

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, April 27, 2022
Place: Department A – Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

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.

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 POSSIBLE UPDATES.

1. [20-10010](#)-A-11 **IN RE: EDUARDO/AMALIA GARCIA**
[LKW-33](#)

MOTION TO EMPLOY ASU COMMERCIAL AS BROKER(S)
4-13-2022 [\[966\]](#)

EDUARDO GARCIA/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 will submit a proposed order after the hearing.

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.

Debtors in possession Eduardo Zavala Garcia and Amalia Perez Garcia (collectively, "Debtors" or "DIP") move pursuant to 11 U.S.C. § 327(a) for authorization to employ ASU Commercial ("Broker") to serve as a real estate broker in connection with the sale of agricultural real property located in Kern County, California, including 3,219.57 acres of irrigated farmland and grazing land identified as: (1) the Hacienda 2 Ranch; (2) the Buena Vista Ranch; (3) the Pole Barn Ranch; and (4) the Rancheria Ranch (collectively, the "Ranches"). Doc. #966.

Section 1107 of the Bankruptcy Code gives DIP all the rights and powers of a trustee and requires DIP perform all the functions and duties of a trustee, subject to certain exceptions not applicable here. 11 U.S.C. § 1107. Section 327(a) of the Bankruptcy Code permits DIP to employ, with court approval, professionals "that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist" DIP in carrying out DIP's duties under the Bankruptcy Code. 11 U.S.C. § 327(a).

DIP selected Broker because of Broker's experience and expertise, and DIP believes Broker's employment is necessary to the administration of this bankruptcy case and is in the best interest of all parties. Decl. of Eduardo Zavala Garcia, Doc. #968. DIP and Broker have entered into four listing agreements dated April 5, 2022, which establish, *inter alia*, Broker's engagement for an approximately 8-month listing period ending December 31, 2022, and Broker's fee of up to 4% of the sale price at closing. Exs. E-H, Doc. #971. DIP proposes to pay Broker from proceeds received from the sale or sales of the Ranches, and compensation will be subject to approval by the bankruptcy court. Doc. #966; Decl. of Michael Anchordoquy, Doc. #969

Broker has verified that it has no connection with Debtors, their creditors, attorneys, accountants, any other party in interest, or the United States Trustee, except for Broker's previous representation of Debtors in past real

estate sales and Broker's employment by Debtors as set forth in the motion. Anchordoquy Decl., Doc. #969. Broker believes it is a disinterested person as defined in 11 U.S.C. § 101(14). Doc. #969.

After review of the evidence, the court finds that Broker does not represent or hold an adverse interest to Debtors or to the estate with respect to the matter on which Broker is to be employed.

Accordingly, the court is inclined to GRANT DIP's motion to employ Broker in connection with the sale of the Ranches. DIP will be authorized to employ Broker, and the effective date of such employment shall be April 5, 2022. The order authorizing employment of Broker shall specify that any compensation or reimbursement from the estate is subject to the court's approval pursuant to 11 U.S.C. § 330(a).

2. [22-10416](#)-A-11 **IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION**
[CAE-1](#)

STATUS CONFERENCE RE: VOLUNTARY PETITION
3-18-2022 [\[1\]](#)

RILEY WALTER/ATTY. FOR DBT.

NO RULING.

3. [22-10416](#)-A-11 **IN RE: KR CITRUS, INC., A CALIFORNIA CORPORATION**
[WJH-1](#)

FURTHER INTERIM HEARING RE: MOTION TO USE CASH COLLATERAL
3-21-2022 [\[14\]](#)

KR CITRUS, INC., A CALIFORNIA CORPORATION/MV
RILEY WALTER/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted on an interim basis through July 19, 2022.

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

This motion was set for hearing pursuant to an interim order authorizing use of cash collateral and granting adequate protection (the "Interim Order"). Doc. #65. The motion was heard initially on March 24, 2022, and again on March 30, 2022, and each time was granted on an interim basis. See Doc. #49; Doc. #65. A continued hearing for interim use of cash collateral was set for April 27, 2022. Interim Order, Doc. #65. Pursuant to the Interim Order, opposition to the continued use of cash collateral may be raised at the hearing. Id. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper. The court will issue an order if a further hearing is necessary.

