UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

August 4, 2022 at 2:00 p.m.

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1. **18-90090-E-7** **CLIFFORD BARBERA**
18-9010 **CAE-1**

BOWERS ET AL V. BARBERA

CONTINUED STATUS CONFERENCE RE: COMPLAINT
6-11-18 [1]

Plaintiff's Atty: Bryan Silverman
Defendant's Atty: Pro Se

Adv. Filed: 6/11/18
Answer: 7/18/18

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - willful and malicious injury

Notes:
Continued from 1/27/22. On or before 7/20/22 Parties to file and serve updated status report(s) as to the status of the State Court Actions and the timing of further proceedings.

Updated Status Report [Plaintiffs] filed 7/19/22 [Dckt 52]

The Status Conference is continued to 2:00 p.m. on February 16, 2023.

AUGUST 4, 2022 STATUS CONFERENCE

Plaintiff filed an Updated Status Report on July 19, 2022. Dckt. 52. The *Bowers, et al. v. Priceless Kitchen & Bath, Inc., et al.* State Court Action in which fraud claims are asserted against Defendant-Debtor is set for trial on October 10, 2022. Defendant-Debtor is actively defending against such fraud claims.

In the *Chekene et al. v. Bowers et al.* State Court Action, Plaintiff's cross-complaint against Defendant-Debtor is not set for trial March 3, 2023.

Plaintiff requests that the Status Conference be continue six months to allow the Parties to focus on the State Court Actions.

At the Status Conference, **XXXXXXX**

JANUARY 27, 2022 STATUS CONFERENCE

On July 11, 2021, this court entered an order authorizing Diana J. Cavanaugh to withdraw as counsel for Defendant Clifford Barbera. Dckt. 45.

On January 20, 2022, Plaintiff filed an Updated Status Report. Dckt. 48. Fact discovery in the State Court Action closed on December 31, 2021 in *Bowers et al. v. Priceless Kitchen & Bank, Inc., et al*. A mandatory settlement conference is set in that State Court Action for February 23, 2022. No trial date has be set.

In the *Chekene et al. v. Bowers et al.* State Court Action,, for which a cross complaint has been filed against Defendant-Debtor, a mandatory settlement conference was held on December 15, 2021, but that Action did not settle. Fact discovery closes on February 28, 2022, and a case management conference is set for March 8, 2022, with an estimated trial date being in the Fall of 2022.

Plaintiffs request a six month continuance of the Status Conference to allow the Parties to concentrate on the State Court litigation for which the automatic stay has been modified.

AUGUST 6, 2020 STATUS CONFERENCE

The Parties filed their Joint Status Report on July 23, 2020. Dckt. 35. They report that the State Court Actions are still being prosecuted and they request further continuance. The parties will file an updated status report prior to the January 28, 2021 continued Conference.

FEBRUARY 6, 2020 STATUS CONFERENCE

By prior order, the court has stayed this Adversary Proceeding to allow the parties to complete their state court litigation to final judgment. Order, Dckt. 28. By that Order, updated status reports were to be filed by January 13, 2020.

No Status Reports have been filed by either Party, and each of the Parties are in violation of the court's prior order.

One of the related actions has proceeded to arbitration in August 2019. The arbitrator has prepared, but has not yet issued the final award.

The second action, in state court, has a case management conference on February 24, 2020, but no trial date has been set.

2. **10-90281-E-7 LORRAINE/GARY ERWIN** **CONTINUED STATUS CONFERENCE RE: COMPLAINT**
21-9005 CAE-1 **5-24-21 [1]**

ERWIN ET AL V. U.S. BANK, NATIONAL ASSOCIATION ET AL

Plaintiff's Atty: Darren Marcus Salvin
Defendant's Atty: unknown

Adv. Filed: 5/24/21
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property

Notes:
Continued from 6/16/22. Order continuing Status Conference and Order to Appear filed 6/21/22 [Dckt 63]

Order denying Motion for Entry of Default Judgment without prejudice filed 6/22/22 [Dckt 64]

The Status Conference is continued to 2:00 p.m. on xxxxxxx , 2022.

On May 24, 2021, Lorraine Erwin and Gary Erwin, the Plaintiff-Debtor, commenced this Adversary Proceeding to quiet title to their real property commonly known as 1320 Oak Leaf Circle, Oakdale, California (the "Property"). Dckt. 1. U.S. Bank, National Association, U.S. Bancorp, and Saxon Mortgage Services, Inc. (as the loan servicer) were named as Defendants.

Plaintiff-Debtor's related bankruptcy case, 10-90281, was originally filed on January 28, 2010, as a Chapter 13 case. On February 9, 2010, Proof of Claim 3-1 was promptly filed for U.S. Bank, National Association, as trustee for the MSM 2006-14L pass-through certificates ("U.S. Bank, Trustee"). In Proof of Claim 3-1, Saxon Mortgage Services, Inc. is identified as the person to whom notices should be sent and payments on the claim be made. The information about the claim provided in Proof of Claim 3-1 ("POC") includes:

A. The amount of the Claim is ($121,274.24). POC, ¶ 1.

B. The claim is secured by real property commonly known as 1320 Oak Leaf Circle, Oakdale, California, and is fully secured. POC, ¶ 4.

On September 17, 2010, a second proof of claim was filed for U.S. Bank, Trustee, Proof of Claim 21-1. This was filed following the court issuing an order valuing U.S. Bank, Trustee's secured claim at $0.00, it secured by a junior lien for which there was no value in the Property, and being an unsecured claim for distribution under Debtor's Chapter 13 Plan. 10-90281; Stipulation to Value, Dckt. 46, and Order, Dckt. 48.

However, on August 31, 2022, this case was converted to one under Chapter 7 at the request of Plaintiff-Debtor. Plaintiff-Debtor, and each of them, obtained their discharges and the Chapter 7 Case was closed.

In 2017, this Chapter 7 case was reopened and the Chapter 7 Trustee reappointed to address a discovered asset, a discovered class action tort recovery relating to pre-petition possible injury to one of the Plaintiff-Debtor.

On September 3, 2019, the court entered an order approving the Settlement of the claim and allowing for the class action recovery of $200,000.00, with a net recovery to the bankruptcy estate of $116,388.26 (after payment of Special Counsel fees and expenses in the class action). 10-90281; Civil Minutes, Dckt. 182, and Order, Dckt. 184.

As addressed in the Order to Show Cause (10-90281; RHS-2, Dckt. 254) issued in the related Bankruptcy Case, the Chapter 7 Trustee attempted to distribute $47,805.58 to U.S. Bank, Trustee on its claim. These monies would reduce the obligation which is purported to be secured by the Deed of Trust recorded against the Plaintiff-Debtor's Property. U.S. Bank, Trustee failed to negotiate the distribution checks. Plaintiff-Debtor filed a claim for payment of the unclaimed monies, the $47,805.58 the Trustee attempted to pay U.S. Bank, Trustee on its claim for which a deed of trust encumbers the Plaintiff-Debtor's Property. The court denied the request for payment of such monies to the Plaintiff-Debtor.

The Order issued by the court pursuant to the Order to Show Cause provides that Plaintiff-Debtor is designated as the representative of the Bankruptcy Estate to adjudicate the proper person to whom the $47,805.58 is to be distributed. The order notes that such proceedings may be conducted in conjunction with any quiet title and enforcement of contract action Plaintiff-Debtor may need to pursue.

INFORMATION PRESENTED TO THE COURT CONCERNING U.S. BANK, TRUSTEE AND OCWEN FINANCIAL CORPORATION

Counsel for Plaintiff-Debtor reports that both U.S. Bank, Trustee and Ocwen Financial Corporation, and their respective representatives, have been very responsive to the 2004 Examination subpoenas and communications from Plaintiff-Debtor's counsel.

As stated in connection with a recent Motion for Entry of Default Judgment against U.S. Bank, Trustee, U.S. Bank, Trustee and Ocwen Financial Corporation both report that there are no records of any obligation owing that is secured by the Deed of Trust recorded against Plaintiff-Debtor's Property.

It appears that Plaintiff-Debtor, U.S. Bank, Trustee, and Ocwen Financial Corporation (as the successor to Saxon Mortgage Services, Inc.) are having to deal with a remnant of the mid-2000's loan making and loan portfolio extravaganza that brought us the Great Recession of 2008.

The court has for U.S. Bank, Trustee, it stated under penalty of perjury that U.S. Bank, Trustee has a claim that is secured by Plaintiff-Debtor's Property. 10-90281; Proof of Claim 3-1, 21-1. That Deed of Trust continues to encumber Plaintiff-Debtor's Property, impairing Plaintiff-Debtor's fresh start, now more than a decade after their Chapter 7 case.

