UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

December 22, 2014 at 10:00 a.m.

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1. 14-27620-A-12 JOE/MARIA PIMENTEL — OBJECTION TO CONFIRMATION OF PLAN 11-24-14 [34]
JLG-1
BANK OF STOCKTON VS.

Final Ruling: The motion will be dismissed.

Creditor Bank of Stockton objects to the debtor's first amended chapter 12 plan filed on November 8, 2014.

The motion will be dismissed because it is not ripe for adjudication. The court will not address objections to plan confirmation until the debtor moves to confirm the plan. 11 U.S.C. § 1224 requires the court to hold a hearing on confirmation of the debtor's plan. The confirmation hearing on the debtor's first amended chapter 12 plan has not taken place yet. The creditor should refile its objection as opposition to a motion to confirm a plan when such motion is filed, served and set for hearing by the debtor.

2. 14-27620-A-12 JOE/MARIA PIMENTEL — MOTION TO EXTEND TIME 12-5-14 [39]
WW-3

Final Ruling: The motion will be dismissed without prejudice because there is no evidence that the motion was served on anyone. The motion is not accompanied by a separate proof of service - or any other proof of service, as required by Local Bankruptcy Rule 9014-1(e)(3).

3. 12-37724-A-11 UDDHAV/CHRISTINE GIRI — MOTION TO CLOSE CASE 10-13-14 [244]
DRE-20

Tentative Ruling: The motion will be granted.

The hearing on this motion was continued from December 9, 2014. The debtor filed two declarations in support of the motion on December 8 and 9, 2014. An amended ruling from December 9 follows below.

The debtors are asking the court to close the case and enter a final decree, contending that their plan was confirmed, that they continue to make payments under the confirmed plan, that they have filed all post-confirmation quarterly reports, and that there are no pending motions or adversary proceedings.

11 U.S.C. § 350(a) provides that "[a]fter an estate is fully administered and the court has discharged the trustee, the court shall close the case." Similarly, Fed. R. Bankr. P. 3022 provides that "[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion

or on motion of a party in interest, shall enter a final decree closing the case."

In the chapter 11 context, courts have defined full administration as substantial consummation. In re Wade, 991 F.2d 402, 406 n.2 (7th Cir. 1993) (citing In re BankEast Corp., 132 B.R. 665, 668 n.3 (Bankr. D.N.H. 1991)). Substantial consummation is defined by section 1101(2) as "(A) transfer of all or substantially all of the property proposed by the plan to be transferred; (B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and (C) commencement of distribution under the plan."

This court confirmed the debtor's chapter 11 plan on March 25, 2014. The confirmation order is final. Property has revested in the debtors pursuant to the terms of the plan. Docket 172 at 15.

Given that the debtors are current on their plan payments, that they have continued to operate their businesses under the terms of their confirmed plan, and given that there are no outstanding motions or adversary proceedings, substantial consummation has been achieved. Accordingly, the court will enter a final decree and close the case. The motion will be granted.

4. 14-30833-A-11 SHASTA ENTERPRISES — STATUS CONFERENCE
10-31-14 [1]

Tentative Ruling: None.

5. 14-30833-A-11 SHASTA ENTERPRISES — MOTION TO EMPLOY
DBJ-2
11-25-14 [33]

Tentative Ruling: The motion will be denied.

The debtor in possession requests authority to employ Douglas Jacobs as bankruptcy counsel for the bankruptcy estate of the debtor. The proposed compensation is based on an hourly fee arrangement. Mr. Jacobs will assist the debtor with the administration of the chapter 11 estate, including, without limitation, advising the debtor about rights and obligations; representing the debtor at hearings; negotiating with creditors; assisting with the preparation and prosecution of motions, reports, statements, and chapter 11 plan, as necessary to the administration of the estate; and addressing post-confirmation issues.

Creditor, Redding Bank of Commerce, opposes the employment, contending that Mr. Jacobs is not eligible to represent the debtor because he also represents JSR Properties, an entity that filed its own chapter 11 case on November 26, 2014, and the debtor in this case is identified as an unsecured creditor in Schedule F of the JSR case, with JSR debtor owing $438,000 to the debtor here.

Mr. Jacobs has filed a reply, disputing an actual conflict of interest, arguing that there is only a potential conflict of interest and urging the court to exercise its discretion to allow his employment.

