UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

June 9, 2015 at 10:00 a.m.

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1. 14-28600-A-7 RAYMOND/ROBERTA LICHTMAN — ORDER TO SHOW CAUSE 5-18-15 [7]
14-2257
LICHTMAN V. AMERICAN EDUCATION SERVICES

Tentative Ruling: The adversary proceeding will be dismissed.

This order to show cause was issued due to the plaintiff's failure to prosecute the complaint. The adversary proceeding was filed on August 29, 2014. At the one and only status conference hearing, on November 19, 2014, the plaintiff indicated that he will be obtaining a new summons. Docket 6. However, no new summons has been issued by the clerk. And, there has been no other activity in the case. Accordingly, the adversary proceeding will be dismissed.

2. 15-23700-A-12 JOE/MARIA PIMENTEL — MOTION TO CONFIRM CHAPTER 12 PLAN 5-11-15 [5]
WW-1

Tentative Ruling: The motion will be denied.

The debtors are seeking confirmation of their chapter 12 plan filed on May 11, 2015. Docket 7.

Because the meeting of creditors was on June 1, the chapter 12 trustee has had sufficient opportunity to examine the debtors and then file opposition, if any, to the confirmation of the plan.

Further, filed an earlier chapter 12 case, Case No. 14-27620, which was dismissed on April 6, 2015. A review of the certificate of service reveals that counsel for creditors appearing in the earlier case was not served with this motion. Specifically, the debtors did not serve Bank of Stockton's counsel even though the Bank of Stockton actively participated in the prior case. Given the close temporal proximity of the two bankruptcy cases, the counsel of creditors who appeared in the prior case should have been served with this motion.

3. 12-35330-A-12 BETTE SPAICH — MOTION FOR ENTRY OF DISCHARGE 5-6-15 [234]
BS-16

Tentative Ruling: The motion will be denied without prejudice.

The debtor is asking the court to enter her chapter 12 discharge.

11 U.S.C. § 1228(a) provides that:

"Subject to subsection (d), as soon as practicable after completion by the debtor of all payments under the plan, and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid, other than payments to holders of allowed claims provided for under section 1222(b)(5) or 1222(b)(9) of this title, unless the court approves a written waiver of discharge executed by the debtor after the order for relief under this chapter, the court shall grant the debtor a discharge of all debts provided for by the plan allowed under section 503 of this title or disallowed under section 502 of this title, except any debt—

(1) provided for under section 1222(b)(5) or 1222(b)(9) of this title; or

(2) of the kind specified in section 523(a) of this title."

This case was filed on August 22, 2012. The court confirmed the debtor's chapter 12 plan on November 6, 2013. Docket 208. The court also approved a modification to the debtor's plan on August 5, 2014. Docket 222.

The debtor does not have any domestic support obligations. The debtor has filed a certificate in connection with this motion that the debtor is not required by a judicial or administrative order, or by statute, to pay a domestic support obligation. See 11 U.S.C. § 1228(a); Docket 54 at 1. No objection has been filed to that certificate and the time to file an objection has expired.

Nevertheless, the motion will be denied without prejudice.

While, the trustee has filed a final report and the time to file objections to it has expired resulting in its approval, the trustee filed an amended report on April 16, 2015. Docket 231. The amended report has not been approved.

Second, under the debtor's plan, she was required to transmit to the trustee certain payments for the payment of claims 1, 5, and 7. Docket 208 at 1-2. But, no payments, whatsoever, are reflected in the trustee's final report and account. Dockets 223 & 231.

The court cannot determine that the requirement of 11 U.S.C. § 1228(a), that the debtor receive a discharge only after completion of all payments under the plan, has been satisfied.

Third, the debtor has not given all creditors notice that 11 U.S.C. § 522(q)(1) is not applicable, and that there is no pending proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind specified in section 522(q)(1)(B). The requirements of 11 U.S.C. § 1228(f) have not been satisfied.

Accordingly, the motion will be denied without prejudice.

4. 13-25330-A-12 PAUL MENNICK — MOTION TO MODIFY CHAPTER 12 PLAN
WW-6 — 4-13-15 [154]

Tentative Ruling: The motion will be denied.

The debtor asks the court to modify his chapter 12 plan confirmed on April 28, 2014. Docket 118.

The trustee objects to modification, contending that the debtor has not established ability to make payments under the proposed modified plan and that plan does not provide for the cure of arrearages under the existing confirmed plan on the debtor's mortgage with PSB Credit Services.