KR Citrus Inc. ("Debtor" or "DIP") moves the court for a further interim order authorizing Debtor to use the cash collateral of (1) PTF, a partnership;

(2) California FarmLink; (3) Small Business Administration ("SBA"); and (4) Vox Funding LLC from May 5, 2022 through July 19, 2022. Second Suppl. Decl. of James Reed in Support of Mot. for Authority to Use Cash Collateral ("Reed 2d Suppl. Decl."), Doc. #79.

Debtor asserts PTF has a producer's lien on dragon fruit plants and proceeds to secure a debt of approximately \$234,000. Id. ¶ 14. PTF has consented to allow the budgeted uses of cash collateral through at least July 19, 2022 without any adequate protection payments. Id.

California FarmLink is owed about \$203,361. Id. ¶ 15. California FarmLink holds a duly perfected security interest in nearly all of Debtor's personal property and farm products. Id. The proposed budget proposes monthly payments to California FarmLink to keep the loan current. Ex. A, Doc. #80.

SBA holds a junior security interest to California FarmLink to secure a debt of approximately \$500,000. Reed 2d Suppl. Decl. ¶ 16, Doc. #79. No payment is due on the SBA loan until December 2022. Id. SBA does not have a security interest in farm products, but does have a security interest in accounts. Id. Debtor testifies that an adequate protection payment for December 2022 is shown in the budget, but the budget submitted does not forecast into December. Id.; Ex. A, Doc. #80.

Debtor disputes the claims and liens of Vox Funding. Vox Funding claims to own 16% of all gross revenues received by Debtor. Reed 2d Suppl. Decl. ¶ 18. Debtor contends that Vox Funding loaned money to Debtor and Debtor did not sell its accounts. Debtor proposes to provide a replacement lien to Vox Funding as adequate protection for use of cash collateral pending a resolution of the legal dispute over the transaction between Debtor and Vox Funding. Id.

Pursuant to 11 U.S.C. § 363, a debtor in possession can use property of the estate that is cash collateral by obtaining either the consent of each entity that has an interest in such cash collateral or court authorization after notice and a hearing. 11 U.S.C. § 363(c)(2). "The primary concern of the court in determining whether cash collateral may be used is whether the secured creditors are adequately protected." In re Plaza Family P'ship, 95 B.R. 166 (E.D. Cal. 1989); see 11 U.S.C. § 363(e). Bankruptcy Code § 361(1) states that adequate protection may be provided by "requiring the [debtor in possession] to make a cash payment or periodic cash payments to such entity, to the extent that the stay under section 362 of this title, use, sale, or lease under section 363 of this title, or any grant of a lien under section 364 of this title results in a decrease in the value of such entity's interest in such property." 11 U.S.C. § 361(1). DIP carries the burden of proof on the issue of adequate protection. 11 U.S.C. § 363(p).

When, as here, the motion requests a hearing before 14 days after service of the motion, Federal Rule of Bankruptcy Procedure 4001(b)(2) permits the court to "authorize the use of only that amount of cash collateral as is necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bankr. P. 4001(b)(2).

DIP moves the court for an order authorizing DIP to use cash collateral through July 19, 2022, consistent with the budget filed as Ex. A, Doc. #80. DIP seeks court authorization to use cash collateral to pay expenses incurred by DIP in the normal course of its business. Reed 2d Suppl. Decl., Doc. #79. As adequate protection for DIP's use of cash collateral, DIP will grant a replacement lien against its post-petition accounts receivable for those creditors with valid liens to extent cash collateral is actually used as well as adequate protection payments to California FarmLink. Ex. A, Doc. #80.

Bankruptcy Code § 361 requires DIP to provide adequate protection to the secured creditors for DIP's use of cash collateral for any decrease in the value of the secured creditors' interest in the accounts receivable due to DIP's use of cash collateral. Based on the evidence before the court, the new crops and proceeds produced and generated by Debtor through the use of cash collateral will be greater than the amount of cash collateral sought to be used. Reed 2d Suppl. Decl. ¶ 22, Doc. #79.

