UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

April 13, 2015 at 10:00 a.m.

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1. 12-30911-A-7 VILLAGE CONCEPTS, INC. MOTION TO
14-2054 ADW-1 INTERVENE
FLEMMER V. WEINER ET AL. 3-9-15 [30]

Tentative Ruling: The motion will be denied.

David Weiner; Lowell Robinson, trustee of the Robinson Enterprises Inc. Employee Profit Sharing Plan ("Robinson"); Carol Manly, trustee of the Manly Living Trust ("Manly"); Tanya Orrison, trustee of the Robert P. Orrison Trust ("Orrison"); and Johnny Massella, trustee of the Massella Family Trust ("Massella"), move to intervene in this adversary proceeding. The movants also assert that they are necessary and indispensable under Fed. R. Civ. P. 19, as made applicable here by Fed. R. Bankr. P. 7019.

The plaintiff, David Flemmer, the chapter 7 trustee in the underlying bankruptcy case, opposes the motion.

This adversary proceeding was filed on February 13, 2014 by David Flemmer against Mark Weiner, Nancy Weiner, individually and in their capacities as co-trustees of the Kopp Family Revocable Living Trust, and Park Village Corporation, Inc.

The debtor, Village Concepts, Inc., filed the underlying case as a chapter 11 proceeding on June 8, 2012. The case was converted to chapter 7 on September 11, 2013. The debtor sold new and used manufactured homes and managed mobile home parks. The defendants Mark Weiner and Nancy Weiner are trustees of the Kopp Trust and are also the debtor's president and secretary, respectively. The Kopp Trust is the debtor's main shareholder.

Castle Village, L.L.C., is a single asset limited liability company holding a 50% interest in a mobile home park in Ione, California. Redding Riverside Village, L.L.C., is another single asset limited liability company holding a 70% interest in a mobile home park in Redding, California.

On or about June 29, 2009, the debtor transferred its 100% interest in Castle Village and Redding Riverside to the defendant Park Village Corp. In exchange, the debtor received 100% of the outstanding and issued shares of stock of Park Village.

On or about June 30, 2009, Mark Weiner and Nancy Weiner cancelled the Park Village Corp. shares received by the debtor and reissued to themselves, in their capacities as trustees of the Kopp Trust, new shares comprising 100% of the outstanding and issued stock of Park Village.

At the time of the above transfers, the debtor was embroiled in construction

defect litigation with customers who had purchased mobile homes from the debtor between 2003 and 2005. Although the debtor settled the disputes in 2007, due to an apparent breach of the settlement, the claimants filed a lawsuit against the debtor in August 2009.

On February 20, 2014, the plaintiff filed an amended complaint. The complaint asserts six causes of action, including: (1) a fraudulent conveyance action pursuant to Cal. Civ. Code § 3439.04 and 11 U.S.C. § 544(b) and § 550; (2) a fraudulent conveyance action pursuant to Cal. Civ. Code § 3439.05 and 11 U.S.C. § 544(b) and § 550; (3) a claim for turnover under 11 U.S.C. § 542; (4) a claim to quiet title; (5) a preference claim under 11 U.S.C. § 547; and (6) a fraudulent transfer claim under 11 U.S.C. § 548.

Fed. R. Civ. P. 24(a) provides: "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).

Fed. R. Civ. P. 24(b)(1) provides: "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).

This adversary proceeding was filed on February 13, 2014. Discovery closed on December 11, 2014. Trial is set for April 27, 2015.

The addition of five defendants to this adversary proceeding at the eleventh hour before trial, without any opportunity to conduct discovery, would be prejudicial to the plaintiff trustee, as he has had no reason to prepare for litigation against anyone other than the named defendants.

In addition, to reopen discovery at this late stage of the proceeding would

delay the trial also and prejudice the plaintiff, as this adversary proceeding has been pending for well-over a year now.

While the movants assert that the lateness of this motion is excusable because it was made "in as prompt a manner as possible consistent with the first time the effected [*sic*] parties became aware of their crucial involvement in this adversary proceeding," the movants state nothing about when they first became aware of this adversary proceeding and its potential effect on their interests. Docket 32.

Moreover, the movant David Weiner is the attorney of record for the defendant Mark Weiner in another adversary proceeding in this bankruptcy case. In connection with this representation, David Weiner attended a mediation on May 2, 2014, which addressed this adversary proceeding as well as the other. David Weiner then has been aware of this adversary proceeding since at least May 2, 2014. Nevertheless, he has filed this motion as counsel for the movants, including himself, on March 9, 2015, about 10 months after the mediation. Hence, the court concludes that this motion is grossly untimely.

Further, none of the movants are asserting an interest relating "to the property or transaction which is the subject of the action."

While four of the movants hold stock pledges in the shares of Park Village Corp., the plaintiff does not have to avoid and/or recover the transfers of the Park Village stock. For the plaintiff to recover the interest in the Castle Village and Redding Riverside limited liability companies, he needs to avoid and recover only their transfer to Park Village Corp. Also, as Park Village Corp. was a newly formed entity, at the time the interest in the Castle Village and Redding Riverside limited liability companies was transferred, the stock of Park Village Corp. appears to have no value, absent the assets of Castle Village and Redding Riverside.

David Weiner's property interests are also unrelated to the property or transaction that is the subject of this action. He holds a partial security interest in the tenant leases of the Castle Village L.L.C., mobile home park. He also holds some junior security interest in the mobile home park owned by the Redding Riverside L.L.C.

On the other hand, the plaintiff seeks to recover only the debtor's membership interest in the two limited liability companies, Castle Village L.L.C., and Redding Riverside L.L.C. This adversary proceeding does not involve the assets owned by the limited liability companies. It was only the debtor's membership interest in the limited liability companies that was transferred and only that interest can be avoided and recovered.

David Weiner's protest that the plaintiff-trustee has no experience in running mobile home parks and David Weiner's interest in the assets of the limited liability companies will be impaired is meritless.

David Weiner's opinion about the trustee's experience in operating mobile home parks is a mere speculation, not supported by admissible evidence.

Also, this argument presumes that the trustee will recover the interest in the limited liability companies and will want to operate the mobile home parks. At this time, though, this is merely speculative.

