

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

March 27, 2019 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled 'Amended Civil Minute Order.'

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

- 2. The court will not continue any short cause evidentiary hearings scheduled below.**
- 3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.**
- 4. If no disposition is set forth below, the matter will be heard as scheduled.**

1. 18-25811-D-11 JLM ENERGY, INC. CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
9-13-18 [1]

2. 18-26517-D-7 BLESSINGS CARE, LLC MOTION FOR RELIEF FROM
SMR-1 AUTOMATIC STAY
PLM LENDER SERVICES, INC. 2-27-19 [25]
VS.

Final ruling:

This matter is resolved without oral argument. This is PLM Lender Services, Inc.'s motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings

demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

3. 17-20859-D-7 TIA LYN ELLIOTT MOTION TO AVOID LIEN OF
JLK-3 PERSOLVE, LLC
2-15-19 [69]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

4. 18-20774-D-11 S360 RENTALS, LLC CONTINUED MOTION FOR RELIEF
PP-1 FROM AUTOMATIC STAY
TRI-POINT CAPITAL, LLC VS. 12-21-18 [224]

5. 17-20689-D-7 MONUMENT SECURITY, INC. MOTION FOR RELIEF FROM
APN-3 AUTOMATIC STAY
TOYOTA MOTOR CREDIT CORPORATION VS. 2-15-19 [554]

Final ruling:

This matter is resolved without oral argument. This is Toyota Motor Credit Corporation's motion for relief from automatic stay. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. As the debtors are not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

6. 17-20689-D-7 MONUMENT SECURITY, INC. MOTION FOR RELIEF FROM
APN-4 AUTOMATIC STAY
TOYOTA MOTOR CREDIT 2-22-19 [564]
CORPORATION VS.

Final ruling:

This matter is resolved without oral argument. This is Toyota Motor Credit Corporation's motion for relief from automatic stay. The court's records indicate that no timely opposition has been filed and the trustee has filed a statement of non-opposition. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. As the debtors are not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

7. 17-20689-D-7 MONUMENT SECURITY, INC. MOTION FOR ADMINISTRATIVE
DNL-15 EXPENSES
2-27-19 [570]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to pay administrative tax claim of the Franchise Tax Board for \$800 is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

8. 17-20689-D-7 MONUMENT SECURITY, INC. MOTION TO SELL
DNL-16 2-27-19 [574]

9. 15-29890-D-7 GRAIL SEMICONDUCTOR MOTION TO COMPROMISE
DNL-56 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH BRAD WOODS
2-27-19 [1232]

Tentative ruling:

This is the application of the attorneys for the interim chapter 7 trustee in this case ("Counsel") for a first and final allowance of attorney's fees and costs. The debtor's major secured creditor, SummitBridge National Investments V LLC ("SummitBridge"), has filed opposition and Counsel has filed a reply. For the following reasons, the application will be granted in part.

SummitBridge contends, first, that the application is premature "given the status of this Chapter 7 case." SummitBridge's Objection, filed Feb. 27, 2019 ("Obj."), at 2:4. SummitBridge does not explain, however, and the court will assume the argument is based on the position SummitBridge takes in its opposition to the interim trustee's fee application - that determination of the fees to be awarded to multiple trustees in the same case must wait until the case is ready to be concluded. The same issues do not arise, however, with respect to counsel for multiple trustees. Counsel's services have been concluded; this is a first and final application and the court sees no reason to delay considering it.

Counsel seeks approval of fees in the amount of \$106,325, costs of \$1,794.22, and an additional \$3,000 for "filing, service and prosecution of this application after January 19, 2019" (the close of the period covered by the application). Counsel's Application, filed Feb. 8, 2019, at 1:25. In reply to SummitBridge's opposition, Counsel has submitted time sheets for such additional fees totaling \$8,352 plus costs of \$1,854, but continues to limit its request for supplemental fees and costs to the \$3,000 it originally estimated. SummitBridge believes the fees should be reduced by \$40,000. That figure is the approximate total of a number of Counsel's time entries SummitBridge has marked as either (1) excessive, (2) duplicative, and/or (3) not reasonably likely to benefit the estate or necessary to the administration of the estate. The court will address these three groups of objections below, but first, some general observations are in order.

The court is familiar with this case, which has been, from the beginning, a complicated case on several levels. Just a week into the case, the debtor and SummitBridge stipulated to the appointment of a chapter 11 trustee. The case has

been largely influenced by SummitBridge, which held (and holds) a blanket lien securing a very large claim, which meant the only way there could be a positive outcome for the estate would be for SummitBridge to consent to or the court to order the ongoing use of SummitBridge's cash collateral to administer the estate. Given the nature of the debtor's former business, there were environmental issues that necessitated the involvement of the relevant authorities in at least two states. And there were issues of abandonment versus retention of leased premises, issues complicated by questions about who would ultimately be responsible for the cleanup of the debtor's electronic and other hazardous waste.