Accordingly, the Motion will be GRANTED. The court grants DIP's request for use of cash collateral through July 19, 2022, consistent with the budget attached as Exhibit A to Doc. #80.

1. [21-10530](#)-A-7 **IN RE: CHRISTOPHER METAS**
[LKW-1](#)

MOTION TO COMPEL
3-31-2022 [\[65\]](#)

CHRISTOPHER METAS/MV
LEONARD WELSH/ATTY. FOR DBT.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the hearing.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The chapter 7 trustee timely filed written opposition on April 13, 2022. Doc. #71. Creditors Michael and Danette Knopf and Melaine Metas also timely filed written opposition on April 13, 2022. Doc. ##73-82. The failure of other creditors, 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). Therefore, the defaults of the non-responding parties in interest are entered.

Christopher Robert Matthew Metas ("Debtor"), the chapter 7 debtor, moves the court for an order compelling Jeffrey Vetter ("Trustee"), the chapter 7 trustee, to pay priority tax claims. Doc. #65. Debtor contends the court has authority to compel Trustee to make such a payment pursuant to 11 U.S.C. § 105(a) which provides: "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

On July 14, 2021, the Internal Revenue Service filed a proof of claim asserting a priority tax claim of \$11,695. Claim 12. The California Franchise Tax Board has a priority tax claim of \$3,927. Claim 11; Claim 5. Debtor believes Trustee has \$137,306.29 on deposit to pay the combined priority tax claims of \$15,622. Doc. #65.

There also is a priority claim for domestic support obligations asserted by Melaine Metas for \$117,847.14. Claim 8. On November 24, 2021, creditor Law Office of Edward J. Thomas, the law firm representing Debtor in the state court family law proceedings which filed Claim 1 in Debtor's bankruptcy case, filed an objection to Claim 8. Doc. #47. The hearing on that objection to claim has been continued to August 4, 2022 by stipulation of the objecting creditor and Melaine Metas to permit findings of fact and conclusions of law to be issued in the state court family law proceedings. Stipulation, Doc. #60. Among the issues to be decided by the family law court are spousal and support issues for children, potential reimbursement for federal stimulus monies, alleged unreimbursed medical and orthodontia expenses, alleged outstanding orthodontia

expenses, alleged unreimbursed education expenses, and domestic support attorney fee obligations for Melaine Metas. Doc. #60.

Regarding Debtor's motion, Trustee believes that it is premature for the court to compel Trustee to pay the priority tax claims. Doc. #71. Trustee explains that the domestic support obligation claim asserted by Melaine Metas has not been disallowed and could take priority over the allowed tax claims, and a determination of the domestic support obligation claim will not be determined until after August 4, 2022. Doc. #71. Melanie Metas and creditors Michael and Danette Knopf also object to Debtor's motion as premature and potentially in contravention of the mandated payment priority of claims prescribed by 11 U.S.C. § 507(a). Doc. ##73, 78.

"It is hornbook law that § 105(a) does not allow the bankruptcy court to override explicit mandates of other sections of the Bankruptcy Code." Law v. Siegel, 571 U.S. 415, 421 (2014). "Section 507 of the [Bankruptcy] Code sets forth the order of priority accorded to various classes of unsecured creditors when a Chapter 7 bankruptcy estate is liquidated." Boeing N. Am. V. Ybarra (In re Ybarra), 424 F.3d 1018, 1025 (9th Cir. 2005). First in priority are "[a]llowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition . . . are owed to or recoverable by a spouse [or] former spouse" 11 U.S.C. § 507(a)(1)(A). Taxes come after. 11 U.S.C. § 507(a)(8).

The court has not yet determined whether the domestic support obligation claim of Melaine Metas will be allowed and, if so, for how much. The state court family law hearing to decide issues directly related to the domestic support obligation claim has been continued until May 25 and 26, 2022. Doc. #60. The bankruptcy court has continued the hearing on the objection to claim to August 4, 2022 at the stipulated request of the law firm representing Debtor in the state court family law proceedings and Melaine Metas. Doc. #62. It is unknown at this time whether Trustee will be able to pay both the domestic support obligation claim and the priority tax claims in full. Requiring Trustee to pay the allowed priority tax claims at this time could potentially override the explicit priority scheme of § 507(a) if there remain insufficient funds in the estate to pay the allowed domestic support obligation claim in full. Such a result would be an impermissible contravention of specific statutory provisions. See Siegel, 571 U.S. at 421.