U.S. Bank, Trustee and Ocwen Financial Corporation are reported to confirm that they have no documentation of any obligation owing to U.S. Bank, Trustee that is secured by the Deed of Trust for which

U.S. Bank, Trustee is the beneficiary. Documents provided in connection with the recent Motion for Default Judgment (which was denied without prejudice) include:

A. Exhibit C; Dckt. 53 - Letter Dated January 26, 2022 on U.S. Bancorp, Corporate Law Division, 800 Nicollet Mall / BC-MN-H21P, Minneapolis, MN 55402.

1. In this Letter U.S. Bank, N.A. responds to the Subpoena requesting document regarding any loan and liens of Plaintiff Debtor which are secured by the Property. (Subpoena, Exhibit B; Id.)

2. The response; which is signed by Carla Walsh, Paralegal/Records Coordinator; to the subpoena is (emphasis added):

> Dear Requestor:
>
> I am writing to you on behalf of U.S. Bank, N.A., in response to the Subpoena, which was served and received, in our department.
>
> A search of U.S. Bank has been completed. **No accounts found are responsive to your request.**
>
> If you have any questions, please do not hesitate to contact me.

B. Exhibit D; Id. – Email dated January 3, 2022, from Brad Weber, Paralegal at U.S. Bank Corporation Trust Services, 60 Livingston Avenue, St. Paul, MN 55107, also responding to the subpoena which includes (emphasis added):

> Please accept this correspondence as a formal response to the Subpoena issued by you to U.S. Bank National Association ("U.S. Bank") regarding the above referenced matter. Your request sought documents and information pertaining to property located at 1320 Oak leaf Cir, Oakdale, CA 95361 (the "property"). In making this response, U.S. Bank does not waive any right to object to the subpoena and, the manner of service or seek a limitation on the nature or scope of any response.
>
> Our research has determined that the **loan** secured by the above referenced property is part of the Residential Mortgage Backed Security ("RMBS") Trust designated as **Morgan Stanley Mortgage Loan Trust Mortgage Pass-Through Certificates Series 2006-14SL**. U.S. Bank National Association serves as Trustee for Morgan Stanley Mortgage Loan Trust Mortgage Pass-Through Certificates Series 2006-14SL. **As Trustee, we do not receive nor do we maintain the information that you seek.** The party to the Trust who would most likely have responsive information to your inquiry is the loan servicer. The loan servicer in this case was Saxon Mortgage Services , Inc. their address is 8951 Cypress Waters Blvd, 1st floor, Coppell, TX 75019 Email address pazura@morqanstanley.com maryt@morqanstanley.com care of Morgan Stanley. The servicer is the entity

> that is most likely to have the information responsive to your subpoena. **We do not have any other documents or information responsive to your subpoena**. Based on the foregoing, my understanding is that no further response or appearance by U.S. Bank is required.
>
> Please do not hesitate to contact Michael Patiuk, Vice President, GSF Specialized MBS Services - Mortgage Disputes, or myself, if you have questions or need further assistance with this inquiry. He may be reached at Michael.patiuk@usbank.com.

In seeing the above response, it appears that U.S. Bank, Trustee is stating that Morgan Stanley may also need to have a "seat at the table," even though U.S. Bank, Trustee is the trustee responsible for the alleged debt.

C. Exhibit F; Id. – Letter dated February 22, 2022, from Courtney Kleiser, Esq., Houser, LLP, 350 Highway 7, Ste 216, Excelsior, MN, 55331.

1. The response provided by Ms. Kleiser is made for Ocwen Financial Corporation in response to the subpoena served on it (Exhibit E, subpoena; *Id.*) is (emphasis added):

> Our firm represents Ocwen Financial Corporation and we are in receipt of the subpoena that was issued to our client in the above referenced matter. Our client conducted a good faith and reasonable search but **was unable to locate the archived Saxon loan and the matter remains unidentified.**

Thus, the situation is one in which while U.S. Bank, Trustee and Ocwen Financial Corporation state that they cannot provide any evidence of an obligation owed by Plaintiff-Debtor that is secured by the Deed of Trust for which U.S. Bank, Trustee is the beneficiary, the Deed of Trustee is allowed to continue to encumber the Property.

Additionally, though U.S. Bank, Trustee refuses to accept any payment on the obligation that is purported to be secured by the Deed of Trust encumbering Plaintiff-Debtor's Property, and U.S. Bank, Trustee has a proof of claim filed under penalty of perjury asserting a claim secured by Plaintiff-Debtor's Property, the Deed of Trust is allowed to continue to encumber the Plaintiff-Debtor's Property and has not been reconveyed.

Again it needs to be recognized that the Plaintiff-Debtor has been **highly complimentary of U.S. Bank, Trustee and Ocwen Financial Corporation in their responses to the discovery and information requests**. The court does not issue this Order to Appear because of negative comments or a misconduct problem to address, but because it perceives there being a need to get everyone in the same room (even if it is virtually) to address a situation before other possible attorneys get involved who would take a more adversarial, big money approach to these issues.

For the August 4, 2022 Status Conference, the court ordered that U.S. Bank, National Association, as trustee, and Ocwen Financial Corporation, and their respective counsel, appear at said Status Conference.

At the Status Conference, **xxxxxxx**

3. 22-90047-E-7 JEFFREY SMITH — **STATUS CONFERENCE RE: COMPLAINT**
22-9001 CAE-1 — **5-25-22 [1]**

HATMAKER V. SMITH

Plaintiff's Atty: Bashar S. Ahmad
Defendant's Atty: Pro Se

Adv. Filed: 5/25/22
Answer: none

Nature of Action:
Dischargeability - willful and malicious injury

Notes:
Stipulation to Extension of Time to Respond to Plaintiff's Adversary Complaint filed 6/24/22 [Dckt 9]; Order Extending Time to Respond to Plaintiff's Adversary Complaint [through and including 7/22/22] filed 6/29/22 [Dckt 10]

As of 7/28/22, no Response to Complaint filed

The Status Conference is xxxxxxx

AUGUST 4, 2022 STATUS CONFERENCE

On July 29, 2022, Plaintiff filed a Status Conference Statement. Dckt. 12. In it Plaintiff recounts the failure of Defendant-Debtor to respond to the Federal Summons and Complaint.

On July 28, 2022, the day before the filing of Plaintiff's Status Conference Statement Plaintiff's counsel said they reached out to Defendant-Debtor as to the status of the answer or other responsive pleading.

Plaintiff reports that now the Parties have agreed to mediate through the State Court Action. The Complaint in the State Court Action was filed October 19, 2021. Exhibit, Dckt. 6. Defendant-Debtor commenced his voluntary Chapter 7 case on February 10, 2022, and his discharge, which is not effective at this time to the claims of Plaintiff asserted in the Complaint, was entered on June 6, 2022.

At the Status Conference, **xxxxxxx**

SUMMARY OF COMPLAINT

The Complaint filed by Johnny Hatmaker ("Plaintiff"), Dckt. 1 , asserts claims seeking the determination that his claims in the pending State Court Action, CV-21-005691, are nondischargeable pursuant to 11 U.S.C. § 523(a)(6) as injury from willful and malicious conduct.

SUMMARY OF ANSWER

Jeffrey Smith ("Defendant-Debtor") has not filed an Answer or other responsive pleading.

Pursuant to an agreement of the Parties, the court entered an order extending the time for Defendant-Debtor to response to July 22, 2022. Order, Dckt. 10.

4. **22-90160-E-11 CAE-1** **EAGLE LEDGE FOUNDATION, INC.** **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 5-18-22 [1]**

4 thru 6

Debtor's Atty: Dennis D. Miller, Kathleen L. DiSanto

Notes:
Continued from 6/30/22

Operating Reports Filed: 7/14/22

[DDM-10] Debtor in Possession's Application for Authorization to Employ Mauck & Baker, LLC as Special Litigation Counsel for the Debtor in Possession filed 7/8/22 [Dckt 95]

[DDM-3] Final Order Granting Debtor's Emergency Motion for Authority to Pay Affiliate Officers' Salaries, Compensation, and Benefits filed 7/12/22 [Dckt 99]

[DDM-5] Second Interim Order Granting Motion for Interim and Final Orders Authorizing the Use of Cash Collateral, Granting Replacement Liens, Providing Adequate Protection, and Approving DIP Budget and Setting Hearing filed 7/12/22 [Dckt 100]

U.S. Trustee Report at 341 Meeting lodged 7/14/22

[DDM-8] Debtor in Possession's Application for Order Authorizing Employment of Ray Jones as Bookkeeper filed 7/12/22 [Dckt 101]; Order granting filed 7/19/22 [Dckt 108]

[DDM-9] Order Approving Debtor in Possession's Application for Order Authorizing Employment of Wren Kelly CPAs, LLP as Accountant filed 7/19/22 [Dckt 107]

Debtor in Possession's Second Status Report filed 7/27/22 [Dckt 109]

The Status Conference is continued to 2:00 p.m. on xxxxxxx , 2022.

