

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

October 23, 2014 at 10:30 a.m.

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1. [14-29231](#)-E-11 MIZU JAPANESE SEAFOOD MOTION TO SELL O.S.T.
RLC-4 BUFFET, INC. 9-30-14 [[28](#)]
Stephen M. Reynolds

Tentative Ruling: The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors, parties requesting special notice, and Office of the United States Trustee on September 30, 2014. By the court's calculation, 23 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The Motion to Sell Property is denied without prejudice.

The Bankruptcy Code permits the Debtor in Possession, Mizu Japanese

Seafood Buffet, Inc., ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here Movant proposes to sell the "Property" described as follows:

- A. All tangible personal property assets in the bankruptcy aside from bank accounts and causes of action.

The proposed purchaser of the Property is Tony Lin and the terms of the sale are that Mr. Lin will purchase essentially all tangible personal property of the Debtor-in-Possession for \$127,000.00 cash. Mr. Lin has no connection to the Debtor-in-Possession or its principals. The price offered is at market price. Portions of the sale proceeds will be subject to disputed liens.

The Declaration of James Hunter has also been filed in response to the opposition. He states that he was employed by the Debtor in March 2014, to attempt to sell the restaurant. He further testifies,

- A. He is experience at selling restaurants. (No testimony provided as to that experience.)
- B. He believes that a \$127,600 sales price is a good price for the business.
- C. This is a going concern value, which is more than just the value of the fixtures and equipment.

Declaration, Dckt. 32.

U.S. TRUSTEE'S OBJECTION

The United States Trustee ("UST") filed opposition to this Motion on October 15, 2014. Dckt. 43. The UST objects to the proposed sale on the following grounds:

1. The proposed sale contemplates that a broker will be paid \$17,400.00. The UST objects to this because the broker's employment has not been approved by this court under 11 U.S.C. § 327. The broker in question appears to be James Hunter of "Business Team." Mr. Hunter started working with Debtor-in-Possession in February or March of 2014.
2. Debtor-in-Possession recently amended the sale documents to provide that the purchaser will pay the broker. In doing so, Debtor-in-Possession reduced the sale price from \$145,000.00 to \$127,000.00. The difference is the exact amount of the broker's commission. Even if the broker does not seek compensation from the estate, the broker must be employed under 11 U.S.C. § 327.

OPPOSITION BY HUI LONG, WAN FANG FU, MAGGIE CHAN, DAO LIU, AND RACHEL LIU

Hui Long, Wan Fang Fu, and Maggie Chan, secured creditors, with Dao Liu and Rachel Liu, unsecured creditors ("Creditors") filed opposition to this motion on October 15, 2014. Dckt. 52. Creditors oppose this motion on the basis that:

1. Debtor-in-Possession's proposed sale is a plan *sub rosa* and should be disfavored by the court. Debtor-in-Possession has entered into transactions to lease the business and a potential sale of the business outside of a plan of reorganization. This sale would dispose of effectively all personal property assets of the Debtor-in-Possession. There could be no future reorganization plan. Debtor-in-Possession is seeking to circumvent the reorganization process and force a sale that should not occur until the going concern value of the business has been investigated, schedules are amended to include insider payments and disclose all assets.
2. Creditors further allege that the sale should not be permitted until all creditors have been able to examine the Debtor-in-Possession's finances and establish the going concern value for the business. The only evidence Debtor-in-Possession supplied regarding the going concern value for the business was a declaration by James Hunter, the broker. Mr. Hunter's basis for his determination of the value has not been disclosed.
3. Creditors next allege that Debtor-in-Possession has not marketed the property adequately. Creditors believe that further marketing may generate a better offer than the one in the Motion. The Hunter Declaration does not state the details of the marketing the property underwent, including how long it was marketed and how many offers it received.
4. The business is currently being operated by the proposed purchaser, Mr. Lin. The Debtor-in-Possession is not incurring additional debts because of this, so there is no reason to push the proposed sale through so quickly.
5. Creditors also allege that the transaction is not at arm's length. The owner of Debtor-in-Possession and Mr. Lin live six (6) houses apart and Mr. Lin paid no money to Debtor-in-Possession for the lease. Mr. Lin is currently operating the business and retaining all proceeds.
6. Debtor-in-Possession states that the lease is not an asset in the Debtor-in-Possession's bankruptcy estate in its Motion for Sale and Schedules, but its balance sheets and 2013 tax return show the rental deposit for the business location (\$57,612.00) as an asset of the Debtor-in-Possession.
7. Creditors assert that Debtor-in-Possession has engaged in a pattern of misrepresentations which leads them to question whether the Motion to Sell was proposed in good faith. Debtor-in-Possession has failed to disclose the terms of its lease of the business, list the rental deposit for the premises, report insider payments to Debtor-in-Possession's principals, note the proximity between Debtor-in-Possession's president and Mr. Lin's homes, and show evidence of due diligence in evaluating the going concern value of Debtor. Altogether, these actions show a pattern of misrepresentation and obfuscation that calls Debtor-in-Possession's good faith into question in regard to

