

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

July 25, 2016 at 10:00 a.m.

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1. 16-23827-A-11 LOBBY BAR, L.L.C. STATUS CONFERENCE  
6-13-16 [1]

**Tentative Ruling:** None.

2. 14-30833-A-11 SHASTA ENTERPRISES MOTION TO  
FWP-25 CONFIRM AMENDED PLAN  
6-13-16 [525]

**Tentative Ruling:** The hearing on the motion will be continued because the trustee filed a modified first amended plan on July 1, 2016 (Docket 545) and served it with an amended ballot on creditors only on July 1, 2016 (Docket 547). This modified plan removes certain requirements the prior version of the plan had imposed on the general unsecured class of creditors (Class 4), such as releasing general partners from liability and signing a release and stipulation.

Such plan changes are significant as some creditors have likely already executed a release and stipulation with the estate, and may be now reconsidering their options, given the removal of this requirement under the newly modified plan; the prior version of the plan was served on June 16, 2016. Docket 532. Such creditors should have the benefit of the full notice period under Fed. R. Bankr. P. 2002(b) to ascertain their rights under the newly modified plan.

3. 14-30833-A-11 SHASTA ENTERPRISES MOTION TO  
FWP-28 SELL AND TO APPROVE COMPENSATION  
OF BROKER  
6-27-16 [539]

**Tentative Ruling:** The motion will be conditionally granted.

The chapter 11 trustee requests authority to short sell "as is" and "where is" for \$1,550,000 in cash the estate's interest in 415 Knollcrest Drive, Redding, CA, including all related items identified in Section 8(B) of the sale agreement, to FP Investments, L.L.C. The only creditor secured by the property is The Curto Family Trust. The release price is \$1,250,000 plus 75% of any overbids above \$1,575,000.

The trustee also seeks:

(1) authority to pay outstanding (estimated at approximately \$75,000) and prorated prospective property taxes out of escrow, along with the estate's escrow and closing costs and expenses;

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(2) authority to pay the release price of \$1,250,000 plus 75% of any overbids above \$1,575,000 to The Curto Trust;

(3) authority to pay a real estate commission to the estate's broker, Properties by Merit, Inc.; Properties by Merit will be sharing some of its 50% commission with the estate's other real estate broker, Kennedy Wilson;

(4) a waiver of the 14-day period of Fed. R. Bankr. P. 6004(h);

(5) a good faith finding under section 363(m); and

While the property is not subject to any other monetary encumbrances, it is nonetheless subject to non-monetary encumbrances, such as easements, dedications, notices and redevelopments. The sale is subject to such non-monetary encumbrances.

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 an estimated net proceeds of \$50,000 for 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 authorize payment of the real estate commission to the estate's broker, consistent with its employment terms approved by the court.

The court will authorize payment of the incentive bonus to Mr. Cretaro, consistent with his employment terms approved by the court.

The court will waive the 14-day period of Rule 6004(h) and it will make a good faith determination under section 363(m), subject to receiving and reviewing a declaration from FP concerning its good faith in purchasing the property. As of the time the motion papers were filed, there was no such declaration from FP, attesting to its good faith in this transaction.

4. 14-30833-A-11 SHASTA ENTERPRISES MOTION TO  
FWP-29 APPROVE COMPENSATION OF ACCOUNTANT  
6-27-16 [533]

**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 trustee, 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

Evanhoe, Kellog & Company, accountant for the estate, has filed its first interim motion for approval of compensation. The requested compensation consists of \$11,647.50 in fees and \$0.00 in expenses. This motion covers the

period from February 16, 2015 through April 20, 2016. The court approved the movant's employment as the estate's accountant on April 27, 2015. Docket 267. In performing its services, the movant charged hourly rates of \$100 and \$225.

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 the preparation of estate tax returns.

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

5. 14-30833-A-11 SHASTA ENTERPRISES STATUS CONFERENCE  
10-31-14 [1]

**Tentative Ruling:** None.

6. 15-29136-A-12 P&M SAMRA LAND MOTION TO  
NCK-5 INVESTMENTS L.L.C. CONFIRM AMENDED PLAN  
6-20-16 [164]

**Tentative Ruling:** The motion will be denied.

The debtor seeks confirmation of its second amended chapter 12 plan, filed on June 20, 2016. Docket 170.