AUGUST 4, 2022 STATUS CONFERENCE

On July 27, 2022, the Debtor in Possession filed an updated Status Report. Dckt. 109. At this juncture the open matters are two employment applications set for final hearing.

At the Status Conference, **xxxxxxx**

5.	**22-90160-E-11 DDM-1**	**EAGLE LEDGE FOUNDATION, INC.** **Dennis Miller**	**CONTINUED MOTION TO EMPLOY KATHLEEN L. DISANTO AS ATTORNEY(S)** **5-26-22 [13]**

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)(4) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Office of the United States Trustee on May 26, 2022. The court set the hearing for June 7, 2022. Dckt. 44.

The Motion to Employ was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(4). Debtor, creditors, 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.

The Motion to Employ is xxxxxxxxxxxx

Eagle Ledge Foundation, Inc., the Debtor in Possession, (though misstated as the "Debtor" in the Application) seeks to employ Kathleen L. DiSanto and her law firm of Bush Ross, P.A. as Counsel for the Debtor ("Counsel") pursuant to 11 U.S.C. §§ 327(a), 328, 329 and Federal Rules of Bankruptcy Procedure 2014(a), 2016. And 5002, and Local Bankruptcy Rule 2014-1.

At the June 7, 2022 hearing, Ms. DiSanto confirmed on the record that the employment authorization requested pursuant to 11 U.S.C. § 327 is for representation of the Debtor in Possession, not the Debtor.

Debtor seeks the employment of Counsel to provide legal advice, prepare court documents on behalf of Debtor in Possession, appear before the court, assist with negotiations with creditors, represent the Debtor in Possession in this case, and perform any other legal services required.

Debtor argues that Counsel's appointment and retention is necessary for administration of its Chapter 11 case. Debtor has agreed to compensate Counsel based on their firm's prevailing rates, which range from $225.00 to $500.00 per hour for attorneys and from $125.00 to $145.00 per hour for paralegals. Debtor states the lead counsel will be Kathleen DiSanto, whose current hourly rate is $375.00 per hour. Any additional compensation will be requested in accordance with the Bankruptcy Code.

Ms. Disanto states the firm does not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with creditors, the U.S. Trustee, any other party in interest, or their respective attorneys. However, Ms. Disanto does inform the court that Randy Sterns, an attorney and shareholder at the firm, is the manager and sole member of C3 Servants, LLC, and thus serves as the collateral agent for the certificate holders, who are creditors of Debtor in Possession. However, because the firm does not represent C3 Servants, LLC, and because Counsel will screen themselves off the issue if any dispute arises between Debtor in Possession and C3 Servants, LLC, Ms. DiSanto does not believe there is any actual conflict of interest.

At the June 7, 2022 hearing Ms. DiSanto confirmed on the record that the employment requested pursuant to 11 U.S.C. § 327 is for employment as counsel for the Debtor in Possession, and not the Debtor.

APPLICABLE LAW

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.

The Motion expressly states that the request for employment is as an attorney for the Debtor and not the Debtor in Possession exercising the rights and power of a trustee, and having the fiduciary obligations to the bankruptcy estate of a trustee.

Congress provides in 11 U.S.C. § 327 for the employment of professionals by a bankruptcy trustee, which authorization to employ may be exercised by the Debtor in Possession in a Chapter 11 case. 11 U.S.C. § 1107. With respect to employment of a professional by a Debtor in Possession pursuant to 11 U.S.C. § 327, Congress provides in 11 U.S.C. § 1107(c) that (emphasis added):

> (b) Notwithstanding section 327(a) of this title, a person **is not disqualified** for **employment under section 327** of this title **by a debtor in possession** solely because of such person's employment by or representation of the debtor before the commencement of the case.

Definition of Debtor and Debtor in Possession

It is the Debtor who seeks authorization to employ counsel. Congress has specifically defined the term "debtor" as follows:

> (13) The term "debtor" means person or municipality concerning which a case under this title has been commenced.

11 U.S.C. § 101(13). In this case the "Debtor" is Eagle Ledge Foundation, Inc. Upon the filing of this case, all rights, interests, and property of the "Debtor" because property of the bankruptcy estate. 11 U.S.C. § 541(a). In a Chapter 11 case, the "Debtor" does not have control over or the right to use property of the bankruptcy case, but the Chapter 11 trustee does. 11 U.S.C. §§ 1106(a)(1), 704(a).

However, if a trustee is not appointed, the "Debtor in Possession" may exercise right and duties, and perform all functions and duties of a trustee (with certain enumerated exceptions). 11 U.S.C. § 1107. It is the "Debtor" who serves as the "Debtor in Possession." Serving as the "Debtor in Possession" is akin to that of being a trustee of a trust, a fiduciary position separate from the individual "Debtor" and the individual "Debtor's" rights and interests.

Statutory Authority Cited by Proposed Counsel for Debtor

11 U.S.C. § 327 provides for the trustee, with court approval, to employ professionals. In a Chapter 11 case where no trustee has been appointed, it is the Debtor in Possession, not the Debtor, who may employ a professional pursuant to 11 U.S.C. § 1107.

11 U.S.C. § 328 does not provide a legal basis for the court authorizing a Debtor to employ a professional. Rather, it states limitations on compensation for professionals authorized to be employed pursuant to 11 U.S.C. § 327 by the Debtor in Possession (or a creditors' committee as provided in 11 U.S.C. § 1103).

11 U.S.C. § 329 does not provide a legal basis for the court authoring a Debtor to employ a professional. Rather, it creates a federal law basis for the court to review compensation of an attorney representing a Debtor, and to disallow amounts in excess of reasonable compensation.

As noted in 3 Collier on Bankruptcy, ¶ 327.05[3] with the enactment of the Bankruptcy Reform Act of 1994, the attorney for the Debtor cannot be compensated from property of the bankruptcy estate. This was stated by the United States Supreme Court in *Lamie v. United States*, 540 U.S. 526, 538, 540-541, (2004), holding:

> Adhering to conventional doctrines of statutory interpretation, we hold that § 330(a)(1) does not authorize compensation awards to debtors' attorneys from estate funds, unless they are employed as authorized by § 327.
> . . .
> Amendment 1645, viewed in its entirety, gives further reason to think Congress may have intended the change. The amendment added a new section that authorizes fee awards to debtors' attorneys in chapter 12 and 13 bankruptcies. 140 Cong. Rec., at 8383 (setting out new 11 U.S.C. § 330(a)(4)(B) [11 USCS § 330(a)(4)(B)]). Since the amendment's deletion of "or the debtors [sic] attorney" from the original proposed draft affected chapter 12 and 13 debtors' attorneys as much as chapter 7 debtors'

attorneys, § 330(a)(4)(B) shows a special intent to authorize the formers' fee awards in the face of the new, broad exclusion.

Disclosed Conflict

In the Motion, attorneys Dennis Miller and Kathleen DiSanto disclose, acknowledge, and apparently admit that a conflict of interest exists between the BR Law Firm and the Bankruptcy Estate in this case, stating:

> 18. In the interests of full disclosure, Randy Sterns, an attorney and shareholder at Bush Ross, is the manager and sole member of C3 Servants, LLC, a Florida limited liability company, which serves as the collateral agent (the "Collateral Agent") for the certificate holders, who are creditors of the Debtor, pursuant to the Certificates of Participation Standby Holder Representative and Security Agreement (the "Holder Representative Agreement"). The Holder Representative Agreement was approved by the certificate holders prior to the Petition Date.

The Certificate is filed as Exhibit A in support of this Motion. Dckt. 15. It defines the Collateral Agent, the LLC of which a BR Law Firm shareholder is the manager and sole member, is defined to mean:

> "Collateral Agent" means the entity, person or persons appointed by the Foundation to serve as the agent and secured party under this Agreement. In the event of default by the Foundation under the Certificates, the Holders are entitled to elect a Representative that will replace Legal Servants, LLC, as Collateral Agent.

Exhibit A, p. 2; Dckt. 13. In the Certificate, it states that Debtor is issuing $20,000,000 in certificates for which the "Collateral Agent," the BR Law Firm Shareholder's LLC, is the "secured party."

For the "Required Documentation," the notes issued for the $20,000,000 in certificates by the Debtor, the note and allonge is to make those notes for which the Debtor is the payor, are made to pay to the order of the BR Law Firm Shareholder's LLC. Id., p. 4.

This required document section continues requiring all of the "documentation" which would be provided to a creditor for monies borrowed, to be made with the BR Law Firm Shareholder's LLC in the position of the "creditor."

In § 4.07 of Exhibit A, it states that all collateral given to the BR Law Firm Shareholder, LLC shall be for the benefits of the creditors who have obtained certificates from Debtor.

