

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

April 4, 2024 at 11:00 a.m.

1. [23-24610-E-11](#) LAFLEURWAY, LLC **CONTINUED STATUS CONFERENCE RE:
[CAE-1](#) **VOLUNTARY PETITION
12-23-23 [1]****

Debtor's Atty: Peter G. Macaluso

Notes:

Continued from 2/21/24 to afford counsel for the Debtor/Debtor in Possession to correct deficiencies in filing.

Operating Reports filed: 3/19/24 [12/31/23; 1/31/24; 2/29/24]

U.S. Trustee Report at 341 Meeting lodged 2/26/24

[PGM-2] Order denying Motion to Use Cash Collateral filed 3/1/24 [Dckt 44]

[RDW-1] Motion for Relief from Automatic Stay (In Rem) filed 3/13/24 [Dckt 48], set for hearing 4/4/24 at 10:00 a.m.; Stipulation filed 3/20/24 [Dckt 59]

[PGM-3] Motion for Order Approving Trial Loan Modification filed 3/25/24 [Dckt 62]; set for hearing 4/18/24 at 10:30 a.m.

The Status Conference is ~~XXXXXXX~~

APRIL 4, 2024 STATUS CONFERENCE

In reviewing the file, the court notes that the Debtor/Debtor in Possession has now filed three monthly operating reports for this Bankruptcy Case filed in December 2023 (shortly after the Debtor was created and real property transferred into it). These Monthly Operating Reports for December 2023, and January and February 2024, are summarized as follows:

A. December 23 - 31, 2023 Monthly Operating Report; Dckt. 56.

1. The Debtor/Debtor in Possession states that the line of business in this Case is “Rental.”
2. The total Opening Balances for all of the bank accounts when this case was filed was \$0.00. *Id.*; ¶ 19.
3. The total Cash Balances on December 31, 2024, was \$3,900.00.
4. It is stated that Professionals were paid \$5,000 “this month.”
5. The \$3,900.00 in monies received were from “Cash Receipts.” *Id.*; ¶¶ 32-34.
6. The Debtor/Debtor in Possession projects that for the full month of January 2024 the cash flow will again be \$3,900, while the cash disbursements for January 2024 will be \$3,900, resulting in \$0.00 of operating profits in January 2024. *Id.*; ¶ 35-36.
7. Though ¶ 20 of the Monthly Operating Reports requires that a listing of the cash received be attached as Exhibit C, no listing of such receipts or their source(s) is provided.
8. The Debtor/Debtor in Possession stated in response to the question that there are open bank accounts other than Debtor/Debtor in Possession account (*Id.*, ¶ 10), the Debtor/Debtor in Possession did not attach the required Exhibit B explaining why there were non Debtor/Debtor in Possession accounts.
9. Though the Debtor/Debtor in Possession checked the boxes in Section 8 that there are financial reports (such as profit and loss statement or balance sheet), Budget or projections, and Project, job costing, or work-in-progress reports, none are attached to the December 2023 Monthly Operating Report as required in Section 8.

B. January 2024 Monthly Operating Report; Dckt. 57.

1. In response to ¶ 10, the Debtor/Debtor in Possession states that it is still maintaining non Debtor/Debtor in Possession accounts.
2. Though stating under penalty of perjury on the December 2023 Monthly Operating Report that there was \$3,900.00 in cash held by the Debtor/Debtor in Possession; the Debtor/Debtor in Possession states that as of January 1, 2024, there was \$0.00 of cash on hand. Dckt. 57; ¶ 19.
3. Debtor/Debtor in Possession then states that for January 2024 there were \$3,900.00 in cash receipts, there were no disbursements, and that on January 31, 2024, there was \$3,900.00 cash on hand. *Id.*; ¶ 20-23.
4. Debtor/Debtor in Possession then states that \$5,000.00 in professional fees were paid in the month of January 2024. *Id.*; ¶ 28.