Two months after the chapter 11 trustee was appointed, SummitBridge filed a motion to convert the case to chapter 7, expressing dissatisfaction with the chapter 11 trustee's performance and indicating it would prefer someone else as chapter 7 trustee. After several hearings, the motion was granted and an interim chapter 7 trustee was appointed. Counsel in the present application represented the interim chapter 7 trustee. As it had with the chapter 11 trustee, SummitBridge became dissatisfied with the positions taken by the interim chapter 7 trustee (Counsel's client), suggesting he was unwilling to properly administer the case and was improperly advocating dismissal of the case. At the meeting of creditors, about two months after the conversion, SummitBridge requested an election of a trustee, and a new permanent chapter 7 trustee was elected and appointed.

SummitBridge now objects to roughly 37% of the amount of fees sought by Counsel. In the first category - that Counsel's time billed was excessive, SummitBridge points to approximately 83 hours and just over \$30,000 billed to the Financing/Cash Collateral category for what SummitBridge characterizes as the preparation of "two simple, uncontested motions to extend use of cash collateral." Obj. at 4:25-26. The court sees the matter as much more complicated. Counsel and the interim trustee stepped into the case virtually in midstream and were faced with a steep learning curve in order to quickly understand and appreciate the ancillary aspects of the case even to be able to discuss the use of cash collateral. They were under pressure to get up to speed right away on environmental issues that could not wait. In addition, there were disputes with the lessors of the debtors' various facilities, which were, in turn, connected with the environmental issues.

Counsel's time entries are quite detailed and are broken down into what were often small increments of time - 0.2 or 0.3 hours. Many of the entries were for communicating with counsel for the predecessor trustee (the chapter 11 trustee) and with counsel for and representatives of SummitBridge itself. The process of getting up to speed was necessitated by SummitBridge's insistence on a new trustee when the case was converted. With a few minor exceptions, discussed below, the court finds no reason to second-guess the amount of time spent by Counsel in hindsight. Nor is the court persuaded Counsel's decision to assign two attorneys to the case, which SummitBridge challenges as unnecessarily duplicative, was facially unreasonable.¹ As already indicated, this is a relatively difficult case with many different aspects, including the element of unusual time pressure. The court notes that SummitBridge has often appeared at hearings by two attorneys; the court does not believe Counsel's utilization of two attorneys was any less reasonable than SummitBridge's.

Finally, SummitBridge challenges certain of Counsel's time entries as not reasonably likely to benefit the estate or as unnecessary to the administration of the estate. These are entries devoted to motions that ultimately were not filed and other similar actions. They include a motion to dismiss the case, a motion to set a chapter 11 administrative claims bar date, a motion to employ special counsel, a

motion to limit notice, and a motion to allow payments to be made to e-waste collectors. (The last of these was filed but later withdrawn, shortly after the permanent trustee was appointed.) The court will grant that this seems an unusually large number of motions to begin but not complete. However, the standard is whether particular services were reasonably likely to benefit the estate or necessary to the administration of the estate at the time the services were rendered, not when they are reviewed with the benefit of hindsight.

The court notes that the trustee's time to complete and file the above motions was cut off by SummitBridge's decision to replace Counsel's client as the trustee. The court sees no basis in the time sheets or the record to second-guess Counsel's and its client's decisions to prepare these motions. The court views similarly the trustee's decision to request denial without prejudice of his predecessor trustee's motion to abandon certain personal property. SummitBridge claims Counsel's services connected with that request "harmed the estate by delaying the eventual abandonment of the subject assets and leading to potential additional administrative claims for hundreds of thousands of dollars by the impacted landlords." Obj. at 5:26-28. The court is familiar with the difficulties the current trustee has faced in abandoning these assets and will not act as Monday-morning quarterback in regards to the decision made by Counsel and its client.

Having said that, the court is concerned with one issue raised by SummitBridge - the amount of time spent on Counsel's application for employment and this fee application. It is clear from the nature of the legal research performed, as reflected in the time entries as a whole (see below), that a new attorney did a considerable amount of work on the case. The court will not pick through all the time entries, but does find that the time spent on the application to employ Counsel, 7.8 hours by one attorney and 2.5 hours by the attorney apparently supervising him, for a total of \$2,987 in fees, was excessive for what was obviously a routine application, supporting declaration, and order. Further, the time spent on this fee application, 8.7 hours by one attorney and 16.8 hours by the supervising attorney, for a total of \$9,147, was excessive for work comprising merely the preparation of the fee application and supporting documents. That is, this amount did not include any fees for work performed in response to SummitBridge's opposition.

Counsel seeks, however, only \$3,000 for services performed after February 19, 2019, which was its original estimate, and is not seeking the remaining \$7,206 of the fees and costs actually incurred during that period. Roughly half of the \$10,206 total of fees and costs included in the supplemental time sheets was attributable to this fee application. Because Counsel has discounted those fees, the court finds no need to reduce the total amount requested based on the excessive amounts billed for the employment and fee applications.