Each of the following parties has filed an opposition to plan confirmation:

- the Socotra Fund, LLC along with Gary E. Roller, trustee of the Gary E. Roller Profit Sharing Plan and the Petit Revocable Trust, dated March 29, 1999 (first mortgage holder on the debtor's farm real property);
- IRA Services Trust Co. CFBO (second mortgage holder on the debtor's farm real property) and trust settlor Shankuntala Saini;
- unsecured creditor Ag-Seeds Unlimited.

Plan confirmation will be denied for the following reasons:

(1) The plan is not proposed in good faith because, among other things, the debtor is treating secured claimants unfairly. While the plan is proposing not to impair the fourth priority mortgage claim of the Thiel Family Trust, given that creditor's insider-like relationship with the debtor, the plan proposes to impair each of the first three in priority claims secured by the property. The plan proposes to reamortize the loans of the first three in priority secured creditors and pay them interest only until a balloon payment due on February 1, 2022. Docket 170 at 12-13.

In other words, while the fourth priority mortgage claim is receiving principal and interest payments, the senior three claims will receive no principal during the duration of the plan.

In addition, the plan does not reveal the terms of the Thiel loan. The court cannot determine the monthly payments owed to Thiel under the plan.

(2) The plan does not satisfy the best interest of creditors test. While the

debtor agrees that unsecured creditors would be paid in full in a chapter 7 liquidation, the plan does not pay them in full. The plan proposes to pay \$61,124.68 a year for five years to unsecured creditors, totaling \$305,623.40, whereas the filed unsecured claims exceed that amount now (approximately \$384,864). Ag-Seeds has amended its claim, increasing it by about \$76,000. POC 6-2. The plan then violates the best interest of creditors test of 11 U.S.C. § 1225(a)(4).

Even if the debtor will be objecting to some claims, the plan must still be feasible and provide for such claims in the event the debtor is unsuccessful at prevailing on such objections.

(3) The plan does not state the monthly/annual payment amounts to the creditors and the due date for such payments. This must be addressed as to all creditors.

(4) The plan does not state the aggregate amount of the general unsecured claims and their dividend. This should be stated under the heading providing treatment for such claims.

(5) The debtor has not established feasibility. Even if the court were to allow the disparate treatment of the secured claims, the court cannot tell from the record the monthly payments due on the Thiel claim and thus whether the debtor has sufficient income to pay the claim.

(6) The plan is not feasible because the debtor expects to fund it in part with a \$60,000 per year plan contribution from Stone Lake Farm Enterprises, Inc., proposed to be increased to \$75,131.48 (Docket 208 at 2), an entity for which the court has evidence it sustained a loss of \$13,511 in 2015. In 2014, Stone Lake had a net profit of only \$76,079. Docket 171, Ex. D.

The debtor's response that Stone Lake will have the promised \$75,131.48 for the debtor because it has or will be planting more acreage (conflicting statements of 350 acres and 500 acres) of organic corn is unpersuasive.

The court is not satisfied with the explanation that Stone Lake's losses last year were due solely to planting 99 acres of organic corn, as opposed to planting 350 or 500 acres. Stone Lake's expenses for planting the 99 acres were correspondingly a lot less as well. For example, for 2014, Stone Lake's expenses were \$453,184, whereas for 2015 they were \$173,411. Docket 171, Ex. D.

If planting only 99 acres last year was indeed the sole cause of Stone Lake's loss, Mr. Samra should have known not to do this and plant more acreage of corn. The debtor's principal, Mr. Samra, who is also Stone Lake's sole owner and principal, boasts of having over 50 years of farming experience, with eight of those years having farmed organic corn. Docket 208 at 2.

Further, Stone Lake's 2015 loss begs the question of who absorbed the loss. Obviously the debtor did not help Stone Lake, as the debtor was unable to pay its own creditors. The debtor defaulted on Ms. Saini's second mortgage claim in or about August 2015. Neither the debtor, nor Stone Lake has answered this question.

Furthermore, the court has no evidence of Stone Lake's current assets and liabilities. The latest financial statement for Stone Lake in the record is as of December 31, 2015, approximately seven months ago. Docket 171, Ex. D.

During this time, Stone Lake's asset to liability ratio may have changed entirely from what it was during 2015.

More, Stone Lake's intention to plant "more acreage" of organic corn this year is not credible as it is too late for such a planting. The planting of corn is done during the spring. See Docket 96.