5. Debtor/Debtor in Possession projects that there will be \$3,900.00 in cash receipts in February 2024, and also (\$3,900.00) in disbursements, which will leave a February 29, 2024 net cash flow to start March 2024. *Id.* ¶¶ 32 - 37.
6. There is an attachment to the January 2024 Monthly Operating Report, stating that for January there was \$3,950.00 in rental income and \$0.00 in expenses. *Id.*; p. 4.

C. February 2024 Monthly Operating Report; Dckt. 58.

1. In response to ¶ 10, the Debtor/Debtor in Possession states that it is still maintaining non Debtor/Debtor in Possession accounts.
2. Though stating under penalty of perjury on the January 2024 Monthly Operating Report that there was \$3,900.00 in cash held by the Debtor/Debtor in Possession; the Debtor/Debtor in Possession states that as of March 1, 2024, there was \$0.00 of cash on hand. Dckt. 57; ¶ 19.
3. Debtor/Debtor in Possession then states that \$5,000.00 in professional fees were paid in the month of February 2024. *Id.*; ¶ 28.
4. For projections, in addition to projecting \$3,900 in cash receipts in April 2024, the Debtor/Debtor in Possession also projects (\$3,900) in disbursement in April 2024. *Id.*; ¶¶ 32-37.
5. There is an attachment to the January 2024 Monthly Operating Report, stating that for January there was \$3,950.00 in rental income and \$0.00 in expenses. *Id.*; p. 4.

Taken as stated by the Debtor/Debtor in Possession under penalty of perjury, as of February 29, 2024, there should have been \$11,700.00 in cash being held by the fiduciary Debtor in Possession, not \$0.00 as indicated by the fiduciary Debtor/Debtor in Possession.

On March 25, 2024, the counsel for the Debtor (in the upper left hand corner he is identified as “Attorney for Debtor Lafleur Way, LLC” and not the Debtor/Debtor in Possession) filed a Motion for Order Approving Trial Loan Modification. Dckt. 62. In the Motion, the Attorney for Debtor states that the Debtor is to make payments, and that the Debtor understands the modified loan terms, and that multiple “Debtors” (even though the sole debtor in this case is Lafleur Way, LLC) continue to meet all eligibility requirements of the modification program. Motion, ¶ 5, 8, 4; Dckt. 62.

The Declaration of Carl Dexter is filed in support of the Motion to Approve Loan Modification. Dckt. 64. He states that he provides this Declaration “on behalf of” the Debtor/Debtor in Possession (it being unclear how Mr. Dexter provides testimony “on behalf of” another entity). *Id.*; p. 1:19-20. His testimony includes (identified by paragraph number in the Declaration) the following quotations:

3. The subject real property is commonly known as 1078 La Fleur Way< [sic] Sacramento, CA 95831. Frank Allen was the prior owner and Plaza Mortgage has agreed to extend the sane [sic] trial modification.

[Second ¶ 3]

3. That I have been offered a trial loan modification from our lender Plaza Mortgage co/o [sic] PHH, Mortgage.

4. That the first payment of \$3,052.89, is due by April 1, 2024, and each subsequent months for May and June of 2024. I intend to timely make these payments. The exhibits are true and correct copies of the documents received from Plaza Home Mortgage. ^{FN.1.}

FN. 1. With this statement, it appears that Mr. Dexter will be personally make the payments and not the fiduciary Debtor in Possession. Such appear to be a gift to the Bankruptcy Estate.

In noting the above, it appears questionable as to whether Mr. Dexter ever reviewed the Declaration or actually signed it.

Looking at the exhibits provided by the Debtor/Debtor in Possession, the fiduciary to the Bankruptcy Estate, the court begins with the Letter from Plaza Home Mortgage which Mr. Dexter testifies that “I have been offered a trial loan modification from our lender Plaza Mortgage co / o PHH, Mortgage.”
^{FN.2.} The court summarizes or “quotes” the information provided in the Letter; Exhibit A, Dckt. 65 at 2-3; as follows:

- A. The Letter, dated February 29, 2024, is addressed to “Carl Dexter” personally, and not to LaFleur Way, LLC via a managing member.
- B. The Letter makes reference to a death and Mr. Dexter having acquired an ownership interest in the La Fleur Way Property.
- C. A Death Certificate is required by the borrower’s death.
- D. If there is a deed transferring title to Carl Dexter, a copy of the deed so transferring title to Carl Dexter.
- E. Spousal agreement documenting a non-probate transfer of community property.
- F. Court order or decree documenting that no court proceedings are required for the transfer of title to Mr. Dexter.
- G. Documentation if Carl Dexter acquired title through intestate succession.
- H. Proof of Carl Dexter’s identity.

