UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

November 25, 2013 at 10:00 a.m.

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1. 13-30804-A-11 ELWYN/JEANNINE DUBEY — MOTION FOR RELIEF FROM AUTOMATIC STAY
GPJ-1 — 9-24-13 [27]
INTERNAL REVENUE SERVICE VS.

Tentative Ruling: The motion will be granted in part.

The movant, the Internal Revenue Service, seeks relief from the automatic stay as to four real properties, two in Georgetown, California, one in Coloma, California, and one in Garden Valley, California. The movant is seeking relief under 11 U.S.C. § 362(d) to sell the properties and apply the proceeds to its secured tax claim. A preliminary hearing on this motion was held on October 18, 2013. The movant was given time to file and provide the debtors with a complete accounting of how prior voluntary and involuntary payments have been applied to the debtors' tax debt.

The debtors oppose the motion. They raise fraudulent conveyance issues and dispute the amount of the government's claim. They deny their multiple bankruptcy filings and the reason for the dismissal of their chapter 7 case.

11 U.S.C. § 362(d)(1) states in pertinent part that:

"On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay— (1) for cause, including the lack of adequate protection of an interest in property of such party in interest;"

Relief from the automatic stay under § 362(d)(1) is discretionary, but a court should consider factors such as judicial economy and deference to other courts. In re MacDonald, 755 F.2d 715, 717 (9th Cir. 1985) (upholding relief from the auto stay to avoid litigating family law issues in bankruptcy court).

The primary debt in this bankruptcy arises from a district court judgment for an unpaid outstanding tax debt, entered in December 1998. The debtors argue that the debt has been paid or, in the alternative, partially paid. At the preliminary hearing on this motion, the debtors requested a complete accounting of the voluntary and involuntary payments made on account of their tax debt. The movant has filed and provided them with a complete accounting. (Dockets 44-59).

While the debtors dispute the accuracy of the accounting provided by the movant, this stay relief motion is a summary proceeding, meaning that the court will not determine the extent, validity, or priority of the movant's claim when resolving this motion. Biggs v. Stovin (In re Luz Int'l), 219 B.R. 837, 841-42 (B.A.P. 9th Cir. 1998); In re Johnson, 756 F.2d 738, 740 (9th Cir. 1985). Such

issues cannot be determined by motion, much less a stay relief motion. Fed. R. Bankr. P. 7001(2).

The appropriate forum to bring any challenge of the movant's accounting is the district court, where the 1998 judgment for unpaid taxes was entered and where a further 2009 judgment was entered against the debtors that enforced the prior judgment and avoided real property transfers.

This court will not adjudicate the debtors' dispute of the accounting provided by the movant, given that such dispute pertains to the judgments entered against the debtors by the district court. By disputing now the movant's accounting and the amount of the tax debt they owe, the debtors are bringing into question the two judgments of the district court, determining the amount of tax debt owed by them.

For instance, the debtors have raised an issue as to how the movant assessed taxes in 1981, 17 years prior to the first district court judgment in 1998. Docket 64 at 2. Obviously, the debtors had the opportunity to raise this issue in the district court.

This court will not allow the debtors to challenge or relitigate in this court issues already litigated or issues that could have been litigated in the district court. To the extent the above-issues were not litigated in the district court, res judicata bars the debtors from now litigating them. The debtors cannot collaterally attack the district court's judgments here.

Further, the debtors have produced no evidence that the debt owed to the movant is less than the value of the subject properties. The debtors have produced no evidence that there is equity in the properties. Conversely, the debtors' Schedule D lists the movant's debt at $1.194 million, which is more than the total value of the four properties as listed in Schedule A, $787,000 ($285,000, Wentworth Springs; $325,000, Fairpines Ln; $147,000, Del Oro Ln; $30,000, Buckeye Ct).

The debtors may be able to "strip down" the tax debt against the properties pursuant to 11 U.S.C. § 506. But, the debtors have not shown any realistic prospect of effective reorganization. United Sav. Ass'n of Texas v. Timbers of Inwwod Forest Assocs., Ltd., 484 U.S. 365, 376 (1988). The debtors have shown no ability to pay $787,000 to the movant on account of its secured claim. The debtors' total monthly income, according to Schedule I, is $6,227, while their monthly expenses in Schedule J are $6,192, excluding the payment of rent or mortgage debt. In other words, the debtors have $35 with which to fund a chapter 11 plan, under which they would have to pay at least $787,000 to the movant.

More, aside from this seemingly unsurmountable feasibility issue, any plan would have serious good faith issues, as the debtors are admittedly not in good health and there would be serious questions about the length of time during which the debtors would be able to pay the movant's claim. Docket 42 at 4.

