

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

June 3, 2021 at 10:00 a.m.

1. [20-90710](#)-E-12

LESLIE JENSEN
David Johnston

MOTION FOR RELIEF FROM
AUTOMATIC STAY MOTION FOR
RELIEF FROM CO-DEBTOR STAY
5-6-21 [\[112\]](#)

STEWART & JASPER ORCHARDS,
INC. VS.

**TELEPHONIC APPEARANCE OF DAVID JOHNSTON, ESQ.,
ATTORNEY OF RECORD FOR THE DEBTOR IN POSSESSION
AND
CHARLES HASTINGS, ESQ., ATTORNEY FOR MOVANTS
REQUIRED FOR THE JUNE 3, 2021 HEARING**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 12 Trustee, parties requesting special notice, and Office of the United States Trustee on May 6, 2021. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief from the Automatic Stay is ~~XXXXX~~.

Creditors Jim Jasper, Jason Jasper, Stewart & Jasper Farming Company formerly known as S&F Farms, a California partnership, and Stewart & Jasper Orchards, Inc. (“Movant”) seek relief from the automatic stay to allow enforcement of the Agreement and Mutual Release, agreed upon by Movant, Debtor, Lisa Jensen (Debtor’s sister), and L&L Investment, LLC, that was entered into on July 2017. Movant has provided the Declaration of James Jasper to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Leslie F. Jensen (“Debtor”).

Movant argues that in essence they are requesting an order granting them relief out of abundance of caution as they assert that pursuant to 11 U.S.C. § 1201 the protections of the automatic stay do not extend to Debtor’s sister, Lisa Jensen and L & L because the debt in which Movant seek to litigate is not for “consumer debt” which is the type of debt that falls under this particular provision.

In their Declaration Movant argues that terminating the stay will allow Movant to use the water well on the L&L property for Movant’s almond processing operation on the property that adjoins the L&L property. Declaration, Dckt. 114.

The specific relief requested in the Motion is stated as:

Creditors bring this motion in to allow them to proceed in an outside forum to litigate their claims against Lisa Jensen and L & L for the settlement payment and rights associated with the Agreement and Mutual Release.

Motion, p. 2:9-11; Dckt. 112.

DISCUSSION

The co-debtor stay does not apply when a creditor’s claim is not based on a consumer debt. Bankruptcy Code Section 1201(a) provides:

(a) Except as provided in subsections (b) and (c) of this section, after the order for relief under this chapter, a creditor may not act, or commence or continue any civil action, to collect all or any part of a consumer debt of the debtor from any individual that is liable on such debt with the debtor, or that secured such debt, unless—

(1) such individual became liable on or secured such debt in the ordinary course of such individual’s business; or

(2) the case is closed, dismissed, or converted to a case under chapter 7 of this title.

11 U.S.C. § 1201.

Here, Movant argues that the agreement arose out of a dispute concerning the parties respective rights and obligations related to farm property owned by Debtor, Debtor's sister, and the LLC. The debt arises from that agreement, and thus it is not related to any consumer debt or consumer activities of Debtor.

Thus, Movant only seeks to terminate the stay so that they may commence litigation in an outside forum against co-debtors of the Debtor for the agreement.

Additionally, pursuant to the Bankruptcy Code, the co-debtor stay may be terminated for cause. Bankruptcy Code Section 1201(c) provides:

(c) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided by subsection (a) of this section with respect to a creditor, to the extent that—

- (1) as between the debtor and the individual protected under subsection (a) of this section, such individual received the consideration for the claim held by such creditor;
- (2) the plan filed by the debtor proposes not to pay such claim; or
- (3) such creditor's interest would be irreparably harmed by continuation of such stay.

11 U.S.C. § 1201(c).

Movant argues that all three conditions apply in this case. It was Debtor's LLC that received the consideration for the claim since Movant was entitled to continue to farm the property that they were releasing their claims for. Moreover, Debtor's Chapter 12 Plan does not propose to pay Movant's claim. Lastly, Movant would be irreparably harmed because not only are they due the \$300,000, but Movant has a legitimate need to enforce the exclusive license to use the water well.

