

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

August 18, 2016 at 10:30 a.m.

1.	<u>12-34203-E-7</u>	WATSON VENTURES, LLC	MOTION FOR ADMINISTRATIVE
	WSS-1	Steven Shumway	EXPENSES
			7-8-16 [<u>159</u>]

Tentative Ruling: The Motion for Administrative Expenses has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties 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 to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on July 8, 2016. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion for Administrative Expenses has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties 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 to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Administrative Expenses is denied.
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Greg Watson ("Movant"), a Managing Member of the Debtor, filed the Instant Motion for Allowance of Administrative Expense on July 8, 2016. Dckt. 159. The Movant seeks administrative expenses for payments made by Movant for past due property taxes of and Homeowner's Association fees for two lots in Mexico that Debtor owned at the time of filing. Movant made the payments after an offer to purchase the lots from the bankruptcy estate was accepted by the trustee and submitted to the court for approval. The court did not approve the sale of the lots to Movant, but Movant claims that the estate did

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benefit from the payment of the property taxes and Homeowner's Association fees. The expenses requested by Movant are property taxes of \$6,258.00 and Homeowner's Association fees of \$1,154.65 on Lot 109 and Property taxes of \$3,773.00 on Lot 110 in August 2014.

No points and authorities in support of the Motion is provided by Movant. In the Motion, reference is made to 11 U.S.C. § 503(b)(1)(B). Dckt. 159. No specific paragraph or basis as applicable to this Motion is identified, but merely the entire multi-prong alternative provisions of various types of expenses.

In his declaration, Mr. Watson testifies that he (a managing member of the entity which filed bankruptcy) decided to pay what he believed were taxes and homeowner's fees in anticipation that he would be the successful purchaser of property from the bankruptcy estate. No testimony is provided as to why or how the bankruptcy trustee and the bankruptcy estate are responsible for this action by Mr. Watson.

TRUSTEE'S OPPOSITION

Alan S. Fukushima, the Chapter 7 Trustee, filed a Memorandum of Points and Authorities in Opposition to Greg Watson's Motion for Reimbursement of Administrative Expenses on August 4, 2016. Dckt. 170. The Trustee opposes the Instant Motion on the following grounds:

1. The moving party failed to prove certified English language translations of the alleged invoices
2. The payments were not taxes incurred by the estate
3. The Movant failed to provide evidence that the payments were actually made

Mr. Watson asserts that Mr. Watson, the Chapter 7 trustee and his [not indicating whether it is Mr. Watson's attorney or the Trustee's] worked for almost four years to sell the two lots in Mexico, and the issue of Spanish language documents was never raised. If translation is required, Mr. Watson requests that a continuance be granted. Dckt. 172.

It further states that Mr. Watson "jumped the gun" by paying the taxes, which would have to have been paid by any Buyer or the Trustee as part of the sale, thus, generating a net price after payment of the taxes. Thus, if Mr. Watson had not "jumped the gun," then the payment from the sale proceeds would have been reflected in the accounting of the sale.

In response to the Trustee stating that there is no proof of payment, Mr. Watson responds that he now provides it as part of his response. In his Response Declaration (Dckt. 173), Mr. Watson testifies that he sent by wire transfer \$9,000.00 to Mr. John Paul Norbert Phillips to pay the property taxes on Lots 109 and 110. He that Mr. Phillips is his (Mr. Watson's) representative. But he does not provide evidence that the money was actually used to pay the taxes. The Wire Transfer Statement provided as Exhibit D, Dckt. 174, is dated July 31, 2014. This was a week after the motion to sell was filed and a month before the scheduled hearing on that motion.

Mr. Watson also testifies that Exhibit "E" to the Declaration shows debits from his bank account to pay HOA dues. Exhibit E shows Debit Transactions for September 2, 2014, in the amount of \$1,154.65 to

“ASOC D CONDO PTO” (and a related \$23.09 processing fee).