There is nothing in this Letter indicating that anything is being done involving the Debtor Lafleur Way, LLC as the owner or with Lafleur Way, LLC, the fiduciary Debtor/Debtor in Possession.

FN. 2. From the plain language of Mr. Dexter's testimony under penalty of perjury, there appear to be multiple persons involved in this loan modification given that he states that Plaza Mortgage is "our lender."

Exhibit B (Dckt. 65 at 4-23) is identified as the Plaza Home Mortgage Trial Loan Modification. The provisions of the proposed Modification include (identified by page number on Dckt. 65):

- A. The Loan Modification, dated February 22, 2024 (well after the transfer of the property to the Debtor), is addressed to "Frank Allen." Dckt. 65 at 4.
- B. The Monthly Payment is to be \$3,052.89. *Id.*

No reference is made to the Debtor, Lafleur Way, LLC in either of these two letters with respect to an offered loan modification.

Reference is made in the Letters to a Frank Allen, who appears to be stated by Carl Dexter to having been deceased. The court cannot identify any grant deed or other documents by which the La Fleur Way Property made its way from Frank Allen to Lafleur Way, LLC.

A Subchapter V plan has now been filed by the Debtor/Debtor in Possession, seeking to reorganize the Debtor's business operations. Dckt. 61. The court's initial observations regarding the Subchapter V Plan include:

- A. Lafleur Way, LLC as the Debtor/Debtor in Possession advances this Plan.
- B. Carl Dexter owns the Debtor, which is stated to be a "closely held corporation." Plan, p. 1:23-24; Dckt. 61.

In reality, as the court has pointed out previously, the Debtor and the Debtor/Debtor in Possession is a limited liability company, not a corporation.

- C. It is stated that the 1078 LaFleur Way, Sacramento, California property is rented to "persons and 1 corporation." *Id.*; p. 1:27.
- D. The Plan then states:

Debtor filed the instant case, after the rights to the property just prior to foreclosure.

Id.; 2:1-2. While the court could guess what this sentence means to say, something like, "the Debtor was created on the eve of foreclosure, then had the Property transferred into it; and then filed this single real estate asset case to stop the foreclosure sale;" the court will not provide such editing services to the Debtor/Debtor in Possession, its managing member, and its counsel.

- E. The Plan states that the “Debtor” has been approved for a trial loan modification. *Id.*; p. 3:15-16.

As shown by the evidence provided by the Debtor/Debtor in Possession, no trial loan modification has been offered to it, but apparently only personally to Carl Dexter, upon his documenting the death of Frank Allen and Carl Dexter acquiring title through the late Frank Allen.

- F. Debtor has no creditors other than the creditor having a lien on the Real Property. *Id.*; p. 3:1-5.
- G. Counsel for the Debtor/Debtor in Possession received no retainer and projects his fees to be \$7,500.00 for this Subchapter V Case. *Id.*; p. 4:23-26.
- H. Under the Plan, it is the Debtor/Debtor in Possession who must make the payments on the claim secured by the Real Property. *Id.*; p. 5:16-26.
- I. Carl Dexter shall serve as the Chief Executive Office for the limited liability company Debtor/Debtor in Possession. *Id.*; p. 9:1-2.

It appears that the limited liability company Debtor/Debtor in Possession will have no managing member.

There is no financial information provided with the Subchapter V Plan, no projections of operations, or anything showing that the Debtor/Debtor in Possession can actually perform a Plan. As noted above, the Monthly Operating Reports are riddled with inconsistencies and Carl Dexter states under penalty of perjury on each that while the prior month ends with a cash balance of \$3,900, that money has disappeared before the start of the next month.

