UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

June 15, 2017, at 10:30 a.m.

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1. **15-28108-E-11** **WILLARD BLANKENSHIP** **MOTION TO APPROVE PROPOSED DISTRIBUTION PURSUANT TO CONFIRMED PLAN OF REORGANIZATION**
RLC-11 **Stephen Reynolds** **5-15-17 [192]**

Final Ruling: No appearance at the June 15, 2017 hearing is required.

Local Rule 9014-1(f)(1) Motion.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession/Plan Administrator, Debtor in Possession's/Plan Administrator's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on May 16, 2017. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion to Approve Proposed Distribution 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Approve Proposed Distribution is granted.

Willard Blankenship ("Plan Administrator/Debtor") moves for a court order approving a proposed distribution to claims under the confirmed plan. Plan Administrator/Debtor states that the Plan contemplated selling real property in Indiana, selling Debtor in Plan Administrator/Debtor's interest in stock of Apnea Analysis, and refinancing his residence in Davis, California. All three of those have occurred.

Plan Administrator/Debtor reports that the Plan calls for proceeds from the refinancing to be distributed in two parts: 1) one portion when the refinancing closes and 2) a second portion thirteen months later. *See* Dckt. 123, at 9 (stating that the second portion will be disbursed twelve months later, not thirteen).

The refinancing close on January 26, 2017, and the Estate received the initial disbursement from it on January 31, 2017.

An order approving sale of the Apnea Analysis stock was entered on January 13, 2017; the Estate received $5,000.00 prior to the hearing. Dckt 181. An order approving sale of real property in Indiana was entered on January 23, 2017, for an overbid purchase price of $171,000.00. Dckt. 185. Plan Administrator/Debtor states that net proceeds from the real property sale of $158,275.00 were received on March 3, 2017.

Proceeds from the two sales and from the refinancing totaled $283,955.00. $43,365.00 was disbursed in attorney's fees, and $85,337.92 was disbursed to Michael Kletchko and Patrick Ruedin in Class 2, pursuant to the Plan. After those distributions, the net proceeds balance is $155,252.08.

Plan Administrator/Debtor reports that there is a change in the total funds received from refinancing his residence. The Plan estimates total funds of $301,202.00, but the realized funds will be $232,665.58. $63,774.33 is held back by the lender for property taxes and insurance, as required by the Department of Housing and Urban Development. That hold back was triggered by transferring the property in Indiana back into the Estate.

Now, Plan Administrator/Debtor proposes to distribute the net proceeds available. After deducting $20,000.00 for estimated priority claims, that amount is $135,252.08. Plan Administrator/Debtor proposes a pro rata distribution to Classes 2 & 3 in the following amounts:

Name	**Claim Amount**	**Percent of Class**	**Amount**
Kletchko & Ruedin, per Plan	$916,762.16	86.80%	$106,134.20
Davis Law Firm, Proof of Claim 4	$45,526.55	4.31%	$9,507.43
American Express, Proof of Claim 5	$1,985.14	0.18%	$397.06
Sleep Train, Proof of Claim 6	$5,315.42	0.50%	$1,102.95
Ameri Gas, Schedules	$187.00	0.02%	$44.12
Davis Smiles Dentistry, Schedules	$1,500.00	0.14%	$308.83
Kevin Apman, Schedules	$10,000.00	0.95%	$2,095.61
Melissa Collier, Schedules	$3,500.00	0.33%	$727.95

Robert Blankenship, Schedules	$3,500.00	0.33%	$727.95
Robert Kidd, Schedules	$1,500.00	0.14%	$308.83
Wright National Flood Insurance	$832.00	0.08%	$176.47
Yury Galprin, Schedules	$65,552.10	6.21%	$13,698.64
Total Interim Disbursement			**$135,230.02**

From the above proposed distribution, Plan Administrator/Debtor states that the amount for Kletchko & Ruedin is less than 86.8% of $135,252.08 to reflect funds distributed previously.

CREDITORS' OBJECTION

Michael Kletchko and Patrick Ruedin ("Creditors") filed an Objection on May 30, 2017. Dckt. 197. Creditors state that the reserve (hold back) from the refinancing was previously undisclosed and unconsented to. Creditors argue that they have been deprived of $63,774.33, and if they had known about the hold back, then they would not have agreed to it.