The debtors have not established that there is any realistic prospect of effective reorganization.

Hence, the court will lift the stay under 11 U.S.C. § 362(d)(1) and (2), to allow the movant to enforce the district court judgments, sell the subject properties and apply the proceeds to the movant's claim.

The court will lift the stay also to allow the debtors to challenge the movant's accounting in district court and pursue any appeals from such challenge. The motion will be granted.

Finally, the court will deny relief under section 362(d)(4). That provision provides:

"On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . . (4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either--

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property."

The court is not convinced that this and the debtors' one prior bankruptcy filing qualify as "multiple bankruptcy filings." Also, the court does not have sufficient information about the circumstances surrounding the transfers of the subject properties.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, and there is no evidence that the movant is entitled to fees and costs, even if its claim were oversecured, 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 be waived.

2.	08-26813-A-9 OHS-48	CITY OF VALLEJO, CALIFORNIA	MOTION FOR ORDER APPROVING STIPULATION 11-8-13 [1383]

Tentative Ruling: The motion will be granted.

The City of Vallejo requests approval of a settlement agreement and stipulation between the City and Anthony Jambois, resolving the allowance, determination and payment of Mr. Jambois' personal injury proof of claim. In August 2010, Mr. Jambois filed a $5 million proof of claim in this case and filed a state court personal injury action against the City. The City's plan, confirmed by the court on August 5, 2011, classified the claim as a class 7 general liability claim. The plan provides that the City will pay 23.0793% of the allowed amount of the claim, up to the amount of $500,000. In April 2012, the City filed an objection to Mr. Jambois' proof of claim, which objection was stayed, pending resolution of the state court action.

Under the terms of the settlement and stipulation, Mr. Jambois will decrease the amount of his proof of claim from $5 million to $866,577.41, and the City will pay $200,000, or 23.0793%, of that amount, in full satisfaction of the claim. The City will dismiss the pending objection to the proof of claim and Mr. Jambois will dismiss the pending state court action. Mr. Jambois' claim will be deemed discharged as of the plan's effective date.

After notice and hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Properties), 784 F.2d 1377, 1381 (9th Cir. 1986); see also TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, reh'g denied, 391 U.S. 909 (1968). The court must consider and balance four factors: 1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending to it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Insur. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the approximate 83% reduction in the amount of Mr. Jambois' claim, given that the factual and legal issues involved are potentially quite complex, and given the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

Therefore, the court concludes the compromise to be fair and equitable. The court may give weight to the opinions of the parties and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). And, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

3. 11-48013-A-11 RONALD/JULIE JACKSON — OBJECTION TO CLAIM
RLC-1
VS. RESURGENT CAPITAL, LLC — 10-25-13 [151]

Final Ruling: The movant has provided only 31 days' notice of the hearing on this objection. The objection papers were served on October 25, 2013. Nevertheless, the notice of hearing for the objection requires written opposition at least 14 days before the hearing, in accordance with Local Bankruptcy Rule 3007-1(b)(1)(A). Objections noticed on less than 44 but more than 30 days' notice of the hearing are deemed brought pursuant to Local Bankruptcy Rule 3007-1(b)(2). This rule does not require written oppositions to be filed with the court. Parties in interest may present any opposition at the hearing. Consequently, parties in interest were not required to file a written response or opposition to the objection. Because the notice of hearing stated that they were required to file a written opposition, however, an interested party could be deterred from opposing the objection and, moreover, even appearing at the hearing. Accordingly, the objection will be dismissed.

4. 11-48013-A-11 RONALD/JULIE JACKSON — MOTION TO CLOSE CASE
RLC-3
11-1-13 [158]

Tentative Ruling: The motion will be denied.

The debtors are asking for the court to enter final decree and close the case.

The motion will be denied without prejudice because it is premised on the assumption that the court will be disposing of an objection to the proof of claim of Resurgent Capital, LLC (DCN RLC-1). That objection was dismissed.

5. 12-41813-A-11 THOMAS/CARLA EATON
CLH-5

MOTION TO
APPROVE DISCLOSURE STATEMENT
9-27-13 [69]

Tentative Ruling: The motion will be denied.

The debtors ask the court to approve their disclosure statement. Docket 89. The court is still considering the objection of the U.S. Trustee and creditors U.S. Bank/Select Portfolio Servicing (secured by sole deed on Catherine St. property), Deutsche Bank National Trust Company (secured by first deed on Wells Lane property) and Donald Suetta (secured by second deed on Wells Lane property), to the prior version of the disclosure statement.