Accordingly, this motion will be DENIED.

CONTINUED MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT
WITH ABLP PROPERTIES, VISALIA LLC AND ABLP REIT LLC, MOTION TO SELL,
MOTION/APPLICATION TO APPROVE CORPORATE DISSOLUTIONS
3-2-2022 [\[81\]](#)

JAMES SALVEN/MV
JUSTIN HARRIS/ATTY. FOR DBT.
D. GARDNER/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The minutes of the hearing will be the court's findings
and conclusions. The court will issue an order after the
hearing.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). On March 16, 2022, the parties stipulated to continue the hearing to April 27, 2022 at 1:30 p.m., requiring written opposition to be filed no later than April 13, 2022, and any replies to be filed no later than April 20, 2022. Order, Doc. #92. The debtor timely filed written opposition on April 13, 2022. Doc. #94. Timely replies were filed on April 20, 2022 by the chapter 7 trustee and one of the parties settling with the chapter 7 estate. Doc. ##98, 100. The failure of creditors, 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). Therefore, the defaults of the non-responding parties in interest are entered.

James E. Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Esperanza Hansen Gonzalez ("Debtor"), moves to approve the compromise of claims and interests in state court litigation, sell the estate's assets in property, and approve corporate dissolutions. Doc. #81. Debtor opposes Trustee's motion. Doc. #94. The compromise and settlement agreement for which Trustee seeks approval is filed as Exhibit E, Docket No. 84 (the "Settlement Agreement"). Ex. E, Doc. #84.

The court is inclined to DENY the motion.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. Martin v. Kane (In re A & C Props.), 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 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 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 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. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Debtor filed a voluntary petition under chapter 7 of the Bankruptcy Code on April 23, 2021. Doc. #1. Debtor scheduled a 100% ownership interest in The Magnolia Group Inc., a Delaware corporation ("Magnolia Group"), valued at \$0. Schedule A/B, Doc. #21. Debtor scheduled a 100% ownership interest in Magnolia Park, a Nevada corporation, valued at \$0.¹ Id. Debtor also scheduled, as a contingent and unliquidated claim, a lawsuit against ABLP REIT LLC ("ABLP REIT"), ABLP Properties Visalia LLC ("ABLP Properties") (together, the "ABLP Entities"), and others pending in Tulare County Superior Court as case number VCU284145, valued at \$5,000,000 ("State Court Litigation"). Id. Debtor did not exempt the lawsuit. Schedule C, Doc. #21.

Debtor scheduled ABLP REIT as having a disputed unsecured claim of \$3,200,000.00 in connection with the State Court Litigation and scheduled ABLP Properties as having a disputed unsecured claim also in connection with the State Court Litigation, but valued ABLP Properties' claim at \$0. Schedule E/F, Doc. #21. On October 19, 2021, ABLP Properties filed a proof of claim asserting a claim of \$3,657,906.89 in connection with an adversary proceeding filed by ABLP Properties to determine certain of Debtor's debts to be nondischargeable under 11 U.S.C. § 523(a)(2). Claim 7. The non-dischargeability action against Debtor filed by ABLP Properties is pending before this court as Adversary Proceeding No. 21-01031 (the "Adversary Proceeding").

Trustee testifies that Magnolia Group's business consisted of the ownership of real properties located at 2948 and 2950 East Douglas Ave., Visalia, CA, and 1331 Lewis Lane, Tulare, CA. Tr. Decl. ¶ 9, Doc. #83. Trustee testifies that the East Douglas property was foreclosed on in November 2019, and the Lewis Lane property was foreclosed on June 30, 2020. Id. Trustee states that Magnolia Group has no assets and no value. Id. ¶¶ 3, 11.

Trustee further testifies that the business operation of Magnolia Park consists of a nursing home and is presently under receivership since the appointment of a receiver on September 30, 2021. Id. ¶ 11. Trustee states that the effect of executing and performing under the Settlement Agreement will result in the receiver of Magnolia Park conducting a UCC sale to dispose of the personal property assets of Magnolia Park. Id. Otherwise, Trustee does not believe Magnolia Park has any value. Id. ¶ 3.