Creditors request that they receive the entirety of the remaining funds in the amount of $111,985.58 from the sale of real property in Indiana and from the sale of Apnea Analysis stock.

Additionally, Creditors object to the following Class 2 and Class 3 claims:

A. Davis Law Firm, Proof of Claim 4, in the amount of $17,183.53;

B. Melissa Collier, Schedules, in the amount of $1,058.98;

C. Robert Blankenship, Schedules, in the amount of $1,058.98; and

D. Yury Galpin, Schedules, in the amount of $20,536.14.

Creditors argue that Section C, Paragraph 4.01 of the Plan assigns to them the right to object to claims of Class 3 related to *Kletchko v. Blankenship*. Case No. 30-2010-00399196, Orange County Superior Court.

Creditors object to Davis Law Firm, Proof of Claim 4, on the grounds that the invoices submitted are "exaggerated and enhanced." Dckt. 197, at 3. Creditors argue that Davis Law Firm represented Plan Administrator/Debtor in the state court case from January 2014 to September 2014 and only filed a single

motion to set aside judgment. Creditors argue that more than 90% of Davis Law Firm's claim is for an unfiled and unscheduled motion for summary judgment.

Creditors object to Yury Galprin's scheduled claim on the grounds that the services rendered are overstated and were not necessary for defending Plan Administrator/Debtor in the state court case. Creditors argue that their attorney's fees in the state court case are comparable to those billed by Yury Galpin ($196,325.50), but Creditor's attorney was involved in the case since June 2010, more than five years longer than Yury Galprin was involved in the case. Creditors object to the claim because of the disproportion in fees billed against time involved in the case.

Creditors object to claims of both Melissa Collier and Robert Blankenship as being undocumented loans that were given to Plan Administrator/Debtor without any stated purpose. Creditors argue that Melissa Collier and Robert Blankenship are Plan Administrator/Debtor's children, and their claims were submitted without supporting documents, such as bank statements showing the alleged loans.

Creditors argue that they have incurred $71,820.00 in post-petition attorney's fees in this case, in addition to fees that were awarded in the state court case. Creditors request to be paid the remaining $111,985.58 in proceeds, or alternatively, they request a briefing schedule.

PLAN ADMINISTRATOR/DEBTOR'S REPLY

Plan Administrator/Debtor filed a Reply on June 6, 2017. Dckt. 200. Plan Administrator/Debtor states that—as reported already—the $63,774.33 hold back required by the mortgage lender was unanticipated and could not have been disclosed prior to plan confirmation. Counsel states that he communicated that problem to Creditors prior to closing the refinancing. Plan Administrator/Debtor argues that the shortage is partially offset by the prompt sale of Apnea Analysis stock and the excess proceeds received from selling property in Indiana.

Plan Administrator/Debtor argues that Creditors' Objection does not object to claims in the manner contemplated in the Plan. He argues that the Plan provided for Creditors to have standing to object to the claims of Davis Law Firm and Yury Galprin Lieber Law Firm. Dckt. 123, at 6:15–22. He states that opposition to the other two claims of his children do not satisfy Federal Rules of Bankruptcy Procedure 2002 and 3007, as well as Local Bankruptcy Rule 3007-1.

REVIEW OF PLAN

The Plan in this case was confirmed on October 11, 2016. Dckt. 153. The Plan description for Class 2 includes language that Creditors "shall have the right to object to the claims of Class 3 General Unsecured Creditors filed by the Davis Law Firm and the claim scheduled as Yury Galprin Lieber Law." *Id.*, at 6:19–22.

The ability to object to claims is not unlimited, with the Confirmed Plan creating an express 180-day limitation. The Confirmed Plan, ¶ 6.04 (misnumber ¶ 5.04 under Article V of the Plan, p. 8 of Plan) requiring that all objections be filed within 180 days of the effective date. Plan attached to Confirmation Order, Dckt. 153. In the Class 2 Claim Treatment, ¶ 4.01, p. 5 of Plan, the Confirmed Plan expressly

provides for Creditors to have the right to object to the claims filed by Davis Law Firm and the claim schedule for Yury Galprin Lieber Law. *Id.* The Confirmed Plan further provides that the "Effective Date" is fourteen business days following the entry of the order confirming the Plan. *Id.*; Plan ¶ 7.02, page 10 of Plan. The Order confirming the Plan was entered on the court's docket on October 11, 2016. The fourteenth business day after entry on the docket is October 31, 2016. April 29, 2017 is the 180th day after October 31, 2016.

