UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 5, 2013 at 10:00 a.m.

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1. 12-27806-A-11 DALE/CARMEN BRUMBAUGH — MOTION TO SELL O.S.T. 7-24-13 [185]
WFH-6

Tentative Ruling: The motion will be conditionally granted in part.

The chapter 11 trustee requests authority to sell free and clear of liens for $419,093 ($410,000 plus $9,093 for reimbursement of expenses advanced by the trustee toward the 2013 olive crop) the estate's interest in a real property in Orland, California, to Wayne English, Eduardo Galvez and Patricia Galvez. The trustee also asks for waiver of the 14-day period of Fed. R. Bankr. P. 6004(h) and for an interim distribution of $20,000 on account of the debtors' $175,000 against the property.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. Under 11 U.S.C. § 363(f), the trustee may sell property of the estate free and clear of liens only if: 1) applicable nonbankruptcy law permits sale of such property free and clear of such liens; 2) the entity holding the lien consents; 3) the proposed purchase price exceeds the aggregate value of the liens encumbering the property; 4) the lien is in bona fide dispute; or 5) the entity could be compelled to accept a money satisfaction of the lien.

The property is subject to a mortgage held by George Simmons in the approximate amount of at least $279,689.27, some outstanding property taxes, and some outstanding fees owed to the Orland Water Users' Association. The debtors have claimed an exemption of $175,000 against the property, but they have agreed to subordinate their exemption to the estate's administrative claims.

The court will not approve the sale free and clear of liens, as the encumbrances against the property will be paid from escrow.

More important, however, the motion is unclear concerning the outstanding amount of property taxes and does not identify the outstanding fees owed to the Water Users' Association.

The figures for the outstanding property taxes in the motion are inconsistent. While on page three of the motion the trustee says that the taxes are $4,500, on page four the property taxes are listed as $17,748.91. Also, the court has been unable to locate in the motion a figure for the outstanding fees owed to the Water Users' Association.

Although the trustee estimates that the estate will generate approximately $94,776 from the sale, the calculation does not account for the Water Users' Association fees and the court is not certain of the amount of outstanding property taxes.

Subject to the trustee clarifying the amounts owed for outstanding property taxes and for fees to the Water Users' Association, the court will approve the sale, as it appears that there will be sufficient sale proceeds to pay the estate's administrative claims.

The sale will generate some proceeds for distribution to creditors of the estate. It will be approved pursuant to 11 U.S.C. § 363(b). The sale is in the best interests of the creditors and the estate as it will pay the estate's administrative claims. The court will approve the payment of the real estate commissions to Bill Chance Realty and the cooperating broker, Titus Realty, in accordance with the compensation terms in the employment order. And, the court will waive the 14-day period of Rule 6004(h).

Finally, subject to the trustee clarifying that there are sufficient funds to pay the estate's administrative expenses, the court will permit the interim distribution of $20,000 on account of the debtors' $175,000 claim in the property.

2. 12-30911-A-11 VILLAGE CONCEPTS, INC. MOTION TO
JLB-6 EXTEND TIME
6-27-13 [155]

Tentative Ruling: The motion will be denied because no relief is necessary.

The debtor asks to extend a June 28, 2013 deadline set by the court for the confirmation of a plan. Docket 91. The court set the deadline when it conditionally denied the U.S. trustee's motion to dismiss or convert the case. The order setting the deadline was entered on March 18, 2013.

"Debtor requests a time extension to file the first amended disclosure statement and first amended plan of 90 days to provide the trustee and debtor additional time for evaluation." Motion at 3-4.

The deadline the court set on March 18 was for the debtor to obtain plan confirmation, not to file a plan and disclosure statement. Docket 91. But, more importantly, the subject deadline has been superseded by an order of the court appointing a chapter 11 trustee. On April 24, 2013, the court appointed a chapter 11 trustee. Docket 131. Thus, at this point, there is no deadline for the debtor to obtain plan confirmation. Accordingly, the motion will be denied as unnecessary.

3. 12-33811-A-13 DESMOND REYNOSO MOTION TO
13-2003 AGT-3 DISMISS CASE
REYNOSO V. JOHNSON ET AL 7-3-13 [29]

Tentative Ruling: The motion will be granted as provided in the ruling below.

The defendant, Shirley Johnson as successor trustee of the Frank Torres Revocable Trust, dated July 18, 1990, moves for dismissal of the claims against her based on a settlement between the movant and the plaintiff.

