



**UNITED STATES BANKRUPTCY COURT  
Eastern District of California  
Honorable René Lastreto II  
Department B - 510 19th Street  
Bakersfield, California**

**Hearing Date: Wednesday, April 3, 2024**

***At this time, when in-person hearings in Bakersfield will resume is to be determined. No persons are permitted to appear in court for the time being. All appearances of parties and attorneys shall be as instructed below.***

Unless otherwise ordered, all matters before the Honorable René Lastreto II shall be simultaneously: (1) via **ZoomGov Video**, (2) via **ZoomGov Telephone**, and (3) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

All parties or their attorneys who wish to appear at a hearing remotely must sign up by **4:00 p.m. one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at <https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>. Each party/attorney who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties and their attorneys who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest and/or their attorneys may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press who wish to attend by ZoomGov may only listen in to the hearing using the Zoom telephone number. Video participation or observing are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may attend in person unless otherwise ordered.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

**Unauthorized Recording is Prohibited:** Any recording of a court proceeding held by video or teleconference, including "screen shots" or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

## INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

**Post-Publication Changes:** The court endeavors to publish its rulings as soon as possible. However, calendar preparation is ongoing, and these rulings may be revised or updated at any time prior to 4:00 p.m. the day before the scheduled hearings. Please check at that time for any possible updates.

9:00 AM

1. [23-12401](#)-B-13     **IN RE: DANIEL/ARACELY REYES**  
[PLG-2](#)

MOTION TO MODIFY PLAN  
2-27-2024    [[47](#)]

ARACELY REYES/MV  
RABIN POURNAZARIAN/ATTY. FOR DBT.

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Granted.

ORDER:             The Moving Party shall submit a proposed order in conformance with the ruling below.

Daniel and Aracely Reyes (collectively "Debtors") move for an order confirming Debtors' *First Amended Chapter 13 Plan* dated February 27, 2024. Docs. #47, #49.

No party has timely objected.

This motion was set for hearing on 35 days' notice as required by Local Rule of Practice ("LBR") 3015-1(d)(1). The failure of any party in interest, including but not limited to creditors, the U.S. Trustee, and the case Trustee, to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987).

The motion requests that the confirmed plan be modified as follows:

1. The plan payments, previously \$1,130.00 per month, will be modified as follows: Plan payments will be as received up through and including February 2024 (month 4), then \$0.00 per month for March 2024 (month 5) through May 2024 (month 7), then \$910.00 per month starting June 2024 (month 8) and continuing through month 60.
2. Priority claims to be paid through the plan will increase from \$0.00 to \$2,545.33.
3. The monthly dividend for administrative expenses will increase from \$82.72 to \$500.00 per month until paid.
4. The monthly arrearage payment to American Honda Finance will increase from \$7.83 to \$8.85 commencing in June 2024.
5. The plan provisions will otherwise remain unchanged.

Docs. #47, #49.

Debtors aver that this modification is necessary because of a medical emergency suffered by their son in January 2024 which has required ongoing treatment and hospitalization which necessitates a three-month hiatus in plan payments. Docs. ##50-51.

No party has objected, and so, this motion is GRANTED. The order shall include the docket control number of the motion, shall reference the plan by the date it was filed, and shall be approved as to form by Trustee.

2. [19-15313](#)-B-13     **IN RE: JENNIFER PAYAN**  
[NES-2](#)

MOTION FOR COMPENSATION FOR NEIL E. SCHWARTZ, DEBTORS  
ATTORNEY(S)  
2-29-2024    [[73](#)]

NEIL SCHWARTZ/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Granted as modified.

ORDER:                            The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after hearing.

Neil E. Schwartz ("Applicant"), attorney for Jennifer Payan ("Debtor"), requests final compensation in the sum of \$2,130.00 under 11 U.S.C. § 330. Doc. #73. This amount consists of \$2,130.00 in fees and \$0.00 in expenses from May 26, 2021 through February 21, 2024. *Id.* Debtor executed a statement of consent dated February 22, 2024, indicating that Debtor has read the fee application and approves the same. *Id.* § 9(7).

No party in interest timely filed written opposition. This motion will be GRANTED.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1) and Fed. R. Bankr. P. ("Rule") 2002(a)(6). The failure of the creditors, the chapter 13 trustee, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition 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. Upon default, factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys. Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

Section 3.05 of the *Chapter 13 Plan* dated December 23, 2019, confirmed April 3, 2020, indicates that Applicant was paid \$2,190.00 prior to filing the case and, subject to court approval, additional fees of \$12,000.00 would be paid through the plan upon court approval by filing

and serving a motion in accordance with 11 U.S.C. §§ 329 and 330, and Rules 2002, 2016-17. Docs. #2, #56.

This is Applicant's second and final fee application. Doc. #73. Applicant was previously awarded **\$5,800.00** in fees and **\$411.00** in expense reimbursement on an interim basis on March 10, 2021, for services and expenses from December 13, 2019, through January 13, 2021. Docs. #61, #66.