For a deadline to object to claims, the Plan states that "[a]ll claim objections, including the claims objections allowed to Class 2 . . . shall be filed within 180 days of the Plan Effective Date." *Id.*, at 8:26–28. The Effective Date of the Plan is October 31, 2016, which is the requisite fourteen business after the October 11, 2016 entry of the order confirming the Plan. Dckt. 153. One hundred and eighty days later is April 29, 2017.

CREDITORS APRIL 4, 2017 PLEADING

On April 4, 2017, Creditors filed a pleading titled:

> "MICHAEL KLETCHKO AND PATRICK RUEDIN'S
> STATEMENT OF OBJECTION AND RESERVATION
> OF RIGHTS TO CONTEST CLASS 3 CLAIMS"

Dckt. 189. This document was not served on anyone and appears to be Creditors' dictate to Debtor, other parties in interest, and the court.

In the Statement, Creditors make the following pronouncements:

A. Creditors object to the first phase of distribution as set forth in the terms of the Confirmed Plan.

B. Creditors assert that they have been deprived of $63,774.33 that is to be paid to them from the reverse mortgage that is to fund the first phase of distribution under the Confirmed Plan.

C. Creditors request that the court set a hearing to determine whether the parties can resolve this dispute.

D. Creditors also now object to the Confirmed Plan Phase 2 sale of the Indiana Property. Creditors assert that the sale has occurred but the Plan Administrator/Debtor has failed to account for or distribute any of the proceeds.

Reservation, Dckt. 189.

Other than advising the court that Creditors are "annoyed," no legal action is taken or initiated with the above pleading.

Creditors have not filed any objections to claims in this case, a right they specifically bargained for in the Chapter 11 Plan.

APPLICABLE LAW

Federal Rule of Bankruptcy Procedure 3007 governs the procedure for objecting to claims. In relevant part, it states:

> (a) Objections to claims. An objection to the allowance of a claim shall be in writing and filed. A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claim, the debtor or debtor in possession, and the trustee at least 30 days prior to the hearing.
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> . . .
>
> (c) Limitation on joinder of claims objections. Unless otherwise ordered by the court or permitted by subdivision (d), objections to more than one claim shall not be joined in a single objection.

FED. R. BANKR. P. 3007 (a) & (c). Federal Rule of Bankruptcy Procedure 3007 (d) & (e) provide the mechanisms for presenting an omnibus objection to claims.

Local Bankruptcy Rule 3007-1 provides additional measures in this district for objecting to claims. That rule states:

> An objection to a proof of claim shall include the name of the claimant, the date the proof of claim was filed with the Court, the amount of the claim, and the number of the claim as it appears on the claims register maintained by the Court. Unless the basis for the objection appears on the face of the proof of claim, the objection shall be accompanied by evidence establishing its factual allegations and demonstrating that the proof of claim should be disallowed. A mere assertion that the proof of claim is not valid or that the debtor is not owed is not sufficient to overcome the presumptive validity of the proof of claim.

LOCAL BANKR. R. 3007-1(a). The Local Rules establish that such objections must be set for hearing on either forty-four or thirty days' notice. LOCAL BANKR. R. 3007-1(b)(1) & (2). Short notice may be deemed inadequate by the court. *See, e.g.*, *In re Ambassador Park Hotel, Ltd.*, 61 B.R. 792 (N.D. Tex. 1986) (deeming eight days' oral notice of hearing on Chapter 11 debtor's objection to creditor's claim to be inadequate under Federal Rule of Bankruptcy Procedure 3007).

Local Bankruptcy Rule 9014-1(d)(1) states that "every application, motion, contested matter or other request for an order, shall be filed separately from any other request, except that relief in the alternative based on the same statute or rule may be filed in a single motion."

DISCUSSION

It appears that Creditors' April 4, 2017 filed Reservation spawned the May 15, 2017 filing of the present Motion. In the present Motion Plan Administrator/Debtor seeks court approval to make an interim distribution under the confirmed plan. No claims have been objected to by any party in interest.

