

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

May 18, 2023 at 10:00 a.m.

FINAL RULINGS

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| <p>1. <u>23-90111-E-11</u>
<u>DB-1</u></p> <p>GARY HOFMANN ET AL. VS.</p> <p>1 thru 2</p> | <p>MICHAEL HOFMANN
Brian Haddix</p> | <p>CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
3-23-23 [16]
SUBCHAPTER V</p> |
|---|---|---|

Final Ruling: No appearance at the May 18, 2023 Hearing is required.

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor/Debtor in Possession, Debtor/Debtor in Possession's Attorney, Chapter 11 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on March 23, 2022. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor/Debtor in Possession, creditors, the Chapter 11 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, opposition was presented by the Debtor/Debtor in Possession in Possession.

The hearing on the Motion for Relief from the Automatic Stay has been continued to 1:30 p.m. on May 23, 2023 by prior order of this court. Order, Dckt. 73.

CONTINUANCE OF MAY 18, 2023 HEARING

The court has prepared the following tentative ruling to be addressed at the May 18, 2023 hearing. However, due to a last minute schedule change, the judge to whom this case is assigned is unable to conduct the May 18, 2023 hearings. Chief Bankruptcy Judge Frederick Clement is hearing the matters for the May 18, 2023 calendar, and was prepared to conduct this hearing.

However, on May 14, 2023, the Debtor/Debtor in Possession filed a Notice of Removal of the State Court Action for which relief is sought in the present Motion to be allowed to enforce post-judgment orders therein. It having been removed, the complexity of this Bankruptcy Case and the related newly opened Adversary Proceeding for the removed State Court Action grew substantially. The judge to whom this case is assigned concluded that it is necessary for that judge, and not the Chief Judge covering the May 18, 2023 calendar, to conduct this hearing.

The court provides the Parties with the following tentative ruling which will be re-posted for the continued hearing on May 23, 2023. The Parties can consider the issues addressed therein, how they impact on the post-judgment enforcement of the Removed State Court Action in this Court, if it is not remanded, and how the relates to any Chapter 11 Plan that is to be diligently prosecuted by the Debtor/Debtor in Possession.

REVIEW OF MOTION

Sharon and Gary Hofmann (“Movants”) seeks relief from the automatic stay with respect to Michael Erich Hofmann’s (“Debtor/Debtor in Possession”) 8.33% interest in residential real property located at 13330 Valley Home Road, Valley Home, California (“Property”). On the Petition, Debtor/Debtor in Possession lists his residence as 13330 Valley Home Rd, Oakdale, California. In the Motion, this property is identified as being in Valley Home, California. The Supplemental Brief clarifies the discrepancy by stating Valley Home is an unincorporated area in Stanislaus County. Supplemental Brief, Dckt. 47 fn. 3. County assessment records designate the address to be in Valley Home, not Oakdale. *Id.*

At the prior hearing on the Motion, the court allowed for supplemental briefing due to Movants’ failure to provide evidence as well as the need of additional briefing for the court to determine the interplay between the Bankruptcy Code, final judgments of a State Court, and property rights under State Law. Civil Minutes, Dckt. 43. Movants have since authenticated their exhibits of state court records through the Declaration of Meghan Baker, Partner at Movants’ Counsel’s firm. Declaration, Dckt. 40.

Movants argue relief is needed to perform obligations under final state court orders in a partition action of the Property. The State Court Order requires Debtor/Debtor in Possession to sell their 8.33% interest in the Property, as well as requires Movants’ to sell their combined 91.66% interests. Exhibit D, Dckt. 22.

Movants’ Supplemental Brief, Dckt. 47, provides the court with additional factual grounds for relief, which are summarized as:

- (1) Debtor/Debtor in Possession’s Interest in the Property - Debtor/Debtor in Possession has a 8.33% interest in the residential real property located at 1330 Valley Home Road, Valley Home, California.