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 an hourly basis, on a fixed or percentage fee basis."

"In a case under chapter 7, 12, or 11 of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest."

11 U.S.C. § 327(c).

11 U.S.C. § 101(14) defines a disinterested person as "a person that- (A) is not a creditor, an equity security holder, or an insider; (B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and (C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason."

The court disagrees with Mr. Jacobs that his conflict is merely potential and disagrees that the only issue in his representation of the subject debtor as a creditor in the JSR bankruptcy will be the validity of the debt owed by JSR. Mr. Jacobs states in his reply to the opposition that: "In this matter, a potential conflict could arise should the debtor in possession seek to collect the money owed from JSR Properties, and should JSR Properties dispute such obligation. Here, however, both this debtor and JSR Properties acknowledge the existence of the debt, the amount owed, and the obligation of JSR to repay Shasta. There is, at most, a 'potential conflict.'" Docket 108 at 2.

Mr. Jacobs ignores other duties of his representation of both parties. The chapter 11 proceeding of JSR Properties, as is the instant bankruptcy proceeding, is an ongoing process that requires many steps ultimately resulting in some adjustment of the debtor-creditor relationship. Those steps are not limited to the validity of the debt.

An attorney representing an unsecured creditor (especially one holding a claim of $438,000) of a debtor during the pendency of a chapter 11 proceeding requires, at a minimum, a review of the debtor's disclosure statement and chapter 11 plan and decisions about whether to object to the disclosure statement, whether to object to plan confirmation (including raising absolute priority issues), and whether to vote to accept or reject the plan. The court is not persuaded that the conflict is merely potential, when the same attorney is the one who represents the debtor, prepares the disclosure statement, prepares the plan, makes decisions on the dividend to unsecured creditors, prosecutes a motion for the approval of the disclosure statement, solicits votes, and prosecutes a motion to obtain plan confirmation.

Hence, Mr. Jacobs' duties in the Shasta Enterprises case and the JSR case will force him to make decisions in favor of one client but at the expense of the

other client. The conflict is ongoing and actual.

More, the court is troubled by two other issues. One is that Mr. Jacobs did not disclose his representation of JSR Properties. It was only after Redding Bank of Commerce raised the issue of his representation of JSR that Mr. Jacobs addressed it. This should have been addressed in the motion and not the reply to the opposition to the motion.

Although this motion was filed on November 25, 2014 and the JSR chapter 11 case was filed one day later, on November 26, 2014, Mr. Jacobs obviously knew of his representation of JSR before he filed this motion. Case No. 14-31675-A-11, Docket 1. The court also notes that Mr. Jacobs' declaration in support of this motion was executed on November 24, 2014. Docket 35. The declaration, however, states nothing about Mr. Jacobs representing JSR or about his imminent filing of JSR's bankruptcy case. It states only, in a conclusory fashion, that: "I [Douglas Jacobs] do not hold *or represent* any interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the Debtor, or for any other reason, and I am a 'disinterested person' as defined by Bankruptcy Code § 101(14)." Docket 35 ¶ 7.

Representing a debtor of the Shasta Enterprises estate owing $438,000 to Shasta Enterprises clearly amounts to representation of an interest materially adverse to the Shasta Enterprises estate. This is especially true when the two estates are being administered by the debtors in possession themselves, as opposed to appointed trustees.

Second, Mr. Jacobs' view that his conflict is merely potential indicates that he sees his duties with respect to the creditor-debtor relationship between the Shasta Enterprises estate and the JSR estate as merely passive. This is troubling because his duties as a chapter 11 debtor's counsel call for a proactive representation, encompassing here the collection of the debt owed to the Shasta Enterprises estate by JSR. By necessity, this includes making certain that the return to general unsecured creditors in the JSR case is maximized, which may require the eventual filing of a motion to convert to chapter 7.

On the other hand, Mr. Jacobs' duties as counsel for the JSR estate would be to make certain that JSR obtains plan confirmation and emerges from its chapter 11 bankruptcy case with as little debt as possible. This would entail modifying the Shasta Enterprises estate's claim, paying it less than a 100% dividend. The JSR estate does not have the funds to confirm a 100% plan. This is evident from the face of JSR's bankruptcy petition, where JSR says that its assets have a value of between $100,001 and $500,000, whereas its debts are between $1,000,001 and $10 million. Case No. 14-31675-A-11, Docket 1.