However, September 2, 2016, was after the court issued its order denying the motion to sell the property. Order, filed date August 29, 2014, Dckt. 104. The hearing on the Motion, when the court announced the ruling occurred on August 28, 2014 (with the court posting its tentative ruling on August 27, 2014). Mr. Watson did not “jump the gun” on making the asserted \$1,154.65 payment, but made it after all the gunfire stopped, the smoke had cleared, and Mr. Watson knew he wasn’t the buyer of the Property.

DISCUSSION

11 U.S.C. § 503 of the Bankruptcy Code provides for the “allowance” of administrative expenses. Section 503(b)(1)(A) allows as administrative expenses “the actual, necessary costs and expenses of preserving the estate.” The burden of proving an administrative expense is on the claimant. *Microsoft Corp. v. DAK Indus. (In re DAK Indus.)*, 66 F.3d 1091 (9th Cir. 1995). The claimant must show that the debt asserted to be an administrative expense (1) arose from a transaction with the debtor-in-possession as opposed to the preceding entity; and (2) directly and substantially benefitted the estate. *Id.* In order to keep administrative costs to the estate at a minimum, “the actual, necessary costs and expenses of preserving the estate,” § 503(1)(A), are construed narrowly. *In re Palau*, 139 Bankr. 942, 944 (B.A.P. 9th Cir. 1992), *aff’d*, 18 F.3d 746 (9th Cir. 1994).

The Movant failed to meet the necessary burden to show that the expense is an allowed administrative expense pursuant to 11 U.S.C. § 503(b).

In order for a claim to receive priority pursuant to 11 U.S.C. § 507(a)(2). The claim must be an “administrative expense[] allowed under section 503(b).” Reviewing the Movant’s Exhibits, all of the information is in Spanish with no accompanying English translation. The burden of proving an administrative claim is on the claimant – here, the Movant. The Movant has failed to meet this burden.

No evidence has been provided to show that the Debtor, in fact, made the payments. Rather, the court is left with untranslated documents and no testimony or receipts that the expenses were paid. In order to succeed on a motion, “every motion shall be accompanied by evidence establishing its factual allegations.” Local Bankr. R. 9014-1(d)(7); see, generally *United States v. Diaz*, 519 F.3d 56, 64 (1st Cir. 2008) (“As we have said before, ‘[i]t is clear, to the point of perfect transparency, that federal court proceedings must be conducted in English.... [P]arties are required to translate all foreign documents into English’ *United States v. Rivera Rosario*, 300 F.3d 1, 5, 7 n. 4 (1st Cir.2002)). Instead of providing competent evidence, the Debtor submits Spanish documents, with no certified English translation, making it impossible for the court or other parties in interest to be able decipher the bills and determine whether they do in fact qualify for priority or administrative expenses.

The history of this case, and Mr. Watson’s attempt to purchase the Mexico property raises troubling questions for the court. The court’s findings of fact and conclusions of law relating to the attempted sale are set forth in the court’s Civil Minutes for the August 28, 2014 hearing on the Trustee’s Motion to Sell the property to Mr. Watson. Dckt. 103. The court’s findings and conclusions include:

- A. “This case was converted and the Trustee appointed for cause – most rising out of the failure of the principals of the Debtor (including Greg Watson) and its professionals from fulfilling

their fiduciary duties for the then Debtor in Possession and failure of the Debtor to truthfully and accurately disclose information in the case.”

B. “Though the principal of the Debtor in Possession, Gary Watson, and the professionals for the Debtor in Possession took advantage of the opportunities under Chapter 11 (including Counsel for the Debtor in Possession being paid) in this case, misstatements, inaccurate information, and incomplete information were identified and these fiduciaries did not correct such failings. Civil Minutes for October 17, 2012 Status Conference, Dckt. 33. (Monthly Operating Report not filed, financial information on Monthly Operating Report inaccurate, replacement counsel for Debtor in Possession (Marlon Bateman) having a disqualifying conflict because he was also serving as attorney for Greg Watson and his wife [who was also an officer of the Debtor], undisclosed assets, undisclosed payments to insiders, and amended Monthly Operating Reports increasing income without explanation.)”