The Confirmed Chapter 11 Plan requires that Creditors be paid an initial disbursement on their Class 2 secured claim from the first reverse mortgage to be completed within an estimated thirty-days of the effective date. Confirmed Plan, Class 2 treatment, page 5 of Plan; Dckt. 153. No specific dollar amount is stated in the Class 2 treatment. However, in Article VII of the Plan (titled "Means for Implementation of the Plan"), it states that the monies from the first reverse mortgage will be $132,567.00. This section further provides that the $132,567.00 will be "distributed first to allowed or pending priority claims and the remainder to Class 2 claims." *Id.*, Plan p. 9:20–21.

In the Motion, Plan Administrator/Debtor is oddly silent and does not provide any information about the initial distribution from the first reverse mortgage, other than saying:

> "The refinancing was much more difficult than contemplated preconfirmation and did not close until January 26, 2017. The estate did not receive the initial disbursement from the loan until January 31, 2017."

Motion, ¶ 3, Dckt. 192.

The Plan Administrator/Debtor (the fiduciary serving under the Confirmed Plan) did not (or refused) to file a declaration in support of the Motion. He offers no testimony of how the Plan has been performed.

However, the attorney for the Plan Administrator/Debtor has chosen to be a witness and testify in support of this Motion. The personal knowledge testimony under penalty of perjury by Stephen Reynolds, attorney for the Plan Administrator/Debtor includes the following:

A. That the "underwriters" kept requiring additional documents, which delayed the closing until January 26, 2017. Declaration, p. 1:22–24; Dckt. 194.

B. Counsel further testifies that there were "statutory education requirements that were surprisingly difficult to meet." *Id.*, p. 1:25–27.

C. However, Counsel testifies that there was an even larger difficulty, with the lender requiring that funds for property taxes and insurance for the entire duration of the reverse mortgage be set aside. *Id.*, p. 1:25–28, 2:1.

At this point, it appears that such a requirement is merely impounding monies that Debtor intended to pay into the future.

D. Counsel further testifies that this requirement was "triggered" because the Indiana property (which Debtor had transferred out of his name prior to the commencement of the case) was recovered as a fraudulent conveyance. *Id.*, p. 2:2–8.

E. Counsel provides testimony that the Indiana Property was sold, generating proceeds of $158,275, and the Apnea Analysis stock was sold, generating proceeds of $5,000.00. *Id.*, p. 2:16–17.

F. Counsel testifies that the disbursements from both the **first and second** reverse mortgage fundings total only $120,000.00. *Id.*, p. 2:17–18.

G. From the funds, attorney's fees of $43,365.00 were paid to Counsel and an initial payment of $85,337.92 was paid to Creditors. *Id.*, p. 2:18–20.

Using the amounts stated in the Plan to be paid, Creditors would be receiving a distribution of approximately $89,000.00 from just the first funding from the reverse mortgage. The Plan states that the second funding of the reverse mortgage was to provide an additional $168,635.00. Plan, Article VII, p. 9 of Plan; Dckt. 153.

In the Opposition to this Motion, Creditors argue that by the undisclosed reserve requirement, Plan Administrator/Debtor has effectively diverted $63,774.33 of the reverse mortgage monies that are to be distributed to Creditors. This money has been diverted to pay Plan Administrator/Debtor's future property taxes and insurance—obligation that Plan Administrator/Debtor would otherwise have to pay from his assets outside of the Plan.

Creditors argue that if they had been told that Debtor would be taking $63,774.33 of the reverse mortgage moneys away from Creditor, they would not have agreed to and would not have supported the Plan. As the "500 lb. gorilla" creditor in this case, such loss of support would likely have doomed any plan.

Creditors then continue, arguing that even though they have elected not to file objections to claims and have not complied with the requirements of the Confirmed Plan, they "object" to four claims by virtue of mentioning them in passing in objecting to the present Motion.

Just as Creditors complain that Plan Administrator/Debtor has not complied with the Plan and the proposed distribution, Creditors ignore the Plan and now try to unfairly attack other creditors. Creditors ignore the Bankruptcy Code (11 U.S.C. § 502), the Federal Rules of Bankruptcy Procedure (Rule 3007), the Local Bankruptcy Rules, and the Confirmed Plan. Creditors create their own rules and law of how they will blindside other creditors and operate outside the law.

