

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

June 18, 2018 at 10:00 a.m.

1. 18-20608-A-11 ANTIGUA CANTINA & GRILL, MOTION TO
NCK-1 INC. APPROVE DISCLOSURE STATEMENT
4-25-18 [51]

Final Ruling: This motion will be dismissed as moot because the debtor filed another motion to approve a disclosure statement. Dockets 66, 67, 69.

2. 18-20608-A-11 ANTIGUA CANTINA & GRILL, MOTION TO
NCK-2 INC. APPROVE DISCLOSURE STATEMENT
5-8-18 [66]

Tentative Ruling: The motion will be denied.

The debtor indicates that it is a small business debtor. Docket 27 at 2. 11 U.S.C. § 1129(e) requires that the court confirm the plan of a small business debtor no later than 45 days after filing of the plan. The debtor's first amended plan, to which this disclosure statement applies, was filed on May 8. The 45-day deadline expires on June 22. The court sees no possibility the plan can be confirmed by June 22. See Fed. R. Bankr. P. 2002(b) (requiring at least 28 days' notice of the time to object to plan confirmation and of the confirmation hearing).

Also, the disclosure statement does not address the order terminating the automatic stay in favor of the creditor secured by the debtor's principal asset. That creditor is owed in excess of \$1,205,405.79. The court granted relief under 11 U.S.C. § 362(d)(1), (2), and (4). Dockets 77 and 79. At the chapter 11 status conference on March 19, 2018, the debtor stated that it filed this case in order to protect itself from foreclosure by the creditor. The debtor has not addressed how the estate will deal with this creditor now that it is free to foreclose.

3. 12-35921-A-12 HARMINDER HEER MOTION FOR
DB-12 ENTRY OF DISCHARGE
5-21-18 [194]

Tentative Ruling: The motion for entry of a chapter 12 discharge will be conditionally granted.

The debtor asks the court to enter his 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 31, 2012. The court confirmed the debtor’s chapter 12 plan on February 25, 2013. Docket 112. The debtor has domestic support obligations and he is current on them, including having paid such obligations as mandated by the plan. Docket 196.

First, the trustee filed a final report on May 15, 2018 and the report has not been approved. Docket 190. The 30-day period for objections to the report expires on June 14. The trustee’s report demonstrates that the debtor has made the payments required by the plan and that the trustee has made the payments to creditors required by the plan. Docket 190. The requirement imposed by 11 U.S.C. § 1228(a) that the debtor receive a discharge only after completion of all payments under the plan has been satisfied.

Second, 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 198. No objection has been filed to that certificate and the time to file an objection has expired.

Finally, by service of this motion, the debtor has 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). Dockets 196 and 198. No creditor has objected to this notice. This satisfies the requirements of 11 U.S.C. § 1228(f).

The motion will be granted on the conditions that the trustee’s report is approved and no timely objections are filed to the report. See Fed. R. Bankr. P. 5009(a).

Therefore, no earlier than 10 days after the hearing on this motion, the clerk shall enter the debtor’s discharge. See 11 U.S.C. § 1228(f).

4. 17-26125-A-11 FIRST CAPITAL RETAIL, STATUS CONFERENCE
L.L.C. 9-14-17 [1]

Tentative Ruling: None.

5. 17-26125-A-11 FIRST CAPITAL RETAIL,
DB-1 L.L.C.

MOTION TO
WITHDRAW AS ATTORNEY
6-1-18 [436]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by counsel for the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the debtor and any other party 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 offer 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.

Downey Brand, L.L.P., asks permission to withdraw as counsel for First Capital Real Estate Investments, L.L.C. and Suneet Singal in both the parent case and the related adversary proceeding, Adv. Pro. No. 18-2017, because of a "breakdown" in the attorney-client relationship as referenced in California Rules of Professional Conduct 3-700(C).

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:

"(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.”

The movant asserts that the breakdown in the attorney-client relationship renders it unreasonably difficult for the movant to continue representing First Capital Real Estate Investments, L.L.C. and Suneet Singal.

The adversary proceeding was dismissed on April 19, 2018 and was closed on May 8, 2018. The first phase of the bankruptcy case – sale of substantially all estate assets – has concluded. The case is about to start moving into its second phase – the proposal and confirmation of a liquidating plan. Both First Capital Real Estate Investments, L.L.C. and Suneet Singal have filed proofs of claim in the case. The court perceives no prejudice in permitting the movant to withdraw at this time. Importantly, the movant’s clients were served with this motion and the court has heard nothing from them. Docket 439 at 2.

The breakdown in communication between the movant and its clients is cause for permitting withdrawal pursuant to California Professional Conduct Rule 3-700(C)(1)(d). The breakdown in the relationship has made it difficult for the movant to represent the clients. The court will permit the movant’s withdrawal from this case and the related adversary proceeding. The motion will be granted. The movant shall return to the clients their files within 14 days of entry of the order on this motion.

6. 18-22245-A-11 PLUSH GROUP CORPORATION STATUS CONFERENCE
4-15-18 [1]

Tentative Ruling: None.