The court may modify a plan after confirmation to alter the amount of payments on a class of claims, to alter the time for such payments, or to alter the amount of distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim other than under the plan. 11 U.S.C. § 1229(a)(1)-(3). Sections 1222(a), 1222(b), and 1223(c), as well as the requirements of section 1225(a), apply to any post-confirmation modification.

The motion will be denied. The motion makes little or no effort to compare the confirmed plan with the proposed modified plan. The motion does not establish the arrearages the debtor is seeking to cure with the modified plan, it does not specify the new plan payments and when the three annual payments will be due, and it says nothing about the debtor's ability to make the new plan payments.

The motion is replete with legal conclusions and devoid of facts. While the supporting declaration states that payments will be $100 less than the payments required by the confirmed plan, the motion does not specify the actual amount of the modified plan payments and when such payments will be due. Docket 156 at 2. The court should not have to search the exhibits for such information.

The motion also does not explain whether the duration of the plan will increase given that the debtor is decreasing the amount and frequency of the plan payments. This is important as the debtor contends that the modified plan does not alter the treatment of the creditors' claims.

The motion does not address whether the debtor's income will improve, given his admission that his business income "was little lower than [he] anticipated in 2014," leading to the arrearages he is attempting to cure with the modified plan. Docket 156 at 2. The court cannot tell from the existing record whether the plan is feasible.

Finally, as pointed out by the trustee, the motion does not address whether and how the arrearage to PSB Credit will be cured. In light of the foregoing deficiencies, the motion will be denied.

5. 14-30833-A-11 SHASTA ENTERPRISES
FWP-10

MOTION FOR ORDER APPROVING AMENDMENT OF BROKER'S AGREEMENT
5-12-15 [286]

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 chapter 11 trustee seeks approval of an amendment to the listing broker agreement between the estate and Properties by Merit Inc., adding services for the brokering of leases and adding authority for the trustee to pay without further court approval future lease commissions to Merit.

The court approved a sales listing broker agreement between the estate and Merit on February 11, 2015, as pertaining to the sale of eight specifically identified real properties. Docket 203. The proposed amendment asks for Merit's services to be expanded to the brokering of leases for those properties.

Merit's commission for such services is proposed to be: 6% of the total base rent for the first 60 months in which rent is paid and 3% of the total base rent for the next 60 months in which rent is paid. A minimum of a one month's rent in commission is to be paid if a property is leased to a tenant procured by Merit, the owner or anyone else. Merit may cooperate and share its leasing commissions with other brokers.

The trustee is satisfied that Merit is a qualified leasing broker. Merit is also quite familiar with the properties, given that it has been the sales listing broker as well.

As the estate will be leasing the properties in the ordinary course of business, Merit's new services will benefit the estate. The court will approve the amendment. As concluded in connection with Merit's prior employment as a sales listing broker for the estate, Merit is disinterested in connection with the subject motion as well. Docket 203. The court will approve the compensation arrangement for Merit. The fixed percentage lease commissions will be approved without further court order.

6. 14-30833-A-11 SHASTA ENTERPRISES
FWP-7

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
5-12-15 [270]

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 chapter 11 trustee's counsel, Felderstein Fitzgerald Willoughby & Pascuzzi, LLP, has filed a first interim motion for approval of compensation. The requested compensation consists of $71,238 in fees and $1,263.33 in expenses, for a total of $72,501.33. This motion covers the period from December 24,

2014 through March 31, 2015. The court approved the movant's employment as the chapter 11 trustee's attorney on January 5, 2015. In performing services, the movant charged hourly rates of $195, $350, $395, $405, $495.

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 movant's services included, without limitation:

(1) assisting the trustee with the analysis of estate assets, including plane, wine inventory, and 24 real properties subject to over $15 million in encumbrances,

(2) preparing for and attending the meeting of creditors,

(3) communicating with the trustee, the United States Trustee and the debtor's counsel about various issues,

(4) responding to multiple stay relief motions,

(5) preparing and prosecuting motion to sell wine inventory,

(6) preparing and reviewing the estate's various agreements with prospective professionals,

(7) monitoring events in the related chapter 11 bankruptcy cases of JSR Properties and BR Enterprises,

(8) reviewing and analyzing an inherited motion for use of cash collateral filed by the debtor pre-appointment of the chapter 11 trustee,

(9) negotiating cash collateral issues with secured creditors,

(10) negotiating and preparing stipulation for use of cash collateral,

(11) reviewing and analyzing an inherited motion to assume executory contracts and for post-petition borrowing filed by the debtor pre-appointment of the chapter 11 trustee,

(12) preparing additional pleadings pertaining to the motion to assume and borrow,

(13) communicating with creditors about claims,

(14) preparing for and attending various court hearings, conferences, meetings, etc.,

(15) assisting in the editing of the estate's operating and cash collateral reports, and

(16) preparing and filing employment and compensation motions.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved.