More, the trustee is not allowed to run a business in chapter 7, absent court

authorization. See 11 U.S.C. § 721. If the trustee asks for authority to operate the mobile home parks, David Weiner will have the opportunity to appear and be heard, in the event his interests in the assets of the limited liability companies are at risk of being compromised by the trustee's operation.

And, even if the trustee were to decide to operate the mobile home parks and he himself does not have sufficient expertise to operate them, he is allowed to retain professionals to assist him in the operation. See 11 U.S.C. § 327(a) & (b).

David Weiner's contentions are unsubstantiated and purely speculative. They are not basis for permitting David Weiner to intervene.

Next, absent intervention, the disposition of the action will not as a practical matter or otherwise impair or impede their ability to protect their interests.

The movants' interests in property pertaining to the action will not be affected by the outcome of the action, if they are not allowed to intervene. If the plaintiff indeed recovers the transfers of the Park Village Corp. stock, his interest would be subject to the interests of anyone other than the named defendants. If the plaintiff were to seek to avoid or otherwise undo the transfers to the movants holding the stock pledges, he would have to initiate another action, naming them as defendants.

The court is not persuaded that mandatory or permissive intervention is warranted here. The motion is untimely and the movants' interests in assets pertaining to this action will not be compromised.

Finally, Fed. R. Civ. P. 19 provides that:

"(a) Persons Required to Be Joined if Feasible. (1) *Required Party.* A person who is subject to service of process and whose joinder will not deprive the court of subject-matter jurisdiction must be joined as a party if:

(A) in that person's absence, the court cannot accord complete relief among existing parties; or

(B) that person claims an interest relating to the subject of the action and is so situated that disposing of the action in the person's absence may:

(i) as a practical matter impair or impede the person's ability to protect the interest; or

(ii) leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest.

(2) *Joinder by Court Order.* If a person has not been joined as required, the court must order that the person be made a party. A person who refuses to join as a plaintiff may be made either a defendant or, in a proper case, an involuntary plaintiff.

(3) *Venue.* If a joined party objects to venue and the joinder would make venue improper, the court must dismiss that party.

(b) When Joinder Is Not Feasible. If a person who is required to be joined if feasible cannot be joined, the court must determine whether, in equity and good

conscience, the action should proceed among the existing parties or should be dismissed. The factors for the court to consider include:

(1) the extent to which a judgment rendered in the person's absence might prejudice that person or the existing parties;

(2) the extent to which any prejudice could be lessened or avoided by:

(A) protective provisions in the judgment;

(B) shaping the relief; or

(C) other measures;

(3) whether a judgment rendered in the person's absence would be adequate; and

(4) whether the plaintiff would have an adequate remedy if the action were dismissed for nonjoinder."

Fed. R. Bankr. P. 7019 prescribes that "Rule 19 F.R.Civ.P. applies in adversary proceedings, except that (1) if an entity joined as a party raises the defense that the court lacks jurisdiction over the subject matter and the defense is sustained, the court shall dismiss such entity from the adversary proceedings and (2) if an entity joined as a party properly and timely raises the defense of improper venue, the court shall determine, as provided in 28 U.S.C. § 1412, whether that part of the proceeding involving the joined party shall be transferred to another district, or whether the entire adversary proceeding shall be transferred to another district."

In Hendricks v. Bank of America, 408 F.3d 1127, 1135-36 (9th Cir. 2005), the Ninth Circuit held that "Rule 19 provides that a court must dismiss a civil action if it lacks personal jurisdiction over any 'necessary' and 'indispensable' party. Fed. R. Civ. P. 19(a)-(b); Takeda v. Northwestern Nat'l Life Ins. Co., 765 F.2d 815, 819 (9th Cir.1985) [. . .].

A party is 'necessary' if '(1) in [its] absence complete relief cannot be afforded among those already parties, or (2)[it] claims an interest relating to the subject of the action and is so situated that the disposition of the action in [its] absence may (i) as a practical matter impair or impede [its] ability to protect that interest, or (ii) leave any of the persons already parties subject to a substantial risk of incurring ... inconsistent obligations.' Fed. R. Civ. P. 19(a).

Whether a party is 'indispensable' is an equitable determination to be decided based on a variety of factors, including: first, to what extent a judgment rendered in the person's absence might be prejudicial to the person or those already parties; second, the extent to which, by protective provisions in the judgment, by the shaping of relief, or other measures, the prejudice can be lessened or avoided; third, whether a judgment rendered in the person's absence will be adequate; fourth, whether the plaintiff will have an adequate remedy if the action is dismissed for nonjoinder. Fed. R. Civ. P. 19(b)."

None of the movants are necessary or indispensable. As discussed above, the court can adjudicate the claims against the named defendants without the movants joining this adversary proceeding. Even if the court awards all the relief sought by the plaintiff, such relief would not affect the movants' interest in property pertaining to the litigation. It would not bind the

movants with respect to their interest in such property. Even without the movants, then, the disposition of the action will not as a practical matter or otherwise impair or impede their ability to protect their interests.

Neither the movants, nor the named defendants would be prejudiced by adjudication of the action in the absence of the movants. As described above, the plaintiff does not have to recover the transfer of the Park Village Corp. stock in order to recover adequate relief. Recovering the transfer of the interest in the two limited liability companies would provide the plaintiff with adequate relief, namely, recovering what the debtor had prior to the subject transfers. The motion will be denied.

2. 13-29214-A-7 JAMES/NICHOLE PINTO — MOTION TO
14-2234 ADJ-3 — APPROVE SETTLEMENT
MCGRANAHAN V. JEFFERLONE — 3-11-15 [23]

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 creditors, the debtor, the U.S. Trustee, 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.

The trustee and plaintiff in this adversary proceeding requests approval of a settlement agreement between the estate and Ronald Jefferlone, the father of Debtor Nichole Pinto, resolving a $12,000 preference clam.

Under the terms of the compromise, Mr. Jefferlone will pay $6,500 to the estate in full satisfaction of the claim.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the small amount at stake, given Mr. Jefferlone's limited assets, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

The court reminds the movant that the approval of settlement agreements should be sought in the main bankruptcy case and not in the adversary proceeding being resolved.

