

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

2500 Tulare Street
Department A, Courtroom 11
Fresno, California

WEDNESDAY

JUNE 24, 2015

1:30 P.M. CHAPTER 11 CASES

PRE-HEARING DISPOSITIONS

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

MATTERS RESOLVED BEFORE HEARING

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter to be dropped from calendar notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860.

ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [10-12709](#)-A-11 ENNIS COMMERCIAL
LRP-36 PROPERTIES, LLC
DAVID STAPLETON/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH ECP
ADMINISTRATOR, ENNIS COMMERCIAL
PROPERTIES, LLC, ENNIS
ENTERPRISES, LLC, KEITH
WATKINS, SUSAN WATKINS
5-22-15 [[1534](#)]

PETER FEAR/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

Final Ruling

Motion: Approve Compromise or Settlement of Controversy

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

Settlement Terms: Set forth in Settlement Agreement, filed as Exhibit 1 in Support of the Motion, filed May 22, 2015, ECF # 1537

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

DISCUSSION

Plan Administrator David Stapleton prays approval of a compromise under Federal Rule of Bankruptcy Procedure 9019 and a finding of good faith under California Code of Civil Procedure §§ 877, 877.6. The confirmed plan gives Stapleton the authority to compromise claims and contemplates approval, if requested, by this court. Chapter 11 Plan § V(M), filed April 10, 2013, ECF # 874; Order Confirming Plan, filed June 25, 2013, ECF # 961.

Rule 9013

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

California Code of Civil Procedure §§ 877, 877.6

"Where a release, dismissal with or without prejudice, or a covenant not to sue or not to enforce judgment is given in good faith before verdict or judgment to one or more of a number of tortfeasors claimed to be liable for the same tort, or to one or more other co-obligors mutually subject to contribution rights, it shall have the following effect: (a) It shall not discharge any other such party from liability unless its terms so provide, but it shall reduce the claims against the others in the amount stipulated by the release, the dismissal or the covenant, or in the amount of the consideration paid for it, whichever is the greater. (b) It shall discharge the party to whom it is given from all liability for any contribution to any other parties. (c) This section shall not apply to co-obligors who have expressly agreed in writing to an apportionment of liability for losses or claims among themselves. (d) This section shall not apply to a release, dismissal with or without prejudice, or a covenant not to sue or not to enforce judgment given to a co-obligor on an alleged contract debt where the contract was made prior to January 1, 1988." Cal. Code of Civ. Proc. 877.

Section 877.6 provides, "Any party to an action in which it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, upon giving notice in the manner provided in subdivision (b) of Section 1005. Upon a showing of good cause, the court may shorten the time for giving the required notice to permit the determination of the issue to be made before the commencement of the trial of the action, or before the verdict or judgment if settlement is made after the trial has commenced. . . .

A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault. . . ."

Cal. Code of Civ. Proc. 877.6(a),(c).

Based on the motion and supporting papers, the court finds that the compromise is fair and equitable considering the relevant A & C *Properties* factors. The compromise will be approved.

ORDER

Stapleton shall prepare and lodge an order consistent this ruling. The order shall append a copy of the Settlement Agreement and shall be approved as to form by counsel for Keith Watkins and Susan Watkins.

2. [10-62315](#)-A-11 BEN ENNIS
LRP-43
DAVID STAPLETON/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH ENNIS COMMERCIAL
PROPERTIES, LLC; ENNIS
ENTERPRISES, LLC; SUSAN
WATKINS; KEITH WATKINS
5-22-15 [[1891](#)]

RILEY WALTER/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

Final Ruling

Motion: Approve Compromise or Settlement of Controversy

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

Settlement Terms: Set forth in Settlement Agreement, filed as Exhibit 1 in Support of the Motion, filed May 22, 2015, ECF # 1896

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

DISCUSSION

Plan Administrator David Stapleton prays approval of a compromise under Federal Rule of Bankruptcy Procedure 9019 and a finding of good faith under California Code of Civil Procedure §§ 877, 877.6. The confirmed plan gives Stapleton the authority to comprise claims and contemplates approval, if requested, by this court. Chapter 11 Plan § V(M), filed April 12, 2013, ECF # 1091; Order Confirming Plan, filed June 27, 2013, ECF # 1203.

Rule 9013

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

California Code of Civil Procedure §§ 877, 877.6

"Where a release, dismissal with or without prejudice, or a covenant not to sue or not to enforce judgment is given in good faith before verdict or judgment to one or more of a number of tortfeasors claimed to be liable for the same tort, or to one or more other co-obligors mutually subject to contribution rights, it shall have the following effect: (a) It shall not discharge any other such party from liability unless its terms so provide, but it shall reduce the claims against the others in the amount stipulated by the release, the dismissal or the covenant, or in the amount of the consideration paid for it, whichever is the greater. (b) It shall discharge the party to whom it is given from all liability for any contribution to any other parties. (c) This section shall not apply to co-obligors who have expressly agreed in writing to an apportionment of liability for losses or claims among themselves. (d) This section shall not apply to a release, dismissal with or without prejudice, or a covenant not to sue or not to enforce judgment given to a co-obligor on an alleged contract debt where the contract was made prior to January 1, 1988." Cal. Code of Civ. Proc. 877.