The motion will be denied for the following reasons:

(1) As pointed out by U.S. Bank/Select Portfolio Servicing in its opposition to the prior version of the disclosure statement, the disclosure statement values its Catherine Court property collateral at $450,000 but does not state whether and when the debtors will file and prosecute valuation motions.

This is not corrected in the latest version of the disclosure statement. Docket 89 at 7-8. The debtors state that they will be filing valuation motions only as to the Wells Lane property. Docket 89 at 7.

(2) The disclosure statement does not say who will be responsible for paying the taxes for the debtors' real properties. It mentions only that the mortgage payments "do not include insurance." Docket 89 at 7, 8.

(3) The latest version of the disclosure statement does not say how the plan will treat claims for which the holder has made an election under 11 U.S.C. § 1111(b). See, e.g., Docket 36.

(4) The disclosure statement fails to indicate which secured claims, if any, have post-petition and pre-confirmation arrears and how such arrears will be cured.

(5) The disclosure statement does not say why the debtors are projecting an increase in the income from their flooring business. This was one of the objections lodged by the U.S. Trustee to the prior version of the disclosure statement.

(6) The disclosure statement does not explain why it is burdensome, inconvenient, reasonable and necessary for there to be a separate convenience class of unsecured claims, when such class appears to consist of only two credit card claims, held by the same creditor, Capitol One, for $1,195 and $1,335. This was one of the objections lodged by the U.S. Trustee to the prior version of the disclosure statement.

(7) The disclosure statement is not clear about the claims in the convenience unsecured class. On page 6, it mentions the amount of such claims as of the petition date ($3,452 - representing two claims), while on page 8 it mentions a different amount that will be paid ($4,253 - representing three claims). Yet, besides the Capitol One claims, the court sees no other proofs of claim for less than $2,000. These apparent discrepancies should be clarified. The issues with the convenience class claims were raised by the U.S. Trustee as an objection to the prior version of the disclosure statement.

(8) The disclosure statement does not say what will be the exact aggregate amount of general unsecured claims. As a result, there is no information or reliable and adequate information provided to general unsecured creditors about the dividend they should expect from the plan. How can general unsecured creditors then decide whether to vote for or against the plan?

The disclosure statement says only that "The total general unsecured debt listed by Debtor as of the date of filing was approximately $132,995. This total will increase by at least $200,000 if the Debtors valuation of the collateral of Class 4 and 5 are successful. Payments on these debts will total approximately $900-950 per month." Docket 89 at 6.

The issues with the aggregate amount of general unsecured claims were raised by the U.S. Trustee as an objection to the prior version of the disclosure statement.

(9) The disclosure statement is not clear about what will happen to income that is used to pay claims only for a portion of the plan term. For instance, the monthly income devoted to the payment of priority claims is projected to pay off such claims during the first two years of the five-year plan. What will happen to that income subsequently? Will it be used to pay general unsecured claims? This was one of the objections lodged by the U.S. Trustee to the prior version of the disclosure statement.

(10) The mortgage payments on the debtors' residence to Deutsche Bank National Trust Company are due to increase by $500 and $530 on January 1, 2015 and January 1, 2016. The disclosure statement does not address how the debtors will meet these obligation increases. This was one of the objections lodged by the U.S. Trustee to the prior version of the disclosure statement.

Future amendments of the disclosure statement should be accompanied with red/black-lined versions.

The court will not address objections pertaining to plan confirmation. Such objections will be addressed if and when the debtors reach plan confirmation.

6. 12-41813-A-11 THOMAS/CARLA EATON — MOTION TO CONVERT CASE TO CHAPTER 7 OR TO DISMISS CASE
UST-1 — 5-30-13 [40]

Tentative Ruling: The motion will be granted and the case will be converted to chapter 7.

The U.S. Trustee moves for conversion to chapter 7 or dismissal, pursuant to 11 U.S.C. § 1112(b), arguing that the debtors have not filed their operating reports for February, March, and April of 2013, and that they have not filed Form 26 for their Floors to Go Sofa and Loveseats, Inc., business, as required by Fed. R. Bankr. P. 2015.3.

11 U.S.C. § 1112(b)(1) provides that "on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."

For purposes of this subsection, "'cause' includes- . . . (F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter." 11 U.S.C. § 1112(b)(4)(F).

After this motion was filed, the debtors filed the missing operating reports. Dockets 45, 46, 47. The debtors have represented that they will be filing Form 26 "shortly." Docket 58 ¶ 9. The debtors have given no reason for their failure to file timely the reports and form. Mrs. Eaton says that she prepared the reports and "[b]efore the 15th of each month [she] forwarded the report[s] to [her] attorney for review and filing." But, "[a]pparently, the complete reports were not filed by my attorney after [she] forwarded them to her." Docket 58 ¶¶ 6, 7. Beyond this, the debtors do not explain their failure to file the reports timely.