According to the submitted billing records, Attorney Neil Schwartz provided 5.3 billable hours at \$300.00 per hour, totaling **\$1,530.00** in fees for work completed. Doc. #75 (*Exhib. B*). The billing records also assert that a paralegal identified as "P.I." provided .20 billable hours for which the Debtor was not billed. *Id.* Finally, the billing records include a line entry for "Anticipated Discharge Paperwork," which appears to be a request for work that has not actually been performed yet, but which is expected to be between now and the point of discharge. *Id.* As noted, Applicant does not seek expense reimbursement in this Application.

These combined fees and expenses total **\$2,130.00** if the court approves the award for Anticipated Discharge Paperwork.

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." In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, considering all relevant factors, including those enumerated in subsections (a)(3)(A) through (E). § 330(a)(3).

Applicant's services here included, without limitation: claim administration and claim objections; fee applications; and case administration. Doc. #73. Services also include 0.20 hours on non-billed work and a flat entry of \$600.00 for an unknown amount of work pertaining to discharge and case closing. *Id.*

No party in interest timely filed written opposition and Debtor has consented to payment of the proposed fees. Doc. #173, § 9(7).

The court finds that those services already performed are reasonable, actual, and necessary, and the motion will be GRANTED as to those hours previously worked which represent **\$1,530.00**. The court is reticent, however, to award a flat amount of **\$600.00** for future work pertaining to the discharge. The court does not have sufficient information about whether this work will be performed by the attorney at a rate of \$300.00 per hour or by the paralegal at a rate of \$175.00 per hour, nor even a clear understanding of what work remains to be completed before discharge and who will perform what task (i.e., the "1328 declaration," etc.). Furthermore, the court notes that the instant motion does not include a request that the compensation previously approved on an interim basis now be approved on a final basis.

Accordingly, this matter will proceed to hearing. The court's inclination is to GRANT the motion but to reduce the amount billed prospectively for discharge-related work from **\$600.00** to **\$400.00** unless Applicant presents additional information to justify the full amount

requested. The court will also hear arguments from Applicant on whether the prior interim award should be approved on a final basis.

3. [24-10267](#)-B-13     **IN RE: LORNE/CANDIS HOWLETT**  
[KMM-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY NELNET HELOC TRUST  
3-5-2024   [[13](#)]

NELNET HELOC TRUST/MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
KIRSTEN MARTINEZ/ATTY. FOR MV.

**After posting the original pre-hearing dispositions, the court has modified its intended ruling on this matter.**

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Withdrawn

ORDER:            The court will issue an order.

On April 2, 2024, the Creditor in the above-styled matter filed a *Notice of Withdrawal* and a request to take the matter off the calendar. Accordingly, this matter is WITHDRAWN.

4. [24-10179](#)-B-13     **IN RE: MARIANA LUCERO**  
[SKI-1](#)

OBJECTION TO CONFIRMATION OF PLAN BY CREDITOR CARMAX  
BUSINESS SERVICES, LLC  
2-9-2024   [[12](#)]

CARMAX BUSINESS SERVICES,  
LLC/MV  
NEIL SCHWARTZ/ATTY. FOR DBT.  
SHERYL ITH/ATTY. FOR MV.

FINAL RULING:     There will be no hearing in this matter.

DISPOSITION:     Withdrawn

No order is required.

On February 20, 2024, the Debtor and Creditor in this matter filed a Joint Stipulation resolving the Creditor's Objection and deeming it withdrawn. Accordingly, the Objection is WITHDRAWN.

5. [24-10087](#)-B-13    **IN RE: MARY MACKEY**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
2-21-2024    [[25](#)]

DISMISSED 3/6/24

FINAL RULING:    There will be no hearing in this matter.

DISPOSITION:    Dropped and taken off calendar.

No order is required.

An order dismissing the case was entered on March 6, 2024. Doc. #30. Accordingly, this Order to Show Cause will be taken off calendar as moot. No appearance is necessary.

10:00 AM

1. [23-11303](#)-B-7 **IN RE: JOHN/VENNESSA MARTINEZ**  
[SKI-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
2-7-2024 [[40](#)]

AMERICREDIT FINANCIAL  
SERVICES, INC./MV  
ROBERT WILLIAMS/ATTY. FOR DBT.  
SHERYL ITH/ATTY. FOR MV.  
DISCHARGED 11/13/23

FINAL RULING: There will be no hearing in this matter.

DISPOSITION: Granted in part and Denied as moot in part.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

The movant, Americredit Financial Services, Inc. ("Movant"), seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2015 GMC Sierra 2500HD (VIN: 1GT12ZE89FF106356) ("Vehicle"). Doc. #40. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). *Id.*

The Chapter 7 Trustee ("Trustee") was served and did not respond. On March 13, 2024, the Trustee filed a *Report of No Distribution*. Doc. #48. No other party in interest timely filed written opposition. This motion will be GRANTED IN PART AND DENIED AS MOOT IN PART.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition 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. Upon default, factual allegations will be taken as true (except those relating to amount of damages). *Televideo Systems, Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

11 U.S.C. § 362(c)(2)(C) provides that the automatic stay of § 362(a) continues until a discharge is granted. The discharge of John and Vennessa Martinez ("Debtors") was entered on November 13, 2023. Doc. #38. Therefore, the automatic stay terminated with respect to the Debtors on November 13, 2023. This motion will be DENIED AS MOOT IN PART as to the Debtors' interest and will be GRANTED IN PART for cause shown as to the Trustee's (or estate's) interest.