CONTINUANCE OF HEARING

It is often said that a party "earns" the opponent it has in litigation. It appears, based on the conduct of Creditors and the Plan Administrator/Debtor, they are cut from the same bolt of litigation and ethical cloth.

The June 15, 2017 hearing date is scheduled to be conducted by a different judge due to a scheduling conflict for the judge to whom this case is assigned. In light of the allegations by the Parties and the conduct of both the Plan Administrator/Debtor and Creditors, this matter is continued to a time and date when the judge to whom it is assigned is available.

Upon review of the pleadings and the conduct of the Plan Administrator/Debtor and the Creditors, the court determines it necessary to require the in-court appearance of those parties and their attorneys at the continued hearing. Plan Administrator/Debtor's contention, "I didn't know, so I'm taking $63,000.00 of the reverse mortgage monies to pay my future taxes and insurance so I don't have to pay it," is as unsatisfactory as Creditors' "Rules, we don't need to follow no Rules, we make the Rules" in how they have failed to, and now try to untimely, prosecute their rights provided in the plan (at their requirement).

The court has previously addressed the shortcomings of the Plan Administrator/Debtor, Creditors, and their respective counsel in their "prosecution" of this bankruptcy case. Examples include:

> [1] failure of Plan Administrator/Debtor to file evidence in support of motion to confirm; Civil Minutes, p. 8, Dckt. 149;
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> [2] Creditors filing an "objection" to administrative fees which stated no specific opposition; Civil Minutes, p. 4, Dckt. 150;
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> [3] Denial of Creditors' motion to dismiss the case, Creditors not stating grounds for dismissal; Civil Minutes, p. 4–6, Dckt. 103;
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> [4] Dismissing Creditors contention that the recording of their judgment lien was not based on an "antecedent debt," Creditors cannot ignore the statutory presumption of insolvency under 11 U.S.C. § 547, the contention of forbearance was not supported by the evidence, and Creditors asserted "baseless grounds" in requesting relief; Civil Minutes, p. 6–8, Dckt. 62;
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> [5] Dismissal of Creditor's complaint against non-debtor third-parties for relief under 11 U.S.C. § 523 for failing to state a claim for which relief could be granted against non-debtors under that provision of the Bankruptcy Code; Adv. Pro. 16-2010, Civil Minutes, p. 13–14; and
>
> [6] Creditors failing to show any legal basis for trying to unilaterally exercise the powers of a debtor in possess/trustee under 11 U.S.C. §§ 547 and 548; *id.*, p. 15–16;

In Adversary Proceeding 16-2010 the court perceived the litigation conduct of Plan Administrator/Debtor and Creditors to be "sandbox litigation," well below that required in federal court proceedings. 16-2010; Civil Minutes, p. 15–16, Dckt. 38. The court observed that the pleadings disclosed a "toxic, less than professional, relationship between [Creditors and Plan Administrator/Debtor] in the State Court [proceedings that set the stage for the bankruptcy case filing]." *Id.*, p. 17. The Civil Minutes include extensive quotations of the less than professional conduct that one expects from parties engaging in litigation, even in state court. This court's conclusions included:

> "Several things are clear. First, the issues between the parties have become personal issues between the attorneys. Proper, ethical, litigation appears to have become secondary to personal attacks and perceived, or allegations of, perceived threats.
> . . .
> Third, due to the long, hostile, history between the attorneys for Plaintiffs, Plaintiffs, Debtor, and Attorneys for Debtor, it will not be the Plaintiffs who would be authorized to exercise the fiduciary powers of the Debtor in Possession. No request has been made of the court and the court will not, *sua sponte*, turn over property of the estate to these Plaintiffs.
>
> Finally, the information disclosed by Plaintiffs, Plaintiffs' counsel, Defendants, and Defendants' counsel may well show that the appointment of a Chapter 11 Trustee is necessary and proper. These parties and their attorney have become so embroiled in personal, vitriolic attacks, the rights and interests of the estate appear secondary. "

Id., p. 19.