(2) State Court Litigation - There was state court litigation brought by Movants to determine parties' interests in the Property and request a judgment for rent that Debtor/Debtor in Possession refused to pay to Movants. The State Court issued an interlocutory judgment which confirmed Debtor/Debtor in Possession's 8.33% interest and found a partition by sale is equitable. Additionally, the State Court awarded judgment which brought the total principal amount Debtor/Debtor in Possession owes to Movants to \$223,457.62.

(3) State Court Appeal - Debtor/Debtor in Possession appealed the interlocutory judgment and the Fifth District Court of Appeal affirmed the State Court Judgment in most parts. ^{FN. 1.}

FN. 1. The court notes, the Fifth District Court of Appeal reversed only one part of the interlocutory judgment in which they reduced the amount of credit the new owners received for their improvements on the Property. *Hofmann v. Hofmann*, No. F079977, 2021 Cal. App. Unpub. LEXIS 4583, at *117 (July 15, 2021).

(4) State Court Proceedings to Sell the Home - Debtor/Debtor in Possession refused to participate in a consensual sale of the Property. Debtor/Debtor in Possession made an all cash offer to purchase the home. However, the State Court found Debtor/Debtor in Possession had not shown proof of funds, and on February 28, 2023, approved the sale to a third party. Escrow was scheduled to close by March 31, 2023.

(5) Debtor/Debtor in Possession's Refusal to Leave the Property - Movants sought assurances that Debtor/Debtor in Possession would vacate by March 21, 2023. On March 15, 2023, Debtor/Debtor in Possession gave notice they would not be vacating the Property prior to the close of escrow. On March 17, 2023, Movants notified Debtor/Debtor in Possession they would seek an order for writ of possession to compel Debtor/Debtor in Possession to vacate the Property. The request was set for hearing on March 21, 2023. On March 20, 2023, Debtor/Debtor in Possession filed for bankruptcy.

(6) Legal Grounds for Relief - Movants argue they are entitled to relief based on the following legal grounds:

- a. The State Court Judgment is final and binding on the bankruptcy court.
- b. Debtor/Debtor in Possession's Creditor's interests are limited to Debtor/Debtor in Possession's 8.33% interest.
- c. Movants are not adequately protected due to Debtor/Debtor in Possession's failure to maintain the Property.

d. *Tucson Estates* Factors weigh in favor of the court abstaining from deciding the underlying property right issues. *In re Tucson Estates, Inc.*, 912 F.2d 1162 (9th Cir. 1990).

Supplemental Brief; Dckt. 47.

The court notes, the *Tucson Estates* Factors include factors in which a court may abstain in favor of state court adjudication of an issue. These factors are summarized as follows:

- (1) the effect or lack thereof on the efficient administration of the estate if a Court recommends abstention,
- (2) the extent to which state law issues predominate over bankruptcy issues,
- (3) the difficulty or unsettled nature of the applicable law,
- (4) the presence of a related proceeding commenced in state court or other nonbankruptcy court,
- (5) the jurisdictional basis, if any, other than 28 U.S.C. § 1334,
- (6) the degree of relatedness or remoteness of the proceeding to the main bankruptcy case,
- (7) the substance rather than form of an asserted "core" proceeding,
- (8) the feasibility of severing state law claims from core bankruptcy matters to allow judgments to be entered in state court with enforcement left to the bankruptcy court,
- (9) the burden of [the bankruptcy court's] docket,
- (10) the likelihood that the commencement of the proceeding in bankruptcy court involves forum shopping by one of the parties,
- (11) the existence of a right to a jury trial, and
- (12) the presence in the proceeding of nondebtor/debtor in possession parties.

Tucson Estates, 912 F.2d at 1167 (citing *In re Republic Reader's Serv., Inc.*, 81 Bankr. 422, 429 (Bankr. S.D. Tex. 1987)) [this court reformatting the forgoing by breaking out each of the twelve elements into separate subparagraphs for ease of review).

At this point, the state court proceeding as been removed to this court. The Parties will address with the court whether they desire to proceed in this court or any parties will seek to have the State Court Action remanded.