11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case-by-case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

After review of the included evidence, the court finds that "cause" exists to lift the stay with respect to the Trustee because Debtors have failed to make four (4) post-petition payments totaling \$4,813.32. Movant has produced evidence that Debtors owe \$56,772.78 to Movant. Docs. #43, #45.

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

The court also finds that the Debtors do not have any equity in the Vehicle and the Vehicle is not necessary to an effective reorganization because this is a chapter 7 case. Movant values the Vehicle at \$41,250.00 and Debtors owe \$56,772.78, which leaves Movant under-secured. Doc. #43.

Accordingly, the motion will be GRANTED IN PART as to the Trustee's interest pursuant to § 362(d)(1) and (d)(2) and DENIED AS MOOT IN PART as to the Debtors' interest under § 362(c)(2)(C).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the Vehicle is a depreciating asset.

2. [24-10112](#)-B-7     **IN RE: SHANNON RHODES**

MOTION FOR WAIVER OF THE CHAPTER 7 FILING FEE  
1-18-2024    [3]

R. BELL/ATTY. FOR DBT.

FINAL RULING:     There will be no hearing on this matter.

DISPOSITION:     Denied as moot.

ORDER:             The court will issue an order.

The record shows that the \$338.00 filing fee was paid on March 20, 2024. Accordingly, this motion will be DENIED as moot.

3. [85-12817](#)-B-7     **IN RE: BARBARA CHANCELLOR**

MOTION FOR PAYMENT OF UNCLAIMED FUNDS IN THE AMOUNT OF \$  
53,898.59 WITH DILKS AND KNOPIK, LLC  
3-4-2024    [\[159\]](#)

BRETT PRICE/ATTY. FOR DBT.  
CLOSED 02/27/1995,

FINAL RULING:     There will be no hearing in this matter.

DISPOSITION:     Continued to May 8, 2024, at 10:00 a.m.

ORDER:            The court will prepare the order.

4. [23-12520](#)-B-7     **IN RE: EMCAST CONSTRUCTION INC**  
[JMV-1](#)

MOTION TO EMPLOY GOULD AUCTION & APPRAISAL COMPANY AS  
AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION  
AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES  
3-5-2024    [\[10\]](#)

JEFFREY VETTER/MV  
PATRICK KAVANAGH/ATTY. FOR DBT.

FINAL RULING:     There will be no hearing in this matter.

DISPOSITION:     Granted.

ORDER:            The Moving Party shall submit a proposed order in  
conformance with the ruling below.

Chapter 7 trustee Jeffrey Vetter ("Trustee") seeks authorization to (a) employ Gould Auction and Appraisal Company ("Auctioneer") under 11 U.S.C. § 328; (b) sell the estate's interest in a 2015 GMC 2500 Truck ("the Vehicle") at public auction under § 363(b)(1); and (c) compensate Auctioneer under §§ 327(a) and 328. Doc. #10. The auction will be held on or after April 27, 2024, beginning at 9:00 a.m. at 6100 Price Way, Bakersfield, California. *Id.* The Debtor corporation ("Debtor") is Emcast Construction, Inc. *Id.*

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an

unopposed movant has made a prima facie case for the requested relief. See *Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

No party in interest timely filed written opposition. This motion will be GRANTED.

#### Employment and Compensation

This motion affects the proposed disposition of estate assets and Auctioneer. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion to add Auctioneer as a party.

LBR 9014-1(d) (5) (B) (iii) permits joinder of requests for authorization to employ a professional, i.e., auctioneer, for sale of estate property at public auction, and allowance of fees and expenses for such professional under 11 U.S.C. §§ 327, 328, 330, 363, and Rules 6004-05.

11 U.S.C. § 327 allows the trustee, with the court's approval, to employ one or more attorneys, accountants, auctioneers, or other professional persons to represent or assist the trustee in carrying out the trustee's duties. The professional is required to be a disinterested person and neither hold nor represent interests adverse to the estate. § 327(a).

11 U.S.C. § 328(a) permits employment of "a professional person under section 327" on "any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." Section 328(a) further "permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.'" *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002).

Under these sections, Trustee requests to employ and compensate Auctioneer by paying: (i) a 15% commission on the gross proceeds from the sale; (ii) an additional 10% premium to be paid by the buyer; (iii) an additional 3% fee paid to the online service Proxibid, if the buyer makes use of that service; (iv) estimated expenses for pickup and storage not to exceed \$100.00, and (v) reimbursement for "extraordinary expenses" not to exceed \$150.00 and subject to court approval if extraordinary expenses exceed \$150. Doc. #10.