Based on the testimony of Plan Administrator/Debtor's Counsel, the Plan Administrator/Debtor was fully aware that he was not able to perform the Plan as confirmed through the refinance. Rather than coming back to court and addressing the issue, Plan Administrator/Debtor found it to be to his advantage to elect a path that would give him a $63,774.33 benefit and divert that amount away from Creditors. Adopting the adage, "It is better to seek forgiveness rather than request permission" is not an effective, productive strategy in bankruptcy proceedings. FN.2.

FN.2. This statement is often attributed to Rear Admiral Grace Hopper, and while possibly has strategy merit on the battlefield where those who act with permission are the victors and can give themselves forgiveness, the same is not true in the judicial process where there is not a "battlefield victor" who dictates the decisions to the judge.

Creditors have sat back, appearing to be in a state of somnolence while not getting paid the monies they believed they were entitled to under the Plan. Though negotiating hard to have the right to object to claims, Creditors have let those rights lapse in apparent disinterest in this case. Now, belatedly, Creditors believe they have the right and power to hide what may be objections to claims in a response to the present Motion. No certificate of service has been filed for Creditors' Opposition to the present Motion. FN.3.

FN.3. In what may be a contest with Plan Administrator/Debtor's counsel to go from being an attorney for a client whose communications are protected to a witness subject to examination, Creditors' Counsel Marc Lazo jumps into the fray with his Declaration. Declaration, Dckt. 198. In it, he offers testimony under penalty of perjury concerning the legal services he provided for Creditors and presents himself as the "unbiased" witness to provide expert testimony about the claims of other attorneys for which Creditors elected not to file any opposition.

Stephen Reynolds, Plan Administrator/Debtor's attorney, was compelled to respond with another tit-for-tat declaration making him a further witness, rather than attorney for a party, in this case. He again testifies to "facts" that should be known by the Plan Administrator/Debtor.

It appears that between the litigation strategy of the Plan Administrator/Debtor, Creditors, and their respective counsel, they have driven this case to one in which it probably will have to be converted or dismissed. It appears that conversion may well be the better option so that an independent fiduciary can figure out how the strategies and conduct of these Parties and their counsel have damaged the bankruptcy estate and other creditors.

Rather than immediately setting the stage for conversion or dismissal, the court continues this hearing to allow the Plan Administrator/Debtor, Counsel for the Plan Administrator/Debtor, Creditors, and Counsel for Creditors to meet and confer to determine what, if anything, productive can be made from the current state of affairs through the Plan (which may have to be modified), which is a better result than having the case, the estate, and all of the rights and powers relating thereto being turned over to an independent fiduciary Chapter 7 Trustee.

This also affords the U.S. Trustee to give this case, and the conduct of the Plan Administrator/Debtor, Creditors, and their respective counsel, a review.

The court shall issue a minute 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 to Approve Proposed Distribution filed by Debtor in Possession/Plan Administrator 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 Motion is continued to **10:30 a.m. on June 29, 2017.**
>
> **IT IS FURTHER ORDERED** that Michael Kletchko, Patrick Ruedin, Marc Lazo, Esq. (Counsel for Kletchko and Ruedin), Willard Blankenship, and Stephen Reynolds, Esq. (Counsel for Willard Blankenship), and each of them, shall appear in person at the June 29, 2017 continued hearing—No Telephonic Appearances Permitted for the aforementioned persons ordered to appear.
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> **IT IS FURTHER ORDERED** that March Lazo, Esq. and Stephen Reynolds, Esq. shall telephonically meet and confer on or before **noon on June 23, 2017,** to address the status of the Plan in this case, possible alternatives, and develop (if possible) a report to be given orally to the court at the June 29, 2017 hearing of any agreed solution to the current status of the case.

2. **14-29361-E-7** **WALTER SCHAEFER** **MOTION TO SELL**
DNL-24 **Douglas Jacobs** **5-18-17 [385]**

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—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 18, 2017. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Sell Property 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Sell Property is granted.

The Bankruptcy Code permits Kimberly Husted, the Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as Guanacaste Lot #37920 and Guanacaste Lot #37922, Costa Rica ("Property").

