

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

August 1, 2024 at 11:00 a.m.

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1. [23-23523-E-7](#) **THE RETREAT AT ROYAL** **CONTINUED STATUS CONFERENCE RE:**
[23-2098](#) **GREEN, LLC. CAE-1** **NOTICE OF REMOVAL**
FARRIS V. THE RETREAT AT ROYAL **11-27-23 [1]**
GREEN LLC ET AL

Plaintiff's Atty: Michael J. Harrington
Defendant's Atty: unknown

Adv. Filed: 11/27/23
Answer: none

Nature of Action:
Determination of removed claim or cause

Notes:
Continued from 7/10/24 [specially set day and time]. Counsel for the Plaintiff-Trustee reporting that he will file an amended complaint.

The Status Conference is XXXXXXX
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AUGUST 1, 2024 STATUS CONFERENCE

The court's July 30, 2024 review of the Docket did not disclose any further pleadings having been filed.

At the Status Conference, XXXXXXX

JULY 10, 2024 STATUS CONFERENCE

On November 27, 2023, Chapter 7 Trustee Nichole Farris, filed a Notice of Removal of a State Court Action to Federal Court. Dckt. 1. The Plaintiff-Trustee has so removed the State Court Action as the successor in interest to the plaintiffs named in the State Court Complaint.

The basis for removal includes that the State Court Complaint seeks to avoid transfers and seeks damages for transfers of assets made by Debtor Antonette Tin, Debtor Royal Green LLC, and several others.

Status Reports

A Joint Status Report was filed by Plaintiff-Trustee and Defendants Erlinda B. Lynch, Alfred B. Tin, Antonio B. Tin, and Exequiel Allan Fernando on July 3, 2024.

These Parties suggest the following dates and deadlines in this Adversary Proceeding:

1. Rule 24 Disclosures.....July 31, 2024
2. Discovery
 - a. Opens.....July 31, 2024
 - b. Closes, including the hearing of any Discovery Motions.....January 31, 2025
3. Experts
 - a. Disclosure of Experts as provided in Federal Rule of Civil Procedure 26(a)(2).
 - (1) Fed. R. Civ.P. 26(a)(2):
 - (a) Allows disclosure of experts to be made at least 90 before the date set for trial.
 - (b) Allows disclosure of experts to contradict or rebut other party's expert within 30 days of the other party's expert.
4. Dispositive Motions set for hearing before.....March 31, 2025.

In the Notice of Removal, Plaintiff-Trustee states that federal court jurisdiction exists for the Removed Action pursuant to 28 U.S.C. § 1334(b) in that it is related to the consolidated Bankruptcy Case of Antoinette Tin and The Retreat at Royal Green, LLC, consolidated Case Number 23-23834.

The Notice of Removal estates that Plaintiff-Trustee consents to entry of final orders and the judgment by the Bankruptcy Court. Notice, ¶ 3; Dckt. 1. The Action seeks to avoid transfers of real properties, or recover the economic value thereof, transferred by Debtor The Retreat at Royal Green and Debtor Antoinette Tin.

At the Status Conference, counsel for the Plaintiff-Trustee reported that he will file an amended complaint to narrow down the defendants and state the specific avoidance claims, as well as determination of the rights and interests in specific properties. The Complaint was filed in State Court by a creditor, and now the Trustee in the related Consolidated Bankruptcy Case has been assigned all rights of the Creditor

asserted in the State Court Complaint pursuant to a Settlement Agreement that has been approved by the court.

The Status Conference is continued to 11:00 a.m. on August 1, 2024.

FINAL BANKRUPTCY COURT JUDGMENT

Plaintiff-Trustee Nichole B. Farris in the Notice of Removal that jurisdiction for this Adversary Proceeding exists pursuant to 28 U.S.C. §§ 1334(b), and pursuant to Federal Rule of Bankruptcy Procedure 9027(a)(1) consents to the Bankruptcy Court entering final orders and judgment in this Adversary Proceeding. Notice of Removal, ¶¶ 1, 3, Dckt. 1.

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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

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's Attorney, Chapter 7 Trustee, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on July 11, 2024. By the court's calculation, 21 days' notice was provided. 14 days' notice is required.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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, -----.

<p>The Motion to Employ is granted.</p>
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**Incorrect Filing of Motion
in Adversary Proceeding**

The Debtor incorrectly filed this Motion in the Adversary Proceeding and not the related Bankruptcy Case, 22-22329. This appears to have been due to a clerical error, the Adversary Proceeding number having been left on the pleading that is captioned for the Bankruptcy Case.

The court deems this not to be a substantive error and can easily be corrected with the court ordering the Motion to also be filed in the Bankruptcy Case. As documented in the Amended Certificate of Service (Dckt. 38 in the Adversary Proceeding), Debtor Movant has served the parties in interest in the Bankruptcy Case, not merely the Adversary Proceeding. Given that the employment and allowance of compensation is subject to further review and order of the court, including as provided in 11 U.S.C. § 328, also addresses the ability of any party in interest to address any undisclosed issues or questions concerning the employment.

Additionally, this employment is requested pursuant to the terms of the court approved Stipulation (22-22329; Order, Dckt. 53) which resolves this Adversary Proceeding.