C. These events in the Watson Ventures, LLC Chapter 11 case were not occurring in a vacuum, but in connection with the Watson Companies, Inc. Case for which Stephen Shumway was the attorney for the debtor in possession and Greg Watson was the principal acting for that debtor in possession as well as the then Debtor in Possession in this case. The court dismissed the Watson Companies, Inc. Case for cause, which included:

- (1) Debtor failing to provide addresses for creditors on Schedule and Mailing Matrix,
- (2) failure of the Debtor in Possession to serve notice of continued meeting of creditors on all creditors,
- (3) failure to correct error in Schedules,
- (4) failure to disclose assets on Schedules,
- (5) failure to include information on the Statement of Financial Affairs,
- (6) grossly inaccurate information was placed on the Schedules (which were signed by Greg Watson under penalty of perjury),
- (7) Counsel for Debtor in Possession appearing as percipient witness (rather than the principal of the Debtor and Debtor in Possession, Greg Watson) testifying as to the inaccurate information in the Schedules and Statement of Financial Affairs, which were signed by Greg Watson under penalty of perjury, and
- (8) counsel’s “contemporaneous” time records having charges which were not for the time period covered by the “contemporaneous” time records.

Civil Minutes, Motion to Dismiss, 12-34252 Dckt. 67.”

D. “In addition to the above grounds, Greg Watson (principal of the debtor and debtor in possession) and Steven Shumway (counsel for that debtor in possession) failed to obtain authorization to use cash collateral and used, or allowed the use of, such cash collateral without regard to the provisions of 11 U.S.C. § 363(c)(2). Civil Minutes, Order to Show Cause, 12-34252 Dckt. 69.”

E. “In addition to the above grounds, Greg Watson (principal of the debtor and debtor in possession) and Steven Shumway (counsel for that debtor in possession) failed to obtain authorization to use cash collateral and used, or allowed the use of, such cash collateral

without regard to the provisions of 11 U.S.C. § 363(c)(2). Civil Minutes, Order to Show Cause, 12-34252 Dckt. 69.”

- F. “No first day motions had been filed and the estate was being operated by its fiduciaries outside the requirements of the Bankruptcy Code. Additionally, that debtor in possession and Greg Watson could not explain how the debtor in possession “found” an additional \$197,747 in cash receipts which were previously unaccounted for by the debtor in possession.”
- G. “The court concluded, ‘It is clear no thought was given to fulfilling the fiduciary obligations of the Debtor in Possession or complying with the cash collateral use prohibitions of the Bankruptcy Code....This is not an indication of a Debtor prosecuting a Chapter 11 case in good faith or a Debtor in Possession attempting to fulfill its fiduciary duties in good faith.’ *Id.*”

Civil Minutes, Dckt. 103.

The proposed sale for the two properties in Mexico, a timeshare in Cabo, a timeshare in Cancun, and a timeshare in Maui to Mr. Watson was proposed for the grand sum of \$35,000.00. *Id.* The agreement provided that Mr. Watson, as the purchaser, would assume all responsibility for all taxes or assessments.

The court took exception to the Trustee’s conduct and proposed sale to Mr. Watson, as it appeared that the Trustee had delegated the trustee work to his attorney. The attorney, in filing the Motion, provided estimates of value for the property to be sold of: (1) \$100,000 for Lot # 109 in Mexico, and (2) \$75,000 for Lot #110 in Mexico. After the payment of all fees expenses, and taxes, based on the information provided by the Trustee’s attorney, the projected net proceeds to the estate for just these two Mexico properties was \$80,650.00. *Id.*, p. 5. The three timeshares were valued at \$2,500.00 each on the Schedules, for a combined value of \$7,500.00, which increased the total projected net value of the estate to \$88,150.00.

The court determined that the Trustee and Mr. Watson offered the court no basis for approving a sale of the property for a discount of 55% of the net value based on the information provided by the Trustee and Mr. Watson as the principal of the Debtor.