In § 4.07(c) it states that the liens on collateral securing the Debtor's obligations shall be perfected in the name of the BR Law Firm Shareholder's LLC.

In § 4.07(d) it states that in the event of a default by Debtor in paying the obligations to the BR Law Firm Shareholder's LLC, then the LLC has the right to enforce and collect all monies for rents, mortgages, or sales proceeds.

In § 5.04 of Exhibit A, it provides that in the event of a default, upon the request of the BR Shareholder's LLC, Debtor would then cure the default. If the default is not cured, then the BR Law Firm

Shareholder's LLC has the obligation to the creditors to assign the rights and interest to another representative of the creditors.

In § 601 of Exhibit A, the duties of the BR Law Firm Shareholder's LLC (and the shareholder as the sole member and managing member) are stated to be:

> Section 6.01. Duties of Collateral Agent.
>
> (a) If an Event of Default has occurred and is continuing, the Collateral Agent shall exercise its rights and powers and use the same degree of care and skill in their exercise as a prudent man would exercise or use under the circumstances in the conduct of his own affairs.
>
> (b) If an Event of Default has occurred and is continuing, the Holders of a Majority in Interest of the principal amount of the Certificates may remove the Collateral Agent and substitute the Holder Representative to take any and all actions authorized under this Agreement for the benefit of the Holders.
>
> (c) Except during the continuance of an Event of Default:
>
> > (I) The Collateral Agent need perform only those duties that are specifically set forth in this Agreement and no others. No implied covenants or obligations shall be read into this Agreement against the Collateral Agent. The Collateral Agent shall not be required to take any action or exercise any judicial remedy to protect the interests of the Holders and its duties shall be limited to holding the Collateral for the benefit of the Holders. Once an Event of Default occurs and the Foundation fails to timely cure such default, the Collateral Agent shall be authorized to assign, transfer and deliver the Collateral and any claims thereunder to the Holder Representative appointed by the Holders pursuant to Section 5.11 herein.
> >
> > (ii) In the absence of bad faith on its part, the Collateral Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates, reports, statements, documents or opinions furnished to the Collateral Agent and conforming to the requirements of this Agreement. The Collateral Agent, however, shall examine the certificates and opinions to determine whether or not they conform to the requirements of this Agreement.
>
> (d) The Collateral Agent may not be relieved from liability for its own gross negligent action, its own negligent failure to act, or its own willful misconduct in each case, as finally adjudicated by a court of law, except that:
>
> > (I) This paragraph does not limit the effect of paragraph (c) of this Section.

(ii) The Collateral Agent shall not be liable for any error of judgment made in good faith by, unless it is proved that the Collateral Agent was negligent in ascertaining the pertinent facts.
(iii) The Collateral Agent shall not be liable with respect to any action it takes or omits to take in good faith in accordance with a direction received by by [sic] a Majority in Interest of the Holders pursuant to this Agreement.

(e) Every provision of this Agreement that in any way relates to the Collateral Agent is subject to paragraphs (a), (c) and (d) of this Section.

(f) The Collateral Agent may refuse to perform any duty or exercise any right or power unless it receives indemnity satisfactory to it against any loss, liability or expense. No provision of this Agreement shall require Collateral Agent to expend or risk its own funds or incur an liability.

Id., p. 19 (emphasis added).

This "simple" 27 page agreement by which the BR Law Firm Shareholder, acting as the managing member of his sole owned LLC, includes disclosing:

- A shareholder of BR Law Firm,
- Is the manager and member of an LLC which serves as the "collateral agent,"
- For creditors of the Debtor, which creditors have claims in this Bankruptcy Case,
- For which the LLC Is to receive monies for and has obligations to the creditors of Debtor, and
- In the event of a default by Debtor, the LLC is required to take certain actions to protect the interests of creditors.

At the hearing, the court determined that the Application would be granted on an interim basis and Ms. DiSanto and the Law Firm would be provided an opportunity to address the issue of whether the Law Firm and Ms. DiSanto were sufficiently disinterested to be employed as counsel for the Debtor in Possession.

JUNE 30, 2022 CONTINUED HEARING

For the June 30, 2022, a Supplemental Declaration by Randy Sterns was filed by the Debtor in Possession. Dckt. 72. He discusses this Limited Liability Company, C3 Servants, LLC, which is the "Collateral Agent" for the certificate holders that are creditors in this case. This Collateral Agent's duties are to hold the collateral and then take certain action if the "Paying Agent," TMI Trust Company provides a notice of default. He testifies that no notice of default has been given.

Mr. Sterns also testifies that he has never been paid any fee or compensation for any services as manager of C3 Servants, LLC "in connection with the Holder Representative Agreement. Declaration, ¶ 13; Dckt. 72. This statement raises several concerns.

1. If Mr. Sterns is not being compensated for protecting the rights and interests of the creditors in their collateral by holding it, how is C3 Servants, LLC able to fulfill its duties?

2. The Declaration states, "I have never been paid a fee or any type of compensation or remuneration for my services as manger of C3 Servants, LLC or in connection with the Holder Representative Agreement." Thus, he makes it sound as if C3 Servant, LLC is independently wealthy, charity providing services to sophisticated business investors.

Additionally, this statement of no compensation for this "Holder Representative Agreement" is pregnant with an indication that he is getting paid some other way for performing these duties, and having such obligations to, the creditors.

Doing a simple "Google Search" one finds a website providing information about businesses, and with respect to C3 Servants, LLC, the following information is provided:

C3 SERVANTS, LLC

Company Number	L16000191846
Status	Active
Incorporation Date	18 October 2016 (over 5 years ago)
Company Type	Florida Limited Liability
Jurisdiction	Florida (US)
Agent Name	BUSH ROSS REGISTERED AGENT SERVICES, LLC
Agent Address	1801 N. HIGHLAND AVENUE, TAMPA, FL 33602
Directors / Officers	BUSH ROSS REGISTERED AGENT SERVICES, LLC, agent RANDY K STERNS

https://opencorporates.com/companies/us_fl/L16000191846. The source of this information is stated to be the Florida Department of State Division of Corporations, http://www.sunbiz.org.

Going to the Florida Division of Corporations (not using the link given on the above page), it shows:

C3 Servants, LLC's Status is Active

C3 Servants, LLC's Registered Agent is Bush Ross Registered Agent Services, LLC

http://search.sunbiz.org/Inquiry/CorporationSearch/SearchResultDetail?inquirytype=EntityName&directionType=Initial&searchNameOrder=C3SERVANTS%20L160001918460&aggregateId=flal-l160001918460-15fe0ee7-faac-4f6e-b2d2-ddf54c8077b7&searchTerm=C3%20Servants&listNameOrder=C3SERVANTS%20L160001918460.

For Bush Ross Registered Agent Services, LLC, the address for that entity is 1801 N. Highland Avenue, Tampa, Florida and its mailing address is P.O. Box 3913, Tampa, Florida. The P.O. Box 3913 mailing address is the same as that given on the Bush Ross, P.A. Law Firm which is seeking to be authorized to be employed as counsel for the Debtor in Possession. The Bush Ross, P.A. Law Firm does not include a street address with its information at the top of the pleadings it filed. *See*, Dckt. 81 for example.

However, on the Bush Ross Law Firm webpage, it states an address of 1801 North Highland Ave., Tampa, Florida. https://www.bushross.com/.

At the hearing, the court addressed the appearance of a conflict between proposed counsel and C3 Servants, LLC, with respect to the obligations to take action for the Certificate Holders in the event of a default in the obligations owed by the Debtor. Proposed counsel, the Debtor in Possession, and C3 Servants, LLC will address this by obtaining the appointment of an independent third party to exercise such rights and duties in the event of such a default.

August 4, 2022 Final Hearing

At the hearing, xxxxxxxxxxxx

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 Eagle Ledge Foundation, Inc. ("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 xxxxxxxxxxxx

6.	**22-90160-E-11 DDM-4**	**EAGLE LEDGE FOUNDATION, INC. Dennis Miller**	**CONTINUED MOTION TO MAINTAIN EXISTING CASH MANAGEMENT SYSTEM WITH LOAN SERVICING AGENT 6-1-22 [33]**

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.

Local Rule 9014-1(f)(4) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on creditors and Office of the United States Trustee on June 1, 2022. The court set the hearing for June 7, 2022. Dckt. 42.

The Motion to Maintain Existing Cash Management System with Loan Servicing Agent was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(4). Debtor, creditors, 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.

The Motion to Maintain Existing Cash Management System with Loan Servicing Agent is xxxxxxxxxxxxx

Eagle Ledge Foundation, Inc., the Debtor, in this Chapter 11 case seeks (as the Debtor, not the Debtor in Possession), to maintain its Cash Management System with its Loan Servicing Agent. Dckt. 33. TMI Trust Company is identified as the loan servicing agent who maintains the Cash Management System.