¹ Debtor scheduled Magnolia Park as a Nevada corporation while Trustee's motion identifies Magnolia Park as an LLC. It does not appear that the specific corporate structure is at issue.

The Settlement Agreement involves the State Court Litigation and the cross-complaint filed by the ABLP Entities against Debtor, Magnolia Group, Magnolia Park, and Debtor's husband Arnulfo Gonzalez. Decl. of Trustee ¶ 8, Doc. #83.

Trustee states that the main points of the settlement agreement are:

- a. Payment of \$30,000 to the estate. Tr. Decl., p. 4, ¶ 12.a, Doc. #83. However, the Settlement Agreement does not identify which of the ABLP Entities, ABLP Properties and/or ABLP REIT, will pay the amount. See Ex. E, Doc. #84.
- b. A stipulated judgment on the cross-complaint in favor of the ABLP Entities. Tr. Decl., p. 4, ¶ 12.b, Doc. #83. The Settlement Agreement states that the stipulated judgment on the ABLP Entities' cross-complaint in the State Court Litigation will be against Debtor, Magnolia Park, and Magnolia Group, jointly and severally. Ex. E, page 2, ¶ 3.b, Doc. #84; see also Ex. F, Doc. #87.
- c. A UCC foreclosure on the personal property owned by Magnolia Park. Tr. Decl., p. 4, ¶ 12.c, Doc. #83.
- d. ABLP Properties and ABLP REIT shall have judgments against Debtor, Magnolia Group, and Magnolia Park, but will waive any claim against the chapter 7 estate. Tr. Decl., p. 4, ¶ 12.d, Doc. #83. However, the Settlement Agreement states that the pre-petition general unsecured claim of ABLP [undefined] against the bankruptcy estate will be retained as a claim in the bankruptcy case. Ex. E, p. 3, ¶ 7, Doc. 84.
- e. Trustee will step into the shoes of Debtor as the sole shareholder of Magnolia Park and Magnolia Group and will wind up and dissolve those entities and file certificates of dissolution in Nevada and Delaware. Tr. Decl., p. 5, ¶ 12, Doc. #83. The Settlement Agreement does not specifically require this, but the recitals to the Settlement Agreement state that Trustee became or will become president of Magnolia Group and Magnolia Park and that Trustee is authorized to enter into the Settlement Agreement as president of those entities. Ex. E, p. 1, ¶ 4, Doc. #84; Ex. F, Doc. #87.

Trustee proposes to sell the estate's interest in the State Court Litigation for \$30,000 subject to higher and better offers made at the hearing. Doc. #81. Trustee does not explicitly identify the buyers, but it appears that if there is no overbid, ABLP REIT and/or ABLP Properties will purchase the estate's interest in the State Court Litigation as part of the settlement agreement. Doc. #81.

A & C Properties analysis

As stated above, approval of a compromise must be based upon considerations of fairness and equity. A & C Properties, 784 F.2d at 1381. The court must consider and balance four factors: (1) the probability of success in the litigation; (2) the difficulties, if any, to be encountered in the matter of collection; (3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and (4) the paramount interest of the creditors with a proper deference to their reasonable views. Woodson, 839 F.2d at 620.

Probability of success. Trustee testifies that the facts giving rise to the State Court Litigation are complicated and span several years in time. Tr.

Decl. ¶ 14(a), Doc. #83. Trustee will have to try and "find a qualified attorney who would be willing to take on the case on a contingency to unravel the foreclosure and obtain a monetary judgment[,] and Trustee believes this fact alone makes the probability of success very remote. Id. Trustee believes the complicated fact pattern "does not create a clear path" to a successful judgment. Id.

Difficulties of collection. Trustee testifies that collection would not be difficult were he to prevail. Id. ¶ 14(b).

Complexity of the litigation. Trustee "view[s] the litigation to be difficult involving multiple witnesses, transactions and documentation to present at the time of trial." Id. ¶ 14(c).

