



UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, July 17, 2024
Department A – Courtroom #11
Fresno, California

Unless otherwise ordered, all matters before the Honorable Jennifer E. Niemann shall be simultaneously: (1) **In Person** at, Courtroom #11 (Fresno hearings only), (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**. You may choose any of these options unless otherwise ordered or stated below.

All parties who wish to appear at a hearing remotely must sign up by 4:00 p.m. **one business day** prior to the hearing. Information regarding how to sign up can be found on the **Remote Appearances** page of our website at <https://www.caeb.uscourts.gov/Calendar/RemoteAppearances>. Each party who has signed up will receive a Zoom link or phone number, meeting I.D., and password via e-mail.

If the deadline to sign up has passed, parties who wish to appear remotely must contact the Courtroom Deputy for the Department holding the hearing.

Please also note the following:

- Parties in interest may connect to the video or audio feed free of charge and should select which method they will use to appear when signing up.
- Members of the public and the press appearing by ZoomGov may only listen in to the hearing using the zoom telephone number. Video appearances are not permitted.
- Members of the public and the press may not listen in to trials or evidentiary hearings, though they may appear in person in most instances.

To appear remotely for law and motion or status conference proceedings, you must comply with the following guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Parties appearing via CourtCall are encouraged to review the [CourtCall Appearance Information](#).

If you are appearing by ZoomGov phone or video, please join at least 10 minutes prior to the start of the calendar and wait with your microphone muted until the matter is called.

Unauthorized Recording is Prohibited: Any recording of a court proceeding held by video or teleconference, including "screen shots" or other audio or visual copying of a hearing is prohibited. Violation may result in sanctions, including removal of court-issued media credentials, denial of entry to future hearings, or any other sanctions deemed necessary by the court. For more information on photographing, recording, or broadcasting Judicial Proceedings, please refer to Local Rule 173(a) of the United States District Court for the Eastern District of California.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:30 AM

1. [24-11422](#)-A-12 **IN RE: IGNACIO/CASAMIRA SANCHEZ**
[CAE-1](#)

STATUS CONFERENCE RE: CHAPTER 12 VOLUNTARY PETITION
5-27-2024 [[1](#)]

PETER FEAR/ATTY. FOR DBT.

NO RULING.

2. [22-10778](#)-A-11 **IN RE: COMPASS POINTE OFF CAMPUS PARTNERSHIP B, LLC**
[KF-1](#)

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
3-27-2024 [[440](#)]

MERCED DIP LENDER LLC/MV
NOEL KNIGHT/ATTY. FOR DBT.
THOMAS PHINNEY/ATTY. FOR MV.
RESPONSIVE PLEADING

NO RULING.

1. [24-11106](#)-A-7 **IN RE: MARIO GAUDIO AND MISTY LOPEZ AMAYA**

PRO SE REAFFIRMATION AGREEMENT WITH WSECU
6-17-2024 [\[16\]](#)

SIMRAN HUNDAL/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped.

ORDER: The court will issue an order.

The debtors' counsel will inform the debtors that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. The debtors were represented by counsel when they entered into the reaffirmation agreement. Pursuant to 11 U.S.C. § 524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. In re Minardi, 399 B.R. 841, 846 (Bankr. N.D. Okla. 2009). The reaffirmation agreement, in the absence of a declaration by the debtors' counsel, does not meet the requirements of 11 U.S.C. § 524(c) and is not enforceable. The debtors shall have 14 days to refile the reaffirmation agreement properly signed and endorsed by the attorney.

1. [24-10947](#)-A-7 **IN RE: MIGUEL DELGADO AND YADIRA ORTEGA**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-19-2024 [\[25\]](#)

U.S. BANK NATIONAL ASSOCIATION/MV
WENDY LOCKE/ATTY. FOR MV.
DISMISSED 7/15/24

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted as to relief under 11 U.S.C. § 362(d)(4); denied as
moot as to relief under 11 U.S.C. § 362(d)(1).

ORDER: The Moving Party shall submit a proposed order in conformance
with the ruling below.

