

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

July 13, 2017 at 10:00 a.m.

1. 13-25330-A-12 PAUL MENNICK HSM-3 PSB CREDIT SERVICES, INC. VS.	MOTION FOR RELIEF FROM AUTOMATIC STAY 6-14-17 [167]
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Tentative Ruling: The motion will be denied.

The movant, PSB Credit Services, Inc., seeks relief from the automatic stay as to a real property in Tehama County. The movant contends that the debtor is not performing in accordance with the terms of his confirmed chapter 12 plan (confirmed on August 5, 2016). The movant has discovered from Tehama County that there are \$61,430.43 in outstanding real property taxes. Docket 180.

While the debtor opposes the motion, he admits that he has not paid all post-petition real property taxes. Specifically, he acknowledges that the second tax installment for the 2015-16 year has not been paid. He anticipates paying that installment prior to the hearing on the motion. Docket 177 ¶ 15. According to the movant's reply, the debtor has already paid the taxes for the 2016-17 year in full. This was not the case when this motion was filed. Docket 180.

The debtor's hearsay objection to the evidence proffered by the movant will be overruled.

First, the debtor admits he has not paid all of the post-confirmation real property taxes.

Second, the movant's information about the outstanding taxes was obtained in a statement from Tehama County. Docket 180 at 2; see Fed. R. Evid. 803(8) (A) (ii), (A) (iii), (B)

Fed. R. Evid. 803(8) prescribes an exception to the hearsay rule for "[a] . . . statement of a public office if: (A) it sets out: . . . (ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; . . . and (B) the opponent does not show that the source of information or other circumstances indicate a lack of trustworthiness."

Tehama County is a public office for purposes of Fed. R. Evid. 803(8). The information about the outstanding property taxes was obtained in a matter under the County's legal duty to report the status of taxes against real property in that county. Also, the debtor has not shown that the source of the movant's information indicates a lack of trustworthiness.

Nevertheless, the plan provides for the repayment of the pre-petition property taxes and the debtor appears to have paid all post-petition taxes except for

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the second installment for the 2015-16 tax year in the amount of \$3,478.60 docket 176 at 6. The opposition indicates this payment will be made prior to the hearing on this motion.

Hence, in the absence of proof that the debtor has not made all plan payments due to the county, and assuming the debtor provides proof at the hearing that the second installment of the 2015-16 taxes were paid, there appears no basis to terminate the stay.

2.	16-22163-A-7	SYLVIA KINERSON	MOTION TO
	16-2134	LT-1	WITHDRAW AS ATTORNEY
	MCGRANAHAN V. KINERSON ET AL		6-15-17 [59]

Tentative Ruling: The motion will be conditionally granted.

Attorney Lou Tovar asks for permission to withdraw as counsel for one of the defendants in this adversary proceeding, Sylvia Kinerson, who is the debtor in the underlying bankruptcy case, because Ms. Kinerson wishes to represent herself. The movant claims that there are other grounds for the motion, but he prefers to provide them to the court in camera "given the sensitive nature of this case."

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."

The underlying bankruptcy case was filed by Ms. Kinerson on April 6, 2016. This adversary proceeding was filed against her and Mr. Laffranchini on July 1, 2016.

On July 3, 2017, the court held a hearing on a similar motion in the bankruptcy case, where the movant was seeking to withdraw as counsel for Ms. Kinerson in that case. At that hearing, Ms. Kinerson did not deny that she no longer wished the movant to represent her.

However, she raised an issue over the fees she has paid to the movant with respect to the bankruptcy case and three adversary proceedings where he represents her, including this adversary proceeding (Case No. 16-22163, Adv. Proc. No. 16-2134, Adv. Proc. No. 16-2137, and Adv. Proc. No. 16-2160).

At that point, it came to light that the movant had not filed a Rule 2016(b) statement disclosing all fees received from the debtor. The court determined that it must examine the movant's fees in the bankruptcy case and all adversary proceedings, before ruling on the motion to withdraw in the bankruptcy case. As such, the court ordered the movant to file an amended Fed. R. Bankr. P. 2016(b) statement by July 10. Case No. 16-22163, Docket 91.

Given that this motion is nearly identical to the one in the bankruptcy case, the court surmises that the debtor's position on this motion is substantially identical to her position on the motion in the bankruptcy case. As such, the movant's Amended Rule 2016(b) statement is relevant here as well. The court will not grant this motion without first having reviewed the movant's Amended Rule 2016(b) statement.