And, from JSR's cash collateral motion (filed on December 12, 2014 and set for hearing on January 5, 2015), it is evident that JSR will pay far less than 100% dividend, if any, to its general unsecured creditors, including the Shasta Enterprises estate. Case No. 14-31675-A-11, Docket 12. JSR generates only $11,078.91 a month in income from the rental of its one commercial real property, yet JSR is seeking to pay $9,025.17 as mere adequate protection payments to the creditor secured by the real property (holding a claim of $2,768,130). Case No. 14-31675-A-11, Docket 12 at 5.

Further, Mr. Jacobs' conflict is exacerbated also by the fact that JSR

identifies Shasta Enterprises in the statement of financial affairs as an insider and discloses $104,763 in payments JSR made to Shasta Enterprises in the one year period before the filing of JSR's case. Case No. 14-31675-A-11, Docket 1, Statement of Financial Affairs, item 3c. These are preferential transfers that, as part of Mr. Jacobs' duties as counsel for the JSR estate, he will have to at least evaluate recovering from the Shasta Enterprises estate.

Thus, the creditor-debtor relationship between Shasta Enterprises and JSR flows both ways. The Shasta Enterprises estate is a creditor of the JSR estate and the JSR estate is a creditor of the Shasta Enterprises estate.

The foregoing demonstrates that the interests of the JSR estate are materially adverse to the Shasta Enterprises estate and the interests of the Shasta Enterprises estate are materially adverse to the JSR estate. These are actual and not just potential conflicts of interest.

Next, the ownership and control lines of demarcation between the two entities are blurred already. Antonio Rodriguez (99% interest) and his wife Lorraine Rodriguez (1%) are the sole general partners of Shasta Enterprises, and Antonio Rodriguez is the president and 100% shareholder of JSR Properties.

The common ownership and control of the entities heightens the risk that their creditor-debtor relationship may receive less than an arm's length treatment during the bankruptcy process. The court will not aggravate that risk by allowing the two debtors to employ identical bankruptcy counsel.

Conversely, the common ownership and control of the entities is what requires the appointment of separate and independent counsel for each estate, to ensure that the estates are administered for the benefit of all creditors, and not just one or few creditors.

As Mr. Jacobs is a professional that represents interests materially adverse to the Shasta Enterprises estate, *i.e.*, the interests of the JSR estate, his employment as counsel for the debtor will be denied.

Finally, aside from these issues, the court has not been persuaded that it should authorize the employment of two attorneys for the debtor. David Brady of Cowan & Brady also seeks approval of his employment as counsel for the debtor. This is an independent basis for denying the motion.

6. 14-30833-A-11 SHASTA ENTERPRISES — MOTION TO USE CASH COLLATERAL AND FOR ADEQUATE PROTECTION PAYMENTS 11-25-14 [43]
DBJ-3

Tentative Ruling: The motion will be denied without prejudice.

The debtor seeks approval to use cash collateral of some of its secured creditors. Secured creditors Joe Curto and Lavone Curto, as co-trustees of the Curto Family Trust, have filed a limited objection to the motion. Redding Bank of Commerce opposes the motion, seeking denial of any use of cash collateral.

11 U.S.C. § 1107(a) provides that a debtor-in-possession shall have all rights, powers, and shall perform all functions and duties, subject to certain exceptions, of a trustee, "[s]ubject to any limitations on [that] trustee." This includes the trustee's rights under 11 U.S.C. § 363. 11 U.S.C. § 363(c)(2)(B), (c)(3), (e) provides that, when the secured claimants with

interest in the cash collateral do not consent, after notice and a hearing, "the court . . . shall prohibit or condition such use [of cash collateral] . . . as is necessary to provide adequate protection of such interest."

The motion will be denied.

The debtor has not carried its burden of persuasion that the interests of the creditors in the cash collateral the debtor is seeking to use are adequately protected. The motion is short on information and evidence.

First, the motion makes virtually no effort to brief the standard for the allowance of use of cash collateral. While the motion mentions 11 U.S.C. § 363, it does not discuss the standard for allowance of use of cash collateral.

Second, while the court sees the list of properties generating monthly rental income for the debtor in Exhibit A, there is nothing in the motion itemizing the monthly maintenance expenses assigned to each property.