Movants argue they are entitled from relief from the stay for “cause” pursuant to 11 U.S.C. § 362(d)(1) on the grounds that a final state court ordered compelled the sale of the Property and that

Debtor/Debtor in Possession's interest in the Property is not necessary for an effective reorganization. Supplemental Brief, Dckt. 47 at 5.

Debtor/Debtor in Possession's Response to Motion and Movant's Supplemental Brief

Debtor/Debtor in Possession filed an initial Opposition to the Motion and Declaration. Dckts. 37, 38. Debtor/Debtor in Possession states the enforcement of the judgment will prejudice the Debtor/Debtor in Possession in that:

1. Movants have locked Debtor/Debtor in Possession out of the sale process despite Debtor/Debtor in Possession offering to purchase the home for a competitive price. Opposition, Dckt. 37 at ¶ 1.
2. There are contingencies associated with the current sale that the current buyer has failed to meet. *Id.*
3. The Property is necessary for an effective reorganization because it is the proper location for their rice business. *Id.* ¶ 5.
4. Movants are adequately protected because Debtor/Debtor in Possession is maintaining the property, paying property taxes and insurance, and seeking to pay Movants in an amount more than the current sale. *Id.* ¶ 6.

At the prior hearing, Debtor/Debtor in Possession's counsel asserted that Movants were adequately protected by the value of the Property. Counsel for the Debtor/Debtor in Possession indicated that the Debtor/Debtor in Possession sought to retain the Property in which he has 8.33% interest that is now property of the Bankruptcy Estate.

Debtor/Debtor in Possession filed a Response to Movants' Supplemental Brief on April 27, 2023. Dckt. 58. Debtor/Debtor in Possession insists cause for relief does not exist, "especially because of the breach of the California Residential Purchase Agreement and the Contingency for Sale of Buyer's Property addendum while the automatic stay was in effect." Response, Dckt. 58 at 1:22-25.

Debtor/Debtor in Possession argues the sale of the Property was contingent on buyer Michael G. Hudson ("Buyer"), selling their property. Debtor/Debtor in Possession states that the proposed purchaser of Buyer's home backed out of escrow, which caused Buyer to take their house off market.

After this bankruptcy case was filed, Buyer put their house back on market, and on April 7, 2023, an offer of Buyer's home was accepted. Debtor/Debtor in Possession states this was a "critical breach" of the Purchase Agreement because Buyer had a duty to notify Movants and Debtor/Debtor in Possession, collectively, "Sellers," of the cancellation of escrow. Debtor/Debtor in Possession claims not informing Debtor/Debtor in Possession of the breach deprived Debtor/Debtor in Possession of their right to cancel the sale of the Property.

Movants' Reply

Movants filed a Reply to Debtor/Debtor in Possession's Response on May 4, 2023. Dckt. 63. Movants argue that Buyer removed the contingency on March 15, 2023, and the contingency was solely the benefit of Buyer. As evidence to support that Buyer removed the contingency, Movants direct the court to Buyer's Declaration, in which Buyer states, "[o]n March 15, 2023, I removed the contingency from my offer to purchase the Property, as our own home was in escrow at that point." There is no evidence for how Buyer removed the contingency, and whether Buyer provided notice to Debtor/Debtor in Possession.

Movant provides the court with well settled California case law in that a buyer may waive a condition precedent solely for their benefit. As the Second District Court of Appeal has stated:

Where all of the material factors of a real property transaction are present, and a seller would not be prejudiced by removal from the agreement of a condition inserted solely for the benefit of the buyer, it would be a gross injustice to the buyer to allow the seller to escape legal responsibility because the courts would not permit a waiver of the condition.

Reeder v. Longo, 131 Cal. App. 3d 291, 296-97 (1982).