In the Motion, the following information is provided about TMI Trust Company and the services it provided to the Debtor pre-petition and is to provide to the Bankruptcy Estate post-petition (identified by paragraph number in the Motion and emphasis added):

> 8. The Loan Servicing Agreement can be summarized as follows:[3]
>
> a. Loan Servicing Practices: TMI has agreed to service and administer loans on behalf of ELF, in a manner consistent with good lending practices, utilizing loan procedures recommended by TMI and approved by ELF.

b. Scope of Services Provided: Among other things, TMI provides **loan collection services**, issues payment **coupons or monthly statements to borrowers**, issues **payoff information** to borrowers, keeps ELF and the Collateral Agent apprised of defaults by borrowers, **provides reporting to ELF, and invests loan proceeds for the benefit of ELF**.

c. Loan Servicing Fees: In exchange for providing the loan servicing, TMI charges a set-up fee of $250.00 for each new loan, and an **annual loan servicing fee of .20%, based on the principal amount outstanding on loans administered by TMI, subject to a minimum fee of $750.00 per month.** The fee is calculated monthly, with one-twelfth to be paid monthly from cash held by TMI for the benefit of ELF. **On average, the monthly fees are approximately $1,500.00.** Actual out-of-pocket expenses are billed at 110% of cost to ELF.

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3 The above summary is provided solely for the convenience of the Court, creditors, and parties in interest. The summary should not be deemed an admission of the Debtor, nor is it intended to in any way alter or modify the terms of the Loan Servicing Agreement. In the event of any discrepancy between this Motion and terms of the TMI Agreements, the terms Agreement shall prevail.

10. Currently, the **Debtor has five active loans**, and as of the Petition Date, the **total outstanding principal balance owed by the borrowers is approximately $719,394.36 in the aggregate. TMI receives and processes the loan payments** from the borrowers, utilizing the loan procedures to make determinations regarding the application of such amounts to principal, interest, fees, expenses, or any other charges or escrows. **The funds are held in an interest-bearing account for the benefit of the Debtor** and are reflected as cash or cash equivalents in the monthly reporting provided to the Debtor. Upon request of the Debtor, and not more than two times per month, the Debtor may request a disbursement of all amounts of principal, interest, or fees collected under the Loans, less the amount of TMI's servicing fees. To the extent a disbursement request is not made by the Debtor, TMI's servicing fees are deducted on a monthly basis from the Debtor's cash. As of the Petition Date, **TMI was holding cash and equivalents of approximately $82,473.82 for the Debtor (the "Cash Proceeds")**. TMI provides the Debtor with monthly accounting reports by the tenth business day of each month.

11. **TMI also manages the Debtor's church bond portfolio**, which had a value of approximately **$529,701.62 as of the Petition Date** (the "Bond Portfolio" and, together with the Cash Proceeds, the "Servicing Account"). These bonds are only purchased at the express direction of the Debtor, and the Debtor is not actively purchasing and does not intend to purchase additional bonds. However, **there is no active market to sell the bonds currently held by the Debtors. The majority of the bonds will mature in 3 to 4 years and, if retained**, are projected to generate a far better return than if the Debtor attempted to cash out the bonds immediately, which will ultimately inure to the benefit of the bankruptcy estate and its creditors.

No information is provided about who and what TMI Trust Company is for employment by the Bankruptcy Estate. Also, it is not identified whether such services require such employment to be authorized pursuant to 11 U.S.C. § 327.

A quick, internet search first turns up a website for TMI Trust Company, with a website at www.tmico.com. The information provided under the "About" tab discloses that TMI was purchased by Reliance Finance Corporation, which has a subsidiary providing services to churches and nonprofits.

It then states that Reliance Finance Corporation was acquired by FIS Global in 2014, and then TMI Trust Company was "spun off and once again became an independent trust company."

A review of the California Secretary of State's website and search of businesses registered to do business in California returned a result that no entity named TMI Trust Company is registered to do business in California.

No declarations, documentary evidence, copies of contracts, or other evidence was filed in support of this Motion.

JUNE 7, 2022 HEARING

At the June 7, 2022 Hearing, the court determined that the granting of the motion with the entry of an interim order was proper.

JUNE 30, 2022 HEARING

The Supplemental Declaration of Mark Young is provided in support of maintaining the pre-petition Cash Management System. Dckt. 76. In it he discusses the business operations of TMI Trust company, where he is employed as a Managing Director. While stating the various services that TMI provides, he does not address TMI's ability to legally do business in California.

The court raised this point, noting that the California Secretary of State reports that no entity named TMI Trust Company has registered to do business in California. This court's triple checking of the Secretary of State's website on June 29, 2022, again disclosed that there is no such entity registered to legally do business in California.

This issue has not been addressed by either the Debtor in Possession or TMI.

The hearing on the Motion to Maintain Existing Cash Management System with Loan Servicing Agent is Status Conference is continued to 2:00 p.m. on August 4, 2022, to afford TMI Trust Company additional time to document that it may do business in California to provide these services to the Debtor in Possession.

August 4, 2022 Hearing

At the hearing, xxxxxxxxxxx

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 Maintain Existing Cash Management System with TMI Trust Company, the Loan Servicing Agent, filed by Eagle Ledge Foundation, Inc ("Debtor in Possession") 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 Maintain Existing Cash Management System with Loan Servicing Agent is xxxxxxxxxxxxxx

7.	**22-90041-E-7** **RHS-1**	**AREA X INC.** **David Johnston**	**ORDER TO SHOW CAUSE WHY CASE SHOULD NOT BE CONVERTED; ORDER TO SHOW CAUSE WHY THE COURT DOES NOT ORDER SANCTIONS AND ORDER TO APPEAR** **6-29-22 [56]**

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. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, Creditors, Former Debtor in Possession, Former Debtor in Possession's Attorney, Responsible Representative of the Debtor and Former Debtor in Possession, U.S. Trustee, and other parties in interest as stated on the Certificate of Service on July 1, 2022. The court computes that 34 days' notice has been provided.

The court issued an Order to Show Cause to address why the court should not Order the Immediate Conversion of the Bankruptcy Case to one under Chapter 7 based on numerous concerns.

The Order to Show Cause is xxxxxxxxxxxx

Area X, Inc., the Debtor, commenced this bankruptcy case on February 7, 2022. On June 16, 2022, the court conducted a hearing on the Motion for Authority to Sell Property of the Bankruptcy Estate that was filed by Area X, Inc., serving as the Debtor in Possession. The court's ruling on that Motion raises several very serious issues for the Debtor in Possession and it's Responsible Representative Neftali Alberto

(its president) concerning their conduct as the fiduciary of the Bankruptcy Estate. These issues, as stated in the court's ruling set for in the Civil Minutes, include:

A. The Purchase Agreement names a nonexistent entity as the Purchaser.

B. The Purchase Agreement is purported to be signed by a representative of the nonexistent entity. There is a largely illegible signature, with there being no date and no printed name for the purported representative of the nonexistent entity. The signature of the purported representative is right above the typed name of the nonexistent entity.

C. It was unexplained how a representative of the purported real buyer would sign the Purchase Agreement as a representative of a nonexistent entity.

D. Debtor in Possession's counsel reported at the hearing that Neftali Alberto, the fiduciary Responsible Representative, knew the name of the Purchaser on the Purchase Agreement was not correct, but instructed counsel to file it anyway, and that an amended purchase agreement would be generated.

E. In the Motion For Authority to Sell Property, counsel for the Debtor in Possession noted that the purchaser named in the Motion was not the same as in the Purchase Agreement and an amended purchase agreement would be executed.

F. No amended purchase agreement was generated.

G. The fiduciary Responsible Representive of Debtor in Possession presented the court with no evidence of the Property having been marketed, or why a sale put together by the Responsible Representative was commercially reasonable.

H. While the Debtor's pre-petition business, under the management of Neftali Alberto, is stated to have been the buying and selling of real property, such business operations drove the Debtor into bankruptcy, notwithstanding a thriving real estate market and soaring real estate prices.

I. It was not explained how Neftali Alberto, who testified in his declaration that he had been a licensed real estate for eight years, would draft a Purchase Agreement to name a nonexistent entity as the Purchaser.

J. The Purchase Agreement identifies the Seller as the Debtor, not the fiduciary Debtor in Possession. No explanation was provided for how Neftali Alberto, the fiduciary Responsible Representative, and counsel for the Debtor in Possession could make such a mistake and then prosecute the Motion For Authority to Sell Property pursuant to the Purchase Agreement in which the Debtor was the Seller.