Although the motion is brought pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii), as made applicable here via Fed. R. Bankr. P. 7041, dismissal under Fed. R. Civ. P. 41(a)(1)(A)(ii) is without a court order, yet the movant has filed this motion seeking an order of dismissal.

As the movant is seeking a court order dismissing the claims against her, the motion is more appropriately disposed of under Fed. R. Civ. P. 41(a)(2), which

allows the court to dismiss an action "on terms that the court considers proper."

Given the settlement between the movant and the plaintiff, providing for the dismissal of the claims against the movant with prejudice, the court will dismiss all claims against the movant in this action. As the settlement is not signed by the other defendant in this action, Mortgage Lender Services, Inc., this motion does not implicate any of the claims against that defendant.

4. 13-27715-A-7 CALIFORMACY INC. STATUS CONFERENCE
6-5-13 [1]

Final Ruling: As this case was converted to chapter 7 on July 16, 2013, the status conference will be dropped from calendar.

5. 10-38019-A-7 KEVIN HEALY MOTION TO
10-2606 KMH-7 RECONSIDER
ROSE V. HEALY 6-30-13 [358]

Tentative Ruling: The motion will be denied.

The defendant, Kevin Healy, asks the court to reconsider its June 17, 2013 ruling awarding, in part, the expenses set forth in the plaintiff, Cynthia Rose's, Bill of Costs. Dckt. 335. [The parties are notified that there is no final order entered on the docket regarding the Bill of Costs. The moving party is reminded to lodge an order with the court as soon as possible.] In particular, the court excluded costs incurred incident to the taking of depositions and costs incurred for the attempted personal service of the summons and complaint; the court, however, awarded each other item set forth in the Bill of Costs. After adjustment, the court awarded costs to the plaintiff in the total amount of $814.47.

As grounds for reconsideration, the defendant asserts that he has new evidence not known or existing at the time of the June 17, 2013 hearing -- specifically, statements made by attorney, Stephanie Finelli, on June 28, 2013 before a superior court judge. The defendant claims that Ms. Finelli has somehow contradicted herself. Because Ms. Finelli stated in the superior court that she is an individual creditor of the defendant, the defendant cries foul that such an admission directly contradicts Ms. Finelli's prior assertion that she is not representing her own interests in this adversary proceeding.

This seeming contradiction, according to the defendant, "should significantly call into question [Ms.] Finelli's credibility and assertions before this [c]ourt" and "should put in [sic] significant question the reasonableness of the Costs Bill . . . and [Ms. Finelli's] Proofs of Service . . . where she claimed to not be a party to this action." Motion at 4:1-4. The defendant also contests -- for the second time -- that the Bill of Costs was not served properly.

In sum, the defendant is asking this court to reconsider its award of costs to the plaintiff because new evidence shows that the plaintiff was allegedly dishonest about her status in this adversary proceeding. And, by that token, the defendant contends that the rest of the plaintiff's assertions -- including the costs incurred in the course of this adversary proceeding -- are tainted and should not be trusted.

Fed. R. Civ. P. 60(b), as made applicable here by Fed. R. Bankr. P. 9024, allows the court to set aside an order or a judgment for:

"(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief."

"A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c).

The defendant proceeds under the second prong of Rule 60(b), which requires the discovery of new evidence that could not have been ascertained, with reasonable diligence, to move for a new trial under Rule 59(b). In the Ninth Circuit, the moving party must show (1) that the evidence existed at the time of trial, (2) that it could not have been discovered in time for a new trial motion despite due diligence, and (3) that the evidence is sufficiently significant that it is likely to change the outcome of the case. Jones v. Aero/Chem Corp., 921 F.2d 875, 878 (9th Cir. 1990).

The court will deny reconsideration of the June 17, 2013 ruling because the evidence does nothing to change the outcome of the ruling. The defendant has repeatedly -- and unsuccessfully -- raised the argument that Ms. Finelli is representing her own interests in this action. The court has reviewed the superior court transcript submitted by the defendant. There is no question in the court's mind that Cynthia Rose -- not Ms. Finelli -- is the plaintiff in this adversary proceeding.

Even if Ms. Finelli did represent in another tribunal that she is a creditor in the underlying bankruptcy case, the court does not doubt that Cynthia Rose is the real party in interest herein. In any event, evidence of Ms. Finelli's supposed dishonesty is not sufficiently significant that it is likely to change the outcome of the ruling.