Interest of the creditors. Trustee believes "that the settlement serves the interests of the creditors because it obtains a sum certain for the estate without the expenditure of attorneys' fees that would be paid out as administrative expenses." Id. ¶ 14(d). Trustee testifies that "[b]ecause the ABLP litigants waive their claims against the chapter 7 estate, the resulting share of funds distributed to the other general unsecured creditors increases." Id. Trustee believes that relief requested by the motion is in the best interest of the estate. Id. ¶ 15.

The court is inclined to find that Trustee has not sufficiently demonstrated that the compromise is fair and equitable under A & C Properties. As an initial matter, other than a cursory mention of the types of allegations in the State Court Litigation, Trustee does not explain in detail the causes of action in the State Court Litigation to be settled, the facts and circumstances that make the State Court Litigation complex, or how far along the State Court Litigation has progressed. Trustee states that he is "faced with trying to find a qualified attorney who would be willing to take the case on a contingency basis" but does not explain whether he has actually discussed the State Court Litigation with any potential counsel. Trustee references Debtor's schedules to show that Debtor valued the estate's interest in the State Court Litigation at \$5,000,000 but seeks to settle the State Court Litigation for a payment to the estate of only \$30,000 without providing any justification for the \$30,000 valuation of the State Court Litigation that completely resolves Debtor's causes of action in the State Court Litigation. It also is not clear whether creditors of the estate will receive any value from the proposed settlement or whether the \$30,000 will be consumed by administrative expenses. Further, part of Trustee's justification for the settlement is that the ABLP Entities waive their claims against the chapter 7 estate, yet this assertion is negated by the express terms of the Settlement Agreement. Compare Ex. E page 3 ¶ 7, Doc. #84 with Tr. Decl. ¶¶ 12, 14(d), Doc. #83.

Debtor's Opposition

Debtor's opposition, filed on April 13, 2022, sets forth several discreet objections to Trustee's motion. Debtor's Opp'n, Doc. #94. First, Debtor contends that the ABLP Entities are not entitled to have a judgment entered against Debtor with respect to the cross-complaint. Id. Debtor's opposition states: "Contrary to the Trustee's Motion and proposed settlement agreement between the Trustee and the ABLP Defendants, there can be no judgment entered against Debtor in connection with the ABLP Defendants' Cross-Complaint in the State Court [Litigation because they] dismissed Debtor as a Cross-Defendant in the State Court [Litigation] on or about August 19, 2021." Debtor's Opp'n 2:19-27, Doc. #94.

In a response to Debtor's opposition, ABLP Properties states that no judgment would be entered against Debtor and that the "Settlement Agreement should be approved subject to that provision being stricken." ABLP Reply 2:3-7, Doc. #100. In his reply, Trustee also states that this objection "is resolved because the ABLP Defendants acknowledge that Debtor was dismissed in the state court action." Tr.'s Reply, 2:5-6, Doc. #98. The court will only approve the proposed Settlement Agreement if the final Settlement Agreement is revised to strike the provision providing for the entry of judgment against Debtor with respect to the cross-complaint and the proposed stipulated judgment is likewise revised.

Debtor next argues that the judgment against Magnolia Park and Magnolia Group should not be entered as currently proposed because the Settlement Agreement is silent as to (a) a specific dollar amount of the judgment to be stipulated to and (b) specific amounts provided for reasonable attorneys' fees. Debtor's Opp'n, 3:3-17, Doc. #94. Debtor requests that, if the ABLP Entities are the successful bidder at the hearing, the ABLP Entities should waive their claim to a monetary judgment against Magnolia Park and Magnolia Group. Id.

Per Trustee's reply, "Trustee agrees that the proposed judgment should be corrected to show the amount due." Tr. Reply 2:8-9, Doc. #98. In its reply, ABLP Properties states that the stipulated judgment will be for \$5,364,361, inclusive of attorneys' fees and receivership costs. ABLP Reply 2:9-26, Doc. #100. However, the motion, proposed Settlement Agreement, and proposed stipulated judgment remain silent as to the amount of the judgment to be entered, and so creditors were not on notice of the full agreement between Trustee and the ABLP Entities. Ex. E, Doc. #84; Ex. F, Doc. #87.