For instance, in Exhibit A, the 345 Hemsted property apparently generates rental income of $2,475 a month, while the monthly payment to the secured creditor is $3,567 and the monthly expenses for that property are $1,448. Docket 46, Ex. A at 1.

But, the court cannot tell what the monthly expenses encompass. While the motion refers to the declaration of Antonio Rodriguez and the two attached exhibits, Exhibit A and Exhibit B, for a description of the expenses, those documents are not helpful. The declaration, barely one and one-half pages long, merely refers to Exhibit A for all information. It makes no effort to itemize the expenses and it contains no dollar figures. Exhibit A lists expenses for each property, but it does not itemize them. Exhibit B, on the other hand, does not list property-specific expenses. It lists what appear to be other expenses for the debtor, such as salaries, membership dues, phones, and payments to secured creditors.

Neither the property-specific expenses in Exhibit A, nor the other expenses in Exhibit B are itemized. The salaries, for example, total $25,068 in Exhibit B, yet there is no breakdown for who receives how much in salary. The salaries also include "(taxes, insurance, etc.)." Those items are not identified, itemized or explained either.

Third, while the motion states that the debtor wants to make adequate protection payments to each of the creditors whose cash collateral it is seeking to use, the proposed adequate protection payment to each creditor cannot be determined. While Exhibit A contains a column for "MONTHLY PAYMENT," the court cannot tell whether the figures in that column represent the monthly payment required under the debtor's pre-petition obligation to each creditor, or represent the proposed adequate protection payment to each creditor. Docket 46, Ex. A.

Fourth, even if the court had the adequate protection payment figure for each creditor, it still cannot determine whether each of the creditors whose cash collateral is to be used is adequately protected. The motion has no information about whether each of the creditors whose cash collateral is to be used is adequately protected.

For example, the court has no information about the specific collateral for each creditor. The court then cannot tell whether and to what extent each of

those creditors' interests in the cash collateral is adequately protected.

Asking the court to look to the schedules is unhelpful. The schedules are not evidence. They are statements made the debtor out of court. Such statements are hearsay. While they can be admitted against the debtor, as an admission by a party opponent, they are inadmissible when proffered by the debtor. See Fed. R. Evid. 802, 801(d)(2)(A).

Fifth, the motion fails to indicate the cash collateral the debtor was holding as of the petition date and the interests in it of each secured creditor.

Sixth, the motion is seeking use of cash collateral from November 1, 2014 until February 1, 2015. Yet, it does not say why the court should award the debtor retroactive use of cash collateral. The motion states that the debtor already used cash collateral without court approval, but it does not state why the debtor did not request permission for cash collateral use upon the filing of the petition on October 31, 2014 and does not account for cash collateral already used by the debtor.

Seventh, the court has no evidence with the motion of each of the creditors' interests in the cash collateral the debtor is seeking to use. For example, there are no deeds of trust with the motion.

Given the foregoing, the motion will be denied.

7. 14-30833-A-11 SHASTA ENTERPRISES — MOTION TO EMPLOY
DMB-2 — 11-25-14 [38]

Tentative Ruling: The motion will be dismissed without prejudice.

The debtor in possession requests authority to employ David Brady of Cowan & Brady as counsel for the bankruptcy estate of the debtor.

As in the related motion for employment filed by Douglas Jacobs, also being heard on this calendar, oppositions have been filed to this motion. An opposition has been filed by the U.S. Trustee and by Redding Bank of Commerce.

The movant has provided only 27 days' notice of the hearing on this motion. The motion was filed and served on November 25, 2014. Nevertheless, the notice of hearing for the motion requires written opposition at least 14 days before the hearing, in accordance with Local Bankruptcy Rule 9014-1(f)(1).

Motions noticed on less than 28 days' notice of the hearing are deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(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 motion. 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 motion and, moreover, even appearing at the hearing.

8. 14-30833-A-11 SHASTA ENTERPRISES — MOTION TO APPOINT TRUSTEE
DL-3 — 12-15-14 [92]

Tentative Ruling: The motion will be granted.

Creditor, Redding Bank of Commerce, seeks the appointment of a chapter 11 trustee.

