UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

April 4, 2017 at 10:00 a.m.

1.	16-20912-A-11 PCB-4	SEAN SUH'S CARE HOMES, INC.	MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY 3-1-17 [143]

Tentative Ruling: The motion will be denied.

Law Offices of Peter C. Bronson, counsel for the revested chapter 11 debtor, has filed a first and final motion for approval of compensation. The requested compensation consists of $109,358.75 (including unearned fees of $2,550) and $802.85 in expenses, for a total of $110,161.60. The compensation covers the period from February 16, 2016 through February 24, 2017. The court approved the movant's employment as the chapter 11 debtor's attorney on March 7, 2016. In performing services, the movant charged hourly rates of $100 and $425.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

The motion will be denied for several reasons. First, the court will not approve any fees and costs incurred pre-petition. This case was filed on February 18, 2016, whereas the movant began working for the debtor on February 16, 2016. Pre-petition fees and costs are pre-petition claims. Assuming such claims were provided for in the plan, they should be paid according to the terms of the plan.

The motion is not clear what fees and costs are attributable to pre-petition services.

Second, the court will not approve any fees and costs incurred post-confirmation. The estate revested in the debtor upon plan confirmation when the plan was confirmed on December 5, 2016. Docket 134 at 3 ¶ 3.

The motion is not clear what fees and costs are attributable to post-confirmation services.

Third, the motion does not establish that the movant's hourly rate of $425 is reasonable. For instance, the motion has no evidence establishing the movant's experience as a bankruptcy attorney, much less as a chapter 11 attorney.

Fourth, while the motion splits the movant's services into categories, there is no corresponding reference to the time and services falling into each category. As a result, the court cannot determine whether the requested fees are reasonable and necessary.

Fifth, on the face of the motion, the requested compensation is not reasonable.

For example, from the start of the case until April 30, 2016 — a two and a half month period — the movant purportedly provided $39,780 in services to the debtor. Docket 146 at 3. Yet, during this period, the movant only:

(1) prepared and filed an approximately five-page motion to pay $2,500 in pre-petition wages, with a two-page declaration (Dockets 19, 20, 21);

(2) prepared and filed a one-page request for order shortening time (Docket 18);

(3) prepared and filed an typtical two-page motion to employ, with a two and one-half page declaration (Dockets 27 & 28);

(4) prepared and filed a list of equity security holders (Docket 25);

(5) prepared and filed a one-page disclosure of attorney compensation form (Docket 31);

(6) prepared for and attended one meeting of creditors (the movant did not attend the other meeting of creditors during the relevant period);

(7) prepared a three-page status report (Docket 33);

(8) assisted the debtor with two operating reports (Dockets 36 & 47); and

(9) prepared for and attended three court hearings (Dockets 23, 42, 49).

The court cannot conclude that the value of the above services is even close to $39,780. The motion will be denied without prejudice.

2.	16-25217-A-11 MJH-4	WEST LANE PROPERTIES INC.	MOTION TO APPROVE DISCLOSURE STATEMENT 2-10-17 [59]

Tentative Ruling: The motion will be conditionally granted.

The debtor asks for approval of its amended disclosure statement filed on February 10, 2017. Docket 59.

Subject to one condition, the motion will be granted and the disclosure statement will be approved. It contains adequate information and the detail necessary that will permit creditors to make an informed decision regarding the plan. See 11 U.S.C. § 1125(a).

The condition is that the order approving the disclosure statement must specify a deadline for the filing of objections to proofs of claim. The court does not see such a deadline in the amended disclosure statement.

3.	15-27448-A-7 16-2036 RESIDENCE INN BY MARRIOTT, LLC ET AL V. ODUM ET AL	JOHN/SHAWNTA ODUM NOS-1	MOTION TO INTERVENE 3-6-17 [37]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the plaintiffs, the

defendants, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

Geoffrey Richards, the trustee in the underlying chapter 7 case, moves to intervene in this adversary proceeding, seeking to continue with the prosecution of the claims asserted under 11 U.S.C. § 727.

Plaintiffs Residence Inn By Marriot, L.L.C. and Springhill SMC, L.L.C. filed the complaint in the instant adversary proceeding on February 26, 2016, seeking relief under 11 U.S.C. § 523(a)(2), (4), and (6) and 11 U.S.C. § 727(a)(2), (4), and (5). The filing of the complaint was timely, in accordance with a court order in the underlying case, extending the deadline for filing section 523 and 727 claims to February 26, 2016. Case No. 15-27448, Docket 25.

Sometime within the last several months, the plaintiffs dismissed the claims under section 523. The plaintiffs have indicated an intent to dismiss the section 727 claims as well. However, the trustee in the underlying case filed the instant motion to intervene as to the section 727 claims. Dockets 34, 35, 36.