The proposed purchaser of the Property is George Bechakas, and the terms of the sale are:

A. Purchase price of $5,000.00, all cash or certified funds, payable as follows:

1. $2,500 initial deposit; and

2. The balance due prior to the close of escrow.

B. Closing date of thirty calendar days from the conclusion of the Bankruptcy Court hearing approving the sale.

C. Property to be sold "as is" and "where is" without representation or warranty.

D. Buyer shall pay any and all escrow fees and costs.

E. The sale is subject to overbidding through conclusion of the sale hearing.

1. Any overbidding shall proceed in increments of at least $500.

Movant asserts that good cause exists to waive the fourteen-day stay of Federal Rule of Bankruptcy Procedure 6004(h) because Movant does not anticipate any opposition to the Motion. A review of the docket shows, in fact, that no opposition has been filed.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: xxxxxxxxxxxxxxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the net proceeds from the sale will benefit creditors and because the Movant has not received a better offer for the Property. With the sale in place, it is time to complete the sale. Movant has pleaded, and as shown by the files in this case, adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement set by Rule 6004(h), and this part of the requested relief is granted.

The court shall issue a minute 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 to Sell Property filed by Kimberly Husted, the Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Kimberly Husted, the Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to George Bechakas or nominee ("Buyer"), the Property commonly known as Guanacaste Lot #37920 and Guanacaste Lot #37922, Costa Rica ("Property"), on the following terms:
>
> A. The Property shall be sold to Buyer for $5,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 388, and as further provided in this Order.
>
> B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.

C. The Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

3. 14-29284-E-7 KJH-6 | **CHARLES MILLS** **Lucas Garcia** | **MOTION FOR COMPENSATION FOR KIMBERLY HUSTED, CHAPTER 7 TRUSTEE** **5-18-17 [494]**

Final Ruling: No appearance at the June 15, 2017 hearing is required.

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 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on May 18, 2017. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Allowance of Professional Fees 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 Allowance of Professional Fees is granted.

Kimberly Husted, the Trustee ("Applicant") for Debtor Charles Mills Jr. ("Client"), makes a First and Final Request for the Allowance of Fees and Expenses in this case. Fees are requested for the period December 23, 2014, through May 18, 2017.

STATUTORY BASIS FOR PROFESSIONAL FEES

Pursuant to 11 U.S.C. § 330(a)(3),

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including—
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> (A) the time spent on such services;
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> (B) the rates charged for such services;
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> (C) whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title;
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> (D) whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed;
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> (E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and
>
> (F) whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

Further, the court shall not allow compensation for,

> (i) unnecessary duplication of services; or
> (ii) services that were not—
> (I) reasonably likely to benefit the debtor's estate;
> (II) necessary to the administration of the case.

11 U.S.C. § 330(a)(4)(A). A professional must "demonstrate only that the services were reasonably likely to benefit the estate at the time rendered," not that the services resulted in actual, compensable, material benefits to the estate. *Ferrette & Slatter v. United States Tr. (In re Garcia)*, 335 B.R. 717, 724 (B.A.P. 9th Cir. 2005) (citing *Roberts, Sheridan & Kotel, P.C. v. Bergen Brunswig Drug Co. (In re Mednet)*, 251 B.R. 103, 108 (B.A.P. 9th Cir. 2000)). The court may award fees for professionals pursuant to 11 U.S.C. § 331, which award is subject to final review and allowance pursuant to 11 U.S.C. § 330.

Benefit to the Estate

Even if the court finds that the services billed by a trustee are "actual," meaning that the fee application reflects time entries properly charged for services, the trustee must demonstrate still that the work performed was necessary and reasonable. *Unsecured Creditors' Comm. v. Puget Sound Plywood, Inc. (In re Puget Sound Plywood)*, 924 F.2d 955, 958 (9th Cir. 1991). A trustee must exercise good billing

judgment with regard to the services provided because the court's authorization to employ a trustee to work in a bankruptcy case does not give that trustee "free reign to run up a [professional fees and expenses] tab without considering the maximum probable recovery," as opposed to a possible recovery. *Id.*; *see also Brosio v. Deutsche Bank Nat'l Tr. Co. (In re Brosio)*, 505 B.R. 903, 913 n.7 (B.A.P. 9th Cir. 2014) ("Billing judgment is mandatory."). According the Court of Appeals for the Ninth Circuit, prior to working on a legal matter, the attorney, or other professional as appropriate, is obligated to consider:

> (a) Is the burden of the probable cost of legal [or other professional] services disproportionately large in relation to the size of the estate and maximum probable recovery?
>
> (b) To what extent will the estate suffer if the services are not rendered?
>
> (c) To what extent may the estate benefit if the services are rendered and what is the likelihood of the disputed issues being resolved successfully?