3. 14-30833-A-11 SHASTA ENTERPRISES — MOTION FOR RELIEF FROM AUTOMATIC STAY
DJP-1 — 3-24-15 [248]
CENTRAL VALLEY COMMUNITY BANK VS.

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, Central Valley Community Bank, seeks relief from the automatic stay with respect to a 1988 British Aerospace BAE 125 Series 800A Hawker Airplane. The plane has a value of $950,000 and the bankr's secured claim is approximately $1,853,276.

The court concludes that there is no equity in the plane and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors.

The court also notes that the trustee has filed a non-opposition to the motion. This is cause for the granting of relief from stay.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (2) to permit the movant to repossess its collateral, dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived.

4. 14-30833-A-11 SHASTA ENTERPRISES — MOTION FOR RELIEF FROM AUTOMATIC STAY
DL-1 — 12-8-14 [67]
REDDING BANK OF COMMERCE VS.

Tentative Ruling: The hearing on the motion will be continued for a final hearing.

The movant, Redding Bank of Commerce, seeks relief from stay as to 355 Hemsted Drive Redding, California.

Given that the court appointed a chapter 11 trustee in this case only on December 23, 2014, the court will continue the hearing on the motion to provide the trustee with time to evaluate and respond to the motion. Dockets 142 & 143.

5. 14-30833-A-11 SHASTA ENTERPRISES — MOTION FOR RELIEF FROM AUTOMATIC STAY
DL-2 — 12-8-14 [75]
REDDING BANK OF COMMERCE VS.

Tentative Ruling: The hearing on the motion will be continued for a final hearing.

The movant, Redding Bank of Commerce, seeks relief from stay as to 381, 391, 393 and 401 Hemsted Drive Redding, California.

Given that the court appointed a chapter 11 trustee in this case only on December 23, 2014, the court will continue the hearing on the motion to provide the trustee with time to evaluate and respond to the motion. Dockets 142 & 143.

6. 13-34541-A-11 6056 SYCAMORE TERRACE — MOTION FOR ENTRY OF DEFAULT JUDGMENT
14-2322 L.L.C. CAH-3 — 3-10-15 [30]
6056 SYCAMORE TERRACE, L.L.C. V. HONARDOOST ET AL.

Tentative Ruling: The motion will be denied.

The plaintiff, 6056 Sycamore Terrace, L.L.C., the debtor in the underlying bankruptcy case, moves for a default judgment against the defendants, Faran Honardoost and Jahan Honardoost, on three claims. It seeks a determination that the defendants have no interest in the debtor's real property and it further seeks a reconveyance of a deed of trust held by the defendants against that property.

Fed. R. Civ. P. 55(b)(2) provides that:

"A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals — preserving any federal statutory right to a jury trial — when, to enter or effectuate judgment, it needs to:

(A) conduct an accounting;
(B) determine the amount of damages;
(C) establish the truth of any allegation by evidence; or
(D) investigate any other matter."

The factors courts consider in determining whether to enter a default judgment include: (i) the possibility of prejudice to the plaintiff, (ii) the merits of the plaintiff's substantive claim, (iii) the sufficiency of the complaint, (iv) the amount at stake, (v) the possibility of a dispute over material facts, (vi) whether the default was due to excusable neglect, and (vii) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits. Valley Oak Credit Union v. Villegas (In re Villegas), 132 B.R. 742,

746 (B.A.P. 9th Cir. 1991).

According to the complaint, in April 2008, Jahan Honardoost loaned $300,000 to Hossein Bozorgzad. Although there are allegations in the complaint that this was an "investment" in a hotel being developed by Mr. Bozorgzad's Auburn Hospitality, L.L.C., the parties have been treated it as a loan.

In any event, Faran Honardoost, the wife of Jahan Honardoost at the time, did not know of the loan. When the financing for the project fell through in September 2008 and Mr. Bozorgzad was unable to pay back the $300,000 to Jahan, Jahan told Faran of the loan. In December 2008, Mr. Bozorgzad executed three deeds of trust in favor of Faran Honardoost and Jahan Honardoost, one deed against a real property in Livermore, California, securing a claim for $100,000, another deed against a real property in Pleasanton, California, securing a debt for $200,000, and a third deed against a real property in Auburn, California, securing a debt of $300,000.

The grantor and trustor under the deeds encumbering the Livermore and Pleasanton real properties is Mr. Bozorgzad in his individual capacity, as he owned those properties. The grantor and trustor under the deed encumbering the Auburn real property is Auburn Hospitality, L.L.C. Mr. Bozorgzad executed that deed in his capacity as a managing member of Auburn Hospitality, L.L.C. Docket 33, Exs. A- C.

In addition to granting the defendants security interest, the deed on the Auburn property also provided that: "This Deed of Trust is Recordable on January 31st 2009 at 12:00 pm (noon) if the note is not paid in full. Upon recording of this Deed of Trust, the Deed of Trusts [*sic*] recorded against parcel #098-0390-154 [(the Livermore property)] and parcel #948-0017-015 [(the Pleasanton property)] both located in Alameda County will be released and removed from the properties they are against." Docket 33, Ex. C at 1.

The deed against the Auburn property was recorded with Placer County on January 30, 2009.

In May 2012, Mr. Bozorgzad transferred the Pleasanton property to 6056 Sycamore Terrace, L.L.C., which filed the underlying bankruptcy case on November 14, 2013 and became a debtor in possession. The debtor filed the instant adversary proceeding on November 19, 2014.

The debtor and plaintiff seeks a determination that the defendants have no interest in the Pleasanton real property - the debtor's sole asset - and seeks a reconveyance of the deed securing the $200,000 debt owed to the defendants. This relief will be denied.

The debtor is not a party to the agreement requiring the defendants to reconvey the deed on the Pleasanton property upon recordation of the deed on the Auburn property. The only parties to the agreement are Auburn Hospitality, L.L.C., and the defendants. The debtor is conspicuously absent as a party to the agreement.

Even if the agreement had been entered into in connection with the other two deeds, on the Livermore and the Pleasanton properties, the debtor would still not be a party to the agreement because the debtor was not a party to those other two deeds. The debtor did not even own the properties subject to those deeds.