DISCUSSION

Contingency Clause

The "Contingency for Sale of Buyer's Property" portion of the Purchase Agreement, Exhibit D, Dckt. 59 at 53, states Buyer's purchase of the Property was contingent upon Buyer selling their own property. The Contingency Agreement is summarized, in relevant part, below:

1. Buyer has 17 days after Acceptance with Sellers to enter into a contract for the sale of their property. Once accepting the contract for sale of their property, Buyer has 2 days, but not more than 17 days after Acceptance with Sellers, to deliver escrow evidence to Sellers.
2. Buyer will sign a listing agreement for Buyer's Property within 1 day after Acceptance.
3. Buyer has until no later than 3 days prior to the scheduled close of escrow of Sellers' Property to close escrow. Once Buyer's property closes, Buyer can no longer use the contingency to cancel the Agreement.
4. **Status of Sale of Buyer's Property**
 - a. Buyer agrees to keep Sellers informed about the status of the transaction for the sale of Buyer's property.
 - b. Within 2 days after Sellers' written request, but no earlier than the applicable time to remove contingencies in the contract for sale of Buyer's property, Buyer shall deliver to Sellers evidence of the removal of identified contingencies.

5. **Cancellation of Sale of Buyer's Property**

- a. If either party subject to the sale of Buyer's property gives the other a notice of cancellation of contract, Buyer will, **within 2 days**, deliver to Sellers a written notice of that cancellation.

6. **Removal of Contingencies**

- a. This contingency can only be removed in writing, even by Buyer, unless:
 - i. Buyer provides verification of sufficient funds to close escrow without the sale of Buyer's Property.

7. **Sellers' Right to Cancel**

- a. If after first giving buyer a Notice to Perform, or written Notice to Remove Buyer Contingencies and Provide Proof of Funds, Buyer fails to perform certain actions.
- b. If Buyer fails to deliver evidence of removal of contingencies in the sale of *Buyer's* property.
- c. If Buyer gives notice to Sellers of a cancellation of contract for Buyer's Property.

Debtor/Debtor in Possession states, "while the automatic stay was *pending*, [Buyer] breached the terms of the [Contingency Agreement] an addendum to the [Purchase Agreement] informing the Seller's that a proposed purchaser backed out of the sale." Response to Supplemental Brief, Dckt. 58 at 3. Debtor/Debtor in Possession states that Buyer's breach "deprived the Bankruptcy Court of an important fact concerning the status of the transaction concerning estate property while the automatic stay was pending." *Id.*

Buyer, however, states they waived the contingency requirements on March 15, 2023. Dckt. 49. Buyer, nor Movant, provides evidence of how this waiver was effectuated.

Had Buyer not waived the contingency, there could be an argument that Buyer breached the Contingency Agreement by not providing notice of cancellation of the contract between Buyer and the purchaser of their home. Then, Sellers would have had the right to cancel the Purchase Agreement, although there is no such evidence that this would have occurred. There would be a question as to whether this breach were material, as Buyer re-listed their property and within a few weeks had accepted another offer.

However, the Motion is to grant relief from the automatic stay. The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

Relief from Stay

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8–9 (B.A.P. 9th Cir. May 23, 2016). To determine “whether cause exists to allow litigation to proceed in another forum, ‘the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the Debtor/Debtor in Possession and the bankruptcy estate.’” *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int’l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. *See Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass’n v. Sanders (In re Santa Clara Cty. Fair Ass’n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

At the heart of this Motion is the Debtor/Debtor in Possession having a fractional interest in the Property to be sold. Debtor/Debtor in Possession’s co-tenants have prosecuted a partition action in the State Court. The result of that is the order for the residence at 13330 Valley Home Rd, Valley Home, California (“Property”) to be sold and the sales proceeds to be “partitioned,” it not being practical to give Debtor/Debtor in Possession 8.33% of the physical space in the residence. Debtor/Debtor in Possession does not dispute the validity of the state court’s order. Response, Dckt. 58. Additionally, Debtor/Debtor in Possession’s Schedules concedes that they only own a fractional interest of 8.33% interest, as described in the Second Amended Interlocutory Judgment. Schedule A/B, Dckt. 32; Exhibit B, Dckt. 20.