both this case and the instant Motion.

8. Finally, Creditors state that the court should deny the Debtor-in-Possession's request for a waiver of the ten day stay in Federal Rule of Bankruptcy Procedure 4001(a)(3). Mr. Lin is already running the restaurant and collecting proceeds without value due to Debtor-in-Possession. Postponing the sale for ten days will not change the position of the proposed buyer or cause nay hardship.

RESPONSE BY DEBTOR IN POSSESSION

The Debtor in Possession, the fiduciary to the bankruptcy estate in this case, responds by saying that if the U.S. Trustee objects to the broker being paid his fee indirectly, through contract revisions to be paid by the purchaser, then the money can be held in a blocked account pending further order of the court.

With respect to the *sub rosa* plan issue, the Debtor in possession cites the court to the Braniff Airways case and the Chrysler Motors case. Debtor asserts that the business asset of the estate is a "melting cube." That the Debtor (presumably the Debtor in Possession in fulfilling its fiduciary duties to the estate) cannot operate the business due to the lac of money.

The Debtor in Possession asserts that while creditors would like more time, the Debtor in Possession needs to sell the business now on the terms of this sale to generate a distribution to creditors holding general unsecured claims. (It is not clear to the court whether the principals of the Debtor who are acting as the officers and agents for the Debtor in Possession, have personal liability on the priority claims and have an interest, separate and apart from the estate and creditors to rush to this sale.)

Alvin Yee, who owns 45% of the shares of the Debtor (and is the President of the Debtor, See Statement of Financial Affairs Question No. 21, Dckt. 25), testifies under penalty of perjury,

- A. Though his mailing address is 10234 Gillam Drive, Elk Grove, California, he has spent the majority (not specifying how much) time somewhere in the Los Angles Area (again, not specifying).
- B. That he has never met Tony Lin and has no connection with him or Asian Ultimate Investments, Inc.
- C. He has no connection with Jim Hunter, the proposed broker.
- D. That he is one of the "former" holders of the real property lease for the business premises of the Estate. He states that the rental deposit shown on the 2013 corporate tax returns was in error.
- E. He states that the lease, with the landlord's permission has already been assigned to the proposed purchaser.

Declaration, Dckt. 62.

Debtor's in Possession counsel has provided his declaration concerning his due diligence concerning the relationships between the various parties involved in this proposed transaction. Dckt. 63.

DISCUSSION

The UST's objection is well-taken. Employment of a broker, like any professional employed to assist a Debtor-in-Possession in carrying out its duties in bankruptcy, must be approved by the court. 11 U.S.C. § 327. The UST correctly notes that James Hunter, the broker in question, has not been approved by the court to render services to Debtor-in-Possession. Although the current sale agreement shows that Mr. Hunter will be "paid by the purchaser" and not the Debtor-in-Possession, his employment must still be approved by the court pursuant to 11 U.S.C. § 327. See *In re Rheuban*, 121 B.R. 368, 385 (Bankr. C.D. Cal. 1990) (stating that even those professionals not intending to seek compensation from the bankruptcy estate must have court approval). Moving the cost from the Debtor-in-Possession to a contracting party does not mean that Mr. Hunter was not employed by and providing services to the bankruptcy estate. This tactic does not overcome the requirements of the Code.