All three deeds are dated April 2008 and were recorded in January 2009. The debtor did not own the Livermore or Pleasanton property during those times. It was Mr. Bozorgzad who owned those properties during those times. This is evident from the fact that it was Mr. Bozorgzad who granted the defendants the deeds on those properties. Mr. Bozorgzad did not transfer the Pleasanton property to the debtor until May 2012.

The debtor cannot enforce an agreement to which it is not a party. The debtor has no standing to enforce the agreement requiring the defendants to reconvey the deed on the Pleasanton property.

Finally, even if the debtor were somehow the proper party in interest to seek enforcement of the agreement between Auburn Hospitality, L.L.C., and the defendants, the deed on the Auburn property was not recorded in accordance with the terms of the agreement.

The agreement states that the deed "is Recordable on January 31st 2009 at 12:00 pm (noon)." Docket 33, Ex. C at 1. And, recording of the deed - when it became recordable - is an express condition precedent to the defendants' obligation to reconvey the deed on the Pleasanton property.

But, the deed was not recorded when it became recordable under the agreement. The deed was recorded on January 30, 2009, one day prior to when it became recordable. Hence, while the deed on the Auburn property was recorded, the recording violated the terms of the agreement and it never gave rise to the defendants' obligation to reconvey the deed on the Pleasanton property.

The subject motion fails to address any of the foregoing. The court cannot grant the sought default judgment. The motion will be denied.

7. 14-28468-A-11 BUALAI WHITE — MOTION TO APPROVE AMENDED DISCLOSURE STATEMENT
MRL-4 — 3-12-15 [124]

Final Ruling: The motion will be dismissed without prejudice because it violates Fed. R. Bankr. P. 2002(b)(1) which requires "not less than 28 days' notice by mail of the time fixed (1) for filing objections and the hearing to consider approval of a disclosure statement." The notice of hearing for this motion states that the last day for filing objections to the debtor's amended disclosure statement (Docket 124, filed March 12, 2015) is March 30, 2015. Docket 125. Yet, that notice was filed and served only on March 12, 2015, giving parties in interest only 18 days notice of the time fixed for filing objections. This violates Rule 2002(b)(1). Docket 126. Accordingly, the motion will be dismissed without prejudice.

8. 14-28468-A-11 BUALAI WHITE — MOTION TO VALUE COLLATERAL
MRL-5
VS. THE BANK OF NEW YORK MELLON — 2-15-15 [71]

Final Ruling: This motion has been resolved by stipulation. See Docket 114.

9. 14-28468-A-11 BUALAI WHITE
MRL-6
VS. GSAA HOME EQUITY TRUST 2007-1

MOTION TO
VALUE COLLATERAL
2-15-15 [74]

Tentative Ruling: The hearing on the motion will be continued to allow the debtor to amend the motion and the respondent creditor to obtain an appraisal.

The debtor is asking the court to strip down the $456,032.49 only mortgage held by GSAA Home Equity Trust et al., of which U.S. Bank is a trustee, on a rental real property on Gratia Avenue in Sacramento, California. The property is also subject to a statutory lien held by Sacramento County in the amount of $3,148.74. See Docket 127, Amended Schedule D.

The debtor requests that the court value the property, based on her opinion as owner, at $220,000. The debtor is seeking to strip down the mortgage to $216,851.26 ($220,000 minus $3,148.74).

GSAA has filed a response, seeking an opportunity to obtain its own appraisal of the property.

The court will continue the hearing for two reasons, to allow the debtor to amend the motion, given discrepancies with the debtor's latest amendment of Schedule D, and to allow GSAA to obtain its own appraisal.

The motion states that GSAA's claim totals $456,032.49, whereas the debtor amended Schedule D on March 17, 2015, indicating that GSAA's claim is $327,996.71. This discrepancy in the record must be corrected. As the court continued the hearing on the motion once already - for 42 days - the court is not inclined to continue the hearing for longer than 30 days.

10. 14-28468-A-11 BUALAI WHITE
MRL-8
VS. FEDERAL HOME LOAN MORTGAGE CORP., AND JPMORGAN CHASE

MOTION TO
VALUE COLLATERAL
2-15-15 [80]

Tentative Ruling: The hearing on the motion will be continued to allow the debtor to amend the motion and the respondent creditor to obtain an appraisal.

The debtor asks the court to strip down the $470,968.39 first mortgage held by Federal Home Loan Mortgage Corporation (Ocwen Loan Servicing in Schedule D) on a rental real property on Guildford Way in Plumas Lake, California. See Docket 127, Amended Schedule D.

The debtor also asks the court to strip off a $87,281.64 second mortgage on the property, held by JPMorgan Chase Bank.

According to the motion, the property is also subject to a senior "statutory lien" held by Yuba County Tax Collector, in the amount of $12,000. See Docket 127, Amended Schedule D.

The debtor requests that the court value the property, based on her opinion as owner, at $200,000. The debtor is seeking to strip down the first mortgage to $188,000 ($200,000 minus $12,000) and strip off the second mortgage to $0.00.

Ocwen has filed a response, seeking an opportunity to obtain its own appraisal of the property.

The court will continue the hearing for two reasons, to allow the debtor to amend the motion, given discrepancies with the debtor's latest amendment of Schedule D, and to allow Ocwen to obtain its own appraisal.

The motion states that JPMorgan Chase Bank's claim totals $87,281.64, whereas the debtor amended Schedule D on March 17, 2015, indicating that JPMorgan Chase Bank's claim is $100,000. See Docket 127, Amended Schedule D. This discrepancy in the record must be corrected. As the court continued the hearing on the motion once already - for 42 days - the court is not inclined to continue the hearing for longer than 30 days.

11. 15-21575-A-11 BR ENTERPRISES, A CALIFORNIA PARTNERSHIP — STATUS CONFERENCE 2-27-15 [1]

Tentative Ruling: None.

12. 14-31890-A-11 JHH-2 SHAINA LISNAWATI VS. PENNYMAC HOLDINGS, L.L.C. — MOTION TO VALUE COLLATERAL 3-19-15 [76]

Tentative Ruling: The motion will be denied.