Movant contends they are not adequately protected in that the Property is “in unlivable conditions as a result of Debtor/Debtor in Possession’s possession” Supplemental Brief, Dckt. 47 at 15. Movant provides evidence of deterioration in the Property, including roof, mold, and dry rot issues. Declaration of Real Estate Broker, Dckt. 46. Additionally, Debtor/Debtor in Possession has lived in the Property since 1982 and has never paid rent more than \$500 per month, and stopped paying rent altogether in 2015. Supplemental Brief, Dckt. 47 at 7.

The issues appear to have been litigated already, and a partition order has already been issued by the state court. Second Amended Interlocutory Judgment, Exhibit B, Dckt. 20. Additionally, Movant’s have already been granted an *Ex Parte* Application to approve the sale of the Property to a third party buyer, Michael Hudson. Amended Order Granting *Ex Parte* Application, Exhibit D, Dckt. 22.

Movant is only seeking relief to complete the sale of the Property and otherwise comply with state court orders. Additionally, after the sale of the Property, the proceeds will still remain property of the estate.

As the court has noted in the prior civil minutes, there are issues concerning asserted and apparent property rights bearing on this Motion. The court does not determine property rights and interests in a motion for relief from the stay (Fed. R. Bankr. P. 7001 requires an adversary proceeding, unless the

parties otherwise agree). The determination of the interplay between the Bankruptcy Code, the final judgments of State Court, and the property rights under State Law would be determined would be subject to a separate proceeding.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court.

The Motion states with particularity grounds upon which the request for waiver of the fourteen day stay is based. These include the delays in sale, Debtor/Debtor in Possession's failure to comply with the orders of the State Court, and a sale of the Property pending.

2. [23-90111-E-11](#) **MICHAEL HOFMANN** **CONTINUED STATUS CONFERENCE RE:**
[CAE-1](#) **VOLUNTARY PETITION**
3-20-23 [[1](#)]

Final Ruling: No appearance at the May 18, 2023 Status Conference is required.

The Status Conference is continued to 1:30 p.m. on May 23, 2023; Specially Set to Department E, Courtroom 33, of the Sacramento Division Courthouse.

MAY 18, 2023 STATUS CONFERENCE

Michael Hoffman, the Debtor/Debtor in Possession, commenced this voluntary Chapter 11 Subchapter V case on March 20, 2023. On Schedule A/B Debtor lists having a joint tenant interest in the following properties (the court computes the percentage of Debtor's interest based on the stated dollar value of his interest as a percentage of the stated total dollar value of the property:

13330 Valley Home Road, parcel -049	\$42,600	8% Joint Tenant Interest
13330 Valley Home Road, parcel -051	\$28,000	8% Joint Tenant Interest
13330 Valley Home Road, parcel -055	\$12,000	8% Joint Tenant Interest

Dckt. 32. For personal property, Debtor's assets of significant value are a vehicle, bank account deposits, a setoff against siblings/Trust, and another setoff for non-payment of rent. Debtor also lists having a 49% interest in a business, but that its value is unknown. *Id.*

On Schedule I Debtor lists substantial monthly income, but on Schedule J substantial necessary monthly expenses. Some items of note with respect to Schedule J include:

- A. No expense for rent or mortgage.
- B. No expense for property taxes or homeowner's/renter's insurance
- C. Water, sewer, and garbage expense of \$30 a month.
- D. Electricity, heat, natural gas expense of \$0.00 a month.
- E. No expense for phone, cell phone, cable, or satellite services.
- F. \$2,000 a month for food and housekeeping for a family unit of just the Debtor.
- G. Gas, vehicle maintenance, repairs, and registration for his vehicle of \$300 a month. If Debtor has purchases a maintenance policy for his Mercedes Benz, after allow \$25 a month for registration, that would leave \$250 a month for gas. At \$4.50 a gallon, that allows Debtor to purchase 55 gallons a month. Assuming an average of 25 miles to the gallon, that give Debtor a driving range of 335 miles a week.
- H. An expenses to "LLC" of \$4,000 a month.