The opposition of Creditors raises many points that cast doubt on the sale and the circumstances surrounding it. The Debtor-in-Possession and its principals have left many questions unanswered, which causes the court to contemplate whether the Motion to Sell has been proposed in good faith and with full disclosure. However, of the eight objections Creditors raise, the most concerning is that the sale as proposed is a plan *sub rosa*. A plan *sub rosa* occurs when the Debtor-in-Possession enters into a transaction that has "the practical effect of dictating some of the terms of a future reorganization plan." *In re Braniff Airways, Inc.*, 700 F.2d 935, 940 (5th Cir. 1983).

Here, Debtor-in-Possession proposes to sell essentially all of the business' tangible personal property. Dckt. 28. Without this infrastructure, Debtor-in-Possession can no longer operate as a restaurant. The terms of any future reorganization plan will be dictated by the proceeds from this sale and the liens to which those proceeds are subject. Additionally, this sale also depletes Debtor-in-Possession's assets, further reducing any creditor's ability to negotiate part of the plan. It is against bankruptcy policy to allow a Debtor-in-Possession to "short circuit the requirements of Chapter 11... by establishing the terms of the plan *sub rosa* in connection with the sale of assets." *In re Braniff Airways, Inc.*, 700 F.2d at 940.

It is possible that everyone (major creditors and Debtor in Possession) could be in agreement that sale of the assets is critical and time sensitive. The court issued the order shortening time and set the hearing believing/hoping that would be the case. That has turned out to be incorrect.

It is clear that the Debtor came into this case with the sale in place. See Schedule B, Contract for Sale of All business with a listed value of \$127,600.00. Dckt. 29 at 35. Based on the Objection, it appears that the bankruptcy was filed to "force" the sale, not having been able to reach resolution with this objecting creditor. The Creditor asserts a lien on the assets of the Debtor.

On Schedule D the Debtor listed the objecting creditors as having judgment liens, with the debts being "disputed." These disputed judgment liens

are in the amount of \$208,982.52, eclipsing the sales proceeds. In the Motion to Sell the Debtor in Possession states that all of the liens may be avoided pursuant to 11 U.S.C. § 547(b). Thus, it is asserted that the liens are "in dispute." No adversary proceeding has been filed to avoid the liens.

The Objecting Creditors assert that judgment liens were recorded in June 2014 (real property) and ORAP liens established August 19, 2014 (personal property). This bankruptcy case was filed on September 15, 2014, just one month after the ORAP liens are asserted to have been established.

In reviewing Schedule E the Debtor lists a number of unpaid wage claims which total \$29,500.00. In addition, Debtor lists \$12,000.00 in Federal unpaid payroll taxes and \$69,000.00 in unpaid sales taxes. It is not explained as to whether the officers of the Debtor in Possession which is pushing this sale have any personal liability for the unpaid taxes and would benefit from a sale for the proposed price, without regard to the benefit to the estate.

However, the Internal Revenue Service has filed Proof of Claim No. 2, in which a priority claim of only \$7,787.81 is asserted.

The Motion was originally supported by the declaration of Jason Chon S. Cheng, the Treasurer of the Debtor. Dckt. 31. He expresses his opinion that the proposed sale is for a fair price and in the interests of the Debtor and creditors. The judgment liens prevented Mr. Cheng from closing the sale.

At the end of the day, the Debtor in Possession, with opposition from a group of the largest creditors in the case, is seeking to have this court issue an order providing for the de facto conclusion of the operation of the estate's business - sale of its most valuable, and only asset. This is nothing more than down and dirty Chapter 7 liquidation, absent the independent fiduciary trustee.

Absent is any explanation as to the extensive marketing and what was done to make sure that fair value, rather than distress value, is obtained. Alvin Yee, the president of the Debtor and Debtor in Possession testifies that he has been absent for the "majority" of the past ten months at some undisclosed location in the Los Angeles Area.

As testified to by Mr. Cheng (Declaration, Dckt. 31), the Debtor leased out its assets pre-petition and is unable to operate a business. The only thing which needs to be done as far as the estate's business operation is for the liquidation sale of this main asset.