11 U.S.C. § 1104(a) provides that:

"*At any time after the commencement of the case but before confirmation of a plan, on request of a party in interest or the United States trustee, and after notice and a hearing, the court shall order the appointment of a trustee—*

"*(1) for cause, including fraud, dishonesty, incompetence, or gross mismanagement of the affairs of the debtor by current management, either before or after the commencement of the case, or similar cause, but not including the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor; or*

"*(2) if such appointment is in the interests of creditors, any equity security holders, and other interests of the estate, without regard to the number of holders of securities of the debtor or the amount of assets or liabilities of the debtor.*"

"[T]he debtor in possession has the same fiduciary duties and liabilities as a Trustee. When the debtor is a corporation, corporate officers and directors are considered to be fiduciaries both to the corporate debtor in possession and to the creditors." Holta v. Zurbetz (In re Anchorage Nautical Tours, Inc.), 145 B.R. 637, 643 (B.A.P. 9th Cir. 1992); see also 11 U.S.C. § 1107(a).

The debtor's petition documents are not accurate and complete even after the debtor has been alerted to missing assets from the schedules. For instance, the petition documents of JSR Properties, a related insider entity, owned in its entirety by the debtor's general partner, Antonio Rodriguez, reflects in Schedule F that the debtor is owed $438,000, based on a promissory note. Case No. 14-31675-A-11, Docket 1, Schedule F. Despite this, the petition documents in this case do not reflect an asset evidencing the debt owed by JSR to Shasta Enterprises. Schedule B, where such an asset should have been disclosed, makes no reference to the claim. See Docket 1, Schedule B, items 16, 21, 35. Even though the United States Trustee asked the debtor about the omission of the asset from the debtor's schedules, the debtor has not amended Schedule B to remedy the omission.

Additionally, the debtor has waited nearly one month to file a motion for use of cash collateral. This case was filed on October 31, 2014, whereas the motion was not filed until November 25, 2014. This is despite the fact that the debtor's income is generated solely from the rental of commercial real property, the rental income is cash collateral securing the claims of creditors, and the debtor admittedly used cash collateral without court approval between the petition date of October 31, 2014 and cash collateral motion filing date of November 25, 2014. In its November 25, 2014 cash collateral motion, the debtor is seeking "retroactive authority for the monthly payments made to date." Docket 43 at 5.

Nonetheless, the debtor has not explained its use of cash collateral without court approval and has not explained its delay in seeking authorization for use of cash collateral.

Moreover, the court is denying the debtor's cash collateral motion as it has insufficient information and evidence.

Further, the court is denying the employment of the two attorneys the debtor is seeking to employ as bankruptcy counsel, Douglas Jacobs and David Brady. They represent interests materially adverse to the Shasta Enterprises bankruptcy estate, namely, the interests of the JSR Properties chapter 11 bankruptcy estate, which is a debtor and creditor of the Shasta Enterprises estate. Also, Shasta Enterprises and JSR share common ownership and control.

Furthermore, the debtor's principals and their relatives and friends hold substantial claims against the debtor. For instance, Antonio Rodriguez, III, the son of the debtor's 99% general partner, holds a $95,000 promissory note payable by the debtor. Greg Camastra, a friend of the debtor's 99% general partner, holds a $240,000 promissory note payable by the debtor. Juanita Sage, a friend of the debtor's two general partners, holds a $508,287 promissory note payable by the debtor. Lorraine Rodriguez, the debtor's 1% general partner and wife of the debtor's 99% general partner, holds a $105,000 promissory note payable by the debtor. Schedule F.

Finally, the above individuals, along with the debtor's 99% general partner, individually or via other entities, received substantial sums from the debtor within the one-year period prior to filing. Docket 1, Statement of Financial Affairs, items 3c (see attachment).

The debtor's 99% general partner, Antonio Rodriguez, received $311,093 from the debtor in his individual capacity during the one year period prior to filing. Lorraine Rodriguez received $59,620 during that same period. The debtor transferred a total of $2,188,165 during the one period to various individuals and entities, many of which appear to be related to the debtor. Docket 1, Statement of Financial Affairs, items 3c (see attachment). Some of the fictitious entities to which the debtor transferred funds during the one year period before filing are also purported to be defunct, leaving the court with questions about where those funds went.

As the debtor is a fictitious entity in a chapter 11 case pending for nearly two months now, using cash collateral without court order or consent of the creditors, it is without court-approved counsel, and the debtor's principals and their relatives and friends hold claims against the estate, while they received substantial sums from the debtor during the one-year period prior to filing, the court will appoint a chapter 11 trustee. The debtor's use of cash collateral without court order or consent of the creditors, its delay in seeking cash collateral use approval, and its selection of counsel whose employment cannot be approved by the court, constitute gross mismanagement of the debtor's post-petition affairs.