As to Form 26, the debtors say that the corporation's CPA was required to prepare it, "but the documents required were not completed until recently." Docket 58 ¶ 9.

None of the foregoing rises to the level of explanation about why the debtors did not file timely the operating reports and Form 26. The debtors cannot blame their attorney or the corporation's accountant for their defaults. After all, both their personal attorney and the corporation are subject to their direct control. They are liable for the actions or lack of action by their professionals. The court cannot excuse the late filing of the operating reports and the still outstanding Form 26.

The above defaults by the debtors then are cause for conversion or dismissal under 11 U.S.C. § 1112(b)(1).

Conversion to chapter 7 would be in the best interest of the creditors and the estate because the debtors have substantial nonexempt and unencumbered assets that could be administered for the benefit of creditors. Some of the debtors' nonexempt and unencumbered assets include: a backhoe with a scheduled value of $4,000, tractor with a scheduled value of $2,000, $16,550 of nonexempt equity in the debtors' Floors to Go Sofa and Loveseats Inc. business, 1994 Chevy Suburban with a scheduled value of $1,000, 2004 Ford Econoline with a scheduled value of $3,000, $1,475 of nonexempt equity in a 2005 Toyota Tacoma, 1984 Star craft pontoon outboard with a scheduled value of $1,500, 1994 Mastercraft 19' with a scheduled value of $4,000, "Funds seized by sheriff" with a scheduled value of $12,500, and a franchise with Floors to Go with a scheduled value of unknown. The motion will be granted and the case will be converted to chapter 7.

7. 13-32417-A-11 BALBIR/SAWARNJIT SEKHON — MOTION FOR RELIEF FROM AUTOMATIC STAY
RPG-1 — 10-28-13 [68]
OCEANIC REDDING LP VS.

Tentative Ruling: The motion will be granted.

The movant, Oceanic Redding, LP, seeks relief from the automatic stay as to a hotel real property in Redding, California.

The debtors oppose the motion, contending that the property is necessary to an effective reorganization. The movant has filed a reply.

The property has a value of approximately $900,000 and it is encumbered by

claims totaling approximately $1,884,740, consisting of the movant's sole mortgage for $1,875,167 and outstanding property taxes in the amount of $9,573. See also Schedule A. Thus, there is no equity in the property.

As to necessity to an effective reorganization, the debtors have the burden to establish necessity to an effective reorganization, when the moving creditor has shown that its claim is undersecured. United Sav. Ass'n of Texas v. Timbers of Inwwod Forest Assocs., Ltd., 484 U.S. 365, 375 (1988). The standard in a chapter 11 proceeding is a showing that "the property is essential for an effective reorganization that is in prospect." This means, that there must be "a reasonable possibility of a successful reorganization within a reasonable time." Timbers at 376.

The debtors have not met their burden of persuasion to establish that there is a reasonable possibility of a successful reorganization within a reasonable time.

The debtors contend that they can fund a plan and obtain plan confirmation because the property is generating profit. In support of this, they refer the court to the budget submitted in connection with their cash collateral motion.

It is true that, without paying the movant's contractual claim, the property generates some profit. But, just because the property generates some profit, it does not mean that the debtors have a reasonable possibility of a successful reorganization within a reasonable time.

The debtors have stated more than once that they intend to strip down the movant's claim from the approximately $1,875,167 to $900,000, the value of the property, meaning that they will create an approximately $975,167 general unsecured claim in favor of the movant. The other general unsecured claims, totaling only $165,514 (without considering insider claims), would be dwarfed by the movant's deficiency general unsecured claim. This will allow the movant to control the voting outcome for the general unsecured class, translating into a rejection of the plan by that class. With a rejection by the general unsecured class, the only way the debtors to confirm a plan would be to provide for a 100% dividend to general unsecured creditors. That is something the debtors are clearly unable to do.

They have not demonstrated how they can propose a confirmable plan paying a $900,000 secured claim and over $1.14 million in general unsecured debt with mere $11,323 in net monthly income, even if the debtors are able to decrease the interest rate on the $900,000 secured claim. Docket 50. That is impossible. Just paying the general unsecured debt at $11,323 a month would take about 100 months or 8.3 years.

The debtors also have not addressed the absolute priority rule, *i.e.*, how they could retain property while paying general unsecured claims less than 100% dividend.

Further, the debtors have not addressed how they would provide for the movant's claim in the event the movant makes an 1111(b) election, waiving its deficiency claim and requiring that its claim be treated as a secured claim in its entirety. The debtors claim that "even if Oceanic does make the 11 U.S.C. § 1111(b) election, Debtors should be able to afford the payments." Docket 75 at 3. There is no evidentiary support for this statement. And, the language "should be able to afford" connotes speculation on the part of the debtors about whether they would be able to afford a $1.9 million secured claim.