The court is unpersuaded by Stone Lake's financial ability to contribute to the plan.

(7) The projected \$535 a ton price for organic corn is inflated given the testimony of Mr. Squires of \$420 to \$440 a ton. Docket 96, Squire Decl. The \$535 a ton price appears to be based on transactions that took place during 2014, whereas Mr. Squires' testimony is based on more recent data. This is another reason the court is not convinced of the plan's feasibility.

(8) The court cannot determine feasibility even if it were to agree with the debtor's projected income over the next five years (Docket 171, Ex. F), including contributions from Stone Lake. The plan does not identify all payments required by the plan. Although the debtor's financial projections state \$180,000 a year for payments under the plan, the court cannot tell from the record how the debtor arrived at this figure. Docket 171, Ex. F.

(9) The court cannot determine feasibility because the debtor has not elaborated on the over \$110,000 in other farming expenses identified in its future financial projections. For instance, the record says nothing about what those expenses involve, why they are reasonable and how they compare with the debtor's or its principal's past payment of such expenses. Such expenses include, without limitation, seed, irrigation, labor, equipment repairs and maintenance. Docket 171, Ex. F.

(10) The record on feasibility is inadequate because it does not address the current drought issues being experienced throughout California.

(11) The arrangement with creditor Michael Thiel to pay \$30 a month for the rental of a residence on the estate's real property prejudices other creditors, including the three mortgage creditors senior to the Thiel Trust, because the debtor is not receiving fair market rental value for that residence, while the plan is paying only interest to the senior mortgage creditors.

(12) There is no evidence in the record about the *present* condition of its real property, including the status of crops.

The court finds it unnecessary to address other basis for plan confirmation denial.

7. 11-23741-A-12 JANET BOGUE  
MWB-4

MOTION FOR  
ENTRY OF DISCHARGE  
6-4-16 [65]

**Tentative Ruling:** The motion will be conditionally granted.

The debtor asks 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 February 15, 2011. The court confirmed the debtor’s chapter 12 plan on November 15, 2011. Docket 52. The debtor does not have any domestic support obligations.

First, the trustee filed a final report on June 11, 2014 and the report was approved on December 22, 2014. Dockets 54 and 58. 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. Dockets 52 & 54. 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 67 at 2. No objection has been filed to that certificate and the time to file an objection has expired.

However, 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). See 11 U.S.C. § 1228(f). Subject to the debtor giving such notice to creditors, the motion will be granted.

8.	16-24261-A-7 C.C. MYERS, INC. JHC-6 LIBERTY MUTUAL INSURANCE CO., ET AL	MOTION FOR RELIEF FROM AUTOMATIC STAY O.S.T. 7-18-16 [51]
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**Tentative Ruling:** The motion will be denied without prejudice because the court sees no evidence in the record, such as a declaration or an affidavit, to support the motion’s factual assertions.

The movant seeks relief from stay to sell steel under the terms of its security agreement with the debtor, securing an approximately \$26,512 claim. Under the terms of the agreement, the movant is purportedly secured by the debtor’s “[a]ll equipment, machinery, vehicles, aircraft, steel, inventory, supplies, office equipment and furnishings.” The movant contends that the value of its collateral is “far less” than its claim. Docket 51 at 3-4.

However, there is no evidence in the record to support any of these factual assertions.

9. 16-21585-A-11 AIAD/HODA SAMUEL MOTION FOR  
FWP-4 ORDER APPROVING PROPERTY  
MANAGEMENT AGREEMENTS ETC  
6-13-16 [114]

**Tentative Ruling:** The motion will be conditionally granted in part.

The chapter 11 trustee sought to employ Sackett Corporation as a property manager for three shopping centers the estate is operating, including Stockton Boulevard, Power Inn Road, and Sacramento Avenue (West Sacramento).

On or about June 27, 2016, the court granted the motion as to the Power Inn and Stockton Boulevard shopping centers, whereas it continued the hearing on the motion with respect to the Sacramento Avenue shopping center – first to July 11 and then July 25, 2016. Dockets 146 & 154. The trustee has been negotiating with the lender secured by that shopping center.

Subject to hearing from the trustee about the management of the Sacramento Avenue shopping center, the motion will be granted as to that shopping center in accordance with the court's June 27, 2016 ruling with respect to the other shopping centers. See Docket 146.