

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

October 3, 2016 at 10:00 a.m.

1. 16-25217-A-11 WEST LANE PROPERTIES MOTION TO
MJH-1 INC. USE CASH COLLATERAL
9-1-16 [18]

Tentative Ruling: The motion will be granted.

The debtor seeks to use the cash collateral of creditors that hold claims secured by the debtor's real property commonly known as 4629 West Lane, Stockton, California, Assessor's Parcel No. 104-370140-000. The property contains a commercial building with 11,648 square feet divided into three units.

The motion identifies the following secured claims:

Rushmyfile Inc. holds a deed of trust in first priority position with a principal balance of approximately \$55,000. The terms of the deed of trust require monthly installment payments in the amount of \$5,880.85. Pre-petition arrears amount to \$58,000.

Linda Banks holds a deed of trust in second priority position with a principal balance of approximately \$246,000. The terms of the deed of trust require monthly installment payments in the amount of \$2,280.45. Pre-petition arrears amount to \$0.

Shabbir A. Khan holds a lien in third priority position that secures a claim for real property taxes in the amount of approximately \$18,172.03. Pre-petition arrears amount to \$22,172.

11 U.S.C. § 1107(a) provides that a debtor-in-possession shall have all rights, powers, and shall perform all functions and duties, subject to certain exceptions, of a trustee, "[s]ubject to any limitations on [that] trustee." This includes the trustee's rights under 11 U.S.C. § 363. 11 U.S.C. § 363(c)(2)(B), (c)(3), (e) provides that, when the secured claimants with interest in the cash collateral do not consent, after notice and a hearing, "the court . . . shall prohibit or condition such use [of cash collateral] . . . as is necessary to provide adequate protection of such interest."

The debtor admits that the property has a value of approximately \$1,000,000 leaving approximately \$180,000 equity. The property generates income of approximately \$6,500 per month from the lease of one of its units to JC Master Tech, an automobile repair facility owned by the principal of the debtor. The principal of the debtor is actively seeking new tenants for the two empty units, which the debtor expects would generate an additional \$3,600 per month in income. The motion states that "all rents collected by the debtor will go towards [the] three creditors" who hold claims secured by the property. Docket

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18. Additionally, the motion states that the real property is listed for sale with an asking price of \$1,200,000, and, if sold, the debtor intends to liquidate the claims secured by the property.

The debtor is seeking to use a total of \$6,167.68 in cash collateral to make monthly adequate protection payments to creditors in the following amounts: (1) \$3,215.25 to Rushmyfile Inc., (2) \$1,438.09 to Linda Banks, and (3) \$1,514.34 to Shabbir A. Khan. The debtor testifies that the "use of cash collateral is necessary in this case to maintain adequate protection payments to secured creditors, to continue business operations, and for reorganization." Ma Decl., Docket 20 at 4.

The motion proposes to devote all current and potential cash collateral generated by the property to adequately protect creditors. The debtor seeks to allocate all current profit arising from a legally binding lease of the property toward adequate protection payments to the aforementioned lienholders. Notably, the debtor also pledges to devote all prospective rental income and/or sale proceeds generated by the property to adequately protect the lienholders or liquidate their claims.

The court is satisfied that the debtor's proposed use of cash collateral for the exclusive use making adequate protection payments to creditors complies with 11 U.S.C. 363. Accordingly, the court will approve the debtor's use of the creditors' cash collateral consistent with the budget proposed in the motion.

The motion will be granted.

2. 10-20342-A-12 HARIPAUL/NARINDER SAHOTA MOTION FOR
SAC-15 ENTRY OF DISCHARGE
8-16-16 [293]

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 chapter 12 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 (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 for entry of a chapter 12 discharge will be 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 January 7, 2010. The court confirmed the debtor’s chapter 12 plan on November 24, 2010. Docket 228. The debtor does not have any domestic support obligations.

First, the trustee filed a final report on August 2, 2016, and the report was approved on September 13, 2016. Dockets 287 and 297. 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 287. 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 declaration in connection with this motion testifying 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 295 at 1. No objection has been filed to this motion or declaration.

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). Docket 296 at 1. No creditor has objected to this notice. This satisfies the requirements of 11 U.S.C. § 1228(f).

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).