Newly discovered evidence must be material to the issues tried, and newly discovered evidence may not be merely impeachment evidence. See 12 MOORE'S FEDERAL PRACTICE § 60.42[7], [8] (Matthew Bender 3d. ed. 2012). Here, the defendant is proffering Ms. Finelli's supposed contradiction solely for impeachment purposes. For that reason, it is insufficient for the purposes of this motion.

To be sure, in the June 17, 2013 ruling, the court applied the mandate of the Supreme Court in Crawford Fitting Co. v. J.T. Gibbons, Inc., 482 U.S. 437, 441-42 (1987), and constrained the award pursuant to the limited universe of taxable costs set forth under 28 U.S.C. § 1920. After a few haircuts compelled by the foregoing, the court awarded the plaintiff $814.47. That figure will not be disturbed for any of the reasons advanced by the defendant.

Lastly, the court has no reason to question service of the Bill of Costs on the defendant. That point is settled. As the court previously found, the Bill of Costs itself includes a signed declaration by Ms. Finelli, stating that the Bill of Costs was mailed to the defendant on April 22, 2013 at 465 Stony Point Road, #215, Santa Rosa, CA 95401. Dckt. 284. To the extent that the defendant relies on the aforementioned impeachment evidence to challenge service, the court will not reconsider its determination regarding the propriety of service.

Frankly, the court is dumbfounded why so much time, ink, and energy is spent litigating such a discrete issue. The very costs being disputed are surely overshadowed by the time and energy dedicated to this contest. The matter should come to rest.

The motion will be denied.

6. 12-35330-A-12 BETTE SPAICH — MOTION TO WITHDRAW AS ATTORNEY
12-2669 JDS-1
SPAICH V. ROTH ET AL — 7-10-13 [38]

Tentative Ruling: The motion will be granted.

Attorney Jerry Sandefur asks for permission to withdraw as counsel for defendant Cornelius Farms, LLC, because Cornelius "has failed to cooperate with Jerry Sandefur in preparation for and prosecution of this case," "has failed and refused to pay for attorney fees pursuant to an employment agreement and is engaging in a course of conduct that makes continued representation by this attorney unethical." Docket 38 at 2.

The debtor opposes the motion, arguing that the motion should be denied because the movant consented to the compromise with his clients and he is full time counsel for Alfred Nevis and Mr. Nevis' entities, including Cornelius. In the alternative, the debtor asks for the movant to be substituted as counsel for Cornelius with someone else and for "a showing of the factual basis for the ethical issues . . . referenced in the motion."

Local Bankruptcy Rule 2017-1(e) provides: "Unless otherwise provided herein, an attorney who has appeared may not withdraw leaving the client in propria persona without leave of court upon noticed motion and notice to the client and all other parties who have appeared. The attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. Withdrawal as attorney is governed by the Rules of Professional Conduct of the State Bar of California, and the attorney shall conform to the requirements of those Rules. The authority and duty of the attorney of record shall continue until relieved by order of the Court issued hereunder. Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit."

"The decision to grant or deny counsel's motion to withdraw is committed to the discretion of the trial court." American Economy Ins. Co. v. Herrera, No. 06CV2395-WQH, 2007 WL 3276326, at *1 (S.D. Cal. Nov. 5, 2007) (quoting Irwin v. Mascott, 2004 U.S. Dist. LEXIS 28264 (N.D. Cal. December 1, 2004), citing Washington v. Sherwin Real Estate, Inc., 694 F.2d 1081, 1087 (7th Cir.1982)). Factors considered by courts ruling on the withdrawal of counsel are (1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. Herrera, at *1 (citing Irwin, 2004 U.S. Dist. LEXIS 28264 at 4).

California Rule of Professional Conduct 3-700 provides that:

"(A) In General.

(1) If permission for termination of employment is required by the rules of a tribunal, a member shall not withdraw from employment in a proceeding before that tribunal without its permission.

(2) A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.

(B) Mandatory Withdrawal.

A member representing a client before a tribunal shall withdraw from employment with the permission of the tribunal, if required by its rules, and a member representing a client in other matters shall withdraw from employment, if:

(1) The member knows or should know that the client is bringing an action, conducting a defense, asserting a position in litigation, or taking an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person; or

(2) The member knows or should know that continued employment will result in violation of these rules or of the State Bar Act; or

(3) The member's mental or physical condition renders it unreasonably difficult to carry out the employment effectively.