Trustee and Jerry Gould, Auctioneer's owner, filed declarations attesting that Auctioneer is a disinterested person as defined in § 101(14) and does not hold any interests adverse to the estate in accordance with § 327(a). Docs. ##12-13. With respect to Debtor, Auctioneer is not a creditor, equity security holder, insider, investment banker for a security of the debtor within the three years before the petition date, or an attorney for such investment banker, and within two years of the petition date was not a director, officer, or employee of the Debtor or an investment banker. Doc. #12. Auctioneer does not have an interest materially adverse to the interest of the estate, creditors, Debtor, equity security holders, an investment banker for a security of the debtors, or any other party in interest, and had

not served as an examiner in this case. *Id.* Auctioneer does not have any connection with any creditors, parties in interests, their attorneys, accountants, the U.S. Trustee, or anyone employed by the U.S. Trustee. *Id.* Additionally, no agreement exists between Auctioneer or any other person for the sharing of compensation received by Auctioneer in connection with the services rendered. *Id.*

Trustee declares that it is necessary to employ Auctioneer to liquidate Vehicle. Doc. #13. Trustee believes that the proposed fees and expenses for services are reasonable and customary for the services to be rendered by Auctioneer. *Id.* Auctioneer will assist Trustee by generally performing and assisting Trustee in matters customarily done and performed by auctioneers in connection with an auction sale of property. *Id.*

The court will authorize Auctioneer's employment pursuant to 11 U.S.C. §§ 327(a), 328 and authorize Trustee to pay the 15% commission, and expenses up to \$100.00 for ordinary expenses and, upon subsequent motion and court approval for "extraordinary expenses" exceeding \$150.

### Proposed Sale

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given 'great judicial deference.'" *Id.*, citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Here, Vehicle is listed in the schedules as having 87,000 miles and is valued at \$23,000.00. *Sched. A/B*, Doc. #1. Vehicle does not appear to have any encumbrances. *Sched. D*, *Id.* Debtor is a corporate entity, and so no exemptions apply.

The motion does not list a proposed sale price but rather seeks the best price that can be obtained at open auction. However, given the fact that expenses are limited to an absolute maximum of \$250.00 without court approval, that auctioneer fees are limited to 15%, and that no Debtor's exemption will be applied, the court concludes that the auction will almost inevitably produce at least some net proceeds for the estate.

Trustee believes that using the auction process to sell Vehicle will result in the quickest liquidation for the best possible price because it will be exposed to many prospective purchasers. Doc. #13. Based on

Trustee's experience, this could yield the highest net recovery to the estate, both in terms of time efficiency and the amount that will be realized from the sale. *Id.*

Sale by auction under these circumstances should maximize potential recovery for the estate such that the sale of the Vehicle would be in the best interests of the estate if it will provide liquidity to the estate that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

#### Conclusion

No party in interest objected to the instant motion, which is GRANTED. Trustee will be permitted to employ Auctioneer, sell the Vehicle at public auction, and pay Auctioneer for its services as outlined above. If the sale is completed, Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 15% of gross proceeds from the sale and payment of up to \$100.00 for expenses. If "extraordinary expenses" are to be sought exceeding \$150, they must be the subject to a later motion and hearing.

#### 5. [24-10322](#)-B-7 **IN RE: MARCELLINA LEATHERS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
2-27-2024 [[17](#)]

DISMISSED 3/4/24

FINAL RULING: There will be no hearing in this matter.

DISPOSITION: Dropped and taken off calendar.

No order is required.

An order dismissing the case was entered on March 4, 2024. Doc. #21. Accordingly, this Order to Show Cause will be taken off calendar as moot. No appearance is necessary.

6. [24-10435](#)-B-7     **IN RE: JASPREET SINGH**  
[HRH-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-15-2024    [[10](#)]

BMO BANK, N.A./MV  
GURJIT SRAI/ATTY. FOR DBT.  
RAFFI KHATCHADOURIAN/ATTY. FOR MV.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Granted and Denied in part.

ORDER:                            The Moving Party shall submit a proposed order in  
conformance with the ruling below.

BMO Bank ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d) (1) and (d) (2) with respect to a one (1) 2023 Utility 53' Dry Van, VIN 1UYV52531P2659740, with a 2022 Thermo King 3600 Reefer unit, Serial Number 6001359695 ("Trailer"). Doc. #10. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a) (3). Id.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f) (2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f) (2). The court will issue an order if a further hearing is necessary.

The Debtor is Jaspreet Singh ("Debtor"), who is both the owner of Baler 22, Inc. ("Baler") and a guarantor of Baler's contract with Movant to purchase the Trailer.

Both the motion and supporting declaration acknowledge this Trailer is not owned by the Debtor here, but rather by the company, Baler. So, the Trailer is not property of the estate. The Trustee does not appear to have an interest in the Trailer.

Based on the foregoing, the court concludes that the Trailer is not and has never been property of the estate.

The Debtor has yet to receive a discharge. So, the motion will be GRANTED as to Debtor's possessory interest only. The Movant's Declaration and the bankruptcy schedules reflect the Trailer is in possession of a repair shop. This court has not been asked nor will it make any ruling or finding concerning any interest in the Trailer that may be held by the repair shop. Movant will need to rely on its state law remedies concerning the repair shop's interest.

Accordingly, this motion will be GRANTED as to Debtor's possessory interest only. The balance of the motion will be DENIED AS MOOT since it is uncontested the estate has no interest in the Trailer. No other relief is granted.

7. [24-10435](#)-B-7     **IN RE: JASPREET SINGH**  
[HRH-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
3-19-2024    [[19](#)]

CROSSROADS EQUIPMENT LEASE AND  
FINANCE, LLC/MV  
GURJIT SRAI/ATTY. FOR DBT.  
RAFFI KHATCHADOURIAN/ATTY. FOR MV.