In re Puget Sound Plywood, 924 F.2d at 958–59 (citing *In re Wildman*, 72 B.R. 700, 707 (N.D. Ill. 1987)).

A review of the application shows that the services provided by Applicant related to the estate enforcing rights and obtaining benefits including: General case administration, liquidation of two real properties, and out of pocket costs in maintenance of real property, and the holding of two auctions. The estate has $141,357.13 of unencumbered monies to be administered as of the filing of the application. The court finds the services were beneficial to the Client and bankruptcy estate and were reasonable.

FEES REQUESTED

Applicant provides a task billing analysis and supporting evidence for the services provided, which are described in the following main categories.

General Case Administration: Applicant opened the case and entered into the trustee's case management software system, reviewed petitions, provided 521 documents, reviewed the proceedings of the Chapter 11 case, reviewed mail, reviewed the case with the Trustee's attorneys, prepared and conducted the 341 examinations of debtor, investigated and inspected real estate assets, retained a CPA and examined proofs of claim, Prepared monthly bank reconciliations and maintained proper accounting of all assets and disbarments made, prepared final accounting and maintained a proper bond.

Efforts to Assess and Recover Property of the Estate: Applicant liquidated two real properties owned by the Debtor. Further, Trustee held two auctions for collectibles and selling the equity in a vehicle. Finally, Trustee filed tax returns and received court permission to pay taxes of the estate.

Trustee requests the following fees:

25% of the first $5,000.00	$1,250.00
10% of the next $45,000.00	$4,500.00

5% of the next $950,000.00	$47,500.00
3% of the balance of $1,520,869.38	$45,626.09
Calculated Total Compensation	**$98,876.09**
Total Maximum Allowable Compensation	$98,876.09
Plus Adjustment for Reduced Fees	($38,605.95)
Total First Interim Fees Requested	$60,270.14

The Trustee has reduced her requested fees to allow priority claims and United States Trustee administrative fees to be paid fully.

EXPENSES REQUESTED

The Trustee also seeks reimbursement for expenses of $6,658.87. The Trustee reports that of the total expenses included in her documents, she has been compensated for $3,303.00 already.

Description of Cost	**Per Item Cost, If Applicable**	**Cost**
Copies		$24.00
Postage		$133.70
Mileage		$618.35
Other (property repairs, parking, advertising, utilities, insurance, Court Call)		$9,185.85
Total Costs Requested in Application		$9,961.90

FEES ALLOWED

The court finds that the requested fees are reasonable pursuant to 11 U.S.C. § 326(a) and that Applicant effectively used appropriate rates for the services provided. Fees in the amount of $60,270.14 pursuant to 11 U.S.C. § 331 and subject to final review pursuant to 11 U.S.C. § 330 are authorized to be paid by the Trustee from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7 case.

In this case, the Chapter 7 Trustee currently has $141,357.13 of unencumbered monies to be administered. The Chapter 7 Trustee performed general case administration, liquidation of two real properties, and out of pocket costs in maintenance of real property, and the holding of two auctions. Applicant's efforts have resulted in a realized gross of $2,530,869.78 recovered for the estate. Dckt. 494.

This case required significant work by the Trustee, with full amounts permitted under 11 U.S.C. § 326(a), to represent the reasonable and necessary fees allowable as a commission to the Chapter 7 Trustee.

Applicant is allowed, and the Trustee is authorized to pay, the following amounts as compensation to this professional in this case:

Fees	$60,270.14
Costs and Expenses	$6,658.87

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.
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> The Motion for Allowance of Fees and Expenses filed by Kimberly Husted ("Applicant"), the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
>
> **IT IS ORDERED** that Kimberly Husted is allowed the following fees and expenses as a professional of the Estate:
>
> Kimberly Husted, the Chapter 7 Trustee
>
> Fees in the amount of $60,270.14
> Expenses in the amount of $6,658.87,
>
> **IT IS FURTHER ORDERED** that the Trustee is authorized to pay the fees allowed by this Order from the available funds of the Estate in a manner consistent with the order of distribution in a Chapter 7.