(C) Permissive Withdrawal.

If rule 3-700(B) is not applicable, a member may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

(1) The client
(a) insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law, or
(b) seeks to pursue an illegal course of conduct, or
(c) insists that the member pursue a course of conduct that is illegal or that is prohibited under these rules or the State Bar Act, or
(d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively, or
(e) insists, in a matter not pending before a tribunal, that the member engage in conduct that is contrary to the judgment and advice of the member but not prohibited under these rules or the State Bar Act, or
(f) breaches an agreement or obligation to the member as to expenses or fees.

(2) The continued employment is likely to result in a violation of these rules or of the State Bar Act; or

(3) The inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal; or

(4) The member's mental or physical condition renders it difficult for the member to carry out the employment effectively; or

(5) The client knowingly and freely assents to termination of the employment; or

(6) The member believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal."

Here, counsel seeks to withdraw because the client has not paid his fees, and the client is not communicating or cooperating with counsel making it impossible for counsel to effectively represent the client while complying with his ethical responsibilities. The movant is not obligated to reveal facts that would jeopardize the confidential information acquired in the process of representing Cornelius. Such information is protected by the attorney-client privilege. Given the declaration of the movant (Docket 40) substantiating the foregoing, the court is satisfied that there are sound bases for withdrawal under California Rule of Professional Conduct 3-700(C)(1)(d), (f) & (2).

The court cannot force the movant to represent Cornelius, given Cornelius' lack of cooperation with the movant, including its failure to pay his attorney's fees. The court cannot force Cornelius to retain new counsel in this proceeding either. It is up to Cornelius to represent itself in this proceeding. And, the court cannot address the enforcement of the compromise against Cornelius and/or Mr. Nevis. Such adjudication requires an adversary proceeding. Fed. R. Bankr. P. 7001(1), (2), (7), (9).

The court will permit the movant's withdrawal from representing Cornelius in this proceeding. The motion will be granted.

7. 12-35330-A-12 BETTE SPAICH — MOTION TO
12-2669 JDS-2 — WITHDRAW AS ATTORNEY
SPAICH V. ROTH ET AL — 7-10-13 [43]

Tentative Ruling: The motion will be granted.

Attorney Jerry Sandefur asks for permission to withdraw as counsel for defendant Alfred Nevis because Mr. Nevis "has failed to cooperate with Jerry Sandefur and [*sic*] preparation for and prosecution of this case," "has failed and refused to pay for attorney fees pursuant to an employment agreement and is engaging in a course of conduct that makes continued representation by this attorney unethical." Docket 43 at 2.

Local Bankruptcy Rule 2017-1(e) provides that "Unless otherwise provided herein, an attorney who has appeared may not withdraw leaving the client in propria persona without leave of court upon noticed motion and notice to the client and all other parties who have appeared. The attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. Withdrawal as attorney is governed by the Rules of Professional Conduct of the State Bar of California, and the attorney shall conform to the requirements of those Rules. The authority and duty of the attorney of record shall continue until relieved by order of the Court issued hereunder. Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit."

"The decision to grant or deny counsel's motion to withdraw is committed to the discretion of the trial court." American Economy Ins. Co. v. Herrera, No. 06CV2395-WQH, 2007 WL 3276326, at *1 (S.D. Cal. Nov. 5, 2007) (quoting Irwin v. Mascott, 2004 U.S. Dist. LEXIS 28264 (N.D. Cal. December 1, 2004), citing Washington v. Sherwin Real Estate, Inc., 694 F.2d 1081, 1087 (7th Cir.1982)). Factors considered by courts ruling on the withdrawal of counsel are (1) the reasons why withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal might cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. Herrera, at *1 (citing Irwin, 2004 U.S. Dist. LEXIS 28264 at 4).

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(B) Mandatory Withdrawal.

A member representing a client before a tribunal shall withdraw from employment with the permission of the tribunal, if required by its rules, and a member representing a client in other matters shall withdraw from employment, if:

(1) The member knows or should know that the client is bringing an action, conducting a defense, asserting a position in litigation, or taking an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person; or

(2) The member knows or should know that continued employment will result in violation of these rules or of the State Bar Act; or

(3) The member's mental or physical condition renders it unreasonably difficult to carry out the employment effectively.

(C) Permissive Withdrawal.