7. 14-30833-A-11 SHASTA ENTERPRISES
FWP-8

MOTION TO SELL FREE AND CLEAR OF LIENS AND MOTION TO PAY
5-12-15 [276]

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

The chapter 11 trustee requests authority to sell "as is" and "where is," for $139,175, plus a release of disputed $25,0000 held in a separate escrow account, the estate's interest in 5685 Aviation Way Redding, California, including all fixtures and fittings attached to the property, to the City of Redding. The disputed $25,000 are in an escrow account pertaining to the debtor's pre-petition sale of another property to the City of Redding. As there was a dispute over the application of the $25,000 - that the debtor was to reserve for potential repairs of the HVAC units by the City - those funds are still in that escrow account.

The subject property has been marketed before and after the filing of this case.

The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h) and asks for approval of the payment of the real estate commission.

The trustee anticipates that the estate would net approximately $154,403 from the sale.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h) and will authorize payment of the real estate commission to Kennedy Wilson Properties, Ltd., in accordance with Kennedy's court approved compensation arrangement.

The court will not approve the sale free and clear of liens under 11 U.S.C. § 363(f), as the only identified encumbrance against the property is outstanding property taxes that will be paid from escrow. The payment of an encumbrance from escrow does not require sale approval free and clear of that encumbrance. The encumbrance is being paid prior to the close of escrow and, thus, prior to consummation of the sale.

As to possible but unidentified other encumbrances against the property, section 363(f) permits sales to be approved free and clear only of specifically identified encumbrances. Without knowing the nature and amount of an encumbrance, the court cannot determine that the sale should be approved free and clear of that encumbrance under section 363(f). Each of the bases under section 363(f) contemplates the court knowing the nature and amount of the encumbrance.

8. 14-30833-A-11 SHASTA ENTERPRISES
FWP-9

MOTION FOR ORDER APPROVING AMENDMENT OF BROKER'S AGREEMENT
5-12-15 [281]

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 chapter 11 trustee seeks approval of an amendment to the broker agreement between the estate and Kennedy Wilson Properties, Ltd., adding services for the brokering of leases and adding authority for the trustee to pay without further court approval future lease commissions to Kennedy.

The court approved a sales listing broker agreement between the estate and Kennedy on February 11, 2015, as pertaining to the sale of nine specifically identified real properties. Docket 202. The proposed amendment asks for Kennedy's services to be expanded to the brokering of leases for those properties.

Kennedy's commission for such services is proposed to be: 6% of the total base rent for the first 60 months in which rent is paid and 3% of the total base rent for the next 60 months in which rent is paid. A minimum of a one month's rent in commission is to be paid if a property is leased to a tenant procured by Kennedy, the owner or anyone else. Kennedy may cooperate and share its leasing commissions with other brokers.

The trustee is satisfied that Kennedy is a qualified leasing broker. Kennedy is also quite familiar with the properties, given that it has been the sales listing broker as well.

As the estate will be leasing the properties in the ordinary course of business, Kennedy's new services will benefit the estate. The court will approve the amendment. As concluded in connection with Kennedy's prior employment as a sales listing broker for the estate, Kennedy is disinterested in connection with the subject motion as well. Docket 202. The court will approve the compensation arrangement for Kennedy. The fixed percentage lease commissions will be approved without further court order.

9.	13-34541-A-11 14-2322	6056 SYCAMORE TERRACE LLC CAH-4	MOTION FOR LEAVE TO AMEND
	6056 SYCAMORE TERRACE, LLC V. HONARDOOST ET AL		5-5-15 [38]

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 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.

The plaintiff, 6056 Sycamore Terrace, LLC, who is the debtor in the underlying chapter 11 case, moves to amend the subject complaint, seeking to add two more defendants, Hossein Bozorgzad, the sole owner and principal of the plaintiff, and Auburn Hospitality, LLC. In addition, the amended complaint adds few more facts pertaining to the recording of the Auburn property deed and Auburn Hospitality's interest in the agreement within that deed.