Section 877.6 provides, "Any party to an action in which it is alleged that two or more parties are joint tortfeasors or co-obligors on a contract debt shall be entitled to a hearing on the issue of the good faith of a settlement entered into by the plaintiff or other claimant and one or more alleged tortfeasors or co-obligors, upon giving notice in the manner provided in subdivision (b) of Section 1005. Upon a showing of good cause, the court may shorten the time for giving the required notice to permit the determination of the issue to be made before the commencement of the trial of the action, or before the verdict or judgment if settlement is made after the trial has commenced.

A determination by the court that the settlement was made in good faith shall bar any other joint tortfeasor or co-obligor from any further claims against the settling tortfeasor or co-obligor for equitable comparative contribution, or partial or comparative indemnity, based on comparative negligence or comparative fault. . . ."

Cal. Code of Civ. Proc. 877.6(a),(c).

Based on the motion and supporting papers, the court finds that the compromise is fair and equitable considering the relevant A & C *Properties* factors. The compromise will be approved.

VIOLATION OF LOCAL RULES

Stapleton's motion violates LBR 9014-1(c)(3), which precludes a second use of the same docket control number. This motion was designated as LRP-43. That docket control number was previously used. See Stipulation to Toll Statutes of Limitations, filed January 15, 2015, ECF # 1852. Future violations may result in summary denial of the motion or sanctions against counsel.

ORDER

Stapleton shall prepare and lodge an order consistent this ruling. The order shall append a copy of the Settlement Agreement and shall be approved as to form by counsel for Keith Watkins and Susan Watkins.

3. [10-62315](#)-A-11 BEN ENNIS
LRP-46
DAVID STAPLETON/MV
RILEY WALTER/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

MOTION TO SELL FREE AND CLEAR
OF LIENS
6-2-15 [[1898](#)]

Tentative Ruling

Motion: Sell Property

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted

Order: Prepared by moving party pursuant to instructions below

Property: 1150 W. Henderson Ave., Porterville, CA

Buyer: Sage Investco Wood, LLC

Sale Price: \$485,000

Sale Type: Private sale subject to overbid opportunity

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

SALE OF PROPERTY

For the reasons stated in the motion, the court will grant the relief requested. The confirmed plan and confirmation order contemplate prior approval of this sale. The sale of the subject property will yield proceeds that will benefit creditors. If the property is not sold, the property will require maintenance that will deplete assets that could otherwise go to creditors.

Further, the County of Tulare holds tax liens against the property. These unrecorded property tax liens will be paid off through escrow or in accordance with applicable non-bankruptcy law.

COMPENSATION

The motion proposes to pay 6% of the total purchase price as a commission to be split in half and shared by seller's broker with buyer's broker. The seller and buyer's broker are authorized to be compensated pursuant to the terms of the underlying agreements between the movant and the broker, and any orders approving the selling broker's appointment.

RELIEF UNDER § 363(m)

The court will grant relief under § 363(m). The Plan makes § 363 applicable to the sales of property encumbered by the Nicholson parties' lien. The Plan Administrator has no relationship with the proposed buyer, and there is no indication of fraud, collusion, or unfair advantage in the process of this sale.

FREE AND CLEAR RELIEF

Based on the consent of the Nicholson parties in the stipulation attached as an exhibit, the court will grant the motion as to free and clear relief. The respondents have received notice of the relief

sought, as they have been served, and they have not opposed the motion.

The sale will be free and clear of the lien of Daryl C. Nicholson, Trustee of the Daryl C. Nicholson and Victoria M. Nicholson Trust Agreement dated October 1, 1990, on the real property described above, and such lien shall attach to the proceeds of the sale with the same priority and validity as it had before the sale. The court will not approve the sale free and clear of any other lien or interest not identified in this paragraph.

The order shall state that the sale is free and clear of only the lien identified and that such lien shall attach to the proceeds of the sale with the same priority and validity as it had before the sale.

The order shall be approved by the signature of the attorney for the Nicholson parties. The order shall attach a copy of the stipulation permitting free and clear relief as an exhibit.