Schedules I and J; Dckt. 32 at 33-36.

On the Statement of financial affairs Debtor lists substantial gross income for wages/commission for 2022 and 2021, but little for the first three months of 2023. *Id.* at 38-39.

In response to Question 17 on the Statement of Financial Affairs, Debtor discloses having paid Freedom Debt Relief monthly payments in the amount \$20,000.00 in the year preceding the filing of this case. (It may be that this is a typo and the monthly payment were less than \$20,000.00 and in the aggregate total \$20,000.00.) *Id.* at 42.

In response to Question 27 on the Statement of Financial Affairs, Debtor states that he is current an LLC member or LLP member in Valley Home Rice Co. and Acres Verde Foundation. *Id.* at 44. Valley Home Rice Company is listed on Schedule A/B, but Acres Verde Foundation is not.

Notice of Removal

On May 14, 2023, Debtor/Debtor in Possession filed a Notice of Removal removing the pending post-judgment State Court Litigation *Hoffman v. Hoffman, and related Cross complaint, et al*, California Superior, for the County of Stanislaus, Case No. 2200623 to this court. In the removal filings Debtor/Debtor in Possession has provided a copy of the Second Amended Interlocutory Judgment entered in the State Court Action. Exhibit 71, docketing pending in adversary proceeding to be opened.

The Second Amended Interlocutory Judgment includes that it determines the percentage ownership interests in the 13330 Valley Home Road property (8 1/3% for Debtor/Debtor in Possession); a monetary surcharge of (\$90,576.81), plus additional interest, for Debtor/Debtor in Possession's occupancy of the residential portion of the Property; against Debtor/Debtor in Possession on his cross complaint against Sharon, Gary, and the Brichettoes; judgment in favor of Debtor/Debtor in Possession for the interference of contract claim; judgment for the Brichettoes for partition of the Property, with such Property to be sold

and the monies divided; Debtor/Debtor in Possession is entitled to a \$142,122 credit if he leave the grain tanks on the Property or a \$62,269 credit if he removes them; and Sharon, Gary, and the Brichettoes are the prevailing parties and costs are awarded, in addition to being awarded attorney's fees to be paid by Debtor/Debtor in Possession. Additional relief is granted between the other parties to the State Court Action that does not directly include Debtor/Debtor in Possession.

Also included is the State Court's detailed thirty-three (33) page Ruling.

In the Notice of Removal Debtor/Debtor in Possession provides information concerning his removal of the post-judgment State Court Action, there remaining the enforcement of the partition of the Property, which includes (identified by paragraph number used in the Notice of Removal):

3. Sharon and Gary Hofmann, petitioners in the state court action and creditors in this matter, seek to enforce the final state court judgment by selling estate property while other creditors, one secured, one claiming to be secured, seek to be paid from the proceeds of the sale of estate property.

4. The claim of the creditor claiming to be secured, Debtor's former spouse, is based on an abstract of judgment for support that is incongruous with an earlier, separate, notarized agreement she entered into with Debtor regarding said claim.

5. If the matter is remanded back to state court, some creditors will be paid outside the framework of the Bankruptcy Code, thus allowing certain creditors, some with dubious claims, to obtain payment from estate assets to the detriment of other creditors. Removal of this action is, therefore, proper under Section 1442 of Title 28 of the United States Code because a claim in this civil action arises under the Bankruptcy Code.

Debtor/Debtor in Possession Status Report

On May 15, 2023, the Debtor/Debtor in Possession's Supplemental Status Report was filed. Dckt. 67. The Debtor/Debtor in Possession reports that Michael Hudson breached the purchase agreement for the sale of the residence ordered by the State Court judge pursuant to the State Court Judgment.

Then, after this case was filed, other parties moved in the State Court for an Amended Order for the Sale of the Residence.

Debtor/Debtor in Possession asserts that when the buyer for Michael Hudson's property, the sale of which was a condition of the sale of the Residence Property to Michael Hudson, he, as one of the sellers was not given notice thereon and deprived of his right to cancel the sale to Michael Hudson.