If the Debtor in Possession and Debtor want to proceed with such a liquidation without a Chapter 11 Plan and cannot obtain the concurrence of a sufficient number of creditors for the court to determine that such extraordinary relief can properly be granted without too much disregard to 11 U.S.C. § 1101 et seq., Debtor can convert this case to one under Chapter 7 and allow the independent Chapter 7 trustee vet the sale, confirm that the asset was properly marketed, and this sale (or some other sale) should be presented to the court. FN.1.

FN.1. Though the Objecting creditors have obtained what they want, denial of the motion, one should always be careful what they wish for, as you may receive

it. The court not approving the sale, the buyer may walk away. The \$100,000+ in proceeds may be gone, replaced by bits and pieces of used equipment, dishes, forks, and spoons which have little net value.

The Motion to Sell is denied without prejudice.

Based on the evidence before the court, the court determines that the proposed sale is not in the best interest of the Estate.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Sell Property filed by Mizu Japanese Seafood Buffet, Inc., the Debtor in Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Sell is denied without prejudice.

2. [14-29231](#)-E-11 MIZU JAPANESE SEAFOOD STATUS CONFERENCE RE: VOLUNTARY
BUFFET, INC. PETITION
Stephen M. Reynolds 9-15-14 [[1](#)]

Final Ruling: No appearance at the October 15, 2014 Status Conference is required.

Debtor's Atty: Stephen M. Reynolds

The Status Conference is continued to 2:30 p.m. on December 3, 2014.

Continued from 10/15/14

Operating Reports filed: 10/13/14

OCTOBER 20, 2014 ORDER

On October 20, 2014, the court issued an order that continued the Status Conference to 10:30 a.m. on October 23, 2014. Dckt. 67. The court also ordered the Debtor-in-Possession to file and serve on the U.S. Trustee, all creditors with secured claims, the creditors holding the twenty largest unsecured claims, and any person requesting notice in this case the Chapter 11 Status Report on or before October 11, 2014. The court's Scheduling Order (Dckt. 7) remains in full force.

STATUS CONFERENCE REPORT

The Debtor-in-Possession filed the Status Conference Report on October 15, 2014. Dckt. 45.

As to post-petition activities, the Debtor-in-Possession entered into an agreement for the sale of the tangible personal property assets of Debtor-in-Possession's Asian buffet business before filing this case. A motion to approve sale is anticipated to be heard on October 23, 2014 pursuant to an Order Shortening Time that is currently pending. Debtor-in-Possession entered into a short term lease of the restaurant equipment and fixtures prior to the filing of the present case. The Debtor was unable to operate the restaurant and pay the ongoing costs of operation; the short term lease was required to avoid incurring post-petition liabilities as well as breaching the lease of the premises where the restaurant is located. The lease of the business premises is not an asset of the Debtor-in-Possession but is held by principals and former principals of the Debtor-in-Possession. In brief, the post-petition activity of the Debtor-in-Possession has been preserving the status quo while court approval of a § 363(f) sale is pending.

As to filing of a plan, Debtor-in-Possession alleges that a plan will be filed after the proposed sale is concluded. Costs of liquidation through a plan are likely to be less than Chapter 7 liquidation.

As to cramdown, Debtor-in-Possession anticipates creditor acceptance of a liquidation Plan and does not anticipate resorting to § 1129(b).

October 23, 2014 at 10:30 a.m.

As to valuation of assets, the Debtor-in-Possession alleges that the only secured creditors in this case hold avoidable judgment liens. The Debtor-in-Possession does not anticipate that there will be litigation regarding the value of assets.

As to objections to claims, Debtor-in-Possession states that there are three avoidable judgments which may require litigation to liquidate. The estate holds counterclaims against certain former employees for embezzlement. It is not clear now whether sufficient funds will be paid at the general unsecured claim level to justify claim objections.

OCTOBER 23, 2014 STATUS CONFERENCE

In light of the Motion to Sell being denied, the court continues the Status Conference.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

Upon review of the files in this case, the denial of the motion to sell assets, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to 2:30 p.m. on December 3, 2014.

3. 13-36132-E-7 **THAN PHUNG** **MOTION TO COMPEL ABANDONMENT**
ACK-1 **Aaron Koenig** **10-9-14 [82]**

Tentative Ruling: The Motion to Abandon Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on October 9, 2014. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Abandon Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The Motion to Abandon Property is denied without prejudice.