K. Subsequent to filing the Motion For Authority to Sell Property for $185,000.00, Neftali Alberto, as the representative of the Debtor, stated under penalty of perjury that the Property actually has a value of $250,000.00 (Schedule A/B filed on June 2, 2022, and

the Motion to Sell filed on May 12, 2022). The question left hanging in the air is where was that "extra" $65,000.00 suppose to go.

Civil Minutes; Dckt. 52.

Primo Farms, LLC Bankruptcy Case

Primo Farms, LLC is an entity (represented by the same counsel as Area X, Inc.) that filed a voluntary Chapter 11 case on December 3, 2020. 20-90779. Neftali Alberto is the fiduciary Responsible Representative of Primo Farms, LLC as the debtor in possession in that case, and continues as the fiduciary Responsible Representative under the Confirmed Chapter 11 Plan in the Primo Farms, LLC Bankruptcy Case.

What has come to light in the Primo Farms, LLC case is that Neftali Alberto's cousin (so identified by Primo Farm, LLC's counsel), who is also a member of Primo Farms, LLC, purported to secretly dissolve Primo Farms, LLC after the commencement of its Bankruptcy Case – Clearly a Violation of the Automatic Stay and a Void Act. This had the effect of torpedoing the subsequently confirmed Chapter 11 Plan (the Plan being confirmed on June 10, 2021) and the Plan Estate, and creditors, losing assets. Neftali Alberto stated that he learned of the void purported May 2021 dissolution of the Primo Farms, LLC in July 2021. 20-90770; Declaration, ¶ 4, Dckt. 103.

Neftali Alberto then testifies that he then took advice from an escrow officer to set up a new limited liability company to take over the property of the non-dissolved Primo Farms, LLC (such conduct being in violation of 11 U.S.C. § 362(a) and void). Additionally, Neftali Alberto states that the dissolution paperwork falsely represented that all members agreed to dissolve Primo Farms, LLC and was not proper under applicable state law. No mention is made about Neftali Alberto, the fiduciary Responsible Representative for that Plan Administrator debtor, seeking the advice of Primo Farms, LLC's, the fiduciary Debtor in Possession, bankruptcy counsel or otherwise seeking to subsequently enforce the rights of the Debtor Plan Administrator for such damages inflicted on the Bankruptcy Estate and the Plan Estate.

Having learned of the void purported dissolution of Primo Farms, LLC, the torpedoed Chapter 11 Plan, and the violations of the automatic stay, Responsible Representative Neftali Alberto and the counsel for Primo Farms, LLC, as Plan Administrator, stated that they would just seek to dismiss the Primo Farms, LLC Bankruptcy Case. Such a dismissal could appear to be a tactic to just "sweep under the rug" the gross violation of the automatic stay and the damages done to the Bankruptcy and Plan Estate, and that other background financial transactions were taking place. *Id.*; Declaration, ¶ 13, Dckt. 103; Plan Administrator Status Report, ¶ 5, Dckt. 94.

Bankruptcy Filings by Neftali Alberto

Recently, in connection with the bankruptcy proceedings for the formerly suspended and who resigned his law license in January 2021, former attorney Thomas Gillis, the court noted that Neftali Alberto has filed a number of unsuccessful personal bankruptcy cases. A summary (not exhaustive review) of these prior bankruptcy cases filed by Neftali Alberto personally is:

I. Chapter 13 Case 20-90017

A. Filed January 7, 2020

B. Dismissed March 6, 2020

C. Information in Petition Under Penalty of Perjury

1. Neftali Alberto has a dba of Area X, Inc. *Id*.; Dckt. 1 at 2.

2. Neftali Alberto is the sole proprietor of the business named Area X, Inc. *Id*. at 4.

D. Information in Schedules Under Penalty of Perjury

1. Neftali Alberto has no interests in any incorporated or unincorporated associations, including interests in an LLC, partnership, and joint venture. *Id*.; Schedule A/B, Question 19, Dckt. 1 at 14.

2. No mention is made of Primo Farms, LLC, on Schedule A/B. However, Primo Farms, LLC filed bankruptcy on December 3, 2020, stating:

a. Neftali Alberto was a 50% owner and managing member of Primo Farms, Inc. (Statement of Financial Affairs, Question 28), and

b. That Primo Farms, LLC had been in business since 2015 (Statement of Financial Affairs, Question 25.1)

20-90779; Dckt. 22.

c. In the Primo Farms, LLC case, Neftali Alberto testified under penalty of perjury with respect to his interest in Primo Farms, LLC;

(1) "I was the managing member of Primo Farms, LLC (the "Debtor"), which was registered with the Secretary of State on September 18, 2013, and was in good standing when then the Chapter 11 petition was filed on December 3, 2020. At the time the petition was filed, I owned 50% and Mark McManis ("McManis") owned 50% of the Debtor. In 2020, I had become the managing member of the Debtor. However, from 2013 to 2020, McManis had been the managing member (or president) of the Debtor and maintained its records and books." 20-90779; Declaration, ¶ 1; Dckt. 103.

II. Chapter 13 Case 19-91091

A. Filed December 17, 2019

B. Dismissed January 6, 2020

1. Dismissed for failure to file documents, including the Schedules and Statement of Financial Affairs.

C. Neftali Alberto requested the dismissal of this case.

III. Chapter 13 Case 20-19-90973

A. Filed October 30, 2019

B. Dismissed December 18, 2019

C. Information in Petition Under Penalty of Perjury

1. Neftali Alberto has a dba of Area X, Inc. *Id*.; Dckt. 1 at 2.

2. Neftali Alberto is not the sole proprietor of the business. *Id*. at 4.

D. Information in Schedules Under Penalty of Perjury

1. Neftali Alberto has no interests in any incorporated or unincorporated associations, including interests in an LLC, partnership, and joint venture. *Id*.; Schedule A/B, Question 19, Dckt. 21 at 6.

2. No mention is made of Primo Farms, LLC, on Schedule A/B.

The court has considered the conduct of Neftali Alberto in this case, the presentation of a Purchase Agreement which Neftali Alberto, the fiduciary Responsible Representative of the Debtor in Possession, and the attorney for the Debtor in Possession in knowingly presenting a Purchase Agreement where the "Buyer" was a known nonentity. Further, the Purchase Agreement which was prepared by Neftali Alberto, who states that he was a licensed real estate agent for eight years, is incomplete and purported to be signed by a representative of a nonexistent entity (signing it right above the printed name of the nonexistent entity).

In the Primo Farms, LLC case, even though there is a gross violation of the automatic stay, as the fiduciary Representative of the Debtor in Possession and the Debtor as the Plan Administrator, no action has been taken by Neftali Alberto to rectify the wrong and address the civil damages caused by the gross violation of Federal Law by one of the members of Primo Farms, LLC.

Then, in multiple recently filed Chapter 13 cases, Neftali Alberto has stated under penalty of perjury that his dba is Area X, Inc., and has stated no interest in Primo Farms, LLC, though in other pleadings and on the Primo Farms, Inc. Statement of Financial Affairs he states that his is, and has been, a 50% owner.

ASSETS AND ORDER TO SHOW CAUSE

On the Schedules, signed under penalty of perjury by Neftali Alberto as president of the Debtor, the disclosed assets of Area X, Inc. include:

A. $3,000.00 in accounts receivable.

B. Rouse Avenue Property with a value of $250,000.00.

1. Encumbrances - Schedules and Proofs of Claim

a. On Schedule D, the Debtor lists Jayco Premium Finance of California, dba Jcap Private Lending, Financial Group as having a secured claim of ($176,000.00).

b. Proof of Claim 3-1 filed by JCAP Financial Group assets a claim for ($170,440.86) secured by the Rouse Avenue Property.

(1) In looking at the Note attached to Proof of Claim 3-1, the signatory for Area X, Inc. is a person named Israel Albert, signing it on what appears to be August 3, 2020.

(2) In response to Question 28 on the Statement of Financial Affairs, Neftali Alberto is listed as the 100% shareholder, President, and Director, with no other persons listed. Dckt. 20 at 21.

c. Proof of Claim 6-1 filed by Creditor Debra Koftinow asserts a claim for ($20,804.66) secured by an abstract of judgment recorded in Stanislaus County (same as abstract reference below in ¶ B.1.b. (3)).

d. A computer printout filed as Proof of Claim 9-1 asserts that Stanislaus County has a secured claim for ($2,269.84).

Using the value of $250,000.00 stated by Neftali Alberto (an experienced, formerly licensed, real estate agent) as the fiduciary Responsible Representative of the Debtor in Possession, there would be approximately $25,000.00 of equity for creditors with unsecured claims (assuming payment of the Koftinow judgment lien is paid from the sale of the Rouse Avenue Property).