The facts giving rise to the subject dispute are as follows. In April 2008, Jahan Honardoost loaned $300,000 to Hossein Bozorgzad. Although there have been allegations that the transfer was classified as an "investment" in a hotel project being developed by Mr. Bozorgzad's Auburn Hospitality, LLC, the parties have been treating the transfer largely 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 himself at the time. The grantor and trustor under the deed encumbering the Auburn real property is Auburn Hospitality, LLC. Mr. Bozorgzad executed that deed in his capacity as a managing member of Auburn Hospitality, LLC. 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 from himself to 6056 Sycamore Terrace, LLC, 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, as the sole plaintiff in this adversary proceeding, 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.

Fed. R. Civ. Proc. 15(a)(1), as incorporated by Bankruptcy Rule 7015, prescribes that "[a] party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading

or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier."

Rule 15(a)(2) provides that "[i]n all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave."

"The court should freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2).

As the interests of Hossein Bozorgzad and Auburn Hospitality in the Pleasanton property and the agreement in the Auburn property deed are implicated by the relief sought by the plaintiff in this proceeding, the amendment will allow the plaintiff court will grant leave to the plaintiff to amend the complaint. As none of the existing defendants have appeared in this proceeding, they are not prejudiced by the proposed amended complaint. The motion will be granted.

10. 15-24246-A-7 TRACIE RIGGS — OBJECTION TO CERTIFICATION BY A DEBTOR O.S.T. 6-1-15 [15]
WLP-2

Tentative Ruling: The objection will be sustained.

The movants, Asparagus Meadows, LLC, and The Richard W. Orser Living Trust, object to the debtor's certification under 11 U.S.C. § 362(l)(1).

11 U.S.C. § 362(l)(1) prescribes that:

"*Except as otherwise provided in this subsection, subsection (b) (22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that--*

"*(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and*

"*(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.*"

The debtor filed the instant petition on May 27, 2015, certifying that:

(1) the movants have a judgment against the debtor for possession of the debtor's residence; and

(2) the debtor has included in the petition the deposit with the court of any rent that would become due during the 30-day period after the petition date.

However, the debtor has not certified that "under nonbankruptcy law . . . there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered."

Hence, the debtor has not satisfied the conditions of 11 U.S.C. § 362(l)(1).

11 U.S.C. § 362(b)(22) provides that the automatic stay does not operate

against "the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor."

Here, the movants have produced evidence that pre-petition, on January 28, 2015, they served the debtor with a 30-day notice of termination of tenancy as to the subject property. Docket 21 at 2. And, the debtor has made an admission, by checking the box at the bottom of page two of her petition, that the movants have a judgment against the debtor for possession of the debtor's residence. Docket 1.

The court concludes then that, under 11 U.S.C. § 362(b)(22), the automatic stay does not operate against the property, as limited by section 362(b)(22). The objection will be sustained.

11. 14-28468-A-11 BUALAI WHITE — MOTION TO VALUE COLLATERAL
MRL-9
VS. JPMORGAN CHASE — 5-18-15 [150]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtors, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, 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 debtor moves for an order valuing their rental real property in Plumas Lake, California, in an effort to strip off JPMorgan Chase Bank's second mortgage on the property, for $87,281.64, and treat it as a wholly unsecured and dischargeable claim.

11 U.S.C. § 1123(b)(5) permits a chapter 11 debtor to modify the rights of secured claim holders, other than claims secured only by the debtor's principal residence.

Pursuant to 11 U.S.C. § 506(a)(1), a secured claim is secured only to the extent of the creditor's interest in the estate's interest in the collateral. 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."

"[The value of the collateral] shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in

conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest."

The debtor's opinion of value for the property is $226,296.76. Docket 152; see also Docket 142. The property is subject to two mortgages, a first deed in favor of Federal Home Mortgage Corporation, securing a claim for approximately $470,968.39 and a second deed in favor of JPMorgan Chase Bank, securing a claim for approximately $87,281.64.

The subject property is a rental and is not the debtor's residence. The anti-modification provision of section 1123(b)(5) then does not apply.

JPMorgan Chase Bank's second priority claim against the property is wholly unsecured within the meaning of section 506(a)(1) because the estate has no equity in the property, after the deduction of FHMC's first mortgage.

Hence, JPMorgan Chase Bank's second mortgage will be stripped off, making it wholly an unsecured claim. The motion will be granted only in connection with plan confirmation.