After notice and hearing, the court may order the Trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Than Phung ("Debtor") requests the court to order the Trustee to abandon property commonly known as Debtor's Business "Ace Auto Wrecking" (the "Property"). The Declaration of Debtor has been filed in support of the motion.

However, the court cannot determine what actual assets the Debtor is seeking to have abandoned. The Debtor refers to the "Ace Auto Wrecking" business but a review of Schedule B shows that there are numerous items that may or may not be considered part of "Ace Auto Wrecking." Furthermore, the court is unable to determine if the Debtor is seeking the Trustee to abandon just the interest in the business or the accompanying property. The motion and the declaration seems to suggest that the Debtor is seeking for the interest and any related property, but without more specifics, the court is not willing to grant the abandonment of a business without the Debtor specifically listing the property.

While the court does accept the Debtor's assertions concerning the communications with the Trustee at face value, it is the lack of specifics on what actual pieces of property and interests the Debtor is seeking to have abandoned. FN.1.

FN.1 On Schedule B filed under penalty of perjury in this case Debtor states with particularity the following assets which may exist for some business: "Office equipment for the business," "business equipment," "forklift," and "inventory and parts. Dckt. 1 at 12. The court has no idea what these assets may comprise. After filing this Motion to Abandon Debtor filed an Amended Schedule B. Dckt. 87. On Amended Schedule B Debtor lists stocks and interests in incorporated businesses described as "Ace Auto Wrecking." No such asset was listed on Original Schedule B.

Because the court is unable to ascertain what specific property the Debtor is seeking to have abandoned, the motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Abandon Property filed by Than Phung ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment is denied without prejudice.

4. [14-23471](#)-E-11 ERROL/SUZANNE BURR CONTINUED MOTION TO EMPLOY
DNL-3 Iain A. MacDonald STEVEN A. LEWIS AS SPECIAL
COUNSEL
9-11-14 [[159](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the October 23, 2014 hearing is required.

The Chapter 11 Trustee having filed a Withdrawal of the Motion to Employ Steven A. Lewis as Special Counsel on September 30, 2014 (Dckt. 173), pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion to Employ Steven A. Lewis as Special Counsel was dismissed without prejudice, and the matter is removed from the calendar.**

5. [14-23471](#)-E-11 ERROL/SUZANNE BURR MOTION TO EMPLOY KORKEILA
DNL-4 Iain A. MacDonald APPRAISAL SERVICES AS APPRAISER
9-24-14 [[165](#)]

Tentative Ruling: The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, parties requesting special notice, and Office of the United States Trustee on September 24, 2014. By the court's calculation, 29 days' notice was provided. 14 days' notice is required.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The Motion to Employ is granted.

Chapter 11 Trustee, Susan Smith, seeks to employ Korkeila Appraisal Services ("Korkeila"), pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of counsel to assist the Trustee in appraising the estate's interest in the real property commonly identified as 95 Slate Castle Ranch Road, Downieville, California (the "Property").

The Trustee argues that Korkeila's appointment and retention is necessary to continue to settle and secure funds due to the bankruptcy estate regarding present by providing the Trustee an opinion and a supporting written report of the fair market value of the Property.

Ossi Korkeila, a California certified real estate appraiser and the owner and sole member of Korkeila, testifies that she is appraising the value of the Property and providing the Trustee with an opinion and a supporting report of the fair market value of the Property. Ms. Korkeila testifies she and the firm do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

The Debtors filed a nonopposition to the instant Motion on October 16, 2014. Dckt. 184.

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of counsel, considering the declaration demonstrating that counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Korkeila as an appraiser for the Chapter 11 estate on the terms and conditions set forth in the Fee Agreement for

Appraisal filed as Exhibit A, Dckt. 168

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Employ filed by the Chapter 11 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is granted and the Chapter 11 Trustee is authorized to employ Korkeila Appraisal Services as appraiser for the Chapter 11 Trustee on the terms and conditions as set forth in the Contingency Fee Employment Agreement filed as Exhibit A, Dckt. 168.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by appraiser in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

IT IS FURTHER ORDERED that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

6. [14-29284-E-11](#) CHARLES MILLS
LBG-4 Lucas B. Garcia

MOTION TO EMPLOY KELLER
WILLIAMS REALTY AS REALTOR(S)
10-9-14 [[36](#)]

Tentative Ruling: The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on October 8, 2014. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The Motion to Employ is granted.