C. Brady Avenue Property with a value of $350,000.00.

1. Encumbrances - Schedules and Proofs of Claim

a. Encumbrances of ($385,000.00) on Schedule D for Cary Hahn, ($115,000.00) for Debra Kofinow, and ($1,500.00) for Stanislaus County.

b. No Proof of Claim has been filed by Cary Hahn.

c. Proof of Claim 5-1 filed by Creditor Debra Koftinow, secured by the Brady Avenue Property asserts a claim for ($148,617.25).

d. Proof of Claim 6-1 filed by Creditor Debra Koftinow asserts a claim for ($20,804.66) secured by an abstract of judgment recorded in Stanislaus County (same as abstract reference above in ¶ B.1.a.(3)).

e. A computer printout filed as Proof of Claim 8-1 asserts that Stanislaus County has a secured claim for ($17,043.48).

Using the value of $350,000.00 stated by Neftali Alberto (an experienced, formerly licensed, real estate agent) as the fiduciary Responsible Representative of the Debtor in Possession, there would be approximately $140,000.00 of equity for creditors with unsecured claims (assuming payment of the Koftinow judgment lien being paid from a sale of the Rouse Avenue Property). However, if Cary Hahn, who has not filed a proof of claim, though being provided notice of this Bankruptcy Case, has a claim secured by this property, then there would be no unencumbered value for the bankruptcy estate.

D. Counterclaim of unknown value against Mark McManis, the member of Primo Farms, LLC who is stated to have violated the automatic stay and torpedoed the confirmed Chapter 11 Plan by purporting to dissolve Primo Farms, LLC during its Chapter 11 case.

Based on the financial information provided by Neftali Alberto under penalty of perjury in the Schedules, there are substantial assets to be administered in this Bankruptcy Case. However, that property needs to administered by a fiduciary of the Bankruptcy Estate, acting in the interests of the Bankruptcy Estate.

Unfortunately, the Debtor in Possession and the fiduciary Responsible Representative Neftali Alberto have demonstrated that such duties are beyond their abilities. Neftali Alberto has "struggled" in his own multiple personal bankruptcy cases and in the Primo Farms, LLC Bankruptcy Case. It also appears that Neftali Alberto is "challenged" when providing asset and financial information under penalty of perjury.

Based on such conduct, cause exists pursuant to 11 U.S.C. § 1112(b), § 105(a) ("No provision of this title providing for the raising of an issue by a party in interest shall be construed to preclude the court from, *sua sponte*, taking any action or making any determination necessary or appropriate to enforce or implement court orders or rules, or to prevent an abuse of process.")

Before taking such action, the court affords all parties to Show Cause why this case should not be converted to one under Chapter 7. While, based on the asset information and values provided by Alberto Neftali (a former licensed real estate agent and self proclaimed experienced real estate transaction person) that there is significant equity for creditors with unsecured claims (after payment of costs of sale, secured claims, and administrative expenses), it may be that the finances for the above properties are tight for administration by a Chapter 7 trustee. The court notes in the past that savvy Chapter 7 trustees have been able to "educate" creditors with liens on properties of the "special powers" of a Chapter 7 trustee to promptly sell property rather than a creditor having to go through a foreclosure sale, pay additional property taxes, pay additional insurance, pay additional security, hire a real estate broker, and delay for a good six months the sale of the encumbered property. Of course, the savvy Chapter 7 trustee obtains a modest carve-out of the encumbered sales proceeds for the bankruptcy estate to generate monies to pay something to creditors (not merely the Chapter 7 trustee and counsel fees).

Or it may be that there is little to administer and the Chapter 7 trustee is left without assets to do anything than abandon the property. Fortunately, in such cases the taxpayers fund the Office of the U.S. Trustee who has standing in bankruptcy cases to review what is going on, investigate, and take action in the bankruptcy case (in addition to any possible referrals to the U.S. Attorney). Merely because a debtor may have lost/destroyed the value of assets, such does not grant an "exemption" from having to comply with Federal Law. To the extent that there are issues relating to proper filing and prosecution of bankruptcy cases, the U.S. Trustee is equipped and empowered to address such issues.

Neftali Alberto's Response

On July 21, 2022, Neftali Alberto ("Alberto") filed a response (Dckt. 68) opposing the corrective sanction and Alberto's OSC Declaration.

In the Response, it is argued that is was an unintentional error in misnaming the purchaser in the Purchase Agreement, noting that in the Motion for Authorization to Sell the error was noted. Response, ¶ 3; Dckt. 68.

It is next argued that Neftali Alberto did not prepare the sales agreement, but that some Unidentified Real Estate Agent who was Working Without Compensation prepared the Purchase Agreement. The Invisible Unidentified Real Estate Agent who was Working For Free, who also owed fiduciary duties to the bankruptcy estate remains unidentified. *Id.*, ¶ 4.

The Response argues that the Unidentified Real Estate Agent is the one who put the wrong name of the purchaser in the Purchase agreement also obtained the signature of Hector Aguliar. *Id.*, ¶ 4

It then states that when Neftali Alberto, the fiduciary responsible representative of the bankruptcy estate, was unaware of the true name of the purchaser when he forwarded it to the Debtor in Possession's attorney. *Id.*, ¶ 5. It appears to state that Mr. Alberto never did business with the purchaser, indicating that he may well have never negotiated the sale terms.[1]

---

[1] The court notes that in working to get the sale of the Property approved by the court, for which the Purchase Agreement identified a non-existent entity and no addendum or amended purchase agreement was filed with the court, Mr. Alberto's second declaration in support of the Motion to Sell, include testimony that:

> 2. I have negotiated a sale of real property commonly known as 1609 Rouse Avenue, Modesto, Stanislaus County, California (the "Real Property"), to Adroit Farm Services Inc., a California corporation ("Adroit").

Alberto Sale Declaration 2, ¶ 2; Dckt. 50. This appears to indicate that Mr. Alberto was personally and directly involved in negotiating the proposed sale to Mr. Aguilar's company.

In this Sale Declaration 2, Mr. Alberto states that he personally knows that "The Debtor in Possession and [Adroit Farm Services, Inc.] have agreed that the close of escrow will take place no later than seven days after an order authorizing the sale becomes final." *Id.*, ¶ 5. This indicates that he was personally involved in communicating with the purchaser.

It is then argued that counsel for the Debtor in Possession obtained the correct name of the purchaser from the Unidentified Real Estate Agent and used that name in the Motion. *Id*. ¶ 6.

An Addendum to the Purchase Agreement was prepared, but nobody, neither the Unidentified Real Estate Agent nor Neftali Alberto, the Responsible Representative of the Debtor in Possession, *Id*. ¶ 7.

The Response also notes that the Purchase Agreement prepared by the Unidentified Real Estate Agent, who purportedly was working for free, did not list the Debtor in Possession as the seller but the Debtor. This is "excused" as having been done by the Undisclosed Real Estate Agent and of no real significance in that the Motion to Sell identified the Debtor in Possession as the Seller. *Id*., ¶ 8. This appears to argue that the parties identified in the Purchase Agreement are of no legal significance.

The Response concludes that nobody objected to the Motion to Sell, not even the U.S. Trustee, apparently indicating that the misidentifications are of little significance. *Id*., ¶ 9.

Neftali Alberto, the Responsible Representative for the fiduciary Debtor in Possession has filed his Declaration in support of the Response. Dckt. 69. Mr. Alberto's testimony appears to be a word for word cut and paste of the arguments in the Response prepared by counsel for the Debtor and former Debtor in Possession.

In his Declaration, Mr. Alberto carefully avoid disclosing the identity of the Unidentified Real Estate Agent who is purportedly to blame for the misidentification, the errors in the Purchase Agreement, and the failure to present the Addendum to counsel for the Debtor in Possession and to the court.

Hector Aguilar's Response

On July 27, 2022, Hector Aguilar ("Aguilar") filed a Response. Dckt. 71. The Response appears to be a hybrid Response and Declaration, in which Mr. Aguilar states he is signing it under penalty fo perjury. Mr. Aguilar's counsel has not signed the Response.

Mr. Aguilar's Response under penalty of perjury provides some additional, and some conflicting information to that provided by Mr. Alberto and counsel for the Debtor and former Debtor in Possession. The information provided by Mr. Aguilar includes:

A. Mr. Aguilar states that he did not sign the Purchase Agreement, and never signed such Agreement as the authorized representative of a non-existent entity. Response, ¶ 3; Dckt. 71.

B. Mr. Aguilar states that he could not understand why he was served with the Order to Show Cause. *Id*., ¶ 4.

C. After meeting with counsel, Mr. Aguilar learned that he was being identified as the person who signed the Purchase Agreement. *Id*., ¶ 5.

This is consistent with Mr. Alberto's Sale Declaration 1, in which he states that "I have negotiated the sale of the real property . . . ." Alberto Sale Declaration 1, ¶ 2; Dckt. 36.

D. He further states that he was never served with the Motion to Sell. *Id*.

E. Mr. Aguilar goes further, stating that his purported signature on the Purchase Agreement is not his signature. *Id*., ¶ 6.