3.	10-36150-A-11 KARIN FRANK 16-2005 MLA-1 FRANK V. CHASE HOME FINANCE	MOTION FOR ENTRY OF DEFAULT JUDGMENT 6-20-16 [35]
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Final Ruling: The hearing on the motion has been continued to October 31, 2016. Docket 61.

4.	16-21585-A-11 AIAD/HODA SAMUEL FWP-11	MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY 9-2-16 [254]
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Tentative Ruling: The motion will be granted and the debtor’s objection will be overruled.

Felderstein Fitzgerald Willoughby & Pascuzzi LLP, attorney for the chapter 11 trustee, has filed its first interim motion for approval of compensation. The requested compensation consists of \$55,308.00 in fees and \$594.54 in expenses, for a total of \$55,902.54. This motion covers the period from May 10, 2016

through July 31, 2016. The court approved the movant's employment as the trustee's attorney on May 19, 2016. In performing its services, the movant charged hourly rates of \$195, \$405 and \$495.

The debtors filed an opposition to the motion asserting that:

- a. Notice is deficient as movant failed to provide 21 days notice as required pursuant to FRBP Rule 2002(a)(6).
- b. The trustee's monthly reports have been late, and page 2 of every single monthly report indicates sums disbursed to attorney for the trustee and to the trustee in June of 2016 without the required court order.
- c. Task billing has not been complied with as there are entries indicating phone conferences with the trustee for time periods approaching 3.5 hours.

Aiad Samuel, a co-debtor, filed a declaration in opposition to the motion alleging that the movant's billing entries are excessive. The debtor testifies that the movant improperly billed for "frequent interruptions for restroom calls from the meeting time billed." Docket 313 at 1.

The movant filed a reply stating that the court's docket and the proof of service of the motion show that the motion was filed and served on September 2, 2016, which was 31 days before the date set for hearing. Docket 259. Thus, the debtors actually received 10 days more notice than the minimum amount of notice required by Fed. R. Bankr. P. 2002(a)(6).

In response to the debtors' contention that the trustee's monthly operating reports ("MOR's") state that payments have been made to the movant without a required court order, the reply notes that such funds have been set aside and held in trust pending the court's allowance and payment of fees and costs. See Docket 254 at 16. The reply reminds the debtor that, as previously explained when the debtors' counsel made the same misstatement of the contents of the MOR's in open court, the MOR's actually state, as follows: "\$38,000.00 paid to Trustee's Atty in June to be set aside until payments are approved by the Court." See Docket 236 at 2.

As to the opposition's assertion that the movant did not comply with task billing, the reply points out that the debtors do not identify a single billing entry in support of their assertion. Rather, the movant contends that an actual review of the billing invoices and the detailed task billing summaries in the motion will show that counsel for the trustee itemizes its billing according to task categories and generally takes its task billing a step further by itemizing its services within a task billing code. For example, page 3 of Exhibit A, Docket 257, includes a task billing category of "Cash Collateral/Financing" with a time entry on 5/18/2016 by Mr. Rios as follows:

Telephone calls to and from Trustee regarding cash collateral budget and related issues. (.4) Telephone call from Chase Bank regarding claims and representation. (.1) Exchange emails with M. Clark regarding JPMorgan claims regarding cash collateral. (.2) Work on meetings with creditors regarding cash collateral issues. (.1) Telephone call from B. Emard regarding cash collateral issues. (.3) Telephone call from attorney for JP Morgan shopping center claim. (.3) Email from debtors' counsel regarding account and budgeting information. (.2) Follow up regarding cash collateral issues emails and calls. Further telephone call from Trustee. (.7) Email to counsel for JPMorgan shopping center claim. (.2)

The reply notes that the debtors appear to complain about management issues such as the time when monthly operating reports were filed and operation of the estate's shopping centers. For example, Mr. Samuel's declaration references over 200 unspecified email complaints and he asserts that "The Trustee lawyer refuse to do parking repairs and roof repairs." Samuel Decl at 2:23-24. Movant submits that counsel for the trustee has not been engaged to perform parking or roof repairs.

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 estate with the sale of personal property; (2) reviewing schedules and other petition documents, (3) preparing and filing stipulations extending the deadline for filing objections to discharge, and (4) preparing and filing employment and compensation motions.