The debtors contend that they can "afford" to pay a $1.9 million secured claim because "an interest payment would likely not be required." Docket 75 at 3. However, they do not explain why they would not have to pay interest on such a claim. They cite no legal authority for such a proposition either. The reality is that the debtors will have to pay interest on such a claim. While the debtors may be able to change the contractual interest rate in a chapter 11 plan, they would be required to pay interest on the $1.9 million secured claim. In permitting the court to adjust interest rates on secured claims under the formula approach of Till v. SCS Credit Corp., 541 U.S. 465 (2004), this court is required to take into account, among other things, a greater risk of default posed by a bankruptcy debtor. Farm Credit Bank v. Fowler (In re Fowler), 903 F.2d 694, 697 (9th Cir. 1990); In re Camino Real Landscape Main. Contrs., Inc., 818 F.2d 1503 (9th Cir. 1987).

The opposition cites to no evidence or analysis of how they propose to pay a $1.9 million secured claim held by the movant.

Finally, the debtors have not addressed the significant feasibility and good faith issues they would have in proposing a plan that would pay the movant's claim over a long period of time. One of the debtors is receiving Social Security income already, meaning that the debtors are at an age that would call into question their ability to continue operating the hotel property in 15 or 20 years from now.

The debtors have not met their burden of persuasion to establish that there is a reasonable possibility of a successful reorganization within a reasonable time.

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

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.

8. 11-47119-A-12 TIMOTHY WILSON
BDC-1

MOTION TO
AMEND DEBTOR'S CONFIRMED PLAN
10-31-13 [153]

Final Ruling: The motion will be dismissed because the notice of hearing violates Local Bankruptcy Rule 9014-1(d)(3), which requires the notice of hearing to indicate whether and when written opposition must be filed. The subject notice of hearing does not indicate whether and when written oppositions must be filed. Accordingly, the motion will be dismissed.

9. 12-37724-A-11 UDDHAV/CHRISTINE GIRI
DRE-20
VS. BANK OF THE WEST

MOTION TO
VALUE COLLATERAL
10-18-13 [182]

Tentative Ruling: The motion will be denied without prejudice.

The debtors move for an order valuing the car wash equipment they are using to operate a car wash on their gas station and convenience store property. The

equipment is collateral for a claim of approximately $74,424 held by Bank of the West.

The standard for the valuation of personal property that is not acquired for personal, family, or household purposes is not 11 U.S.C. § 506(a)(2), "the price a retail merchant would charge for property of that kind considering the age and condition of the property."

Obviously, the car wash equipment is not used by the debtors for personal, family, or household purposes. It is used for business purposes, in the operation of their car wash.

The value of personal property "shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest." 11 U.S.C. § 506(a)(1).

The debtors are reorganizing and are seeking a valuation to strip down the bank's secured claim. Thus, the replacement value of the equipment is what the debtors would pay to buy the same equipment, considering the age and condition of the equipment.

The only evidence the debtors have proffered with this motion is a supporting declaration stating that "[i]n our opinion, at the time of filing for bankruptcy, the car wash equipment had the replacement value of $50,000.00." Docket 184 ¶ 5.

The debtors have provided inadmissible and insufficient evidence of the equipment's replacement value. There is no evidence of what the debtors would pay to buy the same equipment, considering the age and condition of the equipment. Stating what is their opinion of value does not establish what they would pay to buy the same equipment. Accordingly, the motion will be denied.

10. 11-30626-A-11 CAL STATE GROWTH FUND
REC-11

MOTION FOR ORDER ESTABLISHING PROCEDURE FOR REQUESTING APPROVAL OF REAL ESTATE SALE TRANSACTIONS
11-1-13 [553]

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

The liquidating trustee in this case asks the court to authorize a procedure for the approval of sales of the property the liquidating trust is charged with selling under the liquidating trust agreement approved by this court, in connection with the confirmation of a chapter 11 plan. While the trust agreement does not require that the court approve sales, the trustee has decided that he needs court approval as it is typically required for title insurance purposes. The proposed procedure is as follows:

The trustee will provide at least seven days' notice of a sale to the oversight committee, the U.S. Trustee and parties that have requested special notice.

If no objection to the proposed sale is filed with the court within seven days of service of the notice of sale, the trustee will be allowed to lodge an order approving the sale without a hearing.

If a timely objection is filed to the notice of sale, the trustee will be

required to notice for hearing a motion to sell, giving at least 14 days' notice of the hearing to the oversight committee, the U.S. Trustee and parties that have requested special notice.