SummitBridge's annotations to Counsel's time sheets raise two other issues that should be addressed. First, one of Counsel's attorneys billed for his travel time at his normal hourly rate, for total fees of \$2,075, whereas he should have billed at half that rate. Second, some of the research done by Counsel's new associate should have been unnecessary or was excessive, and the estate should not have to bear its cost.² For the travel time and unnecessary research time, the court will deduct \$2,000 from Counsel's fee request. Accordingly, the court will allow \$106,325 less \$2,000, or \$104,325 in fees, plus the original \$3,000 estimate for the period after February 19, plus the original cost amount, \$1,794.22, for a total of \$109,119.22.

The court will hear the matter.

- 1 The court recognizes that Counsel utilized the services of three other attorneys for minor amounts of time.
- 2 Legal research re authority for chapter 7 trustee's motion to operate business, 3.0 hours; legal research re local rules applicable to monthly operating reports, 0.3; legal research re motion to set chapter 11 administrative bar date, 2.0; review bankruptcy rules and statutes to ensure that trustee's application to employ [Counsel] complies with all requirements, 1.3; legal research re authority for motion to limit notice, 1.4.

12. 18-22453-D-7 ECS REFINING, INC. MOTION TO ABANDON
HSM-6 3-8-19 [1040]

13. 18-22453-D-7 ECS REFINING, INC. MOTION TO ABANDON
HSM-7 3-8-19 [1044]

14. 18-22453-D-7 ECS REFINING, INC. MOTION TO EMPLOY TRANZON ASSET
HSM-8 STRATEGIES AS AUCTIONEER(S)
AND/OR MOTION TO SELL O.S.T.
3-8-19 [1047]

Tentative ruling:

This is the application of the interim chapter 7 trustee in this case (the "trustee" or "interim trustee") for a first interim allowance of attorney's fees and costs. The debtor's major secured creditor, SummitBridge National Investments V LLC ("SummitBridge"), has filed opposition and the trustee has filed a reply. For the following reasons, the application will be granted in part.

In his application, the trustee requested "an allowance of compensation in the amount of \$102,568.81 in fees and \$993.90 in expenses" (Trustee's Application, filed Feb. 8, 2019 ("Appl."), at 1:24-25), but limited his request for payment at this time to an interim fee of \$41,593.37 plus expenses of \$993.90. The \$41,593.37 figure is derived from application of the § 326(a) formula to the sums the trustee disbursed to vendors and creditors. The \$102,568.81 figure is based on application of the formula to those sums plus the sum the trustee turned over to his successor, the permanent chapter 7 trustee.

First, SummitBridge objects to any allowance of compensation based on application of the § 326(a) formula to the funds the trustee turned over to the permanent trustee. In his reply, the trustee claims "the amount requested does not include commissions on funds turned over" to the permanent trustee. Trustee's Reply, filed March 6, 2019, at 2:1-2. He adds that the issue of compensation based on funds turned over to the permanent trustee "is not presented in this interim application." *Id.* at 2:5-6. In fact, the application did expressly request "an allowance of compensation" of \$102,568.81 in fees and "the granting of Interim Trustee fees in the amount of \$102,568.81." Appl. at 8:6-7.

The court will construe the trustee's reply as a withdrawal of his request for the "allowance" or "granting" of fees of \$102,568.81 and, contingent on the permanent trustee's agreement, other than by default, will grant the application to the extent of \$41,593.37 plus \$993.90 in costs. That is, absent a concern on the part of the permanent trustee, the court does not agree with SummitBridge's second argument - that the court should delay consideration of the application until the permanent trustee's work is completed.

Finally, the court does not agree with SummitBridge that extraordinary circumstances exist for decreasing the trustee's fees below the statutory cap. It is clear SummitBridge disagreed with the trustee's strategy and positions in the case. However, as the court has explained in some detail in its ruling on the trustee's counsel's fee application, also on this calendar, the circumstances of the case made the trustee's performance of his duties difficult at best. The court has no trouble concluding that the trustee's actions under those circumstances more than satisfy the standard for approval of the maximum fee under § 326(a). See Fear v. United States Trustee (In re Ruiz), 541 B.R. 892, 896 (9th Cir. BAP 2015).

For the reasons stated, the application will be granted in part, assuming the concurrence of the permanent trustee. The court will hear the matter.

16. 19-21359-D-7 DEBRA SOLIZ MOTION TO DISMISS CASE
RLC-1 3-6-19 [5]

Tentative ruling:

This is the debtor's motion to dismiss this case on the ground it was accidentally filed and is a duplicate of a case filed earlier. The moving party utilized BK Attorney Services, LLC, to serve the notice of hearing (see DN 8), but the notice was served only on the debtor, her attorney, the chapter 7 trustee, and the Office of the U.S. Trustee. BK Attorney Services, LLC failed to serve all creditors (or any creditors), as required by Fed. R. Bankr. P. 2002(a)(4).

The court will consider continuing the hearing to give the moving party the opportunity to file a notice of continued hearing and serve it on all creditors. The court will hear the matter.

17. 18-27383-D-7 PAUL RAMIREZ CONTINUED MOTION TO AVOID LIEN
MB-1 OF SEQUOIA CONCEPTS, INC.
1-29-19 [13]

18. 18-20774-D-11 S360 RENTALS, LLC MOTION TO AMEND O.S.T.
WSS-3 3-22-19 [271]