**After posting the original pre-hearing dispositions, the court has modified its intended ruling on this matter.**

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                    Granted in part as to 2020 Vanguard Reefer Trailer and Granted as to Debtor's possessory interest only as to the other Vehicles. But denied as to other relief.

ORDER:                            The Moving Party shall submit a proposed order in conformance with the ruling below.

Crossroads Equipment Lease and Finance ("Movant") seeks relief from the automatic stay under 11 U.S.C. §§ 362(d)(1) and (d)(2) with respect to a 2020 Vanguard Reefer Trailer (VIN 527SR5322LL017662) ("Vanguard") and as to the 2023 Peterbilt Model 579 tractor truck, VIN 1XPBD49X1PD837250, the 2023 Peterbilt Model 579 tractor truck, VIN 1XPBD49X7PD837253, the 2023 Peterbilt Model 579 tractor truck, VIN 1XPBD49X0PD837255, the 2023 Utility 53' Reefer Trailer, VIN 1UYV52539P2989429, with Thermo-King 5-700 Refrigeration Unit, Serial Number 6001388542, the 2023 Utility 53' Reefer Trailer, VIN 1UYV52537P2989428, with Thermo-King 5-600 Refrigeration Unit, Serial Number 6001390538 ("Vehicles"). Doc. #19. Movant also requests waiver of the 14-day stay of Fed. R. Bankr. P. 4001(a)(3). *Id.*

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED in part and DENIED in part.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

11 U.S.C. § 362(d)(1) allows the court to grant relief from the stay for cause, including the lack of adequate protection. "Because there is no clear definition of what constitutes 'cause,' discretionary relief from the stay must be determined on a case by case basis." *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985).

11 U.S.C. § 362(d)(2) allows the court to grant relief from the stay if the debtor does not have an equity in such property and such property is not necessary to an effective reorganization.

After review of the included evidence, the court finds that "cause" exists to lift the stay as to the Vanguard because Jaspreet Singh ("Debtor") is five payments past due in the amount of \$6,886.15 together with the late fees of \$344.30 and fees and expenses of 710.00 for a total of \$7,940.45. Docs. #23, #24. The certificate of title for the Vanguard shows it is owned by this Debtor

The court declines finding that Debtor does not have any equity in the Vehicle. Although this is a chapter 7 case, and the Vehicle is not necessary for an effective reorganization. Doc. #23. Relief under § 362(d)(2) is moot because there is "cause" to grant the motion under § 362(d)(1).

As to the other Vehicles:

Debtor, who is both the owner of Baler 22, Inc. ("Baler") and a guarantor of Baler's contract with Movant to purchase the Vehicles.

The Trustee was served. The other Vehicles, according to the motion and the accompanying exhibits are not property of the estate. The Trustee did not have an interest in the Vehicles. The Movant admits as much in the motion and supporting documents.

Based on the foregoing, the court concludes that the other Vehicles are not and have never been property of the estate.

The court has not been asked and is not making a finding or ruling about the nature and extent or validity of the interest of the repair shop where all the vehicles subject to this motion are currently located. The Movant will need to litigate that issue under state law in state court should the repair shop assert any interest in any or all of the vehicles.

The motion will be GRANTED in part pursuant to 11 U.S.C. §§ 362(d)(1) to permit the movant to exercise its' rights under state law to dispose of the Vanguard pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded. According to the Debtor's Statement of Intention, the Vanguard will be surrendered.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because Debtor has failed to make at least five pre-petition payments to Movant and the Vanguard is a depreciating asset.

This motion will be DENIED in part as moot as to the other Vehicles since it is uncontested that they are not part of the estate. The motion will be GRANTED as to the other Vehicles as to Debtor's possessory interest, only. Movant may submit an order granting the motion in part and denying the motion in part as set forth here. No other relief is granted.



8. [23-12637](#)-B-7     **IN RE: AUTOMATION ELECTRICAL AND INSTRUMENTATION**  
[JMV-1](#)

MOTION TO EMPLOY GOULD AUCTION AND APPRAISAL COMPANY AS  
AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION  
AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES  
3-5-2024    [[10](#)]

JEFFREY VETTER/MV  
D. GARDNER/ATTY. FOR DBT.

FINAL RULING:        There will be no hearing in this matter.

DISPOSITION:        Granted.

ORDER:                The Moving Party shall submit a proposed order in  
conformity with the ruling below

Chapter 7 trustee Jeffrey Vetter ("Trustee") seeks authorization to (a) employ Gould Auction and Appraisal Company ("Auctioneer") under 11 U.S.C. § 328; (b) sell the estate's interest in a 2018 GMC 2500 Truck ("the Vehicle") at public auction under § 363(b)(1); and (c) compensate Auctioneer under §§ 327(a) and 328. Doc. #11 . The auction will be held on or after April 27, 2024, beginning at 9:00 a.m. at 6100 Price Way, Bakersfield, California. *Id.* The Debtor corporation ("Debtor") is Automation Electrical and Instrumentation. *Id.*

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). Thus, pursuant to LBR 9014-1(f)(1)(B), the failure of any party in interest (including but not limited to creditors, the debtor, the U.S. Trustee, or any other properly-served party in interest) to file written opposition at least 14 days prior to the hearing may be deemed a waiver of any such opposition to the granting of the motion. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). When there is no opposition to a motion, the defaults of all parties in interest who failed to timely respond will be entered, and, in the absence of any opposition, the movant's factual allegations will be taken as true (except those relating to amounts of damages). *Televideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917 (9th Cir. 1987). Because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary when an unopposed movant has made a prima facie case for the requested relief. *See Boone v. Burk (In re Eliapo)*, 468 F.3d 592 (9th Cir. 2006).