The trustee asks the court to waive the 14-day stay of Fed. R. Bankr. P. 6004(h) as to all sales brought pursuant to this procedure.

Also, the procedure would not apply to any sales free and clear of liens under 11 U.S.C. § 363(f).

The motion does not address how the trustee will be handling overbids. And, assuming the trustee will not be entertaining overbids, the motion does not explain why.

Subject to the trustee explaining at the hearing how he will be handling overbids, the court is inclined to approve the above procedure with some additions/changes:

- The notice of sale shall be served on the debtor, on the chairman of the oversight committee and on any counsel for the oversight committee.

- For every sale, the trustee shall file the notice of sale and proof of service for the notice with the court, within three days of service of the notice of sale.

- In every notice of sale, in addition to the items specified in the proposed order on this motion, the trustee shall disclose also whether and to what extent the property has been marketed.

- When lodging an order for the approval of a sale, after expiration of the seven-day period for the filing of objections, the trustee shall also file a declaration with the court, stating that he has received no objections to the sale, stating that he has examined the court docket and no objections to the sale have been filed (taking into account that sometimes it takes as much as three business days for the docketing of papers), stating that all encumbrances on the property being sold will be paid from escrow, and stating that there are no overbids or that the overbidding procedure does not apply.

- In the event the trustee receives an overbid for a sale (assuming the terms of sale anticipate overbids), the trustee shall set the motion for hearing under Local Bankruptcy Rule 9014-1(f)(2) on at least 14 days' notice.

The motion will be conditionally granted in part.

11.	11-45927-A-7	RICHARD/TERESA KOOI	MOTION TO
	12-2058	EM-1	WITHDRAW AS ATTORNEY
	KOOI V. KOOI ET AL		10-30-13 [183]

Final Ruling: The motion will be dismissed without prejudice as the proof of service for the motion has not been executed by anyone. Docket 186. The court cannot tell who, if anyone, effectuated service of the motion.

The motion will be dismissed also because while it asks for withdrawal of counsel for the plaintiff Clarence Kooi, as individual and as the trustee of two family trusts, there is no evidence that the motion was served on the plaintiff Clarence Kooi. The unsigned proof of service for the motion does not identify Clarence Kooi as having been served with the motion papers. Docket

186.

Finally, for now, the notice of hearing for the motion violates Local Bankruptcy Rule 9014-1(d)(3), which requires the notice of hearing to indicate whether and when written opposition must be filed. The subject notice of hearing does not indicate whether and when written oppositions must be filed. Docket 184.

12. 11-39843-A-7 LILIA KRYVOSHEY
12-2221
KRYVOSHEY V. DEUTSCHE BANK NATIONAL TRUST COMPANY

MOTION TO EXTEND TIME
10-10-13 [71]

Final Ruling: The motion will be dismissed as moot.

This motion to extend the time for the plaintiff to file a response to the defendants' dismissal motion, that was set to be heard and was heard on October 15, 2013, will be dismissed as moot because the court has disposed of the dismissal motion. On October 16, 2013, the court published a final ruling on the dismissal motion. Docket 77. And, on October 17, 2013, the court entered an order granting the dismissal motion in part. Docket 79.

This motion will be dismissed for other reasons as well.

The notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Docket 73. Instead, the notice advises the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). The respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

In short, if the movant gives 28 days or more of notice of the hearing, it does not have the option of pretending the motion has been set for hearing on less than 28 days of notice and dispensing with the court's requirement that written opposition be filed.

Further, in violation of Local Bankruptcy Rule 9014-1(c), the motion papers do not all have docket control numbers. Dockets 71 & 73. In the future, the plaintiff should also correct the main case number on her pleadings. The underlying bankruptcy case is no longer a chapter 13 proceeding, it is a chapter 7 case.

13. 11-39843-A-7 LILIA KRYVOSHEY
12-2221
KRYVOSHEY V. DEUTSCHE BANK NATIONAL TRUST COMPANY

MOTION TO COMPEL ABANDONMENT
10-10-13 [72]

Final Ruling: The motion will be dismissed without prejudice.

The notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Docket 73. Instead, the notice advises the respondent to oppose the motion by appearing at the hearing and raising any

opposition orally at the hearing. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). The respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

In short, if the movant gives 28 days or more of notice of the hearing, it does not have the option of pretending the motion has been set for hearing on less than 28 days of notice and dispensing with the court's requirement that written opposition be filed.