Valuations pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are contested matters and do not require the filing of an adversary proceeding. It is only when such a motion or objection is joined with a request to determine the extent, validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed. R. Bankr. P. 7001(2). Therefore, by granting this motion the court is only determining the value of the respondent's collateral. The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's lien will remain of record until the plan is completed. See 11 U.S.C. § 349(b). Once the plan is completed, if the respondent will not reconvey/cancel its lien, the court then will entertain an adversary proceeding.

12. 14-27083-A-11 DJC-1 — RCK CONSERVATION CO-OP, L.L.C. — MOTION TO APPOINT TRUSTEE 4-29-15 [158]

Tentative Ruling: The motion will be denied.

Cynthia Vandiver, a former officer of the debtor, seeks the appointment of a chapter 11 trustee, citing mismanagement of the debtor's affairs by the debtor's managing member, David Major.

The motion will be denied because the court is granting the United States Trustee's motion to dismiss the case. The appointment of a trustee is undesirable in this case for the reasons stated in the court's ruling on the dismissal motion (DCN UST-1), including the debtor's unprofitability and the absence of general unsecured creditors.

13. 14-27083-A-11 UST-1 — RCK CONSERVATION CO-OP, L.L.C. — MOTION TO DISMISS OR CONVERT TO CHAPTER 7 5-12-15 [160]

Tentative Ruling: The motion will be granted and the case will be dismissed.

The U.S. Trustee moves for dismissal, pursuant to 11 U.S.C. § 1112(b), arguing diminution of the estate along with absence of a reasonable likelihood of rehabilitation and gross mismanagement of the estate, as causes under section

1112(b)(1).

11 U.S.C. § 1112(b)(1) provides that "on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."

For purposes of this subsection, "'cause' includes- (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation; (B) gross mismanagement of the estate." 11 U.S.C. § 1112(b)(4)(A), (B).

The above instances of cause are not exhaustive. Pioneer Liquidating Corp. v. United States Trustee (In re Consolidated Pioneer Mortgage Entities), 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000). For instance, unreasonable delay that is prejudicial to creditors is also cause for purposes of 11 U.S.C. § 1112(b)(1). Consolidated Pioneer at 375, 378; In re Colon Martinez, 472 B.R. 137, 144 (B.A.P. 1st Cir. 2012).

This case was filed on July 8, 2014, as a chapter 12 reorganization. Pursuant to a motion by the debtor, the court converted the case to chapter 11 on November 3, 2014. Docket 75. The debtor's primary source of income has been the lease of its real property. The court approved two leases of parts of the debtor's real property in March 2015. Docket 153.

The debtor was expecting to confirm a plan based on the income from the two leases. It expected annual revenue from the leases in the amount of $89,000. The debtor does not have other substantial income which can fund a plan.

However, the two leases have been now breached. Both lessees have walked away from the leases. "The Debtor's attorney has informed the United States Trustee that 'Peggy Salazar is not performing the lease and has abandoned the real property' and that a $8,400 lease deposit was returned to Dana Packard." Docket 162 at 6.

The court also notes that the operating reports reflect aggregate losses of $10,714 for January, February, and March 2015 (negative $4,960, negative $2,373, and negative $3,381). Dockets 147, 154, 157. The positive cash balance for April 2015 is only of $6,813.

The above amounts to diminution of the estate and absence of a reasonable likelihood of rehabilitation.

Although the debtor claims to have four more leases for which it will be filing a motion for approval prior to June 9, there is no evidence with the opposition establishing any of the debtor's factual assertions. And, the court has no information, much less evidence, of the viability of those leases.

Further, under the watch of the debtor's managing member, David Major, a now apparently former member of the debtor, Beau Green, withdrew $31,500 from the DIP bank account. He had no authority to do this. Mr. Green also returned the $8,400 lease deposit to Dana Packard (or Pickard), a now former lessee, without authority. Docket 164 at 3.

While the opposition contends that a $30,000 disbursement is being reversed,

stating that "it returned the bulk of the funds and is working on returning the small remaining balance," there is no evidence from the debtor supporting this factual assertion. Docket 175 at 4. Also, even if there were admissible evidence of this assertion, it explains nothing. The court does not understand what the debtor means by stating "it returned the bulk of the funds," when it was Mr. Green who withdrew, not $30,000 but $31,500, and he is no longer a member of the debtor.

The opposition also does not explain how the debtor will recover the now returned $8,400 lease deposit to Ms. Packard (or Pickard).

The foregoing constitutes gross mismanagement of the debtor under section 1112(b)(4)(B).

The members of the debtor also appear to be in a violent conflict with one another. Apparently, Mr. Major fired a weapon at one of the other members, Glen Culpepper. The opposition does not even attempt to address this.