Movant has provided sufficient grounds to grant relief from the co-debtor stay under 11 U.S.C. § 1201(a). Movant has established, pursuant to 11 U.S.C. § 1201(a), that it would be irreparably harmed if relief from the co-debtor stay were not granted because Movant has the property rights to the water well in order for their farming operations to continue, as well as co-debtors Lisa Jensen-Long and L&L Investments, LLC.

Absence of Creditors and Previously Disclosed Water Quality Issues

Creditor notes for the court that Debtor neglected to list creditor on Schedule E/F and the Verification of Master Address List. The court's review of the original and amended Schedules and the original and amended Verification of Master Address List discloses that Creditor was not listed. Dckts. 12, 13, 21, 22, 23.

Some of the rights that Creditor seeks to enforce are access to a well on the L&L Investments, LLC property (which was formerly owned by Debtor and her sister, Lisa Jensen, which they transferred into L&L Investments shortly after a creditor obtained a substantial judgment against Debtor). On April 22, 2021, in response to an objection to the proposed Chapter 12 Plan, the Debtor in Possession filed the Declaration of David R. Giomi, MAI, RM, in which he provided expert testimony concerning the value of the real property owned by L&L Investments, LLC. Mr. Giomi's expert testimony included explaining that

he could not provide a value for the property, which is important information to determine the value of the bankruptcy estate's interest in L&L Investment, LLC, stating:

4. On April 19, 2021, I prepared my report. Exhibit 1 is a true copy of my report. As the report spells out in detail, I was not able to value the real property or the Debtor's interest in the LLC because the real property is not presently marketable due to the **unavailability (onsite or offsite) of water**, the current drought, **poor production history the orchards**, difficulty in a buyer obtaining financing due to **lack of water**, and the fractional interest of the Debtor in the LLC, requiring a discount.

Declaration, ¶ 4; Dekt. 90. While Creditor is seeking relief from the stay so that it can access a well to pump water from the L&L Investment, LLC property to other property not owned by the LLC, the Debtor in Possession (exercising the fiduciary duties, powers, and rights of a bankruptcy trustee) provides expert testimony that there is no such water. Further, this expert presented by the Debtor in Possession and Debtor in Possession's counsel testifies that production is so poor for the orchards that no one would buy the property to farm it. Yet, Debtor states under penalty of perjury to receiving \$486,671 in gross farm income in 2019 and \$542,226 in gross farm income in 2018. It may be, the expert's opinion, that such gross farm income does not represent a viable or actual farming operation.

Additionally, counsel for the Debtor in Possession stated to the court that there is ground water contamination which impairs the use and value of the property of L&L Investments, LLC.

At the hearing, the court addressed these points with the attorney of record for the Debtor in Possession and the attorney whose name appears on the various documents, including the expert's declaration. Counsel **XXXXXXX**

~~————— The court determines that the co-debtor stay arising under 11 U.S.C. § 1201(a) does not apply to the obligations of Lisa Jensen-Long and L&L Investments arising out of the Settlement Agreement filed as the Exhibit (Dekt. 115) filed in support of the Motion, and Creditors may seek to enforce and litigate their claims against Lisa Jensen and L & L for the settlement payment and rights associated with the Agreement and Mutual Release.~~

No other or additional relief is granted by the court.

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 Motion for Relief from the Automatic Stay filed by Jim Jasper, Jason Jasper, Stewart & Jasper Farming Company formerly known as S&F Farms, a California partnership, and Stewart Jasper Orchards, Inc. ("Movant") 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 request to terminate the co-debtor stay of Lisa Jensen and L&L Investment, LLC of 11 U.S.C. § 1201(a) is granted, the court determining that the co-debtor automatic stay of 11 U.S.C. § 1201(a) does not apply to Lisa Jensen and L&L Investment, and each of them, with respect to the obligations of Lisa Jensen-Long and L&L Investments arising out of the Settlement Agreement filed as the Exhibit (Dckt. 115) filed in support of the Motion, and Movant enforcing their rights and claims against Lisa Jensen and L & L arising under the Settlement Agreement and Mutual Release

~~IT IS FURTHER ORDERED~~ that the automatic stay is not modified with respect to the Debtor, Michael Meyer ("the Chapter 12 Trustee"), or property of the bankruptcy estate.

~~No other or additional relief is granted.~~