This motion was set for hearing on at least 28 days' notice prior to the hearing date pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

The movant, U.S. Bank National Association, as Trustee for Structured Adjustable Rate Mortgage Loan Trust, Mortgage Pass-Through Certificates, Series 2005-19XS ("Movant"), seeks relief from the automatic stay under 11 U.S.C. § 362(d)(1) and (d)(4) with respect to residential real property located at 820 Chavez Avenue, Calexico, California 92231 ("Property"). Doc. #25. Movant holds a promissory note ("Note") executed by Rosa Hall ("Borrower") and secured by a deed of trust against the Property. Decl. of Mary Gracia, Doc. #29; Exs. 1, 2 & 3, Doc. #27. On or about July 6, 2022, Borrower gifted an interest in the Property to Miguel Delgado and Yadira Ortega (together, "Debtors") by grant deed ("Grant Deed") without authorization from Movant and without recording the Grant Deed. Ex. 4, Doc. #27; Gracia Decl., Doc. #29. The Grant Deed was recorded on June 4, 2024, the same day as Movant's foreclosure sale under its deed of trust. Exs. 4 & 6, Doc. #27.

This bankruptcy case was dismissed on July 15, 2024 for the failure of Debtors to appear at the 341 meeting of creditors. Order, Doc. #43. Therefore, the request for relief pursuant to 11 U.S.C. § 362(d)(1) is moot pursuant to 11 U.S.C. § 362(c)(2)(B). In the dismissal order, however, the court retained jurisdiction to rule on and enter an order with respect to Movant's request for relief from stay pursuant to 11 U.S.C. § 362(d)(4). Order, Doc. #43.

Section 362(d)(4) of the Bankruptcy Code allows the court to grant relief from the stay with respect to real property

if the court finds that the filing of the [bankruptcy] petition was part of a scheme to delay, hinder, or defraud creditors that involved either [] a transfer of all or part ownership of, or other interest in such real property without the consent of the secured creditor or court approval; or [] multiple bankruptcy filings affecting such real property.

11 U.S.C. § 362(d)(4). To obtain relief under § 362(d)(4), the court must affirmatively find: (1) the debtor's bankruptcy filing is part of a scheme; (2) the object of the scheme is to delay, hinder, or defraud creditors; and (3) the scheme involves either (i) the transfer of some interest in real property without the secured creditor's consent or court approval or (ii) multiple bankruptcy filings affecting the property. First Yorkshire Holdings, Inc. v. Pacifica L 22 (In re First Yorkshire Holdings, Inc.), 470 B.R. 864, 870-71 (B.A.P. 9th Cir. 2011).

"A scheme is an intentional construct. It does not happen by misadventure or negligence." In re Duncan & Forbes Dev., Inc., 368 B.R. 27, 32 (Bankr. C.D. Cal. 2007). Because direct evidence of a scheme is uncommon, "the court must infer the existence and contents of a scheme from circumstantial evidence. The party claiming such a scheme must present evidence sufficient for the trier of fact to infer the existence and content of the scheme." Id.; see Jimenez v. ARCPE 1, LLP (In re Jimenez), 613 B.R. 537, 545 (B.A.P. 9th Cir. 2020).

Here, Debtors are not the borrowers on Movant's Note. Garcia Decl., Doc. #29. On or about July 6, 2022, Borrower granted an interest in the Property to Debtors that was not recorded and was not authorized by Movant. Id. As of November 1, 2022, the Note is in default for Borrower's failure to make payments with arrearages owed under the Note in the amount of \$24,208.00. Id.

On January 18, 2024, a Notice of Default was recorded in the official records for the County of Imperial based on Borrower's default. Ex. 5, Doc. #27. On April 15, 2024, Debtors filed this chapter 7 bankruptcy case. Doc. #1. Debtors did not disclose an interest in the Property based on the unrecorded Grant Deed on their original bankruptcy schedules filed on April 25, 2024. Sch. A/B, Doc. #15.

On April 23, 2024, a Notice of Trustee's Sale was recorded in the Official Records for the County of Imperial that scheduled a foreclosure sale of the Property for June 4, 2024. Ex. 6, Doc. #27. On same day as the scheduled foreclosure sale, the Grant Deed was recorded, and Debtors filed an Amended Schedule A disclosing their interest in the Property. Ex. 4, Doc. #27, Am. Sch. A/B, Doc. #22.

The court finds that Movant has made the requisite showing under 11 U.S.C. § 362(d)(4) because the recordation of the Grant Deed and amendment of Debtors' bankruptcy schedules were part of a scheme to hinder and delay Movant's foreclosure sale of the Property. Borrower transferred an unauthorized interest in the Property to Debtors pre-petition that was not recorded or disclosed in Debtor's bankruptcy case until the day Movant's foreclosure sale was scheduled, notwithstanding the fact that the interest in the Property had been transferred to Debtors nearly two years before that date.

Accordingly, the motion is granted pursuant to 11 U.S.C. § 362(d)(4). Because the actions of Debtors were part of a scheme to hinder and delay Movant's foreclosure sale, the 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is waived.