The foregoing is cause for conversion or dismissal under section 1112(b)(1).

Dismissal is in the best interest of the estate because the debtor is unprofitable, has no general unsecured creditors, and it will not receive a discharge in chapter 7. The motion will be granted and the case will be dismissed.

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

Tentative Ruling: The motion will be granted in part.

The hearing on this motion was continued from April 20, 2015, in order for the respondent creditor to obtain an appraisal and file a supplemental opposition to the motion. The respondent creditor has filed a supplemental opposition. An amended ruling from April 20 follows below.

The debtor asked in her motion for an order valuing her 50% interest in real property in Auburn, California, to strip down PennyMac Holdings' $485,361 claim to $107,200 - representing the value of her 50% property interest - and treat the remainder as a partially unsecured claim.

After PennyMac filed an opposition to the motion, however, proffering evidence that the property has a value of $325,000 (Docket 150), the debtor in her reply agreed with PennyMac's $325,000 valuation. Docket 156 at 4.

The property is not the debtor's residence.

The debtor was the original and sole borrower on the loan from the respondent or its predecessor. The debtor obtained the loan secured by the entire 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. This is corroborated by Schedule A filed in Case No. 11-45430 which shows that she owned the entire property. Case No. 11-45430, Docket 25.

Sometime before filing this case but after the debtor encumbered the property,

the debtor transferred a 50% interest in the property to another person, a nondebtor. There is no evidence that the respondent creditor consented to that transfer.

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."

Relief under section 506(a)(1) is limited to valuing the creditor's collateral insofar as that collateral is property of the bankruptcy estate. It is a bifurcation of the creditor's claim into its secured and under-collateralized components based on the value of the creditor's security interest in the debtor's interest in the collateral.

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 that property. It is also secured by a nondebtor's interest in the property. As a result, the court cannot value the creditor's entire collateral under section 506(a)(1) because it does not permit the valuation of a nondebtor's interest in the property, over which the court does not have subject matter jurisdiction.

Nor can the court enter an order that strips off or strips down the respondent's lien to the extent it encumbers the interest of the nondebtor. Assocs. Commercial Corp. v. Rash, 520 U.S. 953 (1997) is not to the contrary. 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 facts in Rash did not involve stripping off and/or stripping down a claim secured by real property in which the debtor owned only a partial interest. Rash concerned the valuation of a vehicle the debtor desired to retain via his chapter 13 plan. The debtor owned 100% interest in the vehicle. 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.

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 to 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 now owned by a nondebtor. As such, this court cannot modify the creditor's interest in the nondebtor's interest.

Further, even though section 506 sets and reduces the amount of the secured claim in this case, the entire claim continues to encumber the nondebtor's interest. However, this does not split or transmute the creditor's claim into two secured claims, one reduced to the value of the debtor's 50% interest and secured by that interest, and another for the full amount of the claim secured by the nondebtor's 50% interest.

If the nondebtor fails to pay the entire claim, subject to the automatic stay and the requirements of any confirmed plan, the creditor's foreclosure will extinguish both interests, not just the interest of the nondebtor. A valuation of the debtor's interest is not somehow a partition of the creditor's rights in its collateral.

Accordingly, the court will only value the debtor's 50% interest in the property. It will not alter in any way the respondent's claim against the property. The court has unrefuted evidence of value of the debtor's 50% interest in the property, given PennyMac's valuation of the entire property at $325,000 and the debtor's agreement to such valuation. The value of the debtor's 50% interest in the property is $162,500. Dockets 150 & 156. No other relief will be awarded. The motion will be granted in part.

15. 14-31890-A-11 SHAINA LISNAWATI — MOTION TO VALUE COLLATERAL
JHH-3
VS. BAYVIEW LOAN SERVICING, L.L.C. — 3-19-15 [80]

Tentative Ruling: The motion will be granted in part.

The hearing on this motion was continued from April 20, 2015, in order for the respondent creditor to obtain an appraisal and file a supplemental opposition to the motion. The respondent creditor has filed a supplemental opposition. An amended ruling from April 20 follows below.

The debtor asked in her motion 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 the value of her 50% interest - and treat it as a partially unsecured claim.

After Bayview filed an opposition to the motion, however, proffering evidence that the property has a value of $410,000 (Docket 142), the debtor in her reply agreed with Bayview's valuation. Docket 157 at 4.

The property is not the debtor's residence.