REVIEW OF MOTION

Jim Allen Hickerson (“Debtor”) seeks to employ Chad DeMasi, real estate agent with Echelon Real Estate (“Broker”) pursuant to Local Bankruptcy Rule 9014-1(f)(2) and Bankruptcy Code Sections 327(a) and 330. Debtor seeks the employment of Broker to market and sell his real property, located at 2301 Muir Woods Place, Davis, California 95616 (“Property”).

Debtor argues that Broker’s appointment and retention is necessary to assist him with the sale of his residence, which sale is called for in the Debtor’s proposed Settlement Agreement with secured creditors Mark Mustybrook and Dionna Mustybrook. Mot. 2:5-7, Docket 32. The agreement includes a 5% broker’s fee.

Chad DeMasi testifies that he is an experienced real estate agent and will assist Debtor in marketing and selling the Property. Decl. 2:3-14, Docket 34. Chad DeMasi testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. *Id.* at 2:15-3:7.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee’s duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Chad DeMasi, real estate agent with Echelon Real Estate for the Debtor on the terms and conditions set forth in the Residential Listing Agreement filed as Exhibit A, Dckt. 35. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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 to Employ filed by Jim Allen Hickerson (“Debtor”) 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 Motion to Employ is granted, effective July 8, 2024, and Debtor is authorized to employ Chad DeMasi, real estate agent with Echelon Real Estate, Broker for Debtor on the terms and conditions as set forth in the Residential Listing Agreement filed as Exhibit A, Dckt. 35.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by Broker in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

IT IS FURTHER ORDERED that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

SUBCHAPTER V

Debtor's Atty: Stephen M. Reynolds

Notes:

[RLC-00] Application to Approve Employment of Attorney filed 6/11/24 [Dckt 10] - *no notice of hearing or proposed order submitted*

[RLC-1] Debtor's Motion for Final Order 11 U.S.C. § 363 Authorizing Use of Cash Collateral, Granting Replacement Liens, and Approving DIP Budget filed 6/12/24; Interim Order granting filed 7/15/24 [Dckt 37]

Plan of Reorganization for Small Business Debtor Under Chapter 11, Subchapter V filed 6/17/24 [Dckt 21]; Order Setting Confirmation Hearing and Related Deadlines filed 6/18/24 [Dckt 22]; [RLC-3] Notice of Hearing on Plan Confirmation filed 7/9/24 [Dckt 30]

[RLC-2] Order on Application to Approve Employment of Attorney filed 7/8/24 [Dckt 29]

[RLC-4] Motion for Order authorizing Maintenance of Prepetition Accounts filed 7/15/24 [Dckt 34]

Status Conference Statement filed 7/18/24 [Dckt 39]

Trustee Report at 341 Meeting lodged 7/23/24

The Status Conference is XXXXXXX
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AUGUST 1, 2024 STATUS CONFERENCE

The Debtor commenced this voluntary Subchapter V Case on June 10, 2024. The court has entered an Interim Order authorizing the use of cash collateral through and including September 30, 2024. Order; Dckt. 37.

The Subchapter V Plan was filed on June 17, 2024, and the confirmation hearing is set for August 22, 2024. The deadline for filing Oppositions to Confirmation is August 8, 2024.

The Debtor/Debtor in Possession filed a Status Conference Report on July 18, 2024. Dckt. 39. In it the Debtor/Debtor in Possession summarizes the economic events which led up to the filing of the current Bankruptcy Case.

It is further stated that while the liquidation value for the automated carwash business and property is \$3,700,000, the Debtor/Debtor in Possession asserts that its operating value is much higher. The Debtor/Debtor in Possession does not anticipate filing any motions to value the secured claims of creditors.

The main creditor in this Bankruptcy is Patriot Bank, which has a secured claim which is asserted by the Bank to be in excess of \$3,750,000 (Opposition to Motion to Use Cash Collateral, ¶ A.2.; Dckt. 25) and the Debtor/Debtor in Possession is working with the Bank to achieve a consensual Plan.

At the Status Conference, **XXXXXXX**

4. [24-22538-E-11](#) **PLAZA ESTATES LLC**
[CAE-1](#)

**STATUS CONFERENCE RE:
VOLUNTARY PETITION
6-11-24 [\[1\]](#)**

Debtor's Atty: Lewis Phon

Notes:

[BAL-1] Motion for Relief from the Automatic Stay filed 6/24/24 [Dckt 15]

[LP-1] *Ex Parte* Application to Extend Deadline to File Remaining Bankruptcy Schedules filed 6/24/24 [Dckt 22]; Order filed 6/26/24 [Dckt 28]

Statement Regarding Ownership of Corporate Debtor/Party filed 7/9/24 [Dckt 42]

Trustee Report at 341 Meeting lodged 7/18/24

Status Conference Statement filed 7/18/24 [Dckt 54]

The Status Conference is XXXXXXX
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AUGUST 1, 2024 STATUS CONFERENCE

The Debtor commenced this voluntary Chapter 11 Case on June 11, 2024. A review of the Docket on July 30, 2024, indicates that no Status Report has been filed and no Monthly Operating Report for June, 2024, has been filed.

At the Status Conference, **XXXXXXX**