If rule 3-700(B) is not applicable, a member may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:

(1) The client
(a) insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension, modification, or reversal of existing law, or
(b) seeks to pursue an illegal course of conduct, or
(c) insists that the member pursue a course of conduct that is illegal or that is prohibited under these rules or the State Bar Act, or
(d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively, or
(e) insists, in a matter not pending before a tribunal, that the member engage in conduct that is contrary to the judgment and advice of the member but not prohibited under these rules or the State Bar Act, or
(f) breaches an agreement or obligation to the member as to expenses or fees.

(2) The continued employment is likely to result in a violation of these rules or of the State Bar Act; or

(3) The inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal; or

(4) The member's mental or physical condition renders it difficult for the member to carry out the employment effectively; or

(5) The client knowingly and freely assents to termination of the employment; or

(6) The member believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal."

Here, counsel seeks to withdraw because the client has not paid his fees, and the client is not communicating or cooperating with counsel making it impossible for counsel to effectively represent the client while complying with his ethical responsibilities. The movant is not obligated to reveal facts that would jeopardize the confidential information acquired in the process of representing Cornelius. Such information is protected by the attorney-client privilege. Given the declaration of the movant (Docket 40) substantiating the foregoing, the court is satisfied that there are sound bases for withdrawal under California Rule of Professional Conduct 3-700(C)(1)(d), (f) & (2).

The court will permit the movant's withdrawal from representing Mr. Nevis in this proceeding. The motion will be granted.

8. 13-22534-A-11 SUPPLY HARDWARE, INC. MOTION TO
WSS-5 APPROVE DISCLOSURE STATEMENT
6-27-13 [94]

Final Ruling: The motion will be dismissed without prejudice because it violates Fed. R. Bankr. P. 2002(b), which requires "not less than 28 days' notice by mail of the time fixed (1) for filing objections and the hearing to consider approval of a disclosure statement." The debtor has given only 25 days' notice of the deadline for filing objections to the approval of the disclosure statement. Local Bankruptcy Rule 9014-1(f)(1) requires that written opposition be filed at least 14 days prior to the hearing on the motion. In this case, the deadline for oppositions/objections was on July 22, 2013, as the hearing for the motion has been set on August 5, 2013. Yet, the motion was served on June 27, 2013, only 25 days prior to July 22. Docket 97. The motion will be dismissed without prejudice.

9. 13-21454-A-11 TRAINING TOWARD SELF MOTION TO
CAH-24 RELIANCE, A CALIFORNIA EMPLOY
7-5-13 [144]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The trustee requests approval to employ Richard Ribacchi of Valvridge Property Advisors as an appraiser for the estate and specifically to prepare an appraisal report as to a commercial real property in Sacramento, California and potentially testify as an expert witness for the estate in proceedings before this court. The proposed compensation for Mr. Ribacchi is a $3,750 flat fee

for his preparation of the appraisal report and $300 an hour for testifying as an expert witness.

Subject to court approval, 11 U.S.C. § 327(a) permits a trustee to employ a professional to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions."

The court concludes that the terms of employment and compensation are reasonable. Mr. Ribacchi is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. His employment will be approved.

10.	13-21454-A-11 CAH-25	TRAINING TOWARD SELF RELIANCE, A CALIFORNIA	MOTION TO APPROVE COMPENSATION OF APPRAISER (FEES $7,750) 7-5-13 [149]

Tentative Ruling: The motion will be granted in part and denied in part.

The debtor in possession on behalf of Richard Ribacchi of Valvridge Property Advisors has filed Mr. Ribacchi's first and final motion for approval of compensation. The requested compensation consists of $7,750 in fees and no expenses. $3,750 of the fees are a flat fee for Mr. Ribacchi to prepare an appraisal for a commercial real property in Sacramento, California. $4,000 of the fees are a retainer for Mr. Ribacchi's services at $300 an hour of potentially testifying in proceedings before this court. The motion to employ Mr. Ribacchi is on this calendar and the court will be granting it.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

As Mr. Ribacchi's services of preparing an appraisal report are well defined and are in consideration of a flat fee, the court will allow the payment of $3,750 for his preparation of the appraisal report.

However, as his services of testifying on behalf of the estate have not been rendered yet and may never be rendered, the court will not approve any compensation for such services. The court cannot assess the reasonableness and necessity of compensation until it knows what is the compensation. Because expert witness services have not been rendered yet, the court cannot make a section 330(a) determination of the requested compensation as to such services. The debtor may pay Mr. Ribacchi the proposed $4,000 as a retainer for such services, but Mr. Ribacchi is not allowed to draw on that retainer absent further order of this court. The motion will be granted in part and denied in part.