Fed. R. Civ. P. 24(a), as made applicable here by Fed. R. Bankr. P. 7024, provides that "*On timely motion, the court must permit anyone to intervene who: (1) is given an unconditional right to intervene by a federal statute; or (2) claims an interest relating to the property or transaction that is the subject of the action, and is so situated that disposing of the action may as a practical matter impair or impede the movant's ability to protect its interest, unless existing parties adequately represent that interest.*"

In the Ninth Circuit, a party may intervene as a matter of right under a four-part test:

(1) the motion to intervene must be timely;

(2) the party must assert an interest relating to the property or transaction which is the subject of the action;

(3) the party must be so situated that without intervention the disposition of the action may as a practical matter impair or impede its ability to protect that interest; and

(4) the party's interest must be inadequately represented by other parties in the action.

United States v. State of Washington, 86 F.3d 1499, 1503 (9th Cir. 1996); see also Cedar-Sinai Medical Center v. Shalala, 125 F.3d 765, 768 (9th Cir. 1997).

The court will grant intervention of right. The motion is timely. It was filed within the 45-day deadline set by the court in an order entered on January 19, 2017. Docket 36; see also Fed. R. Bankr. P. 9006(a)(1)(C). Also,

even though the plaintiffs have stated their intent to dismiss the section 727 claims, they have not yet filed a request to dismiss the claims.

Additionally, this proceeding, although filed nearly a year ago, is still in the early stages. No discovery plan has been approved by the court yet. The status conference hearings were continued numerous times in order to provide the parties with opportunity to resolve the claims informally.

The trustee is charged with administering the bankruptcy estate, including opposing the debtor's discharge. 11 U.S.C. § 704(a)(6). In other words, the trustee has direct interest in the grant or denial of the debtor's discharge. He also has interest in the assets and/or transactions that would warrant discharge denial.

As the plaintiffs do not wish to prosecute the section 727 claims any longer, without intervention the trustee cannot protect the estate's interest in the grant or denial of the debtor's discharge. Without the plaintiffs' prosecution of the section 727 claims, the estate has no representation in this action. This warrants permitting the trustee's intervention in the prosecution of the section 727 claims.

Permissive intervention is also warranted. Fed. R. Civ. P. 24(b)(1) provides that "On a timely motion, the court may permit anyone to intervene who (A) is given a conditional right to intervene by a federal statute; or (B) has a claim or defense that shares with the main action a common question of law or fact." Permissive intervention requires:

1) an independent ground for jurisdiction,
2) a timely motion, and
3) a common question of law and fact between the movant's claim or defense and the main action.

Washington, 86 F.3d at 1506-07.

"In exercising its discretion, the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3).

In determining whether a motion to intervene as of right or permissively is timely, the court must consider the stage of the proceeding at which the applicant seeks to intervene, prejudice to other parties, and the reason for and length of delay. Washington, 86 F.3d at 1503; see also Bouman v. Pitchess, 158 Fed. Appx. 937, 939 (9th Cir. 2006).

11 U.S.C. § 727(c)(1) unequivocally authorizes a trustee to object to a debtor's discharge. The court has independent core jurisdiction over a trustee's objection to discharge. See 28 U.S.C. § 157(b)(2)(J). As discussed above, the motion is timely and the claims asserted by the plaintiffs here are the very claims the trustee is seeking to continue prosecuting. The trustee did not seek to prosecute the claims and expend estate resources until now because the plaintiffs were prosecuting the claims. There was no need for the trustee to spend estate resources in duplicative litigation.

There is no prejudice to any of the existing parties in the proceeding. The plaintiffs are not impacted whatsoever by the intervention and the debtor-defendants have been on notice of the claims since the adversary proceeding was filed approximately a year ago. Permissive intervention is also warranted.

The motion will be granted.

4. 17-21177-A-11 MONACO MOTEL L.L.C. STATUS CONFERENCE
2-26-17 [1]

Tentative Ruling: None.

5. 16-21585-A-11 AIAD/HODA SAMUEL MOTION TO
FWP-21 APPROVE SUBSTANTIVE CONSOLIDATION
3-7-17 [746]

Tentative Ruling: The motion will be granted.

The chapter 11 trustee seeks substantive consolidation of the assets and liabilities of St. Mena and St. Marcorious, L.L.C. with the assets and liabilities of the debtors' bankruptcy estate. St. Mena is owned 100% by the debtors.

St. Mena's assets include:

1) an unencumbered shopping center in Rio Linda, California (listed for sale at $2.5 million),

2) inventory from a pre-petition 98 Cent Store business (estimated value of $10,000),

3) personal property from a pre-petition My Beauty Barber College business (estimated value of $30,000), and

4) equipment from a pre-petition Meineke business (in the process of being sold).

Docket 749 at 3.

Aside from the United States' over $3 million lien against the Rio Linda shopping center, St. Mena's liabilities total approximately $86,400, including:

(i) a claim for approximately $44,141.82, by Sacramento County Community Development Department,

(ii) unpaid property taxes for approximately $24,377, by Sacramento County Tax Collector,

(iii) a claim for approximately $5,550.14, by Yesco,

(iv) unpaid water and sewer services for approximately $11,983, by Sacramento County Consolidated Utilities, and

(v) a claim for approximately $350.12, by Cisco.

Docket 749 at 3-4.