Debtor further objects that the Trustee's motion and the Settlement Agreement are contradictory as to what claims are being released or waived by the respective parties to the Settlement Agreement. Debtor's Opp'n, Doc. #94. Debtor's opposition highlights the contradiction in Trustee's motion stating that the ABLP Entities will waive any claim against the chapter 7 estate and the Settlement Agreement language stating that the ABLP Entities do not waive their pre-petition unsecured claim. Compare Ex. E page 3 ¶ 7, Doc. #84 with Tr. Decl. ¶¶ 12, 14(d), Doc. #83. Trustee's reply says that the "intent of the compromise is that the ABLP Defendants will not share in any funds of the estate. Trustee is willing to clarify the stipulation and judgment to so reflect." Tr.'s Reply, 2:10-13, Doc. #98. ABLP Properties, by its reply, states that the motion "accurately states that ABLP is waiving its Claim against the Estate as a condition of the Settlement Agreement. As such, the Court should approve the Settlement Agreement upon condition of ABLP's waiver of its Proof of Claim." ABLP Reply 3:6-10, Doc. #100. The court will only approve the proposed Settlement Agreement if the final Settlement Agreement is revised to provide that ABLP Properties waives its proof of claim against the estate.

Debtor's next objection states that, as presently pleaded, Trustee's motion effectively leaves Debtor with nothing, apart from an exemption related to her home. Debtor's Opp'n, Doc. #94. Debtor objects because the Settlement Agreement leaves Debtor no chance of continuing to operate Magnolia Park Assisted Living as she once did. Debtor's Opp'n 4:5-13, Doc. #94. Debtor wants the Adversary Proceeding against her dismissed as part of the compromise. Id. By the reply, Trustee states that Trustee "cannot control or leverage ABLP to release the Debtor from a non-dischargeability action. This should not be grounds for keeping the settlement from going forward." Tr. Reply 2:13-16, Doc. #98. Similarly, ABLP Properties, in its reply, states that the Settlement Agreement between the estate and the chapter 7 trustee is not related to the Adversary Proceeding. ABLP Reply, Doc. #100. The court agrees with Trustee and ABLP Properties that there is no basis upon which this court should deny approval of

this compromise simply because Debtor is not released from the non-dischargeability complaint as part of the compromise. Trustee has no authority to require such a condition in the estate's settlement with the ABLP Entities.

Finally, Debtor objects to the motion on the grounds that dissolution of Magnolia Park and Magnolia Group is unnecessary and adds nothing to the proposed settlement with the ABLP Entities. Debtor's Opp'n, Doc. #94. Debtor correctly states that Trustee makes no mention of the reason or justification for the proposed dissolution of Magnolia Park and Magnolia Group, which Trustee states have no value. Debtor states that Magnolia Park and Magnolia Group may have tax attributes for Debtor and asks that the compromise between Trustee and the ABLP Entities exclude the dissolution of Magnolia Park and Magnolia Group as unnecessary. Debtor's Opp'n 4:14-24, Doc. #94.

By his reply, Trustee "does not oppose keeping the Magnolia Group and Park entities alive; for example if they were to be abandoned back to the Debtor upon conclusion of the settlement." Tr.'s Reply 2:17-20, Doc. #98. In its reply, however, ABLP Properties states that the dissolution of Magnolia Park and Magnolia Group are material terms to the proposed Settlement Agreement. ABLP Reply 3:23-4:7, Doc. #100. ABLP Properties contends that "the burden is not on the Trustee or the parties to the settlement to explain the significance of every term or condition in [the Settlement Agreement.]" Id. It appears that Trustee and ABLP Properties are at odds over whether dissolution of Magnolia Park and Magnolia Group is necessary for the proposed compromise. Assuming Trustee agrees to dissolve Magnolia Park and Magnolia Group as part of the compromise, the law clearly states that Trustee must satisfy the A & C Properties and Woodson factors for approval of a compromise or settlement as well as the factors for a § 363(b) sale. Here, Trustee has not provided sufficient justification for dissolving Magnolia Park and Magnolia Group as a material term of the compromise given Debtor's opposition.