The debtor moves for an order valuing her 50% interest in a real property in Auburn, California, in an effort to strip down PennyMac Holdings' $485,361 mortgage on the property to $107,200 - representing her 50% property interest - and treat it as a partially unsecured claim.

The property is not the debtor's residence. The debtor contends that the value of the entire property is $214,400 and the value of her 50% interest in the property is $107,200. Docket 78 at 4.

First, the court will not permit the debtor to strip down the creditor's claim to the value of her 50% interest in the property, given that the debtor was the original and sole borrower on the loan, owned the entire property when she obtained the loan, and granted a security interest to the creditor in the entire property.

The debtor obtained the loan secured by the property in August 2007. POC 1 at 25, 29. She is the sole grantor and trustor under the deed of trust securing the loan, also dated August 2007. POC 1 at 9, 22. This means that the debtor was the sole owner of the property when she obtained the loan and granted a deed of trust to secure it.

Sometime before filing this case on December 6, 2014, the debtor transferred a 50% interest in the property to another person, a non-debtor.

The motion states nothing about when the debtor obtained the loan and granted the subject deed of trust, when she transferred interest in the property, to whom she transferred that interest, how much interest in the property she transferred to each transferee, and whether she obtained permission from the creditor or its predecessor in interest to make the transfer(s).

The court will not permit the debtor to reduce her liability on the loan by transferring partial interest in the property and then seeking to strip down the secured claim only to the value of her remaining interest in the property. This is inequitable.

If the debtor were allowed to do this, she could have transferred a 99% interest in the property to a non-debtor, retaining only a 1% interest in the property, and then asked the court to reduce her secured obligation to the value of her 1% interest in the property.

If this were permissible, as the original borrower the debtor would be utilizing section 506(a)(1) not only to value the creditor's collateral and strip down or strip off its secured claim to that value, but also to alter the collateral itself.

Second, 11 U.S.C. § 506(a)(1) provides that:

"An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

Here, however, the debtor is the court to value her secured obligation to the creditor based on "the value of [the] creditor's interest in the estate's interest in [the] property," as well as to reduce her secured obligation to the creditor based on the fact that she no longer owns 100% interest in the property.

The debtor transferred a partial interest in the property pre-petition to a non-debtor. There is no evidence that the creditor consented to that transfer.

Nothing in section 506(a)(1) permits the court to decrease or alter the creditor's security interest in the collateral originally pledged by the borrower. That would amount to determining the extent, validity, or priority of the creditor's interest in the collateral, for which an adversary proceeding is required. See Fed. R. Bankr. P. 7001(2). Such relief cannot be obtained on a motion.

Relief under section 506(a)(1) is limited to valuing the creditor's collateral for plan confirmation purposes. It is a bifurcation of the creditor's claim into secured and unsecured claims, where the new secured claim is based on the value of the creditor's collateral. It is not based on the court recognizing or determining a security interest held by the debtor that is different in type, extent or priority from the security interest originally pledged as collateral for the creditor's claim. Once again, such relief requires an adversary proceeding and it cannot be granted on a motion. Fed. R. Bankr. P. 7001(2).

Third, 28 U.S.C. § 1334(e) prescribes: "(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction— (1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and (2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327." This court's subject matter jurisdiction then is limited only to "property . . . of the debtor . . . and of property of the estate."

Given the debtor's transfer of a partial interest in the property, the creditor's claim is no longer secured solely by the debtor's interest in the property. It is now secured also by a non-debtor's interest in the property. As a result, the court cannot value the creditor's collateral under section

506(a)(1) because it requires the valuation of a non-debtor's interest in the property, over which the court does not have subject matter jurisdiction.

The court rejects the contention that when valuing a creditor's collateral, it can value only the debtor's interest in the property, in determining the extent to which the creditor is secured, while ignoring the non-debtor's interest in the property. Valuations under 506(a)(1) fix the secured portion of the creditor's bifurcated claim. To ignore a non-debtor's interest in the property would amount to depriving the creditor of part of its collateral.

The court is aware of no legal authority permitting this. Even if the court has the authority to do this, an adversary proceeding is required. See Fed. R. Bankr. P. 7001(2).

Fourth, the cited case of Assocs. Commercial Corp. v. Rash, 520 U.S. 953 (1997) is unhelpful. The debtor directs to the following language in Rash:

"*To separate the secured from the unsecured portion of a claim, a court must compare the creditor's claim to the value of 'such property,' i.e., the collateral. That comparison is sometimes complicated. A debtor may own only a part interest in the property pledged as collateral, in which case the court will be required to ascertain the 'estate's interest' in the collateral.*"

Rash at 961.

The language quoted by the debtor from Rash is dicta. The facts of that case did not involve the stripping off and/or stripping down of a claim secured by a real property in which the debtor owned only a partial interest. Rash concerned the valuation of a tractor truck the debtor desired to retain via his chapter 13 plan. The debtor owned 100% interest in the truck.

And, although the Supreme Court mentioned that "[a] debtor may own only a part interest in the property pledged as collateral," it never stated that it was permissible to strip the lien from the interest in property not owned by the debtor.

Fifth, the debtor's reliance on In re Toppmeyer, Case No. 11-30698, WL 3629048, at *1-4 (Bankr. S.D. Ill., Aug. 21, 2012) is inapposite. That case is only tenuously persuasive and it is not binding on this court.

More important, Toppmeyer stripped down "an in rem lien on an undivided 1/3 interest" in real property, where the lien was involuntary, based on a judgment entered against the debtor.

When a creditor records an abstract of a judgment, the resulting judicial lien attaches by operation of law only against the judgment debtor's interest in real property. If a debtor owns only one-third interest in real property, the judgment lien will attach only to that one-third interest. The judgment lien does not attach to anyone else's interest in the property because only the judgment debtor is subject to the judgment giving rise to the lien.

On the other hand, the lien here is voluntary and it is based on a note secured by a deed of trust on the entire property, including a 50% interest held by a non-debtor. As such, this court cannot modify the creditor's claim.

The court does not reach the merits of the debtor's valuation of the property.