It appears that mischief is afoot in this Bankruptcy Case. There are no loan modification documents relating to the fiduciary Debtor in Possession. The Monthly Operating Reports are grossly incorrect. One might begin to suspect that there is a fraud being committed on the court in violation of federal law.

From the February 28, 2024, Loan Modification Offer Letter to Carl Dexter (Exhibit B; Dckt. 65), it expressly states that Carl Debtor has stated to the Lender that Carl Dexter has obtained title to the 1078 La Fleur Way Property; and not the Debtor that was created to file this Bankruptcy Case.

Looking at Schedule A/B, Debtor/Debtor in Possession does not provide a description of the nature of the 1078 La Fleur Way Property. As shown on Schedule A/B, Debtor/Debtor in Possession is devoid of any personal property assets to care and maintain a property (which the court is being told is a rental property). The Debtor/Debtor in Possession appears to have no way to fund the mortgage payment, property taxes, property insurance, landlord insurance, repairs, maintenance, legal fees, and the like.

At the Status Conference, **XXXXXXX**

FEBRUARY 21, 2024 STATUS CONFERENCE

This Subchapter V case was filed by Lafleur Way, LLC on December 23, 2023. Dckt. 1. The Debtor is serving as the Debtor in Possession in this case. On February 13, 2024, the Debtor/Debtor in Possession filed a Status Conference Report. Dckt. 21. In the Report, the Debtor/Debtor in Possession states that it has conferred with the U.S. Trustee, and has contacted the Chapter 11 Trustee, and the Appointed Chapter 11 Trustee on January 4, 2024. *Id.*, p. 1:25 - 2:2.

In reviewing the file, in this Subchapter V case, on January 4, 2024, U.S. Trustee filed the Notice of Appointment of Lisa Holder as the Subchapter V Trustee in this Case. Dckt. 9. No other “Chapter 11 Trustee” has been appointed in this case. The Debtor is serving as the Debtor/Debtor in Possession, exercising the powers of, and having the fiduciary duties of a Chapter 11 trustee. *See*, 11 U.S.C. § 1184.

On February 14, 2024, 53 days after this case was filed, the Debtor/Debtor in Possession filed a Motion to Use Cash Collateral. Dckt. 23. In the Motion the Debtor/Debtor in Possession states that in December 2023, Shareholder Carl Dexter bought the La Fleur Way Property. *Id.*; p. 1:36 - 2:6. Further, that Carl Dexter, who is said to be a “shareholder” of the Debtor collects the monthly rents, which total \$3,775.00. It does not say that the Debtor purchased the Property or that he is collecting rents as a managing member or employee of the Debtor.

In the Motion, it is stated that the Debtor, not the Debtor/Debtor in Possession who is exercising the rights and has the fiduciary duties to the Bankruptcy Estate, seeks authority to spend the rent monies. The use is stated to be to maintain and preserve the ongoing value of the business (not making it clear whether it is the business of shareholder Carl Dexter, or a business that is property of the bankruptcy estate).

The Motion continues to seek authorization for the “Debtor,” and not the fiduciary Debtor/Debtor in Possession to operate the business.

The Motion references Exhibit A, with is a 60 month budget.

Additionally, the “Debtor” seeks to grant replacement liens for the cash collateral that is used by the Debtor. No assets are identified in which the replacement liens are to be granted by the Debtor (not the fiduciary Debtor/Debtor in Possession).

A Declaration of Carl Dexter is provided in support of the Motion. Dckt. 26. In it, Mr. Dexter states that he is “the president and majority shareholder in La Fleur Way, LLC.” *Id.*, 1:19-20. It is not clear how a limited liability company has a “president” and shareholders.

In his Declaration, Mr. Dexter states testimony that conflicts what is alleged in the Motion. He states that the Debtor, and not Mr. Dexter, purchased the Property. *Id.* ps. 1:25 - 2:1.

In his Declaration, Mr. Dexter states that the “shareholders” of the Debtor collect the rents. *Id.* p. 2:11-14. He does not testify that it is the Debtor, or now the Debtor/Debtor in Possession collects the rents.