The appointment of a chapter 11 trustee is in the best interest of all creditors, security holders and the estate, given also the claims held by the debtor's principals and their relatives or friends, and the funds they received during the one year period before filing. The motion will be granted.

9. 14-30833-A-11 SHASTA ENTERPRISES
DL-5

MOTION TO ASSUME LEASE OR EXECUTORY CONTRACT AND FOR POST-PETITION BORROWING
O.S.T.
12-15-14 [97]

Tentative Ruling: The motion will be denied.

Redding Bank of Commerce, a fist deed holder on the debtor's real property at

250 Hemsted Drive, Redding, California, asks the court to authorize the assumption of three pre-petition agreements to which the debtor is a party.

The debtor entered into a lease agreement with the State of California pre-petition for California's lease of the second floor of the property. The lease however is contingent on the debtor making some improvements to the property, including some Americans with Disabilities Act work. Under the lease agreement, California will not take possession of the premises until those improvements are complete. The cost of the improvements is estimated to be at between $300,000 to $350,000.

In connection with the lease, the debtor entered into a separate agreement with the movant for funding of the improvements. Also, the debtor entered into a construction agreement with J&T Williams Construction Company for construction of the improvements. Construction work had been ongoing as of the October 31, 2014 petition date, but because J&T did not receive payment post-petition, it stopped working. The construction was to be completed by December 1, 2014, when the State of California was to take possession of the property under the lease agreement. California has agreed to push its occupancy date to February 10, 2015, provided the construction of the improvements is completed by then. J&T has stated that it can complete the improvements construction by February 10, 2015, provided that it resumes work immediately.

In an effort to salvage the debtor's lucrative lease agreement with the State of California, the movant is asking the court to approve the assumption of the debtor's financing agreement with the movant, to approve the assumption of the construction agreement with J&T, and to approve the assumption of the lease agreement with the State of California.

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 sell property of the estate pursuant to section 363 and assume an executory contract under section 365.

11 U.S.C. § 365(a) provides: "Except as provided in sections 765 and 766 of this title and in subsections (b), (c), and (d) of this section, the trustee, subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor."

The standard for determining whether to approve the assumption of unexpired leases and/or executory contracts is the business judgment rule. Group of Institutional Investors v. Chicago, Milwaukee, St. Paul & Pacific R. Co., 318 U.S. 523 (1943); Robertson v. Pierce (In re Chi-Feng Huang), 23 B.R. 798, 800-01 (B.A.P. 9th Cir. 1982) (holding that the primary issue is whether rejection or assumption would benefit the general unsecured creditors, which may also involve a balancing of interests).

The court "should approve the rejection [or assumption] of an executory contract under § 365(a) unless it finds that the debtor-in-possession's conclusion that rejection would be 'advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice.' [. . . .] Such determinations, clearly, involve questions of fact . . . which we review for clear error." Agarwal v. Pomona Valley Medical Group, Inc. (In re Pomona Valley Medical Group, Inc.), 476 F.3d 665, 670 (9th Cir. 2007).

"The Bankruptcy Court, in evaluating the debtor's decision, 'should presume that the debtor-in-possession acted prudently, on an informed basis, in good faith, and in the honest belief that the action taken was in the best interests of the bankruptcy estate.' It should approve the decision to reject an executory contract 'unless it finds that the debtor-in-possession's conclusion that rejection would be advantageous is so manifestly unreasonable that it could not be based on sound business judgment, but only on bad faith, or whim or caprice.'" In re Yellowstone Mountain Club, LLC, Case Nos. 08-61570-11, 0861571-11, 08-61572-11, 08-61573-11, CV-09-48-BU-SEH, 2010 WL 5071354, at *2 (D. Mont. Dec. 7, 2010) (quoting and citing to Pomona Valley Medical Group at 670).

The debtor's lease with the State of California is expected to generate monthly rental income for the debtor's estate in the amount of $21,266.27.

The court does not have sufficient information to determine whether the financing and construction agreements are executory contracts within the meaning of 11 U.S.C. § 365. Indeed, contracts for loans and financial accommodations are expressly made not assumable by 11 U.S.C. § 365(c)(2).