13. 14-31890-A-11 SHAINA LISNAWATI
JHH-3
VS. BAYVIEW LOAN SERVICING, L.L.C.

MOTION TO
VALUE COLLATERAL
3-19-15 [80]

Tentative Ruling: The motion will be denied.

The debtor moves for an order valuing her 50% interest in a real property in Roseville, California, in an effort to strip down Bayview Loan Servicing's $408,153 first mortgage on the property to $91,472 - representing her 50% interest - and treat it as a partially unsecured claim.

The property is not the debtor's residence. The debtor contends that the value of the entire property is $182,944 and the value of her 50% interest in the property is $91,472. Docket 82 at 4.

First, the court will not permit the debtor to strip down the creditor's claim to the value of her 50% interest in the property, given that the debtor was the original and sole borrower on the loan, owned the entire property when she obtained the loan, and granted a security interest to the creditor in the entire property.

The debtor obtained the loan secured by the property in September 2005. She is the sole grantor and trustor under the deed of trust securing the loan, also dated September 2005. This means that the debtor was the sole owner of the property when she obtained the loan and granted a deed of trust to secure it.

Sometime before filing this case on December 6, 2014, the debtor transferred a 50% interest in the property to another person, a non-debtor.

The motion states nothing about when the debtor obtained the loan and granted the subject deed of trust, when she transferred interest in the property, to whom she transferred that interest, how much interest in the property she transferred to each transferee, and whether she obtained permission from the creditor or its predecessor in interest to make the transfer(s).

The court will not permit the debtor to reduce her liability on the loan by transferring partial interest in the property and then seeking to strip down the secured claim only to the value of her remaining interest in the property. This is inequitable.

If the debtor were allowed to do this, she could have transferred a 99% interest in the property to a non-debtor, retaining only a 1% interest in the property, and then asked the court to reduce her secured obligation to the value of her 1% interest in the property.

If this were permissible, as the original borrower the debtor would be utilizing section 506(a)(1) not only to value the creditor's collateral and strip down or strip off its secured claim to that value, but also to alter the collateral itself.

Second, 11 U.S.C. § 506(a)(1) provides that:

Here, however, the debtor is the court to value her secured obligation to the creditor based on "the value of [the] creditor's interest in the estate's interest in [the] property," as well as to reduce her secured obligation to the creditor based on the fact that she no longer owns 100% interest in the property.

The debtor transferred a partial interest in the property pre-petition to a non-debtor. There is no evidence that the creditor consented to that transfer.

Nothing in section 506(a)(1) permits the court to decrease or alter the creditor's security interest in the collateral originally pledged by the borrower. That would amount to determining the extent, validity, or priority of the creditor's interest in the collateral, for which an adversary proceeding is required. See Fed. R. Bankr. P. 7001(2). Such relief cannot be obtained on a motion.

Relief under section 506(a)(1) is limited to valuing the creditor's collateral for plan confirmation purposes. It is a bifurcation of the creditor's claim into secured and unsecured claims, where the new secured claim is based on the value of the creditor's collateral. It is not based on the court recognizing or determining a security interest held by the debtor that is different in type, extent or priority from the security interest originally pledged as collateral for the creditor's claim. Once again, such relief requires an adversary proceeding and it cannot be granted on a motion. Fed. R. Bankr. P. 7001(2).

Third, 28 U.S.C. § 1334(e) prescribes: "(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction— (1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and (2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327." This court's subject matter jurisdiction then is limited only to "property . . . of the debtor . . . and of property of the estate."

Given the debtor's transfer of a partial interest in the property, the creditor's claim is no longer secured solely by the debtor's interest in the property. It is now secured also by a non-debtor's interest in the property. As a result, the court cannot value the creditor's collateral under section 506(a)(1) because it requires the valuation of a non-debtor's interest in the property, over which the court does not have subject matter jurisdiction.

The court rejects the contention that when valuing a creditor's collateral, it can value only the debtor's interest in the property, in determining the extent to which the creditor is secured, while ignoring the non-debtor's interest in the property. Valuations under 506(a)(1) fix the secured portion of the creditor's bifurcated claim. To ignore a non-debtor's interest in the property would amount to depriving the creditor of part of its collateral.

The court is aware of no legal authority permitting this. Even if the court has the authority to do this, an adversary proceeding is required. See Fed. R. Bankr. P. 7001(2).

Fourth, the cited case of Assocs. Commercial Corp. v. Rash, 520 U.S. 953 (1997) is unhelpful. The debtor directs to the following language in Rash:

"*To separate the secured from the unsecured portion of a claim, a court must compare the creditor's claim to the value of 'such property,' i.e., the collateral. That comparison is sometimes complicated. A debtor may own only a part interest in the property pledged as collateral, in which case the court will be required to ascertain the 'estate's interest' in the collateral.*"

Rash at 961.

The language quoted by the debtor from Rash is dicta. The facts of that case did not involve the stripping off and/or stripping down of a claim secured by a real property in which the debtor owned only a partial interest. Rash concerned the valuation of a tractor truck the debtor desired to retain via his chapter 13 plan. The debtor owned 100% interest in the truck.

And, although the Supreme Court mentioned that "[a] debtor may own only a part interest in the property pledged as collateral," it never stated that it was permissible to strip the lien from the interest in property not owned by the debtor.

Fifth, the debtor's reliance on In re Toppmeyer, Case No. 11-30698, WL 3629048, at *1-4 (Bankr. S.D. Ill., Aug. 21, 2012) is inapposite. That case is only tenuously persuasive - it is not binding on this court.

More important, Toppmeyer stripped down "an in rem lien on an undivided 1/3 interest" in real property, where the lien was involuntary, based on a judgment entered against the debtor.

When a creditor records an abstract of a judgment, the resulting judicial lien attaches by operation of law only against the judgment debtor's interest in real property. If a debtor owns only one-third interest in real property, the judgment lien will attach only to that one-third interest. The judgment lien does not attach to anyone else's interest in the property because only the judgment debtor is subject to the judgment giving rise to the lien.

On the other hand, the lien here is voluntary and it is based on a note secured by a deed of trust on the entire property, including a 50% interest held by a non-debtor. As such, this court cannot modify the creditor's claim.