Mr. Watson should not feel alone in the court calling into question his conduct with respect to the sale, as the court found that the Trustee had done little to determine the value and market the property, concluding,

“For this Motion, the Movant has not established that the estate would receive the fair market value from the proposed sale of the Mexico Properties and the Timeshares. At best, the Motion and supporting evidence is that the Trustee can recover an easy \$35,000.00 for minimal work done by counsel for the Trustee. (This conduct smacks of the Trustee having the attorney do trustee work, and the attorney bill for the Trustee’s work, and then the Trustee double dipping by claiming a commission on the sales proceeds.)”

Id. at 7.

The Trustee, after marketing the properties came back to the court with a buyer to purchase Lot #

109 for \$70,000.00 and Lot #110 for \$50,000.00. After costs of sale and expenses, the Trustee reports receiving net proceeds of \$46,904.59 from the sale of these two lots. Trustee's Report of Sale, Dckt. 136.

Attached to the Report are two Settlement Statements for the sales. For Lot #109, it that from the sale proceeds there was \$17,221.25 for HOA Dues paid by the Trustee and a reimbursement of property taxes to a "Yunen Dias in the amount of \$294.34. Additionally, property taxes and HOA dues of \$1,461.90 were prorated 50/50 between the Buyer and the Trustee. *Id.* at 3.

For Lot #110, there was \$11,001.04 paid for HOA dues, and \$173.60 property tax reimbursement to "Yunen Diaz." Property taxes and HOA dues of \$861.36 were prorated 50/50 between the Buyer and the Trustee.

From the Trustee's Report, it does not appear that there was a significant amount of property taxes paid through the sale escrow. Looking at the contracts for the sale of the two properties in Mexico, the Seller (the Trustee) was responsible for paying of all property up to the date of sale, with a proration of the taxes for the sale year. Dckt. 122.

When the Trustee filed the original motion seeking approval to sell the Property to Mr. Watson, the Trustee alleged in the Motion that there was approximately \$2,550.00 in back property taxes due for both properties in Mexico, with such taxes having gone unpaid since 2012. Motion, ¶ 7; Dckt. 95. Motion filed on July 24, 2014. This was before the asserted \$9,000.00 wire transfer from Mr. Watson to Mr. Phillips on July 31, 2014. Exhibit D, Dckt. 174. This is significantly less than the \$9,000.00 which Mr. Watson testifies under penalty of perjury were wired to Mr. Phillips, his representative to pay the property taxes on the two lots in Mexico. Declaration, Dckt. 173.

The court can view this several different ways. The first is, based on the grounds stated in the Motion and the evidence presented, it appears that Mr. Watson is now seeking to burden the bankruptcy estate with a gamble he sought to make as part of his plan to take this property from the bankruptcy estate at a substantial discount. The evidence presented is that he acted voluntarily and with respect to property in which he had no interest or right. Rather than acting consistent with the law and his rights, Mr. Watson continued to treat the property of the estate as his own property, which he will take from the estate, irrespective of the law.

The second way to look at this is that the bankruptcy estate may have benefitted from Mr. Watson acting without interest or authority, and reducing what would otherwise have to be paid out of a sale escrow for the Property. In the Motion to Sell the property to Mr. Watson, the Trustee noted that the property taxes were two years in arrears at that time. By the time of the sale which the court approved, it appears from the Trustee's Report of Sale that there were no delinquent taxes paid.

With what the court has been provided, there is no evidence that Mr. Watson has paid the taxes, was authorized to pay the taxes, or has demonstrated a basis to have the bankruptcy estate pay Mr. Watson. At best, Mr. Watson's testimony is that he sent money to his representative in Mexico, with no evidence that the money was used to pay the taxes. To the extent that Mr. Watson chose to co-opt the role of the Chapter 7 Trustee and volunteer to pay the taxes, there is no basis shown by Mr. Watson that such a volunteer is then entitled to demand monies from the bankruptcy trustee.

Therefore, based on the evidence before the court, the Movant's Motion for Administrative Expenses

is denied as a priority administrative claim pursuant to 11 U.S.C. §§ 503(b) and 507(a)(2).

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusion of Law are stated in the Civil Minutes for the hearing.

The Motion for Administrative Expense filed by Greg Watson 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 for Administrative Expense is denied.