Mr. Dexter further testifies that he personally “manage[s] the property and I am responsible for administrative duties, and the Debtor is responsible only for the Secured Creditor’s payment. *Id.* p. 2:18-20.

Mr. Dexter does not explain how he personally, and not the fiduciary Debtor/Debtor in Possession, is responsible for managing any property of the Bankruptcy Estate.

**Review of the Filings and
Public Record of the California
Secretary of State**

The California Secretary of State reports that Lafleur Way, LLC filed its initial documents with the Secretary of State on December 22, 2023, that its Status is Active, and that Carl Dexter is identified as Debtor’s Agent. <https://bizfileonline.sos.ca.gov/search/business>.

On Schedule A/B Carl Dexter, as the “Manager” of the Debtor, states under penalty of perjury that as of the filing of this Case on December 23, 2023, the Debtor had no personal property and had only one piece of real property it owned, 1078 La Fleur Way, Sacramento, California, which is valued at \$950,000. Dckt. 1 at 9 - 12. On Amended Schedule D Carl Dexter states under penalty of perjury as the manger of the Debtor, that Debtor’ only creditor with a secured claim is PHH Mortgage, with a (\$550,449.95) claim secured by the La Fleur Way Property that is stated to have a \$950,000 value.

On Schedule E/F Mr. Dexter, as Debtor’s Manager, states under penalty of perjury that Debtor has no creditors with any unsecured claims.

This appears that this Chapter 11 Case was filed for a limited liability company created on December 22, 2023, into which the La Fleur Way Property was transferred into on December 22, 2024, and then the newly created limited liability company, the Debtor, was put into bankruptcy the next day, December 23, 2024. The sole asset of the Debtor that is in the Bankruptcy Estate is the La Fleur Way Property that was transferred to the Debtor the day before this Case was filed.

FINAL RULINGS

2. [23-24610-E-11](#)
[RHS-1](#)

LAFLEUR WAY, LLC
Peter Macaluso

CONTINUED ORDER TO SHOW CAUSE
1-17-24 [16]

Final Ruling

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 11 Subchapter V Trustee, and office of the U.S. Trustee as stated on the Certificate of Service on January 18, 2024. The court computes that 34 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to file the Master Equity Security Holder List in this Chapter 11 Subchapter V case.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

April 4, 2024 Hearing

A review of the Docket on April 1, 2024 reveals that the issue that was subject of the Order to Show Cause has been cured. On March 13, 2024, Debtor in Possession filed the Amended Master List of Equity Security Holders, complying with LOCAL BANKRUPTCY RULE 1007-1(b). Docket 47. The Order to Show Cause is Discharged, and the case shall proceed.

REVIEW OF THE ORDER TO SHOW CAUSE

11 U.S.C. § 1116(4) requires a Debtor under Chapter 11 to "file all postpetition financial and other reports required by the Federal Rules of Bankruptcy Procedure or by local rule of the district court." This district requires Chapter 11 debtors to file a "Master Equity Security Holder Address List which includes the name, address, and zip code of all the equity security holders of the debtor. . . prepared in strict compliance with instructions of the Clerk (Form EDC 2-190. . .)." LOCAL BANKRUPTCY RULE 1007-1(b).

The court's docket reflects that the default in the filing requirement that is the subject of the Order to Show Cause has not been cured. The Master Equity Security Holder List remains unfiled as of the court's review of the docket on February 14, 2024.

On the Amended Statement of Financial Affairs Carl Dexter is listed as the only officer, managing member, person in control of the Debtor. His position is stated to be "Manager," not "managing member" of the Debtor Limited Liability Company. It further states that he owns 100% of the interests in the Debtor. Dckt. 30 at p. 7; Question 28.

The filing of the Statement of Financial Affairs does not replace the obligation of the Debtor to file Master Equity Security Holder List.

The Equity Security Holders List filed on February 20, 2024, incorrectly list a creditor who has a secured claim in this case. The court continues the hearing to afford counsel for the Debtor/Debtor in Possession to correct this error.

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

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

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the hearing on the Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.