

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

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

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: JUNE 5, 2019
CALENDAR: 10:30 A.M. CHAPTERS 11 AND 9 CASES

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

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

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

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

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

1. [18-14414](#)-A-11 **IN RE: TITUS INDUSTRIAL, INC.**
[LKW-9](#)

MOTION FOR COMPENSATION FOR LEONARD K. WELSH, DEBTORS
ATTORNEY(S)
5-7-2019 [[140](#)]

LEONARD WELSH

Final Ruling

Application: Allowance of Third Interim Compensation and Expense Reimbursement

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this application was required not less than 14 days before the hearing on the application. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

In this Chapter 11 case, Leonard K. Welsh, attorney for the debtor in possession, has applied for an allowance of interim compensation and reimbursement of expenses. The application requests that the court allow compensation in the amount of \$5,825 and reimbursement of expenses in the amount of \$309.24.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by an employed professional in a Chapter 11 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

CIVIL MINUTE ORDER

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

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

Leonard K. Welsh's application for allowance of interim compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$5,825 and reimbursement of expenses in the amount of \$309.24. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

IT IS FURTHER ORDERED that the debtor in possession is authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

2. [18-11651](#)-A-11 **IN RE: GREGORY TE VELDE**
[MB-47](#)

MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION TO
EMPLOY RITCHIE BROS. AUCTIONEERS AS AUCTIONEER, AUTHORIZING
SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT
OF AUCTIONEER FEES AND EXPENSES
5-5-2019 [\[2004\]](#)

RANDY SUGARMAN/MV
MICHAEL COLLINS
JOHN MACCONAGHY/ATTY. FOR MV.
RESPONSIVE PLEADING

No Ruling

3. [18-11651](#)-A-11 **IN RE: GREGORY TE VELDE**
[MB-48](#)

MOTION TO SELL
5-15-2019 [[2059](#)]

RANDY SUGARMAN/MV
MICHAEL COLLINS
JOHN MACCONAGHY/ATTY. FOR MV.

Tentative Ruling

Motion: Sell Property

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted

Order: Prepared by moving party

Property: a 1958 Cadillac 62 Sedan De Ville and 1966 Lincoln Continental Convertible

Sale Type: Public auction

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). Liquidation of estate assets is an appropriate restructuring purpose in a Chapter 11 reorganization case. *See, e.g.*, 11 U.S.C. § 1123(a)(5) (listing a sale of all or part of property of the estate as a means for implementing a Chapter 11 plan).

As a result, the court will grant the motion. The sale will be approved pursuant to section 363(b). The court is not approving a sale free and clear of liens. The motion does not ask for such approval.

4. [18-11651](#)-A-11 **IN RE: GREGORY TE VELDE**
[MB-49](#)

MOTION TO SELL FREE AND CLEAR OF LIENS
5-15-2019 [\[2064\]](#)

RANDY SUGARMAN/MV
MICHAEL COLLINS
JOHN MACCONAGHY/ATTY. FOR MV.

Tentative Ruling

Motion: Sell Property Free and Clear of Liens Pursuant to 11 U.S.C. § 363(f) (4)

Notice: LBR 9014-1(f) (2); no written opposition required

Disposition: Granted

Order: Prepared by moving party

Property: Model R840-S Shuitemaker Haywagon

Buyer: Douglas Van Surksum

Sale Price: \$100,000

Sale Type: Private sale subject to overbid opportunity

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 363(b) (1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b) (1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). Liquidation of estate assets is an appropriate restructuring purpose in a Chapter 11 reorganization case. *See, e.g.*, 11 U.S.C. § 1123(a) (5) (listing a sale of all or part of property of the estate as a means for implementing a Chapter 11 plan).

SALE FREE AND CLEAR UNDER § 363(f)

The term "bona fide dispute" in § 363(f) (4) means that "there is an objective basis for either a factual or legal dispute as to the validity of the debt." *Union Planters Bank, N.A. v. Burns (In re Gaylord Grain L.L.C.)*, 306 B.R. 624, 627 (B.A.P. 8th Cir. 2004); *see also 3 Collier on Bankruptcy* ¶ 363.06[5], at 363-53 (Alan N. Resnick & Henry J. Sommer eds., 16th ed. rev. 2012) (citing cases). Under this subsection of § 363, the trustee has the burden of proof to show the existence of a bona fide dispute. *See 3 Collier on Bankruptcy, supra*, ¶ 363.06[5], at 363-53.

"Moreover, courts have recognized that to qualify as a 'bona fide dispute' under § 363(f) (4), the propriety of the lien does not have to be the subject of an immediate or concurrent adversary proceeding." *Burns*, 306 B.R. at 627. In *Burns*, the bankruptcy appellate panel for the Eighth Circuit found that an objective basis existed to avoid a bank's liens against two vehicles because the

liens against those vehicles had not been perfected pursuant to the state statute governing perfection of liens against motor vehicles. *Burns*, 306 B.R. at 628-29.

The three disputed lienholders against the property include, in order of seniority:

(1) UCC-1 Financing Lien held by Rabobank, N.A. in the approximate amount of \$29,000,000;

(2) A UCC-1 Financing Lien held by Federal Land Bank Association of Kingsburg, FLCA aka Golden State Farm Credit in the approximate amount of \$5,354,968.50; and

(3) A UCC-1 Financing Lien held by J.D. Heiskell Holdings, LLC in the approximate amount of \$7,900,000.

The motion presents sufficient facts establishing an objective factual or legal dispute existing as to the validity of the liens or debt underlying the liens.

The subject property is identified by a vehicle identification number (a VIN) and, as such, it appears to meet the definition of a "vehicle" as referenced in Cal. Vehicle Code § 6701. The exclusive means of perfecting a security interest in a vehicle is through identification of the lienholder on the certificate of title. See Cal. Vehicle Code §§ 6300, 6301, 6303.

Yet, none of the above lienholders are identified as lienholders on any certificate of title for the property the trustee has been able to locate. This raises an objective dispute over whether any of the liens attach to the subject property. Without deciding in any way whether it does, the court concludes that a bona fide dispute exists for purposes of section 363(f)(4).

Therefore, the court will grant the motion. The sale shall be free and clear of the liens of Rabobank, FLCA, and J.D. Heiskell Holdings on the personal property described above, and such liens shall attach to the proceeds of the sale with the same priority and validity as they had before the sale. 11 U.S.C. § 363(f).

The order shall state that the sale is free and clear of only the liens identified in this ruling and that such liens shall attach to the proceeds of the sale with the same priority and validity as they had before the sale. The order shall also include the following statement verbatim:

"If the filing fee for the motion was deferred and if such fee remains unpaid at the time the order is submitted, then the trustee or debtor in possession shall pay the fee for filing this motion to the Clerk of the Bankruptcy Court from the sale proceeds immediately after closing."