Debtor/Debtor in Possession also reports that his former spouse is wrongly asserting a \$501,693.31 claim pursuant to a 1998 dissolution judgment, asserting that it is secured by a 2013 abstract of judgment. Debtor/Debtor in Possession asserts that the dollar amount is incorrect and that it is not

secured (but does not state why he asserts that a 2013 abstract of judgment does not create a lien on real property that Debtor owns).

3. [23-90129-E-11](#) **G ARATA & SON INC.**
[CAE-1](#)

**STATUS CONFERENCE RE:
VOLUNTARY PETITION
3-28-23 [1]**

Final Ruling: No appearance at the May 18, 2023 Status Conference is required.

<p>The Status Conference is continued to 2:00 p.m. on July 13, 2023.</p>

MAY 18, 2023 STATUS CONFERENCE

This Subchapter V Chapter 11 case was filed on March 28, 2023 by G. Arata & Sons, inc. Vol. Petition, Dckt. 1. The Schedules were filed on April 25, 2023. Dckt. 34. The Debtor lists personal property equipment of substantial value that are used in its business. Debtor has no other substantial personal property assets and does not list any real property assets.

The Debtor lists on the Statement of Financial Affairs (Dckt. 27) having substantial income in 2021, but that the income for 2022 and year to date 2023 are unknown. Dckt. 27 at 1.

The U.S. Trustee reports that the 341 Meeting was conducted on May 1, 2023, continued, and then concluded on May 11, 2023. U.S. Trustee May 11, 2023 Docket Report.

The Debtor/Debtor in Possession filed its Status report on May 4, 2023. Dckt. 36. Debtor/Debtor in Possession projects having its plan filed by June 26, 2023, which plan will provide for a 100% dividend for all allowed claims. The Debtor/Debtor in Possession states that it is not aware of any creditors having an liens on any cash collateral.

The court has entered the order authorizing employment of counsel for the Debtor/Debtor in Possession. Dckt. 38. No other motions have been filed and the Docket does not indicate any issues that are bubbling up at this time.

In reviewing the Proofs of Claim filed, the court notes that Proof of Claim 6-1 was filed Farm Credit Leasing Services, Corp. in the amount of (\$131,433.66), for which a pre-petition default is stated to be (\$72,183.66). POC 6-1, ¶¶ 7, 10. No leases are listed on Schedule G by the Debtor. However, Debtor lists Farm Credit Leasing Services Corp. on Schedule D as having a purchase money security interest in a 2017 Flory Shredder to secure a claim in the amount of (\$150,000).

Though Farm Credit Leasing has not attached copies of its contracts/leases to Proof of Claim 6-1, a summary sheet attached thereto indicates that the Debtor has a purchase option for a Shredder. The attachment also shows there being "Sales Tax on Rents Past Due" owed in the amount of \$2,017.28.

Thus, it does not appear that a substantial claim of Farm Credit Leasing Services, Corp. is going unaddressed, but that the parties are looking at it from different ends of the telescope.

In light of the information provided by the Debtor/Debtor in Possession, experienced Chapter 11 counsel representing the Debtor, a well established Subchapter V Trustee being in place, and there being nothing indicating a need for a May Status Conference, the Status Conference is continued to the first available regular Modesto Calendar Day after the expiration of the time period for the filing of the Subchapter V Plan.

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 Subchapter V Status Conference having been scheduled, the court having reviewed the Status Report filed by the Debtor/Debtor in Possession, the case appearing to being diligently prosecuted, the experienced Subchapter V Trustee, the U.S. Trustee, and on creditors not having identified any specific concerns for the Status Conference, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to Status Conference is continued to **2:00 p.m. on July 13, 2023.**

Final Ruling: No appearance at the May 18, 2023 Status Conference is required.

The Post-Confirmation Subchapter V Status Conference is continued it to 1:30 p.m. on May 23, 2023, specially set to the Sacramento Division Courthouse – Telephonic Appearances Permitted.