Finally, the motion will be denied because the court rejects the debtor's valuation of the property.

The debtor's valuation of the property in this motion ($182,944) is substantially lower from her valuation under the penalty of perjury in Schedules A & D ($225,650).

More, the debtor's valuation is internally inconsistent and it is a liquidation value for the property. The debtor discounted the value of the property by $79,500 due to it being "foreclosure imminent." Docket 82 at 3. Yet, she states that her valuation is not a liquidation value. Id. By discounting the property for being "foreclosure imminent," the debtor is proffering a liquidation value. When a property is labeled as "foreclosure imminent," the price is decreased in order for the property to be sold "as is" and in less time than what is needed to market a property for which there is no time pressure for sale. This is precisely what liquidation valuations are based upon.

The debtor's valuation is based on a decreased marketing price, on an "as is" sale due to many needed repairs, and on a decreased marketing period due to anticipated imminent foreclosure, given that Bayview obtained relief from stay as to the property on March 9, 2015. Docket 82 at 2-4; Docket 73.

14. 14-31890-A-11 SHAINA LISNAWATI
JHH-4
VS. OCWEN LOAN SERVICING, L.L.C.

MOTION TO
VALUE COLLATERAL
3-19-15 [84]

Tentative Ruling: The motion will be denied.

The debtor moves for an order valuing her one-third interest in a real property in Olivehurst, California, in an effort to strip down Ocwen Loan Servicing's $251,008 first mortgage on the property to $32,158.33 - representing her one-third property interest - and treat it as a partially unsecured claim.

The property is not the debtor's residence. The debtor contends that the value of the entire property is $96,475 and the value of her one-third interest in the property is $32,158.33. Docket 86 at 4.

First, the court will not permit the debtor to strip down the creditor's claim to the value of her 50% interest in the property, given that the debtor was the original and sole borrower on the loan, owned the entire property when she obtained the loan, and granted a security interest to the creditor in the entire property.

The debtor obtained the loan secured by the property in August 2007. POC 1 at 25, 29. She is the sole grantor and trustor under the deed of trust securing the loan, also dated August 2007. POC 1 at 9, 22. This means that the debtor was the sole owner of the property when she obtained the loan and granted a deed of trust to secure it.

Sometime before filing this case on December 6, 2014, the debtor transferred a 50% interest in the property to another person, a non-debtor.

The motion states nothing about when the debtor obtained the loan and granted the subject deed of trust, when she transferred interest in the property, to whom she transferred that interest, how much interest in the property she transferred to each transferee, and whether she obtained permission from the creditor or its predecessor in interest to make the transfer(s).

The court will not permit the debtor to reduce her liability on the loan by transferring partial interest in the property and then seeking to strip down the secured claim only to the value of her remaining interest in the property. This is inequitable.

If the debtor were allowed to do this, she could have transferred a 99% interest in the property to a non-debtor, retaining only a 1% interest in the property, and then asked the court to reduce her secured obligation to the value of her 1% interest in the property.

If this were permissible, as the original borrower the debtor would be utilizing section 506(a)(1) not only to value the creditor's collateral and strip down or strip off its secured claim to that value, but also to alter the collateral itself.

Second, 11 U.S.C. § 506(a)(1) provides that:

"An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest

. . . is less than the amount of such allowed claim."

Here, however, the debtor is not only asking the court to value her secured obligation to the creditor based on "the value of [the] creditor's interest in the estate's interest in [the] property."

In addition to that relief, the debtor is asking the court to reduce her secured obligation to the creditor based on the fact that she no longer owns 100% interest in the property, as she did when she incurred the claim secured by the property and when she pledged all 100% interest in the property as collateral for the claim.

The debtor transferred a partial interest in the property pre-petition to a non-debtor, with no evidence of consent from the creditor.

However, nothing in section 506(a)(1) permits the court to decrease or alter the creditor's security interest in the collateral originally pledged by the borrower. That would amount to determining the extent, validity, or priority of the creditor's interest in the collateral, for which an adversary proceeding is required. See Fed. R. Bankr. P. 7001(2). Such relief cannot be obtained on a motion.

The relief of section 506(a)(1) is limited merely to valuing the creditor's collateral for plan confirmation purposes. It is a bifurcation of the creditor's claim into secured and unsecured claims, where the new secured claim is based on the value of the creditor's collateral. It is not based on the court recognizing or determining a security interest held by the debtor that is different in type, extent or priority from the security interest originally pledged as collateral for the creditor's claim. Once again, such relief requires an adversary proceeding and it cannot be granted on a motion. Fed. R. Bankr. P. 7001(2).

Third, 28 U.S.C. § 1334(e) prescribes: "(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction— (1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and (2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327." This court's subject matter jurisdiction then is limited only to "property . . . of the debtor . . . and of property of the estate."

Given the debtor's transfer of a partial interest in the property, the creditor's claim is no longer secured solely by the debtor's interest in the property. It is now secured also by a non-debtor's interest in the property. As a result, the court cannot value the creditor's collateral under section 506(a)(1) because it requires the valuation of a non-debtor's interest in the property, over which the court does not have subject matter jurisdiction.

The court rejects the contention that when valuing a creditor's collateral, it can value only the debtor's interest in the property, in determining the extent to which the creditor is secured, while ignoring the non-debtor's interest in the property. Valuations under 506(a)(1) fix the secured portion of the creditor's bifurcated claim. To ignore a non-debtor's interest in the property would amount to depriving the creditor of part of its collateral.

The court is aware of no legal authority permitting this. Even if the court has the authority to do this, an adversary proceeding is required. See Fed. R.

Bankr. P. 7001(2).

Fourth, the cited case of Assocs. Commercial Corp. v. Rash, 520 U.S. 953 (1997) is unhelpful. The debtor directs to the following language in Rash:

"*To separate the secured from the unsecured portion of a claim, a court must compare the creditor's claim to the value of 'such property,' i.e., the collateral. That comparison is sometimes complicated. A debtor may own only a part interest in the property pledged as collateral, in which case the court will be required to ascertain the 'estate's interest' in the collateral.*"

Rash at 961.