Debtor in Possession, Charles Mills, seeks to employ realtor Mimi Nassif, of Keller Williams Realty, pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code Sections 328(a) and 330. Debtor in Possession seeks the employment of realtor to assist the Debtor in marketing and selling the real estate property. Mimi Nassif has been specially trained and certified in high end properties and has worked exclusively in the local region. Mimi Nassif does not have any connection with the Debtor in Possession, or with any insider of the Debtor or any insider of an insider of the Debtor; does not hold or represent any interest adverse to the Debtor or the bankruptcy estate; does not have a pre-petition claim against the Debtors or the bankruptcy estate; and

is not a creditor or an equity security holder of the Debtors or the bankruptcy estate.

The Debtor in Possession argues that realtor's appointment and retention is necessary to sell the real estate property to secure funds due to the bankruptcy estate regarding present circumstances, because Mimi Nassif is a certified "Million Dollar Home Specialist" and, presently, there are fewer than 1% of California Real Estate Agents in Sacramento and Placer Counties that are certified as such.

Mimi Nassif, a real estate agent of Keller Williams Reality, testifies that she is representing the Debtor to market and lease the real estate property located at 201 Rua Esperanza, Lincoln, California. Mimi Nassif testifies she does not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of counsel, considering the declaration demonstrating that counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Mimi Nassif as the realtor for the Chapter 11 estate on the terms and conditions set forth in the Agreement filed as Exhibit 1, Dckt. 39. The approval of the contingency fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Employ filed by the Chapter 11 Debtor in Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is granted and

the Chapter 11 Debtor in Possession is authorized to employ Mimi Nassif as the realtor for the Chapter 11 Debtor on the terms and conditions as set forth in the Real Estate Listing Agreement filed as Exhibit 1, Dckt. 39.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by realtor in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

IT IS FURTHER ORDERED that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

7. [14-29284-E-11](#) CHARLES MILLS
LBG-5 Luke Garcia

MOTION TO EMPLOY LUKE GARCIA AS
ATTORNEY
10-9-14 [[46](#)]

Tentative Ruling: The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on parties requesting special notice on October 8, 2014. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The Motion to Employ is denied without prejudice.

The Debtor-in-Possession, Charles Mills, seeks to employ counsel Luke Garcia, pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code Sections 328(a) and 330. Trustee seeks the employment of counsel to assist the Debtor-in-Possession and provide services associated with legal representation of the Debtor-in-Possession .

The Debtor-in-Possession argues that counsel's appointment and retention is necessary to continue to settle and secure funds due to the bankruptcy estate regarding present financial affairs of both the Debtor-in-Possession and Debtor-in-Possession's estate.

Luke Garcia testifies that he is representing the Debtor-in-Possession and the estate. Mr. Garcia testifies he and the firm do not represent or hold any interest adverse to the Debtor or to the estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

However, the Debtor-in-Possession has not provided a copy of any agreement or retainer that describes the terms and conditions of the representation. Nowhere in the declaration or in the motion are the terms of the employment listed outside the general assertion of "legal representation."

Because the court cannot determine if the terms and conditions of the representation is reasonable, the court denies the motion to employ.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Employ filed by the Debtor-in-Possession having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Employ is denied without prejudice

8. [14-29284-E-11](#) CHARLES MILLS
LBG-6 Luke Garcia

MOTION TO SELL
10-9-14 [[41](#)]

Tentative Ruling: The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, 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.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on parties requesting special notice, and Office of the United States Trustee on October 8, 2014. By the court's calculation, 15 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
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The Motion to Sell Property is denied without prejudice.

Charles Mills ("Debtor-in-Possession"), through his attorney Luke Garcia, filed the instant Motion to Authorize the Debtor-in-Possession to Sell Real Property and Contents on October 9, 2014.

However, the Debtor failed to give proper service. Under Fed. R. Bankr. P. 2002(a)(2), a proposed sale of the estate other than in the ordinary course of business requires 21 day notice to parties in interest. Here, the Debtor only provided 15 days notice.