MAY 18, 2023 POST-CONFIRMATION STATUS CONFERENCE

In reviewing the Docket, the court notes that nothing has been filed since the April 6, 2023 Post-Confirmation Status Conference. As shown in the Minutes below from two prior Post-Confirmation Status Conference, the Subchapter V Trustee states that the Subchapter V Debtor/Debtor in Possession is making direct payments to creditors on their claims and not through the Subchapter V Trustee.

No updated Status Report has been filed by the Debtor/Debtor in Possession for the May 18, 2023 Status Conference, and none have been filed since the February 11, 2021 confirmation of the Plan in this case.

The Civil Minutes from the Confirmation Hearing state that there were four of the thirteen classes of claims that voted to confirm the Plan. Dckt. 130. No other ballots were cast in the other nine classes of claims, and for the four accepting classes, no ballots were cast against confirmation. *Id.*

The Bankruptcy Code provides in 11 U.S.C. § 1194(b) that if the Plan is confirmed under 11 U.S.C. § 1191(b), then the Subchapter V Trustee will make all payments to creditors under the Plan, unless the Plan proves otherwise. 11 U.S.C. § 1191(b) provides that if the requirements for confirmation provided in 11 U.S.C. § 1129(a)(8) [all impaired classes accept], (a)(10) [at least one impaired class votes to accept if there are any impaired classes of claims], and (a)(15) [distribution amount if a holder of an unsecured claim objects].

As shown in the Civil Minutes for the confirmation of this Subchapter V Plan, no all impaired classes voted to accept the Plan and it was confirmed pursuant to 11 U.S.C. § 1129(b).

The judge to whom this case is assigned will not be able to attend the May 18, 2023 Status Conference due to a last minute schedule change. Rather than having the judge covering the May 18, 2023 calendar conduct the Status Conference, the court continues it to 1:30 p.m. on May 23, 2023, specially set to the Sacramento Division Courthouse – Telephonic Appearances Permitted.

The court does this so that it may address with the SubChapter V Trustee and counsel for the Debtor/Debtor in Possession whether the payments are being made through the SubChapter V Trustee, the

Plan needs to be modified to provide for the Debtor/Debtor in Possession to make the payments, or the Subchapter V Trustee and Debtor/Debtor in Possession now agree that payments are to be made directly by the Debtor/Debtor in Possession.

If the Subchapter V Trustee and the Debtor/Debtor in Possession have resolved this payment issue, they may file a joint status report advising the court of such resolution and the basis therefore, which joint status report may also request that the court continue the Post-Confirmation Status Conference.

APRIL 6, 2023 POST-CONFIRMATION STATUS CONFERENCE

Since the January 26, 2023 Status Conference, the court has entered an order approving interim fees and expenses for David M. Souza, the Subchapter V Trustee. Order; Dckt. 195. No updated Status Report has been filed by the Debtor/Debtor in Possession Plan Administrator.

At the Status Conference, counsel for the Debtor Plan Administrator reported that the disputed claim over the truck leasing claim are still the subject of ongoing discussions.

The Trustee reported that Debtor Plan Administrator has been making the Plan payments directly to creditors with secured claims, and not making them through the Subchapter V Trustee.

JANUARY 26, 2023 POST-CONFIRMATION STATUS CONFERENCE

No updated status reports have been filed and no post-confirmation fee applications have been filed. By the end of March 2022, the final orders were entered on the Debtor/Debtor in Possession Plan Administrator's objections to claims. There has been nothing filed in connection with the administration of this case and the Confirmed Plan since March 2022.

At the Status Conference, counsel for the Debtor/Debtor in Possession Plan Administrator reported that the dispute over rejection damages is ongoing with Fresno Truck Center, dba Lee Financial Services.

The court continues the Status Conference to allow the Debtor/Debtor in Possession Plan Administrator to reach a resolution of this ongoing dispute or commence the necessary claim objection litigation.