11.	11-46663-A-7 BSH-3 VS. CHEVRON FEDERAL CREDIT UNION	ANTHONY GRADEN	MOTION TO AVOID LIEN O.S.T. 7-25-13 [50]

Tentative Ruling: The motion will be denied without prejudice.

The debtor seeks to avoid the judicial lien of Chevron Credit Union on the debtor's real property in Lathrop, California. The motion will be denied because while the supporting declaration refers to an attachment evidencing the

recorded abstract of judgment, there is no attachment of the recorded abstract of judgment in the record. Given this, the motion will be denied.

The court cannot grant the motion for another reason as well. The respondent creditor was not served with the motion. While the debtor served the respondent creditor's attorney, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

12. 11-46663-A-7 ANTHONY GRADEN — MOTION TO AVOID JUDICIAL LIEN O.S.T. 7-25-13 [55]
BSH-4
VS. EAGLE CREDIT UNION

Tentative Ruling: The motion will be denied without prejudice.

The debtor seeks to avoid the judicial lien of Eagle Credit Union on the debtor's real property in Lathrop, California.

However, the motion will be denied because while the supporting declaration refers to an attachment evidencing the recorded abstract of judgment, there is no attachment of the recorded abstract of judgment in the record. And, the amended motion (Docket 72) says that the judgment giving rise to the lien was entered on April 6, 2011, while an abstract of the judgment was recorded on or about March 13, 2011. This is impossible. The creditor could not have recorded an abstract of the judgment before the judgment was entered. Given this, the motion will be denied.

The court cannot grant the motion for another reason as well. The respondent creditor was not served with the motion papers. While the debtor served the respondent creditor's attorney, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

13. 10-39672-A-11 MATTERHORN GROUP, INC. — MOTION TO DISMISS CASE, ETC. 6-14-13 [1501]
LNB-95

Tentative Ruling: The motion will be granted.

The debtors are asking the court to dismiss the debtors' respective cases and to authorize the debtors to distribute the remaining estate funds as follows.

The debtors are holding a total of $725,750.24. All objections to administrative and pre-petition priority claims have been resolved. There is a total of $311,309.68 of allowed nonprofessional administrative claims, all of which will be paid in full upon dismissal of the cases. There is a total of $204,154.97 of allowed pre-petition priority claims, all of which will be paid in full upon dismissal of the cases. After payment of all of these allowed administrative and priority claims, a balance of $210,285.59 of cash will remain. After payment of the fees and costs incurred by the debtors' and the official committee of unsecured creditors' counsel and the payment of the quarterly fees to the U.S. Trustee, the estates will have $134,062.55 available for pro rata distribution to the $18,371,264.47 in general unsecured claims, including the bank's unsecured deficiency claim. The debtors will not have to pay anything from this sum to the bank because under the debtors' agreement with the bank, the bank is entitled to 85% of the surplus exceeding $135,475.95. Under the agreement with the bank, post-dismissal recoveries will be distributed 85% to the bank and 15% to general unsecured creditors on pro

rata basis.

The court will authorize the debtors to distribute the remaining funds in the estate as proposed above.

As all of the debtors' known assets have been liquidated and all causes of action and proofs of claim have been resolved, the court will order dismissal of the cases under 11 U.S.C. § 1112(b)(1). The alternatives of prosecuting the confirmation of a liquidation chapter 11 plan or conversion to chapter 7 are costly and will deplete the little funds available for distribution to general unsecured creditors. The court also notes that the bank and committee are agreeable to dismissal of the cases. The cases will be dismissed and the motion will be granted. No other relief will be ordered.

14. 10-39672-A-11 MATTERHORN GROUP, INC. CONTINUED STATUS CONFERENCE
7-26-10 [1]

Tentative Ruling: None.

15. 10-39672-A-11 MATTERHORN GROUP, INC. MOTION TO
LNB-12 USE CASH COLLATERAL
10-18-10 [297]

Tentative Ruling: None.

16. 10-39672-A-11 MATTERHORN GROUP, INC. MOTION TO
LNB-97 APPROVE COMPENSATION OF DEBTOR'S ATTORNEY (FEES $106,648.50, EXP. $5,511.13)
7-3-13 [1520]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

Levene, Neale, Bender, Yoo & Brill, L.L.P., counsel for Matterhorn Group, Inc., Vitafreze Frozen Confections, Inc., and Deluxe Ice Cream Company (collectively "the debtors"), has filed its second and final motion for approval of compensation.