Further, motions to compel the abandonment of estate property must be filed in the main bankruptcy case, not in an adversary proceeding. And, in violation of Local Bankruptcy Rule 9014-1(c), the motion papers do not all have docket control numbers. Dockets 72 & 73. The plaintiff should also correct the main case number on the pleadings. The underlying bankruptcy case is no longer a chapter 13 proceeding, it is a chapter 7 case.

14. 13-28248-A-11 GLENN BARNEY — MOTION TO CONVERT CASE TO CHAPTER 7 OR TO DISMISS CASE
UST-1 — 10-18-13 [103]

Tentative Ruling: The motion will be granted and the case will be converted to chapter 7.

The U.S. Trustee moves for conversion to chapter 7, pursuant to 11 U.S.C. § 1112(b), contending that the debtor has not filed his June and July 2013 operating reports and has not timely filed his August 2013 operating report.

Creditor JPMorgan Chase Bank has filed a joinder and non-opposition to the motion, but it asks for dismissal rather than conversion.

11 U.S.C. § 1112(b)(1) provides that "on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."

For purposes of this subsection, "'cause' includes- . . . (F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter . . . ." 11 U.S.C. § 1112(b)(4)(F).

Since this case was filed on June 18, 2013, the debtor has filed only his August and September 2013 operating reports. Dockets 95 and 102. The debtor has not filed his June, July and October 2013 operating reports and filed his August 2013 report late, on October 9, 2013. The August report was due on September 16, 2013. The debtor has not responded to the motion.

Accordingly, the debtor's failure to file operating reports and his failure to file reports timely is cause for 11 U.S.C. § 1112(b)(1) purposes. See 11 U.S.C. § 1112(b)(4)(F).

The court will convert the case to chapter 7, as the debtor has a seemingly valuable interest in a corporation, Barney Chiropractic, Inc. Although the debtor has not disclosed that interest in the schedules, in a report regarding the value, operations and profitability of entities in which the estate holds a substantial or controlling interest, the debtor asserts that the value of his interest in Barney Chiropractic is $15,000. Docket 48 at 4. His opinion of value is based solely on what he thinks the equipment of the business could be sold for, aside from other business assets.

Given this, conversion to chapter 7 would be in the best interest of the estate, for a trustee to determine whether and to what extent the debtor's interest in Barney Chiropractic could be liquidated for the benefit of the creditors and the estate. The motion will be granted.

15. 13-21454-A-11 TRAINING TOWARD SELF RELIANCE, A CALIFORNIA
CAH-29 MOTION TO APPROVE COMPENSATION OF ACCOUNTANT (FEES $24,404.40) 10-28-13 [222]

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 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 will be granted.

Keith Cummings, CPA, accountant for the estate, has filed its first interim motion for approval of compensation. The requested compensation consists of $24,404.40 in fees and $0.00 in expenses. This motion covers the period from March 1, 2013 through August 31, 2013. The court approved the movant's employment as the estate's accountant on April 18, 2013. The requested compensation is based on a monthly flat fee compensation of $4,067.40.

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 consisted of:

- administrative and clerical duties, including creating, maintaining and organizing files;

- bookkeeping duties, including reviewing and processing sales, reconciling statements, inquiring about irregularities, and others;

- payroll preparation duties, including gathering and verifying payroll data, maintaining and updating payroll files and deductions, as to 401k plans, health, dental, AFLAC, phone deductions, pay rate changes, and entering payroll hours;

- controller duties, including preparing operating reports, gathering information for the reports, supervising audits and the payment of payroll

taxes, preparing payroll tax compliance forms, and others; and

- advisory duties, including reviewing statements and advising the debtor about financial issues and strategies, attending various meetings, responding to auditors, discussing insurance issues, preparing budgets and forecasts, overseeing accounting staff, and others.

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

16. 13-33582-A-11 RIVER CITY CAR WASH LLC — MOTION FOR RELIEF FROM AUTOMATIC STAY
BLR-1 — 10-25-13 [21]
WELLS FARGO BANK, N.A.

Tentative Ruling: The motion will be granted.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in West Sacramento, California (649 Harbor Blvd). The movant purchased the property at a pre-petition foreclosure sale, on October 16, 2013. The debtor filed the instant petition on October 21, 2013. The movant is asking for relief from stay to proceed with an unlawful detainer action as to the property.

The debtor opposes the motion, asserting fraud and/or promissory estoppel against the movant, based on a purported agreement with the movant for the postponement of the foreclosure sale until October 22.

The movant has filed a reply, denying that it agreed to a continuation of the foreclosure sale beyond October 16.

Motions for relief from stay are summary proceedings, meaning that the court does not finally determine the validity of the movant's claim. Veal v. American Home Mortgage Servicing, Inc., (In re Veal), 450 B.R. 897, 914-15 (B.A.P. 9th Cir. 2011); Biggs v. Stovin (In re Luz Int'l), 219 B.R. 837, 841-42 (B.A.P. 9th Cir. 1998). "A party seeking stay relief need only establish that it has a colorable claim to enforce a right against property of the estate." Veal at 914-15.