No party in interest timely filed written opposition. This motion will be GRANTED.

Employment and Compensation

This motion affects the proposed disposition of estate assets and Auctioneer. Under Fed. R. Civ. P. ("Civ. Rule") 21 (Rule 7021 incorporated in contested matters under Rule 9014(c)), the court will exercise its discretion to add Auctioneer as a party.

LBR 9014-1(d)(5)(B)(iii) permits joinder of requests for authorization to employ a professional, i.e., auctioneer, for sale of estate property

at public auction, and allowance of fees and expenses for such professional under 11 U.S.C. §§ 327, 328, 330, 363, and Rules 6004-05.

11 U.S.C. § 327 allows the trustee, with the court's approval, to employ one or more attorneys, accountants, auctioneers, or other professional persons to represent or assist the trustee in carrying out the trustee's duties. The professional is required to be a disinterested person and neither hold nor represent interests adverse to the estate. § 327(a).

11 U.S.C. § 328(a) permits employment of "a professional person under section 327" on "any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." Section 328(a) further "permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.'" *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002).

Under these sections, Trustee requests to employ and compensate Auctioneer by paying: (i) a 15% commission on the gross proceeds from the sale; (ii) an additional 10% premium to be paid by the buyer; (iii) an additional 3% fee paid to the online service Proxibid, if the buyer makes use of that service; (iv) estimated expenses for pickup and storage not to exceed \$100.00, and (v) reimbursement for "extraordinary expenses" not to exceed \$150.00. Extraordinary expenses exceeding \$150.00 are subject to court approval. *Id.*

Trustee and Jerry Gould, Auctioneer's owner, filed declarations attesting that Auctioneer is a disinterested person as defined in § 101(14) and does not hold any interests adverse to the estate in accordance with § 327(a). Docs. #12, #14. With respect to Debtor, Auctioneer is not a creditor, equity security holder, insider, investment banker for a security of the debtor within the three years before the petition date, or an attorney for such investment banker, and within two years of the petition date was not a director, officer, or employee of the Debtor or an investment banker. Doc. #12. Auctioneer does not have an interest materially adverse to the interest of the estate, creditors, Debtor, equity security holders, an investment banker for a security of the debtors, or any other party in interest, and had not served as an examiner in this case. Docs. #12, #14. Auctioneer does not have any connection with any creditors, parties in interests, their attorneys, accountants, the U.S. Trustee, or anyone employed by the U.S. Trustee. *Id.* Additionally, no agreement exists between Auctioneer or any other person for the sharing of compensation received by Auctioneer in connection with the services rendered. *Id.*

Trustee declares that it is necessary to employ Auctioneer to liquidate Vehicle. Doc. #13. Trustee believes that the proposed fees and expenses for services are reasonable and customary for the services to be rendered by Auctioneer. *Id.* Auctioneer will assist Trustee by generally performing and assisting Trustee in matters customarily done and performed by auctioneers in connection with an auction sale of property. *Id.*

The court will authorize Auctioneer's employment pursuant to 11 U.S.C. §§ 327(a), 328 and authorize Trustee to pay the 15% commission, and expenses up to \$100.00 for ordinary expenses and, upon subsequent motion and court approval, for "extraordinary expenses "exceeding \$150.00

### Proposed Sale

11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. *In re Alaska Fishing Adventure, LLC*, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) citing *240 North Brand Partners, Ltd. v. Colony GFP Partners, Ltd. P'ship (In re 240 N. Brand Partners, Ltd.)*, 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996); *In re Wilde Horse Enters., Inc.*, 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." *Alaska Fishing Adventure, LLC*, 594 B.R. at 889, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given 'great judicial deference.'" *Id.*, citing *In re Psychometric Sys., Inc.*, 367 B.R. 670, 674 (Bankr. D. Colo. 2007); *In re Bakalis*, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

Here, Vehicle is listed in the schedules as having 136,000 miles and is valued at \$25,000.00. *Sched. A/B*, Doc. #1. Vehicle is encumbered by a claim by Wells Fargo Auto for an auto loan in the amount of \$5,000.00. *Sched. D, Id.* Debtor is a corporate entity, and so no exemptions apply.

The motion does not list a proposed sale price but rather seeks the best price that can be obtained at open auction. However, given the fact that expenses are limited to an absolute maximum of \$250.00 without court approval, that auctioneer fees are limited to 15%, that the Vehicle is valued at \$25,000.00 and subject only to a \$5,000.00 encumbrance, and that no Debtor's exemption will be applied, the court concludes that the auction will almost inevitably produce at least some net proceeds for the estate after auto loan is paid off in full and all Auctioneer fees and expenses are paid.