Final Ruling: No appearance at the August 18, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on July 20, 2016. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties 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 to be the equivalent of a statement of nonopposition. *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 Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Motion to Abandon Property is granted.
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After notice and hearing, the court may order the Trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Kimberly J. Husted ("Trustee") requests the court to authorize Trustee to abandon property commonly known as 763 Main Street, Chester, California (the "Property"). The Property is encumbered by the liens of Bank of the West, securing a claim of \$360,730.00. While the Property was valued by the Debtor at \$800,000.00, the Declaration of Kimberly J. Husted has been filed in support of the motion and testifies that the value of the Property is significantly lower. The Trustee's Declaration states that the Subject Property:

is subject to a "Covenant to Restrict Use of Property Environmental Restriction" which was entered into as a result of the Department of Toxic Substances Control determining that there was a "need to protect present or future human health or safety of environment as a result of the presence on the land of hazardous materials. The Covenant reflects that the Shop cannot be used as a residence, hospital, school for persons under the age of 21 or day care center as it would "entail an unacceptable cancer risk hazard." However, the Covenant

acknowledges that the current usage does not present an unacceptable threat. The Covenant also provides that there shall be no activities that disturb the soil without prior approval and prohibits the property from being used to raise food, drilling for water, oil, or gas (without prior approval), or excavation (without prior approval).

Husted Declaration. Dckt. 333.

The Husted Declaration states that the Trustee sought the assistance of two brokers in order to provide maximum exposure for the shop. After employment of the two brokers for over a year, the Trustee had still not received an acceptable offer for the Subject Property. The Trustee reached out to the few potentially interested buyers to inquire about a sales price at the minimum amount that would yield a meaningful net return to the estate and sought the assistance of an auctioneer as an alternative method of liquidating the Subject Property. No interested buyer made an offer to purchase the Subject Property and the auctioneer advised that, based on her experience, the nature of the market in Chester, California, the rural location of the property, and the possible environmental issues associated with the property, the reserve for the sale of the Subject Property to obtain a buyer should be \$350,000.00, which was less than Bank of the West's secured claim. Husted Declaration. Dckt. 333.

Due to the lack of interest in the Subject Property and the auctioneer's statements, the Trustee reached out to Bank of the West to discuss the Subject Property's liquidation. Bank of the West would prefer to liquidate the Subject Property on its own and requested abandonment so that it could foreclose. Husted Declaration. Dckt. 333.

The court finds that the Property secures claims which exceed the value of the Property, and are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate, and authorizes the Trustee to abandon the Property.

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 Abandon Property filed by the Trustee 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 Compel Abandonment is granted and that the Property identified as 736 Main Street, Chester, CA, APN 100-291-002 is abandoned to Walter Helge Schaefer by this order, with no further act of the Trustee required.

Tentative Ruling: The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties 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 to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

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.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, Buyer, parties requesting special notice, and Office of the United States Trustee on July 21, 2016. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Sell Property has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties 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 to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). The defaults of the non-responding parties are entered.

The Motion to Sell Property is granted.
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The Bankruptcy Code permits the Trustee ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here Movant proposes to sell the "Property" described as follows:

- A. Estate's 1/5th interest in 725 Acacia Avenue, Richmond, California

The proposed purchaser of the Property is Betty Robinson-Harris and the terms of the sale are:

- A. The Buyer shall purchase the estate's interest in the Property for the net purchase price of \$30,000.00, payable as follows:

1. \$5,000.00 initial deposit (which has been paid)
 2. The balance due within 30 calendar days of entry of court approving the sale.
- B. The Buyer agrees to purchase the Property subject to any and all claims of lien, encumbrance, interest, unpaid property taxes and utilities, and homeowners association dues;
- C. The transfer of the Property shall be “as is” and “where is” without representation or warranty;
- D. The Buyer shall be responsible for any and all transfer taxes;
- E. The Trustee shall execute all documents reasonably necessary to effectuate the sale and the terms of the Agreement; and
- F. The sale is subject to overbidding through conclusion of the sale hearing.