F. Mr. Aguilar states that he had done business before with Neftali Alberto, with the last transaction being in 2016. *Id*., ¶ 7. Mr. Agruilar states that the 2016:

> [b]usiness transction did not end well and based on this experience, I have refrained from doing business with Neftali Alberto, even though he continues to contact me regarding possible business ventures.

Id. This appears to conflict with Neftali Alberto's statement under penalty of purjury that the he never did any business with the purchaser – Mr. Aguilar's business

G. Mr. Aguilar unequivocally states:

a. "I did not sign the agreement . . ."

b. "Nor did I have knowledge of the agreement"

Id., ¶ 9.

August 4, 2022 Hearing

The court is being presented with conflicting testimony presented under penalty of perjury and subject to the certifications pursuant to Federal Rule of Bankruptcy Procedure 9011. There is the direct statement under penalty of perjury that Hector Aguilar's never signed the Purchase Agreement.

Then, there is an Undisclosed Real Estate Agent purporting to act for the Debtor in Possession who is being fingered as being responsible for all of the errors in the Purchase Agreement and for not providing the Addendum to counsel for the then Debtor in Possession.

Clearly much more information is required.

At the hearing, XXXXXXXXXX

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 Order to Show Cause 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 Order to Show Cause is **xxxxxxx**.

8. **20-90779-E-11 CAE-1** **PRIMO FARMS, LLC** **CONTINUED STATUS CONFERENCE RE: VOLUNTARY PETITION 12-3-20 [1]**

SUBCHAPTER V

Debtor's Atty: David C. Johnston

Notes:
Continued from 5/5/22. Neftali Alberto, the Responsible Representative of the Debtor in Possession, and David C. Johnston, counsel for the Debtor in Possession, and each of them to appear in person at the continued Status Conference. No Telephonic Appearances Permitted for the foregoing persons ordered to appear in person.

[DL-2] Motion to Convert Chapter 11 Case to Chapter 7 Case filed 6/23/22 [Dckt 112], set for hearing 8/4/22 at 10:30 a.m.

The Status Conference is continued to be conducted as a Chapter 7 Status Conference at 2:00 p.m. on xxxxxxx , 2022, the court having converted this case.

AUGUST 4, 2022 STATUS CONFERENCE

On August 4, 2022, the court heard the Motion of the Subchapter V Trustee to convert this case to one under Chapter 7. No opposition by the then Debtor/Debtor in Possession being asserted and the consent of the Debtor/Debtor in Possession having been given in writing (Dckt. 117), the court ordered the case converted.

In light of the issues arising in this case not being the ordinary Chapter 7 liquidation, the court sets a Chapter 7 Status Conference for case management purposes.

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 court having converted this case to one under Chapter 7 as requested in the Motion to Convert filed by the Subchapter V Trustee, issues arising concerning the administration of the Subchapter V case during the period the Debtor/Debtor in Possession was in charge, conduct of other members of the Debtor having purported to have dissolved the Debtor during the pendency of this case and the automatic stay being in effect, and upon review of the files in this case and good cause appearing,

IT IS ORDERED that the a Chapter 7 Status Conference shall be conducted at 2:00 p.m. on **xxxxxxx** , 2022. Status Reports shall be filed by the Chapter 7 Trustee and by any other party in interest, if such party in interest so desires, on or before seven (7) days before the above Status Conference date.

FINAL RULINGS

9. **20-90210-E-11** **JOHN YAP AND IRENE LOKE** **CONTINUED STATUS CONFERENCE RE: COMPLAINT**
21-9016 **CAE-1** **12-10-21 [1]**

YAP ET AL V. PNC FINANCIAL SERVICES GROUP, INC. ET AL

Final Ruling: No appearance at the August 4, 2022 Status Conference is required.

Plaintiff's Atty: Arasto Farsad, Nancy W. Weng
Defendant's Atty: unknown

Adv. Filed: 12/10/21
Answer: none

Nature of Action:
Validity, priority or extent of lien or other interest in property

Notes:
Continued from 6/16/22 for adversary proceeding management, the court having granted the Plaintiff-Debtors' Motion for Entry of Default Judgment.

[AF-1] Order granting Motion for Entry of Default Judgment filed 6/22/22 [Dckt 34]

[RHS-1] Order to Show Cause Why Court Does Not Amend Order Granting Motion for Default Judgment to Correct Clerical Error in the Street Address Stated in Said Order filed 7/14/22 [Dckt 35], set for hearing 8/4/22 at 10:00 a.m.

The Status Conference is continued to 2:00 p.m. on November 10, 2022.

AUGUST 4, 2022 STATUS CONFERENCE

The court entering an amended order granting the Motion for Entry of Default Judgment which correctly identifies the address of the property at issue, the court continues the Status Conference to afford Plaintiff-Debtor time to lodged and have entered the proposed judgment relating thereto.

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 court having reviewed the file for this Adversary Proceeding, an amended order granting default judgment to be entered by the court, and upon review of the pleadings, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to **2:00 p.m. on November 10, 2022**, to be conducted in conjunction with the hearing on the Motion for Summary Judgment filed in this Adversary Proceeding.

10. **20-90115-E-7** **ALI MUTHANA** **STATUS CONFERENCE RE: AMENDED COMPLAINT**
21-9008 **CAE-1** **6-1-22 [33]**

MCGRANAHAN V. SUWAID ET AL

Final Ruling: No appearance at the August 4, 2022 Status Conference is required.

Plaintiff's Atty: Daniel L. Egan, Jason Eldred
Defendant's Atty:
David C. Johnston [Bader Alikassim Suwaid]
Timothy J. Silverman [GNN Real Estate and Mortgage, Inc.]
Gurjeet Rai [Ali Saeed Muthana]

Adv. Filed: 7/26/21
Answer: 8/27/21
Amd. Cmplt. Filed: 6/1/22
Answer: none

Nature of Action:
Recovery of money/property -other
Validity, priority or extent of lien or other interest in property
Declaratory judgment

Notes:
Set by Reissued Summons and Notice of Status Conference filed 6/7/22 [Dckt 34]

[WF-3] Trustee's Motion for Partial Summary Judgment Against Bader Alikassim Suwaid filed 6/23/22 [Dckt 37], set for hearing 8/4/22 at 10:30 a.m.

[WF-4] Trustee's Motion for Partial Summary Judgment Against Ali Saeed Muthana filed 6/23/22 [Dckt 46]; Stipulation to continue hearing filed 7/14/22 [Dckt 55], Order continuing hearing filed 7/17/22 [Dckt 59], set for hearing 9/1/22 at 10:30 a.m.

Stipulation Between Plaintiff Michael D. McGranahan, Chapter 7 Trustee and Defendant Ali Saeed Muthana for Extension of Time to File Responsive Document [to 8/18/22] filed 7/14/22 [Dckt 57];

Order Appointing Resolution Advocate and Assignment to the Bankruptcy Dispute Resolution Program filed 7/27/22 [Dckt 60]

The Status Conference is continued to 10:30 a.m. on September 1, 2022 (specially set day and time), to be conducted in conjunction with the Motion for summary Judgment.

AUGUST 4, 2022 STATUS CONFERENCE

The court continued the hearing on the Motion for Summary Judgment upon the request of the Parties so that they could engage in the Alternative Dispute Resolution Program mediation process. The Order appointing the ADRP mediator was entered on July 27, 2022.

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 court having reviewed the file for this Adversary Proceeding, a BDRP Mediation pending, and upon review of the pleadings, and good cause appearing,
>
> **IT IS ORDERED** that the Status Conference is continued to **10:30 a.m. on September 1, 2022**, to be conducted in conjunction with the hearing on the Motion for Summary Judgment filed in this Adversary Proceeding.

11. **21-90338-E-7 JOSE GUZMAN AND** **CONTINUED STATUS CONFERENCE RE:**
21-9014 CAE-1 GUILLERMINA DE FLORES **COMPLAINT**
11-4-21 [1]

FH TRUCKING, INC. V. GUZMAN

Final Ruling: No appearance at the August 4, 2022 Status Conference is required.

Plaintiff's Atty: Armando S. Mendez
Defendant's Atty: unknown

Adv. Filed: 11/4/21
Answer: none

Nature of Action:
Dischargeability - false pretense, false representation, actual fraud
Dischargeability - willful and malicious injury

Notes:
Continued from 5/26/22 by order filed 4/25/22 [Dckt 33]

[ASM-1] Order Granting Motion for Entry of Default Judgment filed 5/25/22 [Dckt 37]

[ASM-1] Judgment of Nondischargeability of Debt filed 7/12/22 [Dckt 42]

Judgment having been entered (Dckt. 42) and this Adversary Proceeding closed, **the Status Conference is concluded and removed from the Calendar.**