The trustee also seeks an order setting a 30-day bar date for the filing of pre-consolidation claims against St. Mena in this case.

The principal Ninth Circuit case dealing with substantive consolidation is Alexander v. Compton (In re Bonham), 229 F.3d 750 (9th Cir. 2000). In Bonham

the Ninth Circuit adopts the substantive consolidation standard promulgated by the Second Circuit. Bonham, at 766. In deciding whether to order substantive consolidation, courts must decide whether:

(1) "creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit;" or

(2) "the affairs of the debtor are so entangled that consolidation will benefit all creditors."

Id. (quoting In re Augie/Restivo Baking Co., Ltd., 860 F.2d 515, 518 (2nd Cir. 1988)).

"Orders of substantive consolidation combine the assets and liabilities of separate and distinct—but related—legal entities into a single pool and treat them as though they belong to a single entity."

Bonham at 764.

"*Hopeless entanglement can be established by proving that there has been an abuse of the corporate form and the other typical alter ego elements. Alternatively, where close interrelationships are established between the debtor and target entities, it will be presumed that the target's creditors did not rely on the separate credit of the targets, and a court is justified in ordering substantive consolidation in the absence of proof to the contrary by the parties opposing that relief.*"

Sharp v. Salyer (In re SK Foods, L.P.), 499 B.R. 809, 834 (Bankr. E.D. Cal. 2013).

A non-exhaustive list of relevant factors to evaluating alter-ego liability includes:

(A) Commingling of funds and other assets, failure to segregate funds of the separate entities, and the unauthorized diversion of corporate funds or assets to other than corporate uses,
(B) The treatment by an individual of the assets of the corporation as his own,
(C) Domination and control of the two entities by the equitable owners or managers of the entities,
(D) The disregard of legal formalities and the failure to maintain arm's length relationships among related entities, and
(E) The diversion of assets from a corporation by or to a stockholder or other person or entity, to the detriment of creditors, or the manipulation of assets and liabilities between entities so as to concentrate the assets in one and the liabilities in another.

SK Foods at 840-41.

The motion establishes that the debtors' and St. Mena's financial affairs were sufficiently entangled to warrant substantive consolidation. The debtors did not treat St. Mena as a separate legal entity. For instance, despite St. Mena's separate legal status as a limited liability company, the debtors declared in their schedules that they do not own any interest in a separate business entity. Dockets 31 & 65, Schedules B, Questions 19.

Next, Mr. Samuel testified at the meeting of creditors that:

- he considered St. Mena to be one with himself;
- rents from tenants at non-St. Mena shopping centers were paid to St. Mena;
- he considered payments to St. Mena to be payments to himself;
- St. Mena did not have a separate bank account;
- rents from St. Mena's Rio Linda shopping center were deposited in the debtors' personal bank account;
- income from St. Mena was used to pay expenses associated with non-St. Mena shopping centers;
- now defunct businesses operated by St. Mena pre-petition were funded from income generated by non-St. Mena shopping centers;
- St. Mena did not maintain records of the income it received from the debtors;
- he considers equipment used in the operation of St. Mena his own personal property.

Docket 751, Exs. 3, 4, 5.

Further, the trustee also discovered:

- no separate books and records for the operation of St. Mena, and specifically the Rio Linda shopping center, apart from the operation of the non-St. Mena shopping centers;
- no operating agreement for St. Mena;
- two non-St. Mena shopping centers, the Power Inn and Stockton Boulevard centers, were insured pre-petition under St. Mena's name;
- some leases at non-St. Mena shopping centers were under the name of St. Mena as opposed to the debtors.

Docket 749 at 2-3.

The debtors have not produced business records for themselves or for St. Mena. Docket 749 at 3.

The foregoing demonstrates entanglement of the assets and liabilities of the debtors and St. Mena — especially ongoing rents (the only source of income for St. Mena) and expenses among all the shopping centers — lasting for many years pre-petition. It also shows utter disregard for the separate legal entity status of St. Mena.

As some creditors of St. Mena have filed proofs of claim in this case, they seem to believe that St. Mena and the debtors are a single economic unit. The County of Sacramento and the City of Sacramento have filed proofs of claim in this case, seeking recovery pertaining to the Rio Linda shopping center. POCs 7 & 23.

Given the lack of records for both the estate and St. Mena and given the passage of time, no accurate identification and allocation of assets (including income) is possible.

More, even if possible, the benefits of undoing the entanglement are grossly outweighed by the costs, delay, and prejudice to creditors of such undoing. Substantive consolidation will benefit all creditors.

The trustee does not expect adverse tax consequences from the consolidation.

Therefore, the court will order the consolidation of the debtors' bankruptcy estate with St. Mena. All assets and all liabilities of St. Mena will be consolidated with the assets and liabilities of the estate, permitting the

trustee to administer St. Mena assets as estate assets and pay St. Mena liabilities as estate liabilities.

The court will also set a 30-day claims bar date for the filing of claims by St. Mena creditors in this case. The 30-day period shall start running from the day when such creditors have been noticed with the deadline. The motion will be granted.