4.	<u>10-62315</u> -A-11 BEN ENNIS LRP-47 DAVID STAPLETON/MV RILEY WALTER/Atty. for dbt. MICHAEL GOMEZ/Atty. for mv.	MOTION TO SELL FREE AND CLEAR OF LIENS 6-2-15 [<u>1905</u>]
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Tentative Ruling

Motion: Sell Property

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted

Order: Prepared by moving party pursuant to instructions below

Property: 1122 W. Henderson Avenue, Porterville, CA

Buyer: Sage Investco Wood, LLC

Sale Price: \$760,000

Sale Type: Private sale subject to overbid opportunity

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. TeleVideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917-18 (9th Cir. 1987).

SALE OF PROPERTY

For the reasons stated in the motion, the court will grant the relief requested. The confirmed plan and confirmation order contemplate prior approval of this sale. The Plan Administrator secured the current proposed sale after marketing the subject property to multiple potential buyers. Sale of the subject property will either yield proceeds that will go to the benefit of creditors or it will pay down the claim of Wells Fargo Bank, N.A., creating further equity on other real properties that secure Wells Fargo Bank, N.A.'s claim. If the property is not sold, it will require maintenance that will deplete assets that could otherwise go towards creditors.

Further, the County of Tulare holds tax liens against the property. These unrecorded property tax liens will be paid off through escrow or in accordance with applicable non-bankruptcy law. Similarly, Wells Fargo Bank, N.A.'s deed of trust will be paid through escrow or in accordance with applicable non-bankruptcy law.

COMPENSATION

The motion proposes to pay 6% of the total purchase price as a commission to be split in half and shared by seller's broker with buyer's broker. The seller and buyer's broker are authorized to be compensated pursuant to the terms of the underlying agreements between the movant and the broker, and any orders approving the selling broker's appointment.

RELIEF UNDER § 363(m)

The court will grant relief under § 363(m). The Plan makes § 363 applicable to the sales of property encumbered by the Nicholson parties' lien. The Plan Administrator has no relationship with the proposed buyer, and there is no indication of any fraud, collusion, or unfair advantage in the process of the sale.

FREE AND CLEAR RELIEF

Based on the consent of the Nicholson parties in the stipulation attached as an exhibit, the court will grant the motion as to free and clear relief. The respondents have received notice of the relief sought, as they have been served, and they have not opposed the motion.

The sale will be free and clear of the lien of Daryl C. Nicholson, Trustee of the Daryl C. Nicholson and Victoria M. Nicholson Trust Agreement dated October 1, 1990, on the real property described above, and such lien shall attach to the proceeds of the sale with the same priority and validity as it had before the sale. The court will not approve the sale free and clear of any other lien or interest not identified in this paragraph.

The order shall state that the sale is free and clear of only the lien identified and that such lien shall attach to the proceeds of the sale with the same priority and validity as it had before the sale.

The order shall be approved by the signature of the attorney for the Nicholson parties. The order shall attach a copy of the stipulation permitting free and clear relief as an exhibit.

5. [10-62315](#)-A-11 BEN ENNIS
LRP-48
DAVID STAPLETON/MV
RILEY WALTER/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

MOTION TO EMPLOY SCHUIL &
ASSOCIATES, INC. AS BROKER(S)
6-9-15 [[1914](#)]

Tentative Ruling

Motion: Employ Real Estate Broker

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted

Order: Prepared by the movant

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The court has reviewed the motion and supporting declarations. The court will authorize the employment of Schuil & Associates, Inc. as real estate broker. This broker has experience in marketing agricultural properties similar to the subject real property known as Morton Hill, Tulare County, California (having the APNs referenced in the motion and supporting papers). The confirmed liquidating plan, moreover, contemplates court approval of brokers and other professionals. Using § 327(a) as a guide, the court concludes that the broker is disinterested and does not hold or represent an interest adverse to the bankruptcy estate and has no connection with any other party in interest or their respective attorneys and accountants, other than the connection to Six Palms Ranch.

6. [14-14241](#)-A-11 ARTHUR FONTAINE

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
8-25-14 [[1](#)]

D. GARDNER/Atty. for dbt.

No tentative ruling.

7. [14-14241](#)-A-11 ARTHUR FONTAINE
DMG-13

CONTINUED AMENDED DISCLOSURE
STATEMENT
4-29-15 [[168](#)]

D. GARDNER/Atty. for dbt.

Final Ruling

The matter is dropped as moot.

8. [14-14241](#)-A-11 ARTHUR FONTAINE
DMG-14

D. GARDNER/Atty. for dbt.

No tentative ruling.

DISCLOSURE STATEMENT FILED BY
DEBTOR ARTHUR B. FONTAINE
6-3-15 [[185](#)]

9. [13-13284](#)-A-11 NICOLETTI OIL INC.
LRP-9
EXXONMOBIL OIL CORPORATION/MV
DAVID GOLUBCHIK/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

No tentative ruling.

MOTION TO EXTEND TIME TO AMEND
PROOF OF CLAIM
6-10-15 [[484](#)]