Trustee believes that using the auction process to sell Vehicle will result in the quickest liquidation for the best possible price because it will be exposed to many prospective purchasers. Doc. #13. Based on Trustee's experience, this could yield the highest net recovery to the estate, both in terms of time efficiency and the amount that will be realized from the sale. *Id.*

Sale by auction under these circumstances should maximize potential recovery for the estate such that the sale of the Vehicle would be in the best interests of the estate if it will provide liquidity to the estate that can be distributed for the benefit of unsecured claims. The sale appears to be supported by a valid business judgment and proposed in good faith. Therefore, this sale is an appropriate exercise of Trustee's business judgment and will be given deference.

## Conclusion

No party in interest objected to the instant motion, which is Granted. Trustee will be permitted to employ Auctioneer, sell the Vehicle at public auction, and pay Auctioneer for its services as outlined above. If the sale is completed, Trustee will be authorized to compensate Auctioneer on a percentage collected basis: 15% of gross proceeds from the sale and payment of up to \$100.00 for expenses. If "extraordinary expenses" are to be sought exceeding \$150.00, they must be the subject to a later motion and hearing.

9. [24-10146](#)-B-7    **IN RE: C.S. & S. BAKERY, LLC**  
[LNH-1](#)

MOTION TO EMPLOY LISA HOLDER AS ATTORNEY(S) FOR TRUSTEE  
3-15-2024    [[15](#)]

JEFFREY VETTER/MV  
LEONARD WELSH/ATTY. FOR DBT.

TENTATIVE RULING:            This matter will proceed as scheduled.

DISPOSITION:                 Granted.

ORDER:                         The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after hearing.

Jeffrey Vetter ("Trustee"), Trustee in the Chapter 7 bankruptcy case of C.S. & S Bakery, LLC ("Debtor"), moves the court for an order authorizing the employment of Lisa Nixon Holder, PC ("Holder") as general counsel pursuant to 11 U.S.C. § 327. Doc. #15.

Written opposition was not required and may be presented at the hearing. In the absence of opposition, this motion will be GRANTED.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

11 U.S.C. § 327 allows the trustee, with the court's approval, to employ one or more attorneys, accountants, auctioneers, or other professional persons to represent or assist the trustee in carrying out the trustee's duties. The professional is required to be a disinterested person and neither hold nor represent interests adverse to the estate. § 327(a).

11 U.S.C. § 328(a) permits employment of "a professional person under section 327" on "any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." Section 328(a) further "permits a professional to have the terms and conditions of its employment pre-approved by the bankruptcy court, such that the

bankruptcy court may alter the agreed-upon compensation only 'if such terms and conditions and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of the fixing of such terms and conditions.'" *In re Circle K Corp.*, 279 F.3d 669, 671 (9th Cir. 2002).

The Trustee avers in the motion that:

[C]ounsel is needed to prepare motions to liquidate business assets including a franchise agreement, and to determine the validity of an equipment "lease." In addition, Trustee contemplates he may be required to seek joint administration or substantive consolidation in the case because the assets, creditors, and equity security holders in this case are intertwined with those in *In re: SLO Dough, LLC*, case no. 23-12767, also before this court. Holder is employed in the SLO Dough case.

Doc. #15.

Holder has submitted a Declaration averring that she is a disinterested person as defined by 11 U.S.C. § 101(14); that she neither holds nor represents any interests materially adverse to the estate or any class of creditors or equity security holders, nor does she have any connections to any party involved in the case at bar which would preclude her under § 327, beyond the fact that she is presently employed by Trustee in the related SLO Dough case. Doc. #18. While there are overlapping parties in interest in both cases, that should not be an obstacle if the two cases are jointly administered under Fed. R. Bankr. Pro. 1015(b) or else substantially consolidated, as Holder has recommended to Trustee and Trustee seems inclined to pursue. Docs. #15, #18.

Both the Trustee and Ms. Holder revealed that they each are Trustee and general counsel, respectively, in a related case known as SLO Dough LLC. Doc. #15. The court has also reviewed the exhibits to the Application. Doc. #17. It appears that both debtor entities were franchisees for a "Crumb Cookie" store. The original franchisee was this debtor but the debtor changed the name from this debtor to SLO Dough, LLC. *Id.* This suggests that both entities have identical assets. The schedules do show virtually identical claims with few exceptions. So, at this time, there does not appear to be an impediment to either Trustee remaining as Trustee and Ms. Holder being retained in both cases. However, the court reminds counsel and the Trustee of continuing duties of disclosure should it appear that the creditor body in both cases becomes markedly different or that other problems preclude disinterestedness.

Based on the Application, the record before the court, and the verified statement made by Holder as required by Bankruptcy Rule 2014(a), it appears that Holder is eligible to be employed. Accordingly, in the absence of any opposition at the hearing, the Court is inclined to GRANT the application, and permit the employment of Holder, subject to the following reasonable terms and conditions and to the applicable provisions of 11 U.S.C. § 327 and §§ 329-331 set forth below.

Reasonable terms and conditions of employment include the following matters related to compensation:

1. No compensation is permitted except upon court order following application with notice and a hearing pursuant to 11 U.S.C. § 330(a).

Compensation will be at the "lodestar rate" applicable at the time that services are rendered in accordance with the Ninth Circuit decision in *In re Manoa Fin. Co.*, 853 F.2d 687 (9th Cir. 1988). No hourly rate referred to in the application is approved unless unambiguously so stated in this order or in a subsequent order of this Court.

