

prior tentative ruling (3/1/16)

Per the status report filed by Plaintiff on 2/23/16, discovery is not complete. Plaintiff wants to take Mr. Pyle's deposition and audit the records.

This was trailing the Berry v. Pyle matter, but given Mr. Berry's health, I think that it should go forward alone and complete the discovery. Feel free to appear by phone at the status conference and let's get some dates to complete discovery. Please advise Mr. Pyle, who is not represented by counsel in this case, to appear in person or by phone.

prior tentative ruling (1/12/16)

This has nothing to do with Mr. Berry's health and Mr. Pyle is not represented by counsel. The 1/5/16 status report said that plaintiff will be ready for trial on 2/1. He figures 2-3 days. Let's set a trial date. Possible dates when there is a courtroom available are Feb. 16-17 and Mar. 23-24.

prior tentative ruling (9/8/15)

This has been trailing Berry v. Pyle. On 8/18/18 Plaintiff filed a status report. He is ready to go to trial in February 2016. He needs another 4-6 months to complete discovery, which includes Mr. Pyle's deposition and an audit of the records.

In htis case Mr. Pyle is not represented by counsel. So let's get a deposition date and move forward.

prior tentative ruling (3/10/15)

Mediation set for 3/24/15. Continue without appearance to 5/12/15 at 1:00 a.m

prior tentative ruling (10/7/14)

The mediation has been delayed. Continue without appearance to 12/16/14 at 10:00 a.m.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, December 18, 2018

Hearing Room 303

10:00 AM

CONT... Glen E Pyle

Chapter 7

prior tentative ruling (8/5/14)

The Berry v. Pyle matter is scheduled for a settlement conference before Judge Ryan on 9/22/14. Is this case part of the settlement conference? If so, continue without appearance to 10/7/14 at 10:00 a.m. If not, the status report filed by Plaintiff on 7/21 requests mediation. How do you wish to proceed?

prior tentative ruling (4/22/14)

On 4/8/14, counsel for plaintiff filed a status report. He believes that he will be ready for trial in 6 months. There is still discovery to be done, including completing Debtor's deposition. A mediation will take place in May or June. **Continue without appearance to August 5, 2014 at 10:00 a.m.**

prior tentative ruling (3/11/14)

This complaint is both under §523 and §727 as well as §§547 and 548. This has been trailing the Berry v. Pyle adversary proceeding. Mr. Mendoza attended the 2/10/14 deposition of Mr. Pyle, which is a joint deposition in both this case and the Berry v. Pyle case. Pyle is not represented by counsel in this adversary proceeding.

Mr. Mendoza, should this continue to trail the Berry adversary or are you ready to go forward on your own?

prior tentative ruling (4/24)

The parties have stipulated that plaintiff will have until 4/20 to file a Second Amended Complaint. A second amended complaint was filed on 4/20. Per the status report, the parties think that they need 4-5 months to complete discovery. The parties wish to mediate. Plaintiff has no co-counsel and may wish to propound more discovery and seek relief from stay as to certain trust assets.

Continue the status conference without appearance to June 19 at 10:00 a.m.

This will allow sufficient time for there to be a response to the second amended complaint and for new co-counsel to move forward. In the meantime, please complete a mediation order since it often takes weeks to schedule a mediation.

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, December 18, 2018

Hearing Room 303

10:00 AM

CONT... Glen E Pyle

Chapter 7

prior tentative ruling (2/14)

Per the status report filed on 1/24, the parties feel that they will not be ready for trial until late in 2012. Set a discovery cutoff date of 7/30/12. Although neither party wants mediation at this time, plaintiff's counsel is willing to attend mediation.

As of 2/12 there is no response to the amended complaint. What is the status of that? When do the parties think that mediation might be beneficial?

prior tentative ruling (1/24)

An answer was filed on 7/15. Plaintiff filed an amended complaint on 1/12, but this was done without leave to amend.

Counsel, in the future please confer with knowledgeable bankruptcy counsel before filing things in bankruptcy court. Your original cover sheet indicated that this was only a complaint to recover money under §§547 and 548. That is incorrect. The original complaint is under §523 and §727 (although that is not mentioned on the caption) and may include §§547 and 548 (although the uploaded copy has some pages missing, so I can't tell for sure). The amended complaint has all of these claims for relief. The court picked up that there was a §727 claim, but we should not have to review the complaint to do this.

prior tentative ruling (10/4)

Nothing further received as of 10/2.

prior tentative ruling (6/22)

As of 5/9 there has been no return on service on the summons. The plaintiff has counsel. There is no status report as of 5/8. If there is no appearance at the 5/11 hearing, I will issue and OSC re: dismissal for failure to prosecute.

Party Information

Debtor(s):

Glen E Pyle

Pro Se

**United States Bankruptcy Court
Central District of California
San Fernando Valley
Judge Geraldine Mund, Presiding
Courtroom 303 Calendar**

Tuesday, December 18, 2018

Hearing Room 303

10:00 AM

CONT... **Glen E Pyle**

Chapter 7

Defendant(s):

Glen Pyle

Pro Se

Plaintiff(s):

Ian Campbell

Represented By
Barry P King

Trustee(s):

Amy L Goldman (TR)

Represented By
Amy L Goldman
Amy L Goldman (TR)
Leonard Pena