Because the Debtor failed to give sufficient notice, the motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Sell Property filed by Charles Milles, the Debtor-in-Possession, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Authorize the Debtor-in-Possession to Sell Real Property and Contents is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF MOVANT MAKES AN ORAL MOTION TO SHORTEN TIME AND CAN SHOW PROPER GROUNDS FOR WHICH THE REQUESTED RELIEF MAY BE ENTERED IN LIGHT OF THE FORGOING ISSUES

ALTERNATIVE RULING

The Bankruptcy Code permits the Debtor in Possession ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here Movant proposes to sell the "Property" described as follows:

- A. 201 Rua Esperanza, Lincoln, California.
- B. Furnishing, including all furniture for a 10,000 square foot home. A list is being prepared.
- C. Decorations, including all artwork, draping, collectibles, books, and assorted three dimensional pieces (statutes, vases, sconces, etc.) A list is being prepared.
- D. Contents, including dishes, flatware, pots, pans, baking ware, appliances, towels, rugs, and recreational items (TVs, Electronics, Pool Table, etc.). A list is being prepared.
- E. Accouterments, including lawn and yard equipment, golf cart, and garage tools associated with a property of this size (1.03 acres). A list is being prepared.

The proposed purchaser of the Property is Randy Renfro and the terms of the sale are:

- 1. Sale Price: \$2,900,000.00.
- 2. Includes Furnishing, Decorations, Contents, and Accouterments.
- 3. Real estate commissions are estimated to total \$130,000.00.

4. Closing costs are estimated to total at \$6,000.00.
5. Randy Renfro may receive credit toward repairs that are estimated to be \$10,000.00 at the maximum.
6. The note held by William and Stacy Lackey in the amount of approximately \$1,550,000.00 as of the date of filing would be paid from the sale price.
7. The note held by the Bleeker Trust in the amount of approximately \$200,000.00 as of the date of filing would be paid from the sale price.
8. The Home Owners Association dues which are believed to be less than \$10,000.00 would be paid from the sales price.

According to the Debtor-in-Possession, the remaining amount would be approximately \$994,000.00.

The Debtor-in-Possession requests permission to use \$50,000.00 of the net proceeds after distribution for renovating and furnishing the home on 9285 Pinehurst Drive, Roseville, California. The Debtor-in-Possession alleges that the home has been left dilapidated and unfurnished by the recent removal of a nonpaying renter and that in order for Debtor-in-Possession to move into and live in that home furniture and repairs will be necessary.

For this Motion, the Movant has established that it is in the best interest of the estate to sell the Property. The proposed sale price is fair, which includes the property, the furnishings, the decorations, the contents, and the accouterments. The court agrees that in light of the circumstances surrounding this case and the Property, it is in the best interest of the estate, the Debtor-in-Possession, and the creditors to approve this sale.

As to the request to use \$50,000.00 of the net proceeds, the court will deny that request and have the Debtor-in-Possession file a supplemental motion requesting such relief.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Sell Property filed by Charles Mills, the Debtor-in-Possession, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Charles Mills, the Debtor-in-Possession, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Randy Renfro or nominee ("Buyer"), the Property commonly known as:

- A. 201 Rua Esperanza, Lincoln, California.
- B. Furnishing, including all furniture for a 10,000 square foot home. A

list is being prepared.

- C. Decorations, including all artwork, draping, collectibles, books, and assorted three dimensional pieces (statutes, vases, sconces, etc.) A list is being prepared.
- D. Contents, including dishes, flatware, pots, pans, baking ware, appliances, towels, rugs, and recreational items (TVs, Electronics, Pool Table, etc.). A list is being prepared.
- E. Accouterments, including lawn and yard equipment, golf cart, and garage tools associated with a property of this size (1.03 acres). A list is being prepared.

("Property"), on the following terms:

1. The Property shall be sold to Buyer for \$2,900,00.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit 1, Dckt. 44, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Debtor in Possession be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

IT IS FURTHER ORDERED that the request for authorization to use \$50,000.00 of the sale proceeds is denied without prejudice.

IT IS FURTHER ORDERED that the Debtor-in-Possession shall file a supplemental pleading to be served onto all parties in interest outlining the specific furnishings, decorations, contents, and accouterments that are part of the approved sale.