11:00 AM

1. [23-11175](#)-B-7 **IN RE: JASWINDER SINGH**  
[23-1047](#) [CAE-1](#)

CONTINUED STATUS CONFERENCE RE: COMPLAINT  
11-10-2023 [[1](#)]

VETTER V. SINGH ET AL  
D. GARDNER/ATTY. FOR PL.

NO RULING.

2. [23-11175](#)-B-7 **IN RE: JASWINDER SINGH**  
[23-1047](#) [TGF-2](#)

MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL  
1-31-2024 [[11](#)]

VETTER V. SINGH ET AL  
VINCENT GORSKI/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted with leave to amend.

ORDER: The court will issue the order.

Defendants Debtor Jaswinder Singh and Amandeep Kaur (Collectively "Defendants" or "Movants") ask the court to dismiss Plaintiff Trustee Jeffrey Vetter's complaint to set aside an alleged fraudulent conveyance and for other relief without leave to amend under Civ. Rule 12 (b) (6). The Plaintiff, inexplicably, filed no response to this motion. Nevertheless, upon review of the pleadings and the attached exhibits, the motion and accompanying declarations, the court finds that Plaintiff should have an opportunity to amend the complaint.

The complaint alleges that Jaswinder Singh transferred his interest in real property known as 8904 Northshore Drive in Bakersfield ("Property") to his then spouse, Amandeep Kaur for no consideration within one year of the filing of this bankruptcy case. Plaintiff's theory is the transfer was made with actual intent to defraud, or alternatively Debtor was insolvent when or made insolvent when the transfer occurred. Plaintiff also seeks a finding of the nature, extent and validity of Amandeep Kaur's interest, if any, and declaratory relief as to whether the Property is an asset of the bankruptcy estate.

Defendants contend that the transfer, which is undisputed, was an invalid transmutation and thus no transfer at all. Defendants point to the amended claim of exemption filed by Jaswinder Singh in which he claims a homestead interest in Property. The Trustee has objected to that claim of exemption and that objection is still pending.

Defendants also assert that under California Family Law, the transfer was for no consideration and thus the result of undue influence and consequently invalid. In addition to the motion, Defendants offer two

identical declarations of Defendants in which they assert a lack of intent to cause a fraudulent transfer or an invalid transmutation.

Through the pleadings these facts are undisputed: A purported Interspousal Transfer Deed was signed by Defendants on December 20, 2022. Seven days later, Defendant Amandeep Kaur filed a dissolution proceeding in the Kern County Superior Court. The next day, the Interspousal Deed was recorded in the Kern County records. On May 31, 2023 this bankruptcy case was filed. On July 6, 2023 a dissolution judgment was entered by default by the Kern County Superior Court. No allegation is made or referenced about any property settlement agreement.

Defendants contend these facts alleged are enough to establish an invalid transmutation, so no transfer occurred at all. Thus, the complaint to set aside the transfer should be dismissed without leave to amend because there was no transfer. The court disagrees.

Even if these facts were sufficient to establish a non-existent transfer, and they do not, Defendants ignore the other claims which can survive since there remains a question as to title to the Property. Trustee has also alleged declaratory relief claims as to the nature and extent of Amandeep Kaur's interest and as to the interest of the estate in the Property.

When considering a Civ. Rule 12 (b) (6) motion, the court must accept as true all well pleaded allegations of material fact and construe those facts in the light most favorable to the non-moving party. *Judd v. Weinstein*, 967 F.3d 952, 955 9thCir. 2020). These motions are disfavored. *Ernst & Haas Management Co., Inc. v. Hiscox, Inc*, 23 F.4th 1195, 1199 (9th Cir. 2022). Also, Civ. Rule 12 (d) provides that if matters outside the pleadings are to be considered, the motion must be treated as one for summary judgment under Rule 56.

Defendants here offer two identical declarations which include facts that are neither judicially noticeable nor part of the pleadings, including intent. The court cannot, at this early stage accept as true these statements without giving the Trustee the opportunity for discovery to test the claims. Plus, the premise of Defendant's motion is that undue influence tainted the entire transaction between the Defendants. The premise is a factual matter. Defendants would need to prove the undue influence, not just allege that it happened.

In addition, Plaintiff has failed to allege the circumstances surrounding the allegedly fraudulent conduct with particularity. See Civ. Rule 9(b). There are general allegations about the insider status of Amandeep Kaur when the transfer occurred, but no allegations concerning solvency or the transfers making Jaspreet Singh insolvent.

Further complicating matters is the pending exemption objection which was continued to allow discovery and other informal fact gathering to proceed.

There are numerous factual issues to determine if there is an actual fraudulent intent under both § 548 and Cal. Civ. Code § 3439(b). Also, Cal. Fam. Code 851 provides that transmutations are subject to



fraudulent transfer law. Hence, if the transfer at issue here was effective, fraudulent transfer law would still apply.

The Trustee did not oppose this motion. But the court finds that the Trustee may have a claim to assert if given the opportunity to amend. Even if Defendants are correct and no transfer occurred there remains an issue as to the extent of the estate's interest, if any since marital property division may affect the property of the estate.

The motion is GRANTED. Trustee shall have 14 days from the date of entry of the order to file and serve an amended complaint.