The movant has established that it has a colorable claim to enforce a right against the subject property. The movant has produced unrefuted evidence that it purchased the property at a pre-petition foreclosure sale. Docket 24, Ex. 3.

As to the fraud and/or promissory estoppel claims asserted against the movant, the court cannot adjudicate such claims on a motion, much less a stay relief motion. For the court to adjudicate such claims, an adversary proceeding is required. Fed. R. Bankr. P. 7001(1), (2), (7), (9).

Further, the debtor's assertion that the stay should not be lifted because the foreclosure sale may be avoided as a preferential transfer is without merit. Whether or not the foreclosure sale can be avoided as a preferential transfer does not take away from the fact that the movant owns the property at this time. The fact that the debtor may be able to file actionable claims against the movant, to recover the property sometime in the future, is not basis for preventing the movant from exercising its state law remedies to recover possession of the property. The movant owns the property at this time and is

entitled to protect its interest in the property by recovering possession of it.

Further, given the Supreme Court's ruling in BFP v. Resolution Trust Corp., 114 S.Ct. 1757 (1994), it is doubtful in the extreme that a foreclosure sale can be avoided as a fraudulent conveyance. And, the payment of secured claim is never a preference; only payment of an unsecured claim may be a preference.

Turning to the merits of the motion, the debtor no longer owns the subject property. The property is owned by the movant and this is cause for the granting of relief from stay under 11 U.S.C. § 362(d)(1), to permit the movant to proceed with an unlawful detainer action in state court to obtain possession of the property. The parties may go to state court in order to determine who is entitled to possession of the property. If the movant prevails and obtains a money judgment against the debtor, no such judgment may be collected from the debtor or the estate, absent plan confirmation and/or further order of this court.

The granting of relief from stay is without prejudice to the debtor prosecuting any claims against the movant in state court.

No fees and costs are awarded because the movant is not an over-secured creditor. See 11 U.S.C. § 506.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived.

17. 13-33582-A-11 JDM-1 — RIVER CITY CAR WASH L.L.C. — MOTION TO EMPLOY 10-23-13 [6]

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 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 will be granted.

The debtor requests authority to employ Dudugjian & Maxey as bankruptcy counsel for the estate. D&M's compensation will be based on an hourly fee arrangement. D&M will assist the debtor with the administration of the chapter 11 estate, including, without limitation, advising the debtor about its powers and obligations in bankruptcy, representing the debtor at the meeting of creditors, assisting with the prosecution of motions necessary to the estate's administration, making appearances at various hearings, negotiating with creditors, preparing the plan and disclosure statement, obtaining plan confirmation, addressing post-confirmation issues, investigating causes of action that can be asserted by the estate, assisting the estate "in the development and prosecution of various claims, causes of action, preference claims, etc."

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 right to employ professional persons under 11 U.S.C. § 327(a). This section states that, subject to court approval, a trustee may employ professionals to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions . . . including . . . on a contingent fee basis."

The court concludes that the terms of employment and compensation are reasonable. D&M is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. The employment will be approved.

As a final note, the $15,000 retainer received by D&M post-petition, on October 22, 2013, cannot be drawn upon for any reason and cannot be refunded back to the debtor, absent an order of this court. D&M shall provide for this prohibition in the order on this motion.

18. 13-33582-A-11 RIVER CITY CAR WASH LLC — STATUS CONFERENCE 10-21-13 [1]

Tentative Ruling: None.

19. 12-41197-A-11 JOHN/MARTA SCHULZE JHH-6 — MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY (FEES $3,000) 10-28-13 [88]

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 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 will be granted.

Judson Henry, attorney for the debtors in possession, has filed his second interim motion for approval of compensation. The requested compensation consists of $3,000 in fees and $0.00 in expenses. This motion covers the period from June 1, 2013 through October 28, 2013. The court approved the movant's employment as the debtors' attorney on April 10, 2013. The requested compensation is based on a flat fee arrangement of $10,000. Pursuant to a prior compensation motion, the court awarded $7,000 in fees to the movant. The movant has produced time records evidencing services to the estate with a value of approximately $4,200. Docket 90, Ex. B to Henry Decl.

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) negotiating plan confirmation issues with

creditor Greater Sacramento Certified Development Corporation, (2) assisting the estate with the preparation of operating reports, (3) preparing and making changes to the plan and disclosure statement, (4) preparing for and attending court hearings, and (5) preparing and filing compensation motions.

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