The debtor was the original and sole borrower on the loan from the respondent or its predecessor. 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. This is corroborated by Schedule A filed in Case No. 11-45430 which shows that she owned the entire property. Case No. 11-45430, Docket 25.

Sometime before filing this case, but after the debtor encumbered the property, the debtor transferred a 50% interest in the property to another person, a nondebtor. There is no evidence that the respondent creditor consented to that transfer.

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."

Relief under section 506(a)(1) is limited to valuing the creditor's collateral insofar as that collateral is property of the bankruptcy estate. It is a bifurcation of the creditor's claim into its secured and under-collateralized components based on the value of the creditor's security interest in the debtor's interest in the collateral.

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 that property. It is also secured by a nondebtor's interest in the property. As a result, the court cannot value the creditor's entire collateral under section 506(a)(1) because it does not permit the valuation of a nondebtor's interest in the property, over which the court does not have subject matter jurisdiction.

Nor can the court enter an order that strips off or strips down the respondent's lien to the extent it encumbers the interest of the nondebtor. Assocs. Commercial Corp. v. Rash, 520 U.S. 953 (1997) is not to the contrary. 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 facts in Rash did not involve stripping off and/or stripping down a claim secured by real property in which the debtor owned only a partial interest. Rash concerned the valuation of a vehicle the debtor desired to retain via his chapter 13 plan. The debtor owned 100% interest in the vehicle. 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.

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 to 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 now owned by a nondebtor. As such, this court cannot modify the creditor's interest in the nondebtor's interest.

Further, even though section 506 sets and reduces the amount of the secured claim in this case, the entire claim continues to encumber the nondebtor's interest. However, this does not split or transmute the creditor's claim into two secured claims, one reduced to the value of the debtor's 50% interest and secured by that interest, and another for the full amount of the claim secured by the nondebtor's 50% interest.

If the nondebtor fails to pay the entire claim, subject to the automatic stay and the requirements of any confirmed plan, the creditor's foreclosure will extinguish both interests, not just the interest of the nondebtor. A valuation of the debtor's interest is not somehow a partition of the creditor's rights in its collateral.

Accordingly, the court will only value the debtor's 50% interest in the property. It will not alter in any way the respondent's claim against the property. The court has unrefuted evidence of value of the debtor's 50% interest in the property, given Bayview's valuation of the entire property at $410,000 and the debtor's agreement to such valuation. The value of the debtor's 50% interest in the property is $205,000. Dockets 142 & 157. No other relief will be awarded. The motion will be granted in part.

16. 14-31890-A-11 SHAINA LISNAWATI — MOTION TO VALUE COLLATERAL
JHH-5
VS. CHASE BANK — 3-19-15 [88]

Tentative Ruling: The motion will be granted in part.

The hearing on this motion was continued from April 20, 2015, in order for the respondent creditor in the related valuation motion (DCN JHH-3) to obtain an

appraisal and file a supplemental opposition to that motion. As that creditor has filed a supplemental opposition in the related motion, an amended ruling from April 20 for this motion follows below.

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 first mortgage on the property, held by Bayview Loan Servicing, L.L.C., is $407,333.94.

As the debtor has now agreed with Bayview's $410,000 valuation of the entire property (Dockets 142 & 157), the court will value the debtor's 50% interest in the property at $205,000, in accordance with the court's ruling on the valuation motion pertaining to Bayview's interest in the property (DCN JHH-3). The court will not alter in any way the respondent's claim against the property. The motion will be granted in part.

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

Tentative Ruling: None.

18. 14-29194-A-11 CALIKOTA PROPERTIES, L.L.C. MOTION TO
CAH-6 WITHDRAW AS ATTORNEY
3-27-15 [72]

Tentative Ruling: The motion will be granted.

The hearing on this motion was continued from April 27, in order for the movant to supplement the record. The movant filed a supplemental declaration on April 23, 2015. Docket 83. An amended ruling from April 27 follows below.

Attorney C. Anthony Hughes asks for permission to withdraw as counsel for the debtor because "[i]rreconcilable differences have arisen," including "Debtor has not paid Attorney's fee as they have come due, and it does not appear that Debtor will be able to pay Attorney's fee going forward and the next steps in the case are to file the Disclosure Statement and plan of reorganization, which requires a large undertaking and feasibility of debtor." Docket 74 at 2.

This case was filed on September 12, 2014.