As of the date of this ruling, the Amended Rule 2016(b) statement has not been filed. As the court has not yet seen the Amended Rule 2016(b) statement, this motion will be granted subject to the court reviewing that statement.

3.	16-22163-A-7	SYLVIA KINERSON	MOTION TO
	16-2134	LT-2	WITHDRAW AS ATTORNEY
	MCGRANAHAN V. KINERSON ET AL		6-15-17 [63]

Tentative Ruling: The motion will be granted.

Attorney Lou Tovar asks for permission to withdraw as counsel for one of the defendants in this adversary proceeding, Stanley Laffranchini, because Mr. Laffranchini wishes to represent himself. The movant claims that there are other grounds for the motion, but he prefers to provide them to the court in camera "given the sensitive nature of this case."

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:

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"(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

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This adversary proceeding was filed on July 1, 2016. As Mr. Laffranchini wishes to represent himself and not be any longer represented by the movant, the court will permit the movant to withdraw as counsel for Mr. Laffranchini. The motion will be granted.

The movant shall provide Mr. Laffranchini with his case file within 14 days of entry of the order on this motion.

4.	16-22163-A-7 SYLVIA KINERSON	MOTION TO
	16-2137 LT-1	WITHDRAW AS ATTORNEY
	KINERSON V. KINERSON	6-15-17 [40]

Tentative Ruling: The motion will be conditionally granted.

Attorney Lou Tovar asks for permission to withdraw as counsel for one of the defendants in this adversary proceeding, Sylvia Kinerson, who is the debtor in the underlying bankruptcy case, because Ms. Kinerson wishes to represent herself. The movant claims that there are other grounds for the motion, but he prefers to provide them to the court in camera "given the sensitive nature of this case."

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."

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On July 3, 2017, the court held a hearing on a similar motion in the bankruptcy case, where the movant was seeking to withdraw as counsel for Ms. Kinerson in that case. At that hearing, Ms. Kinerson did not deny that she no longer wished the movant to represent her.

However, she raised an issue over the fees she has paid to the movant with respect to the bankruptcy case and three adversary proceedings where he represents her, including this adversary proceeding (Case No. 16-22163, Adv. Proc. No. 16-2134, Adv. Proc. No. 16-2137, and Adv. Proc. No. 16-2160).

At that point, it came to light that the movant had not filed a Rule 2016(b) statement disclosing all fees received from the debtor. The court determined that it must examine the movant's fees in the bankruptcy case and all adversary proceedings, before ruling on the motion to withdraw in the bankruptcy case. As such, the court ordered the movant to file an amended Fed. R. Bankr. P. 2016(b) statement by July 10. Case No. 16-22163, Docket 91.

Given that this motion is nearly identical to the one in the bankruptcy case, the court surmises that the debtor's position on this motion is substantially identical to her position on the motion in the bankruptcy case. As such, the movant's Amended Rule 2016(b) statement is relevant here as well. The court will not grant this motion without first having reviewed the movant's Amended Rule 2016(b) statement.

As of the date of this ruling, the Amended Rule 2016(b) statement has not been filed. As the court has not yet seen the Amended Rule 2016(b) statement, this motion will be granted subject to the court reviewing that statement.

5. 16-22163-A-7 SYLVIA KINERSON
16-2160 LT-1
MCGRANAHAN V. KINERSON

MOTION TO
WITHDRAW AS ATTORNEY
6-15-17 [17]

Tentative Ruling: The motion will be conditionally granted.

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The underlying bankruptcy case was filed by Ms. Kinerson on April 6, 2016. This adversary proceeding was filed against her on August 4, 2016.

On July 3, 2017, the court held a hearing on a similar motion in the bankruptcy case, where the movant was seeking to withdraw as counsel for Ms. Kinerson in that case. At that hearing, Ms. Kinerson did not deny that she no longer wished the movant to represent her.

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Given that this motion is nearly identical to the one in the bankruptcy case, the court surmises that the debtor's position on this motion is substantially identical to her position on the motion in the bankruptcy case. As such, the movant's Amended Rule 2016(b) statement is relevant here as well. The court will not grant this motion without first having reviewed the movant's Amended Rule 2016(b) statement.

As of the date of this ruling, the Amended Rule 2016(b) statement has not been filed. As the court has not yet seen the Amended Rule 2016(b) statement, this motion will be granted subject to the court reviewing that statement.

6.	17-23853-A-11	ELIZABETH SETTLES	STATUS CONFERENCE
			6-8-17 [1]

Tentative Ruling: None.