Additionally, the Trustee requests that the 14-day stay period imposed by Fed. R. Bankr. P. 6004(h) be waived so that the sale can move forward immediately upon entry of sale.

At the time of the hearing the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing the following overbids were presented in open court: xxx.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate. The sale is of a 1/5th interest in the Property and is being sold to a party who themselves already is a co-owner on the Property. The unique circumstances surrounding this case and particular Property justify the approval of the sale. Additionally, given that the sale is with an already co-owner of the Property, there is cause to waive the 14-day stay.

The court shall issue a minute 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 Sell Property filed by J. Michael Hopper, the Trustee 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 J. Michael Hopper, the Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Betty Robinson-Harris or nominee (“Buyer”), the Property commonly known as 1/5th interest of the Bankruptcy Estate in real property located at 725 Acacia Avenue, Richmond, California (“Property”), on the following terms:

1. The Property shall be sold to Buyer for \$30,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit B, Dckt. 175, and as further provided in this Order.
2. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
3. The Trustee be, and hereby is, authorized to execute any and all documents reasonably necessary to effectuate the sale.

IT IS FURTHER ORDERED that the 14-day stay pursuant to Fed. R. Bankr. P. 6004(h) is waived for cause.

Debtor's Atty: Richard A. Hall

Notes:

Continued from 6/22/16. The Trustee reported that he had been in active negotiations with Corrigan Financial and the Parties were working on the terms of an agreement.

AUGUST 18, 2016 STATUS CONFERENCE

No updated Status Report has been filed by the Parties. No agreement with Corrigan Financial has been presented to the court.

JUNE 22, 2016 STATUS CONFERENCE

The Trustee reported that he desired to engage the services of the attorney who has been representing the Debtor in her battles with ex-husband Stanislav Lazutkine, a debtor in his own Chapter 7 case (Bankr. E.D. Cal. 13-21893) for which the Trustee in this case is also the Chapter 7 trustee.

Unfortunately, though it would otherwise appear that a significant common interest would exist for this Debtor and the Trustee on the issue of the Lake Tahoe Property and other personal property was community property as stated by Debtor Jenny Pettengill, and not property of entities in which Debtor Stanislav Lazutkine asserted he had no interest, it appears that any cooperation has fallen apart. On May 24, 2016, the Trustee dismissed his motion to employ the Debtors state court counsel to prosecute the rights and interest of the estate as Jenny Pettengill has stated under penalty of perjury exist. Civil Minutes, Dckt. 269, 268.

At the Status Conference, the Trustee reported that the Trustee has been in active negotiations with Corrigan Financial. The parties are working on the terms of an agreement. The Debtor raised the issue of the estates and Debtors interest are roughly aligned.

MAY 5, 2016 STATUS CONFERENCE

The court set a Chapter 7 Status Conference in this case. Order, Dckt. 241. The court reviewed the proceedings in this Chapter 7 case and that the Chapter 7 Trustee has been active in trying to sell shoreline residential real property located on North Shore Lake Tahoe since February 2014. Though the Chapter 7 Trustee and Corrigan Finance stipulated in February 2014 to litigate their disputes in this court, neither party has actively prosecuted their respective asserted rights.

Chapter 7 Trustee Status Report, Dckt. 258. The Trustee reports that Since the last hearing in this case in March 2014, the Trustee has decided that he now wants to litigate the estates rights in the Placer County family law court as part of the Debtor and her ex-husbands long pending, multi-year dissolution proceeding. Other than telling the court that he now, years into the bankruptcy case, wants to litigate in state

court and not proceed as he stipulated, gives the court no reason for the bankruptcy Trustee subjecting himself and the estates rights to the civil family law process in which Debtor and her ex-husband have been entangled.

Corrigan Finance filed its own Status Conference Report. Dckt. 256. Corrigan Finance states that it wants to litigate the rights and interests with the Trustee, but that the Trustee has failed to prosecute such actions. Corrigan Finance does not offer an explanation as to why it has not picked up the cudgel and advanced its rights in this court as stipulated.

At the Status conference the parties reported that they are talking and intend to remove, or commence in this court, the appropriate proceedings to determine the ownership of the properties (real and personal) in dispute.