Debtor signals that she will submit a bid at the hearing. Debtor's Opp'n, Doc. #94. ABLP Properties requests Debtor be prohibited from overbidding at the hearing because Debtor has failed to qualify to overbid. The motion recommends that any potential overbidder provide certified funds in the amount of \$30,000 plus the initial overbid by no later than March 28, 2022 (two days before the original hearing date), as well as proof in the form of a letter of credit or some other written pre-qualification for any financing that may be required to complete the purchase of the estate's affirmative claims in the State Court Litigation and proof of the ability to close the sale within 30 days. Motion, ¶ 16, Doc. #81. At the hearing on the motion, the court will consider Trustee's position as to whether Debtor qualifies to submit an overbid under the terms set forth in the motion.

This motion will be DENIED because Trustee has not shown that the A & C Properties and Woodson factors have been met, there is uncertainty surrounding the terms of the proposed compromise between Trustee and the ABLP Entities, and creditors were not informed of the amount of the monetary judgment to be entered as part of the stipulated judgment.

MOTION BY JUSTIN D. HARRIS TO WITHDRAW AS ATTORNEY
4-25-2022 [\[107\]](#)

JUSTIN HARRIS/ATTY. FOR DBT.
OST 4/25/22

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 the hearing.

On April 25, 2022, the court granted the movant's ex parte Motion for Order Shortening Time to hear the movant's Motion to Withdraw as Counsel. Doc. #111. This motion was set for hearing on April 27, 2022 at 1:30 p.m. pursuant to Local Rule of Practice ("LBR") 9014-1(f)(3). 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 a further hearing is proper. The court will issue an order if a further hearing is necessary.

Justin D. Harris and Harris Law Firm PC ("Movant"), counsel for Esperanza Hansen Gonzalez ("Debtor"), the chapter 7 debtor, moves to withdraw as Debtor's attorney of record. Doc. #107. Movant seeks withdrawal as attorney of record in Debtor's bankruptcy case and in an adversary proceeding pending before this court as Adversary Proceeding No. 21-01031. Movant's withdrawal will leave Debtor unrepresented by counsel.

LBR 2017-1(e) states that "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 local rule goes on to require the attorney seeking withdrawal to "provide an affidavit stating the current or last known address" of the client and "the efforts made to notify the client of the motion to withdraw." LBR 2017-1(e). Withdrawal is governed by the California Rules of Professional Conduct. Id.

Movant has conformed with the Local Rules. Movant testifies as to Debtor's current or last known address and explains that he emailed Debtor on April 22, 2022 notifying Debtor of Movant's intention to seek an ex parte order shortening time on a motion to be relieved as counsel to be heard on April 27, 2022 at 1:30 p.m. Decl. of Justin D. Harris, Doc. #109. The certificate of service filed with this motion shows that Debtor received notice via electronic mail and U.S. mail. Doc. #110. Service also was made upon creditors, the chapter 7 trustee, and the United States trustee. Doc. #110.

Pursuant to California Rules of Professional Conduct Rule 1.16, formerly Rule 3-700, a lawyer may withdraw from representing a client if the client breaches a material term of an agreement with the lawyer and the lawyer has given the client reasonable warning of withdrawal, if a continuation of the representation is likely to result in a violation of the rules, if the client renders it unreasonably difficult for the lawyer to carry out the representation effectively, or if other good cause for withdrawal exists. Rules

Prof. Conduct 1.16(b), <https://www.calbar.ca.gov/Attorneys/Conduct-Discipline/Rules/Rules-of-Professional-Conduct/Current-Rules>.

Movant submits that Debtor accuses Movant of professional negligence. Decl. of Movant, Doc. #109. Movant also testifies that there has been a fundamental breakdown in the attorney-client relationship that makes it unreasonably difficult for Movant to continue with Movant's representation of Debtor. Id. Movant intends to comply with California Rule of Professional Conduct 1.16(e), which requires Movant to turn over any client materials and refund any part of a fee or expense paid in advance that the lawyer has not earned or incurred. Doc. #107. It appears that Movant's withdrawal will cause no undue prejudice to Debtor and Movant has demonstrated cause for withdrawal.

Accordingly, this motion will be GRANTED.