Local Bankruptcy Rule 2017-1(e) provides that "Unless otherwise provided herein, an attorney who has appeared may not withdraw leaving the client in propria persona without leave of court upon noticed motion and notice to the client and all other parties who have appeared. The attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. Withdrawal as attorney is governed by the Rules of Professional Conduct of the State Bar of California, and the attorney shall conform to the requirements of those Rules. The authority and duty of the attorney of record shall continue until relieved by order of the Court issued hereunder. Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit."

"The decision to grant or deny counsel's motion to withdraw is committed to the

discretion of the trial court." American Economy Ins. Co. v. Herrera, No. 06CV2395-WQH, 2007 WL 3276326, at *1 (S.D. Cal. Nov. 5, 2007) (quoting Irwin v. Mascott, 2004 U.S. Dist. LEXIS 28264 (N.D. Cal. December 1, 2004), citing Washington v. Sherwin Real Estate, Inc., 694 F.2d 1081, 1087 (7th Cir.1982)). Factors considered by courts ruling on the withdrawal of counsel are (1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. Herrera, at *1 (citing Irwin, 2004 U.S. Dist. LEXIS 28264 at 4).

California Rule of Professional Conduct 3-700 provides that:

"*(A) In General.*

"*(1) If permission for termination of employment is required by the rules of a tribunal, a member shall not withdraw from employment in a proceeding before that tribunal without its permission.*

"*(2) A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.*

"*(B) Mandatory Withdrawal.*

"*A member representing a client before a tribunal shall withdraw from employment with the permission of the tribunal, if required by its rules, and a member representing a client in other matters shall withdraw from employment, if:*

"*(1) The member knows or should know that the client is bringing an action, conducting a defense, asserting a position in litigation, or taking an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person; or*

"*(2) The member knows or should know that continued employment will result in violation of these rules or of the State Bar Act; or*

"*(3) The member's mental or physical condition renders it unreasonably difficult to carry out the employment effectively.*

"*(C) Permissive Withdrawal.*

"*If rule 3-700(B) is not applicable, a member may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:*

"*(1) The client*
(a) insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law, or
(b) seeks to pursue an illegal course of conduct, or
(c) insists that the member pursue a course of conduct that is illegal or that is prohibited under these rules or the State Bar Act, or
(d) by other conduct renders it unreasonably difficult for the member to carry

out the employment effectively, or
(e) insists, in a matter not pending before a tribunal, that the member engage in conduct that is contrary to the judgment and advice of the member but not prohibited under these rules or the State Bar Act, or
(f) breaches an agreement or obligation to the member as to expenses or fees.

"(2) The continued employment is likely to result in a violation of these rules or of the State Bar Act; or

"(3) The inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal; or

"(4) The member's mental or physical condition renders it difficult for the member to carry out the employment effectively; or

"(5) The client knowingly and freely assents to termination of the employment; or

"(6) The member believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal."

This case was filed on September 12, 2014. Although the debtor filed a plan and disclosure statement on December 11, 2014, the motion for approval of the disclosure statement was dismissed on March 25, 2015. Dockets 44, 45, 70.

Irreconcilable differences have arisen between the debtor and the movant over the type of chapter 11 plan to be proposed on behalf of the debtor. The court also notes that the debtor has already found another attorney, given its response to the stay relief motion, also pending on this calendar.

The above-described disagreement between the movant and the debtor renders it unreasonably difficult for the movant to carry out his employment effectively. This is cause for permitting the movant's withdrawal pursuant to California Professional Conduct Rule 3-700(C)(1)(d). The court will permit the movant's withdrawal from this case. The motion will be granted.

19. 14-29194-A-11 CALIKOTA PROPERTIES, L.L.C. MOTION FOR
DBJ-1 RELIEF FROM AUTOMATIC STAY
PETTYGROVE FUND, L.L.C. VS. 4-15-15 [76]

Tentative Ruling: The motion will be denied without prejudice.

The movant, Pettygrove Fund, L.L.C., seeks relief from the automatic stay as to a commercial real property in Chico, California.

The motion will be denied because it does not contain evidence of the movant's asserted value for the property. The movant disputes the debtor's scheduled value for the property, of $575,000, asserting in the motion that the property has a value of only $395,000. Yet, there is no evidence of a $395,000 valuation with the motion.

Given the absence of such evidence, the court cannot determine whether there is equity in the property and whether the movant's interest in the property is adequately protected. The movant's mortgage on the property, for $481,875, is the only encumbrance against the property. Accordingly, the motion will be denied.

To the extent the movant has proffered evidence of value for the property with its reply to the opposition, such evidence should have been with the motion. Otherwise, parties in interest do not have the opportunity to respond to such evidence.