The requested compensation consists of $4,790.50 in fees and $154.84 in expenses, for a total of $4,945.34. This motion covers

The requested compensation consists of two time periods. The first time period is from May 1, 2012 through June 30, 2013, when the movant incurred fees of $106,648.50 and expenses of $5,511.13, for a total of $112,159.63.

The second time period is from July 1, 2013 through August 5, 2013. For that period, the movant has agreed to cap its fees and costs to $7,079.98.

The court approved the movant's employment as the debtors' attorney on August 31, 2010. In performing its services, the applicant charged hourly rates ranging between $195, $300, $325, $510, $525, $575 and $595.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The applicants' services included, without limitation:

(1) addressing cash collateral and budgeting issues post-sale,

(2) communicating with the bank, committee and other parties in interest as to various issues about the administration of the estate,

(3) preparing and analyzing operating reports,

(4) addressing compliance issues with the United States Trustee,

(5) analyzing claims and preparing and prosecuting claim objections,

(6) preparing and prosecuting motion to dismiss and pay claims,

(7) appearing at court hearings,

(8) preparing and prosecuting compensation motions,

(9) addressing responses to compensation motions, and

(10) preparing plan and disclosure statement.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved.

17.	12-40090-A-7 13-2042 HODGSON ET AL V. EAST BAY INVESTORS, LLC	FREDRICK HODGSON BSA-2	MOTION TO DISMISS ADVERSARY AND TO EXPUNGE LIS PENDENS 7-8-13 [30]

Tentative Ruling: The motion will be disposed as provided in the ruling below.

The defendant, East Bay Investors, LLC, is asking for dismissal of this action and for the expunging of a lis pendens on a real property in Kings Beach, California.

The plaintiff filed the underlying bankruptcy case on November 15, 2012 as a chapter 13 case. The defendant conducted a foreclosure sale of the subject property on November 16, 2012, one day later. The court converted the case to chapter 7 on January 14, 2013. On January 23, 2013, this court entered an order granting retroactive relief from stay with respect to the defendant's foreclosure sale.

On January 25, 2013, the plaintiff filed a state court complaint against the defendant, in Placer County Superior Court, asserting claims for breach of contract, fraud, IIED, negligent misrepresentation, wrongful foreclosure and violations of Cal. Bus. & Profess Code § 17200 et al., relating to the subject property. On January 29, 2013, the plaintiff recorded a lis pendens against

the property. The defendant removed the state court action to this court on February 7, 2013.

This court does not have subject matter jurisdiction over any of the pending claims because the underlying chapter 7 bankruptcy case was dismissed on July 14, 2013. Hence, this court cannot adjudicate any of the claims in this case. The court also declines to exercise the type of supplemental subject matter jurisdiction discussed by Carraher v. Morgan Elec., Inc. (In re Carraher), 971 F.2d 327 (9th Cir. 1992). The court does not see how it can have any jurisdiction over the claims even under Carraher.

The question then is whether to dismiss the action or remand it back to state court. The court will remand the action.

28 U.S.C. § 1447(c) provides: "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case *shall* be remanded."

The disposal of the action is consistent with equitable remand as well. Under 28 U.S.C. § 1452(b), this court "may" remand a removed action "on any equitable ground." The grounds include judicial economy, comity and respect for the state court's decision-making capabilities, the effect of remand upon administration of the bankruptcy estate, the effect of bifurcating claims and parties and the possibility of an inconsistent result, predominance of state law issues and non-debtor parties, and prejudice to other parties in the action. Western Helicopters, Inc. v. Hiller Aviation, Inc., 97 B.R. 1, 6 (Bankr. E.D. Cal. 1988); see also Williams v. Shell Oil Co., 169 B.R. 684, 692-93 (Bankr. S.D. Cal. 1994).

The court will remand the action to state court, for that court to determine whether the claims are actionable, given that the action was filed initially in state court, it was removed to this court, and the causes of action are based solely under state law.

As the court is remanding the action back to state court, it does not reach the merits of the lis pendens.

18. 12-33592-A-11 KURTIS/CHRISTY SANDHOFF — MOTION TO CONFIRM AMENDED PLAN
RAH-19 — 6-13-13 [248]

Final Ruling: This motion will be dismissed as moot because the case was dismissed on July 3, 2013.