

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: FEBRUARY 6, 2019
CALENDAR: 9:45 A.M. CHAPTER 7 CASES

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [17-11918](#)-A-7 **IN RE: GARZA CONTRACTING, INC.**
[BBR-7](#)

CONTINUED MOTION TO APPROVE STIPULATION FOR RELIEF FROM THE
AUTOMATIC STAY
11-20-2018 [[159](#)]

IRMA GARZA/MV
T. BELDEN
RESPONSIVE PLEADING

Tentative Ruling

Motion: Approve Stipulation for Stay Relief
Notice: Written opposition filed
Disposition: Granted in part, denied without prejudice in part
Order: Civil minute order

Secured creditor Irma Garza ("Garza") moves to approve a stipulation with the chapter 7 trustee for stay relief. That stipulation authorizes Garza to exercise her state law rights with respect to the debtor's (1) "money on deposit" \$486,680.95; (2) "workmen's compensation deposit" \$137,630.00; (3) "accounts receivable" \$579,927.22; (4) "machinery and equipment (liquidated by Trustee)" \$140,000; (5) "office furniture and equipment" \$6,000; and (6) "vehicles (liquidated by Trustee)" \$161,700. Creditor California Farm Management, Inc. ("CFMI") opposes the motion insofar as it seeks relief as to funds in the debtor's bank accounts or accounts receivable.

FACTS

Garza Contracting, Inc. ("GCI") was a farm labor contractor that operated in the southern end of the San Joaquin Valley. Garza was its sole shareholder.

GCI's Debt to Garza

In December 2014, Garza loaned \$800,000 to GCI. That loan was memorialized by a Secured Promissory Note and was purported to be secured by GCI's equipment, inventory, accounts receivable, bank accounts, and furniture, as well as tangible and intangible assets "as set forth in that certain Security Agreement of even date." The note provided for interest at 2.67% with payments commencing December 2015.

The Security Agreement granted Garza a security interest in "all of [GCI's] right, title and interest in and to all equipment, inventory, accounts receivable, bank accounts, furniture, and all other tangible and intangible assets." That agreement authorized perfection by filing a financing statement (UCC-1) and required GCI to "take all other steps which are reasonably necessary in order to vest and preserve in [Garza] a perfected security interest."

Shortly thereafter a UCC-1 financing statement was filed. That statement described the collateral as "All of [GCI's] right, title

and interest in and to all equipment, inventory, accounts receivable, bank accounts, furniture and all other tangible and intangible assets" and included "any proceeds therefrom."

GCI's Bankruptcy

In May 2017, GCI sought the protections of chapter 11.

Unable to reorganize, in August 2017, GCI moved to convert the case to chapter 7. By October 2017, the case converted to chapter 7 and Jeffrey M. Vetter was named the chapter 7 trustee.

In May 2017, Vetter sought court approval to sell assets (vehicles and equipment) by public auction, 11 U.S.C. § 363(b), employ an auctioneer, and to approve a carveout agreement with Garza and others. The court granted that motion. Thereafter, the auctioneer sold 26 estate vehicles and trailers.

Motion for Approval of Stipulation for Stay Relief

The trustee and Garza then executed a stipulation for stay relief authorizing Garza to "collect and dispose" of her collateral and to apply those proceeds against the \$800,000 GCI owed to her.

Garza then moved for approval of the stipulation, including stay relief. Fed. R. Bankr. 4001(d). The gist of her motion is that the estate assets for which stay relief are sought are of "inconsequential value to the estate" because they are "significantly overencumbered." Motion, p. 4, lines 6-8, November 20, 2018, ECF # 159.

LAW

The law of stay relief is well-known. Section 362(d) provides:

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

(1) for cause, including the lack of adequate protection of an interest in property of such party in interest;

(2) with respect to a stay of an act against property under subsection (a) of this section, if--(A) the debtor does not have an equity in such property; and (B) such property is not necessary to an effective reorganization;

11 U.S.C. § 362(d).

Section 362 allocates the burden of proof between the moving party and any respondent.

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

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues.

11 U.S.C. § 362(g).

DISCUSSION

Machinery, Equipment and Vehicles

The motion defines the scope of the relief that may be granted. Fed. R. Bankr. P. 9013. Here, the motion seeks approval of a stipulation for stay relief. The motion seeks leave for Garza to "enforce any and all of her rights and remedies in connection with the loans." Motion, p. 5, lines 17-22, November 20, 2018, ECF # 159. The stipulation offered in support of the motion seeks authority to "collect and dispose" of the collateral and to apply the proceeds to GCI's debt to Garza.

