

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

May 30, 2017 at 10:00 a.m.

1. 16-25217-A-11 WEST LANE PROPERTIES MOTION TO
MJH-4 INC. CONFIRM PLAN
2-10-17 [57]

Tentative Ruling: The debtor seeks confirmation of its amended chapter 11 plan filed on February 10, 2017. Docket 57.

Confirmation will be denied for the following reasons:

(1) The court is not persuaded that the plan is feasible.

The debtor's commercial and sole real property is split into three units. For some time prior to the bankruptcy, the debtor had all three units rented. Two of the units were generating \$3,500 a month. Docket 59 at 4 (as marked). How much rent the debtor was receiving in for the third unit. It was rented to an insider, a corporation (auto repair business), J.C. Master Tech, Inc., owned by the debtor's principal.

Prior to bankruptcy, the debtor lost the tenants in the two units that had generated \$3,500 a month. According to the debtor, "[t]his led to the inability of the Debtor to make payments to Pat De Santis [(first priority mortgagee)], Linda Banks [(second priority mortgagee)] and the real property tax. . . ." Docket 59 at 4 (as marked). The loss of the two tenants is what, the debtor claims, led to the filing of this bankruptcy case. Id.

This plan proposes to fund payments to creditors from the rental income to be generated from the property. In a one-page income projection attached to the amended disclosure statement, the debtor contends that its rental income will be \$6,500 a month. Docket 62 at 17. Yet, the debtor acknowledges that it still does not have tenants in the two units formerly generating \$3,500 a month in rental income. Docket 59 at 4 (as marked).

In other words, the debtor proposes to fund the plan from income it will be generating solely from its affiliated corporation, J.C. Master Tech, Inc. – the same tenant with which the debtor was unable to sustain payments on the property.

The court is unclear what has changed since the filing of the case with the rental payments from J.C. Master Tech, Inc., enabling the debtor now to pay creditors secured by the property from such rental payments.

(2) On one hand, in the disclosure statement's liquidation analysis, the debtor claims that the real property cannot be sold for sufficient proceeds to pay off the claims secured by the property. Docket 59 at 13-14 (as marked).

On the other hand, that is precisely what the plan is proposing to do. While maintaining payments to secured creditors, the plan is proposing to:

"continue to market the real property for sale which would pay all of the above creditors in full as well as all priority tax claims."

Docket 57 at 3.

Whether creditors will be paid from rental income or from sales proceeds, the court is unpersuaded of the plan's feasibility.

(3) Although the plan includes Articles VI and VIII, there is no article VII. Docket 57 at 4. The court cannot tell whether this was merely a numbering error or there entire section of the plan missing.

Future amendments of the plan and disclosure statement should be accompanied by red/black-lined versions.

2. 17-21524-A-11 LONE PINE MOTEL L.L.C. MOTION TO
RPH-1 USE CASH COLLATERAL
5-8-17 [50]

Final Ruling: This motion will be dismissed as moot because the case was dismissed on May 10, 2017.

3. 16-22654-A-7 MARC LIM MOTION TO
16-2087 WITHDRAW AS ATTORNEY
SEQUOIA SALES, INC. V. LIM'S 3-16-17 [36]
PRODUCE ET AL

Final Ruling: This motion will be dismissed as moot because the adversary proceeding was dismissed on May 2, 2017.

4. 16-22654-A-7 MARC LIM MOTION TO
16-2202 WITHDRAW AS ATTORNEY
CHICK'S PRODUCE, INC. ET AL V. LIM 3-16-17 [23]

Tentative Ruling: The motion will be dismissed without prejudice.

The movant, Walter Dahl, is seeking permission to withdraw as counsel for the defendant Marc Lim.

However, although this motion was served on Mr. Lim, it was served on him on March 16, only one to three days before he became incapacitated. Docket 26. The movant appeared before this court on March 27 on a motion in the bankruptcy case, representing to the court that he learned on the evening of March 24 that Mr. Lim suffered a debilitating stroke. Case No. 16-22654, Docket 132. Due to the stroke, Mr. Lim was placed on life support. Mr. Lim passed away subsequently, on April 1. Case No. 16-22654, Docket 140.

Given Mr. Lim's loss of capacity shortly after the service of the instant motion and given his passing approximately 17 days prior to the hearing on the motion, the court will dismiss the motion for inadequate service. If reset for a hearing, the motion should be served on Mr. Lim's successor(s) of interest.

5. 17-21177-A-11 MONACO MOTEL LLC MOTION TO
RPH-1 USE CASH COLLATERAL
5-8-17 [46]

Final Ruling: This motion will be dismissed as moot because the case was dismissed on May 10, 2017.

6. 14-30011-A-13 TIFFANY FINLEY MOTION TO
14-2295 UST-1 SET ASIDE
U.S. TRUSTEE V. FINLEY 5-15-17 [20]

Tentative Ruling: The motion will be denied.

The defendant, Tiffany Finley, the debtor in the dismissed underlying chapter 13 bankruptcy case, asks the court to modify its judgment prohibiting her "from filing, or from causing to be filed, any subsequent petition for relief under the Bankruptcy Code in the United States Bankruptcy Court for the Eastern District of California, for a period of four-years." Docket 17 at 2. The judgment was entered because the debtor had filed 10 serial petitions. Each of her prior cases was dismissed due to the debtor's failure to appear in its proper and diligent prosecution. The four-year period will expire on December 22, 2018.

The motion does not provide a factual basis for the relief requested. Docket 20. There is no evidence that any relief is appropriate.