And, while the court is sympathetic to the debtor's situation of potentially losing the lease agreement with the State of California, the court cannot permit assumption of the financing agreement because the motion says nothing about the borrowing terms of that agreement.

The court has no information about the financial status of the financing and construction agreements.

For instance, the court has no information about the repayment terms under the financing agreement, what has been paid by the movant thus far, to whom it was paid, what remains to be paid, etc. The court does not have information about the interest rate and repayment term under the financing agreement with the movant, and it does not have information about how much of the improvement work has been completed by J&T, how much of the work is remaining to be completed, and how much more in compensation is J&T owed by the debtor.

As a result, the court cannot determine whether the agreements are executory contracts and cannot determine whether assumption of the agreements will benefit the creditors and the estate. The motion will be denied.

10. 10-36150-A-11 KARIN FRANK — MOTION FOR SANCTIONS AND TO ENFORCE CONFIRMED PLAN
KMF-27 — 11-12-13 [412]

Tentative Ruling: None. The December 22, 2014 hearing will be treated as a status conference.

Pursuant to the July 29, 2014 order, the last hearing on this motion, on September 15, 2014, was treated as a status conference. Docket 463. The parties appeared at the last hearing and sought a continuance. The court continued the hearing to December 22, 2014, once again as a status conference.

11. 13-21454-A-11 TRAINING TOWARD SELF RELIANCE, A CALIFORNIA
CAH-33 MOTION TO APPROVE DISCLOSURE STATEMENT 10-3-14 [291]

Tentative Ruling: The motion will be granted.

The hearing on this motion was continued from November 24, 2014.

The motion will be granted and the disclosure statement filed by the debtor on August 12, 2014 (Docket 280) will be approved, as it contains adequate information and the detail necessary that will permit creditors to make an informed decision regarding the plan. See 11 U.S.C. § 1125(a).

12. 13-36164-A-7 DENIS BONFILIO
14-2071 FWS-1
RLED, LLC V. BONFILIO
MOTION TO WITHDRAW AS ATTORNEY 11-21-14 [65]

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 plaintiffs, the defendant, 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.

Attorney Frederick Stephenson asks for permission to withdraw as counsel for the defendant, Denis Bonfilio because of "breakdown of the attorney-client relationship . . . to the point that it is not feasible for me to continue representing Mr. Bonfilio." Docket 67 ¶ 3.

Local Bankruptcy Rule 2017-1(e) provides: "Unless otherwise provided herein, an attorney who has appeared may not withdraw leaving the client in propria persona without leave of court upon noticed motion and notice to the client and all other parties who have appeared. The attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. Withdrawal as attorney is governed by the Rules of Professional Conduct of the State Bar of California, and the attorney shall conform to the requirements of those Rules. The authority and duty of the attorney of record shall continue until relieved by order of the Court issued hereunder. Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit."

"The decision to grant or deny counsel's motion to withdraw is committed to the discretion of the trial court." American Economy Ins. Co. v. Herrera, No. 06CV2395-WQH, 2007 WL 3276326, at *1 (S.D. Cal. Nov. 5, 2007) (quoting Irwin v. Mascott, 2004 U.S. Dist. LEXIS 28264 (N.D. Cal. December 1, 2004), citing Washington v. Sherwin Real Estate, Inc., 694 F.2d 1081, 1087 (7th Cir.1982)). Factors considered by courts ruling on the withdrawal of counsel are (1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. Herrera, at *1 (citing Irwin, 2004 U.S. Dist. LEXIS 28264 at 4).

California Rule of Professional Conduct 3-700 provides that:

"(A) In General.

(1) If permission for termination of employment is required by the rules of a tribunal, a member shall not withdraw from employment in a proceeding before that tribunal without its permission.

(2) A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.

(B) Mandatory Withdrawal.

A member representing a client before a tribunal shall withdraw from employment with the permission of the tribunal, if required by its rules, and a member representing a client in other matters shall withdraw from employment, if:

(1) The member knows or should know that the client is bringing an action, conducting a defense, asserting a position in litigation, or taking an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person; or

(2) The member knows or should know that continued employment will result in violation of these rules or of the State Bar Act; or

(3) The member's mental or physical condition renders it unreasonably difficult to carry out the employment effectively.

(C) Permissive Withdrawal.