Final Ruling: No appearance at the August 18, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on June 27, 2016. By the court's calculation, 52 days' notice was provided. 28 days' notice is required.

The Motion to Withdrawal as Attorney has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties 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 to be the equivalent of a statement of nonopposition. *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 Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Withdraw as Attorney is granted.

Peter G. Macaluso, attorney of record for Debtor Latanya Moore, filed a Motion to Withdraw as Attorney in this bankruptcy proceeding. Movant states the following reasons for the motion: (1) lack of cooperation, communication, and response from the Client and (2) disagreement between Movant and Client on how to proceed with the case.

APPLICABLE LAW

District Court Rule 182(d) governs the withdrawal of counsel. Local Bankr. R. 1001-1(C). The District Court Rule prohibits the withdrawal of counsel leaving a party *in propria persona* unless by motion noticed upon the client and all other parties who have appeared in the case. E.D. CAL. L.R. 182(d). The attorney must provide an affidavit stating the current or last known address or addresses of the client and efforts made to notify the client of the motion to withdraw. *Id.* Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit. *Id.*

Withdrawal is only proper if the client's interest will not be unduly prejudiced or delayed. The court may consider the following factors to determine if withdrawal is appropriate: (1) the reasons why the withdrawal is sought; (2) the prejudice withdrawal may cause to other litigants; (3) the harm withdrawal

might case to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. 2010). FN.1.

FN.1. While the decision in *Williams v. Troehler* is a District Court case and concerns Eastern District Court Local Rule 182(d), the language in 182(d) is identical to Local Bankruptcy Rule 2017-1.

It is unethical for an attorney to abandon a client or withdraw at a critical point and thereby prejudice the client's case. *Ramirez v. Sturdevant*, 21 Cal. App. 4th 904 (Cal. App. 1st Dist. 1994). An attorney is prohibited from withdrawing until appropriate steps have been taken to avoid reasonably foreseeable prejudice to the rights of the client. *Id.* at 915.

The District Court Rules incorporate the relevant provisions of the Rules of Professional Conduct of the State Bar of California ("Rules of Professional Conduct"). E.D. Cal. L.R. 180(e).

The termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdrawal from employment until Counsel takes steps reasonably foreseeable to avoid prejudice to the rights of the client. Cal. R. Prof'l. Conduct 3-700(A)(2). The Rules of Professional Conduct establish two categories for withdrawal of Counsel: either Mandatory Withdrawal or Permissive Withdrawal.

Mandatory Withdrawal is limited to situations where Counsel (1) knows or should know that the client's behavior is taken without probable cause and for the purpose of harassing or maliciously injuring any person and (2) knows or should know that continued employment will result in violation of the Rules of Professional Conduct or the California State Bar Act. Cal. R. Prof'l. Conduct 3-700(B). Permissive Withdrawal is limited to when to situations where:

(1) 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 he 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.

Cal. R. Prof'l. Conduct 3-700(C).

DISCUSSION

Movant filed and noticed a motion to the Debtor. Movant provided the following address for the Debtor: 9869 Bobbell Drive, Elk Grove, California in the Proof of Service.

Movant and Defendant are in disagreement over how to proceed forward with the case. Movant does not discuss any prejudice his withdrawal as a counsel will or will not cause to the Debtor or harm it might or might nor have on administration justice. However, neither the Trustee, Debtor, or any other relevant party has filed an opposition to the Local Bankruptcy Rule 9014-1(f)(1) motion. Debtor has appeared in court and expressed her desire to proceed in this case as a Chapter 7.

Of note, the Debtor converted the case converted the case on her own, without informing the Movant of the situation until the hearing on the Trustee's Motion to Dismiss.

Further, under the California Rules of Professional Conduct 3-700(C)(1)(d), Debtor's conduct, such a lack of communication, coordination, and response as well as Debtors inability to agree with the Movant on how to proceed forward with the case, is hindering Movant's ability to carry out his employment and duties effectively. These are sufficient reasons for permissive withdrawal.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusion of Law are stated in the Civil Minutes for the hearing.