Proof of service indicates that the movant provided the debtors with notice of the motion on September 2, 2016. Docket. 259. The court calculates that the movant provided 31 days notice in compliance with Rule 2002.

The debtor's declaration and the opposition make allegations of improper billing that are unsupported by evidence. First, the opposition objects to compensation for a telephone call "approaching 3.5 hours" but does not reference the invoice or date for the alleged call. Docket 312 at 2. A review of the task billing submitted as an exhibit attached to the motion reveals that 0.8 hours the maximum amount of time the movant has billed exclusively for a telephone call. See Docket 257, Ex. A.

Next, the debtor's declaration asserts a blanket allegation of improper billing but does not provide supporting evidence such as an invoice or date for the improper charges. The debtor contends that the time charged for meetings should be reduced as the movant took "frequent interruptions for restroom calls from the meeting time billed." The debtor does not identify the specific meetings to which he is referring.

The debtor's declaration also faults the movant for failing to repair a roof, but the court does not see the relevance in such an assertion where the issue before the court is reasonable compensation and the movant has not billed for roof repair and states that the trustee did not engage the movant to perform roof repairs. The court notes that oversight of roof repair is not in the realm of duties typically performed by counsel for a trustee.

After a review of the motion and thorough task billing, the court concludes the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved.

To the extent applicable, the movant shall deduct from the allowed compensation any fees or costs that have been estimated but not incurred.

5. 16-21585-A-11 AIAD/HODA SAMUEL
MDE-1
THE BANK OF NEW YORK MELLON VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
8-30-16 [240]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, 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 in part and denied in part. The motion will be granted as to the debtor and denied as moot as to the chapter 11 trustee.

The movant, The Bank of New York Mellon, et al., as trustee for the certificate holders of the CWALT, Inc., Alternative Loan Trust certificate, seeks relief from the automatic stay as to a real property in Sacramento, California. The property has a value of \$105,000 and is encumbered by claims totaling approximately \$145,734. The movant's deed is in first priority position and secures a claim of approximately \$145,734.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court notes that the chapter 11 trustee filed a statement of nonopposition citing a motion to abandon the property filed by the trustee. The docket reflects that the court granted the trustee's motion to abandon. Docket 320. As a result, the automatic stay no longer applies to the trustee as the subject property is no longer property of the estate. Thus, the motion for relief from stay is moot as to the trustee and will be denied in part on this basis.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(2) as to the debtor to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. The motion will be denied as moot as to the trustee. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will not be waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

6.	15-22990-A-7	XTREME ELECTRIC, INC	MOTION FOR
	16-2143	MHK-1	ABSTENTION
	ROBERTS V. SEGUE CONSTRUCTION, INC., ET AL		8-25-16 [15]

Tentative Ruling: The motion will be granted.

The movant, Segue Construction, Inc., requests that the court abstain from

hearing adversary proceeding number 16-2143.

The estate filed the adversary proceeding, asserting breach of contract and quantum meruit claims against Segue and objecting to Segue's \$736,312 unsecured proof of claim against the estate. The adversary proceeding also seeks recovery on construction bonds against two bond issuers, American Contractors Indemnity Company and The Ohio Casualty Insurance Company.

The court previously determined that discretionary abstention under 28 U.S.C. § 1334(c)(1) was warranted as to the estate's claims. The court made this ruling in the context of deciding a motion for relief from stay filed in the underlying bankruptcy case. See Case No. 15-22990, Docket 69. The court determined that abstention was cause to grant relief from stay and allow the movant to proceed with state court litigation. Id. In weighing factors used by the Ninth Circuit to decide whether discretionary abstention is appropriate, the court noted that the adversary proceeding involves the same issues the movant is litigating in state court namely, breach of contract and mechanic's lien issues pertaining to the nursing home construction project where Segue was a general contractor and the debtor was a subcontractor. Id.

The court incorporates by reference its full analysis of abstention from its ruling on the motion for relief from stay. Id.

Given the foregoing, abstention under 28 U.S.C. § 1334(c)(1). The court will grant the motion.

7.	15-22990-A-7	XTREME ELECTRIC, INC	STATUS CONFERENCE
	16-2143		7-20-16 [7]
	ROBERTS V. SEGUE CONSTRUCTION, INC. ET AL		

Tentative Ruling: None.