The puzzling part of the motion is that the machinery, equipment and vehicles for which stay relief is requested have already been sold: "Machinery and Equipment (liquidated by the Trustee)" valued at \$140,000 and "Vehicles (liquidated by the Trustee)" valued at \$161,700. Motion p. 2, lines 16-24, November 20, 2018, ECF # 164. And this court has already approved a carveout agreement with respect to these assets. Order, June 19, 2018, ECF # 142.

Since the motion describes these assets as liquidated by trustee, the court does not believe it possible to collect and dispose of them, as prayed by the motion. To the extent that the motion prays only that the trustee be compelled to turnover proceeds of these assets pursuant to the terms of the carveout agreement, the motion will be granted. Order, June 19, 2018, ECF # 142. All other relief as to machinery, equipment and vehicles will be denied.

Workmen's Compensation Deposit, Office Furniture and Equipment

By executing the stipulation for stay relief, the trustee has signaled his support for Garza's relief as to these assets. No creditor, including California Farm Management, Inc., opposes Garza's relief as to these assets. As a consequence, the motion will be granted as to these assets.

Money on Deposit and Accounts Receivable

There are at least two problems with Garza's argument of entitlement to the funds and accounts held by the debtor on the date of the petition.

First, and foremost, the grant to a security interest does not extend to after-acquired property. CFMI correctly notes that a security interest does not extend to after-acquired property of the same species unless the security agreement includes specific language so indicating. Cal. Com. Cod § 9204(a) ("security agreement may create . . . a security interest in after-acquired collateral"); *Id.* at Comment 2; *Power House Ford Engines, Inc. v. Wind Mach. Sales & Serv. (In re Wind Mach. Sales & Serv.)*, 161 B.R. 1000, 1011 (Bankr. E.D. Cal. 1993) (Ford, J.) ("Without an after-acquired property clause, the collateral afforded them by their security agreements would have been limited to collateral that the debtor had rights to at the time the security interest first attached.").

Here, the security interest contains no such forward-looking verbiage. And hence, Garza's security interest was limited to funds and accounts then in existence. The agreement was executed in December 2014. Garza has argued in her motion that she continued business operations over the course of time. From that, the court infers that the funds and receivables for which stay relief is sought are not the same as those in existence in December 2014.

Second, Garza has not sustained her burden of proof as to the lack of equity, which dovetails into her only factual argument for stay relief: inconsequential value. 11 U.S.C § 362(g)(1). Equity is fair market value less liens.

But the date at which the lack of equity is measured is critical. In the context of adequate protection, the Ninth Circuit Bankruptcy Appellate Panel has held that the date is that on which the creditor would have exercised its state law remedies. *In re Deico Electronics, Inc.*, 139 BR 945, 947 (9th Cir. BAP 1992) ("adequate protection analysis requires the bankruptcy court to first determine when the creditor would have obtained its state law remedies had bankruptcy not intervened ... The court must then determine the value of the collateral as of that date."). The movant has argued that equity should be measured presently. This court disagrees and finds the *Dieco Electronics* analysis persuasive. Here, no evidence has been offered as to when Garza would have exercised her state law remedies or whether equity existed on that date.

For these reasons the motion will be denied as to funds and accounts.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Irma Garza's motion has been presented to the court. Having considered the motion, oppositions, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is granted to the extent provided herein;

IT IS FURTHER ORDERED that to the extent that the motion seeks authorization for the trustee to turnover those proceeds of the sale of the machinery, equipment and vehicles to which Irma Garza is entitled by virtue of the carveout agreement, Order, June 19, 2018, ECF # 142, the motion is granted and Irma Garza may apply those proceeds to any pre-petition debt owed to her by Garza Contracting, Inc.;

IT IS FURTHER ORDERED that to the extent that the motion seeks stay relief as to the Workmen's Compensation Deposit, Office Furniture and Equipment described in the Motion to Approve Stipulation pp. 2-3, November 20, 2018, ECF # 159, the motion is granted;

IT IS FURTHER ORDERED that to the extent the motion seeks stay relief as to the Money on Deposit and Accounts Receivable described in the Motion to Approve Stipulation pp. 2-3, November 20, 2018, ECF # 159, the motion is denied;

IT IS FURTHER ORDERED that to the extent the motion is granted, Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived; and

IT IS FURTHER ORDERED that except as expressly provided herein, the motion is denied.