The Motion to Withdraw as Attorney filed by Debtor's Counsel having been presented to the court, and upon review of the pleadings, evidence, argument of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Withdraw as Attorney is granted, and

Peter Macaluso is authorized to withdraw as counsel for Debtor in this case and LaTanya Moore, the Debtor, is substituted in *pro se*, in place of said counsel.

6. [11-43987](#)-E-11 **RONALD PATTERSON AND MIMI MILLER- PATTERSON** **MOTION FOR ENTRY OF DISCHARGE**
CAH-6 **Mikalah Liviakis** **7-18-16 [138]**

Final Ruling: No appearance at the August 18, 2016 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on July 18, 2016. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion for Entry of Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties 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 to be the equivalent of a statement of nonopposition. *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 Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Entry of Discharge is granted.
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With some exceptions, 11 U.S.C. § 1141(d) permits the discharge of debts provided for in the Plan. Debtor is not seeking a hardship as described as described in 11 U.S.C. § 1141(d)(5)(B), rather, the Debtor is seeking a discharge under 11 U.S.C. § 1141(d)(5)(A), which provides:

(5) In the case in which the debtor is an individual-

(A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan

The Debtor's declaration certifies that the Plan Administrator, the Debtors,:

1. Have completed the required Plan payments to the general unsecured creditors

2. Have completed all payments under the plan
3. Are not a party to a pending proceeding which implicates 11 U.S.C. § 522(q)(1)(A) or (B)

The Debtors originally filed a Chapter 11 on October 5, 2011. On June 20, 2012, the court signed an order confirming the Plan of Reorganization proposed by the then Debtors-in-Possession. On September 12, 2012, the Court entered an order for Final Decree and to close the case. Dckt. 133.

On or around May 2016, Plan Administrator Debtors completed the required Plan payments to the general unsecured creditors, which renders them eligible for discharge pursuant to 11 U.S.C. 1141(d)(5)(B). On July 18, the Court entered an order to Administratively Reopen Chapter 11 Case to Obtain a Discharge. Dckt. 137. On June 2, 2016, the Debtors completed their Financial Management Course and filed their certificates with the Court. The Debtors have not received a discharge in any bankruptcy preceding the filing of this case.

The Debtors state that they have completed all payments under the plan to the General Unsecured Creditors, Class 10. Exhibit A, Payment Breakdown. Dckt. No. 245. The Debtors paid \$20,000 to the holders of general unsecured claims, \$1,417.79 more than they would have received in a hypothetical Chapter 7 case. The Debtors state that they were able to accelerate payment to the creditors holding general unsecured claims, due to an unexpected sales commission Debtors received in 2013 and by withdrawing \$13,000 from their Intel stock account. A modification is not feasible under section 1127 because the Plan Administrator Debtors have complied with the plan payments. The Debtors will continue to make continue to pay long term claims and unimpaired claim.

Moreover, the Debtors state that: (1) they have not been required by a judicial or administrative order or by statute to pay a domestic support obligation as defined by 11 U.S.C. § 101(14A); (2) they do not have any delinquent tax returns, and have complied with the terms of the plan. Debtors-in-Possession have not been convicted of any felonies; and (3) there are no pending criminal proceedings against Debtors-in-Possession.

Upon completion of all payments under the plan, Chapter 11 Debtors are entitled to a discharge. 11 U.S.C. § 1141(d)(5)(A). Here, Debtors have requested a “full compliance” discharge, and have made the proper showing that Plan Administrator Debtors have made all of the payments required under their confirmed Chapter 11 Plan. This excepts continued payments that Debtors are making on unimpaired, long term claims, where the interest holders have retained their equity interests and receive distribution in the event funds become available from liquidation of the Debtors’ assets after payment of all creditors. There being no objection from Creditors or other parties in interest, and based upon the evidence presented to the court, the Debtors are entitled to a discharge.

The court shall issue a minute 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 for Entry of Discharge filed by Ronald Patterson and Mimi

Miller-Patterson, the Debtor's-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 is granted and the court shall enter the discharge for each debtor in this case.