The language quoted by the debtor from Rash is dicta. The facts of that case did not involve the stripping off and/or stripping down of a claim secured by a real property in which the debtor owned only a partial interest. Rash concerned the valuation of a tractor truck the debtor desired to retain via his chapter 13 plan. The debtor owned 100% interest in the truck.

And, although the Supreme Court mentioned that "[a] debtor may own only a part interest in the property pledged as collateral," it never stated that it was permissible to strip the lien from the interest in property not owned by the debtor.

Fifth, the debtor's reliance on In re Toppmeyer, Case No. 11-30698, WL 3629048, at *1-4 (Bankr. S.D. Ill., Aug. 21, 2012) is inapposite. That case is only tenuously persuasive - it is not binding on this court.

More important, Toppmeyer stripped down "an in rem lien on an undivided 1/3 interest" in real property, where the lien was involuntary, based on a judgment entered against the debtor.

When a creditor records an abstract of a judgment, the resulting judicial lien attaches by operation of law only against the judgment debtor's interest in real property. If a debtor owns only one-third interest in real property, the judgment lien will attach only to that one-third interest. The judgment lien does not attach to anyone else's interest in the property because only the judgment debtor is subject to the judgment giving rise to the lien.

On the other hand, the lien here is voluntary and it is based on a note secured by a deed of trust on the entire property, including a 50% interest held by a non-debtor. As such, this court cannot modify the creditor's claim.

Finally, the motion will be denied because the court rejects the debtor's valuation of the property.

The debtor's valuation of the property decreases its value by 21% because she labels the property as "foreclosure imminent."

The court disagrees. The debtor is in a reorganization bankruptcy case, protected by the automatic stay since December 6, 2014, and Ocwen has not obtained relief from stay to foreclose on the property. The property is not "foreclosure imminent" and the corresponding decrease in value is unwarranted.

15. 14-31890-A-11 SHAINA LISNAWATI — MOTION TO VALUE COLLATERAL
JHH-5 — 3-19-15 [88]
VS. CHASE BANK

Tentative Ruling: The motion will be denied.

The debtor moves for an order valuing her 50% interest in a real property in Roseville, California, in an effort to strip off JPMorgan Chase Bank's $95,604 second mortgage on the property to $0.00 - representing her 50% interest, after accounting for the first mortgage on the property - and treat it as a wholly unsecured claim.

The property is not the debtor's residence. The debtor contends that the value of the entire property is $182,944 and the value of her 50% interest in the property is $91,472. The first mortgage on the property, held by Bayview Loan Servicing, L.L.C., is $408,153.

The motion will be denied for the reasons stated in the court's ruling denying the debtor's similar motion to strip down Bayview's first mortgage on the property (DCN JHH-3), also being heard on this calendar. That ruling is incorporated here by reference.

16. 14-31890-A-11 SHAINA LISNAWATI — MOTION TO VALUE COLLATERAL
JHH-6 — 3-19-15 [92]
VS. OCWEN LOAN SERVICING, L.L.C.

Tentative Ruling: The motion will be denied.

The debtor moves for an order valuing her one-third interest in a real property in Olivehurst, California, in an effort to strip off Ocwen Loan Servicing's $42,555 second mortgage on the property to $0.00 - representing her one-third interest, after accounting the first mortgage on the property - and treat it as a wholly unsecured claim.

The property is not the debtor's residence. The debtor contends that the value of the entire property is $96,475 and the value of her one-third interest in the property is $32,158.33. The first mortgage on the property, held also by Ocwen, is $251,008.

The motion will be denied for the reasons stated in the court's ruling denying the debtor's similar motion to strip down Ocwen's first mortgage on the property (DCN JHH-4), also being heard on this calendar. That ruling is incorporated here by reference.

17. 15-21491-A-11 BELLA PROPIEDAD, L.L.C. — STATUS CONFERENCE 2-26-15 [1]

Tentative Ruling: None.

18. 15-21491-A-11 BELLA PROPIEDAD, L.L.C. — MOTION FOR RELIEF FROM AUTOMATIC STAY
KO-1 — 3-16-15 [31]
SUNMARK CAPITAL L.L.C. VS.

Tentative Ruling: The motion will be denied without prejudice. The movant, Sunmark Capital, L.L.C., seeks relief from stay as to a real property in Carmichael, California.

The court will deny this motion without prejudice as moot, given that it approved a sale of the property on March 30, 2015, to be closed on March 31 or April 1, 2015. Nevertheless, if the sale has not closed, the court will reconsider this ruling.

19. 15-21491-A-11 BELLA PROPIEDAD, L.L.C. MOTION TO EMPLOY
WSS-1 3-6-15 [16]

Tentative Ruling: The motion will be granted in part and denied in part.

The debtor requests authority to employ W. Steven Shumway as bankruptcy counsel for the estate. The movant's compensation will be based on an hourly fee arrangement. The movant will assist the debtor with the administration of the chapter 11 estate.

11 U.S.C. § 1107(a) provides that a debtor in possession shall have all rights, powers, and shall perform all functions and duties, subject to certain exceptions, of a trustee, "[s]ubject to any limitations on [that] trustee." This includes the trustee's right to employ professional persons under 11 U.S.C. § 327(a). This section states that, subject to court approval, a trustee may employ professionals to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions . . . including . . . on a contingent fee basis."

The motion will be denied to the extent the debtor is seeking to employ Mr. Shumway to represent the debtor in state court lawsuits. The motion does not state what services, if any, the estate needs in state court. The Statement of Financial Affairs lists no pending lawsuit to which the debtor is a party and Schedule B lists no interest in claims against anyone. Docket 14.

Otherwise, the court concludes that the terms of employment and compensation are reasonable. The movant is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate.

The movant has clarified his involvement in state court litigation involving the debtor's principal. The movant accepted only service of process for the debtor's principal, in a personal guarantee lawsuit filed by the principal creditor secured by the debtor's real property in Carmichael, California. The agreement for acceptance of service was in conjunction with the creditor's consent to continue the foreclosure sale for the Carmichael property, thereby giving more time to the debtor to sell the property. The court is satisfied with the movant's explanation. In accepting service for the debtor's principal, the movant has not compromised the interests of the debtor.

The employment will be approved in part.