If rule 3-700(B) is not applicable, a member may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

(1) The client
(a) insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law, or
(b) seeks to pursue an illegal course of conduct, or
(c) insists that the member pursue a course of conduct that is illegal or that is prohibited under these rules or the State Bar Act, or
(d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively, or
(e) insists, in a matter not pending before a tribunal, that the member engage in conduct that is contrary to the judgment and advice of the member but not prohibited under these rules or the State Bar Act, or
(f) breaches an agreement or obligation to the member as to expenses or fees.

(2) The continued employment is likely to result in a violation of these rules or of the State Bar Act; or

(3) The inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal; or

(4) The member's mental or physical condition renders it difficult for the member to carry out the employment effectively; or

(5) The client knowingly and freely assents to termination of the employment; or

(6) The member believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal."

This adversary proceeding was filed on March 5, 2014 and the action should be ready for trial, after the court granted the plaintiff's summary judgment motion only as to the malicious injury element of its section 523(a)(6) claim. Docket 59 at 3.

In addition to alleging a breakdown in the attorney-client relationship, the movant asserts that the defendant does not have the funds to pay the movant's attorney's fees. These are cause for permitting the movant's withdrawal pursuant to California Professional Conduct Rule 3-700(C)(1)(d) & (f). The court will permit the movant's withdrawal from this adversary proceeding. The motion will be granted. The movant shall mail the defendant his case file within seven days of the December 22, 2014 hearing on this motion, at the last known address of the defendant.

13. 14-28468-A-11 BUALAI WHITE — ORDER TO SHOW CAUSE 11-24-14 [52]

Final Ruling: The order to show cause will be discharged and the petition will remain pending.

The debtor was given permission to pay the petition filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment fee in the amount of $429 due on November 19, 2014 was not paid. However, the debtor paid the installment fee on December 4, 2014. No prejudice has resulted from the delay.

14. 14-22884-A-11 RAYMOND/ROSA KING
CAH-7 — MOTION TO APPROVE COMPENSATION OF DEBTORS' ATTORNEY 11-20-14 [99]

Final Ruling: The motion will be dismissed without prejudice because the notice of hearing for the motion contains contradictory language and it is confusing. On one hand, the notice says that written opposition to the motion must be filed and served at least 14 days before the hearing. Docket 100 at 7-8. On the other hand, the same notice states that the "last date to serve and file Opposition is November 25, 2014." Docket 100 at 8.

The last date to file written opposition is not November 25, 2014. This motion was filed only five days earlier of that date. It was filed on November 20, 2014. Written opposition to the motion must be filed and served at least 14 days before the hearing, when the motion is brought pursuant to Local Bankruptcy Rule 9014-1(f)(1). This motion was brought under that local rule. The motion was filed and served on November 20, 2014, 32 days before the December 22, 2014 hearing on the motion. Docket 106. This means that the last day for oppositions to be filed and served is December 8, 2014, 14 days before the December 22 hearing. As the notice of hearing states that the last day to

file and serve opposition is November 25, 2014, the motion will be dismissed for inadequate notice.

15. 14-22884-A-11 RAYMOND/ROSA KING — MOTION FOR FINAL DECREE
CAH-8 — 11-20-14 [107]

Final Ruling: The motion will be dismissed without prejudice because the notice of hearing for the motion contains contradictory language and it is confusing. On one hand, the notice says that written opposition to the motion must be filed and served at least 14 days before the hearing. Docket 108 at 2. On the other hand, the same notice states that the "last date to serve and file Opposition is November 25, 2014." Docket 108 at 2.

The last date to file written opposition is not November 25, 2014. This motion was filed only five days earlier of that date. It was filed on November 20, 2014. Written opposition to the motion must be filed and served at least 14 days before the hearing, when the motion is brought pursuant to Local Bankruptcy Rule 9014-1(f)(1). This motion was brought under that local rule. The motion was filed and served on November 20, 2014, 32 days before the December 22, 2014 hearing on the motion. Docket 110. This means that the last day for oppositions to be filed and served is December 8, 2014, 14 days before the December 22 hearing. As the notice of hearing states that the last day to file and serve opposition is November 25, 2014, the motion will be dismissed for inadequate notice.

16. 14-31393-A-11 GAJENDRA/MUNA ADHIKARI — STATUS CONFERENCE
11-19-14 [1]

Tentative Ruling: None.