

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

August 26, 2025 at 10:00 a.m.

1. [22-90415](#)-E-7
[KMT](#)-4

JOHN MENDOZA
Peter Macaluso

**MOTION TO SELL FREE AND CLEAR
OF LIENS AND/OR MOTION FOR
COMPENSATION FOR RE/MAX
EXECUTIVE, BROKER(S)
8-7-25 [\[604\]](#)**

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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and creditors that have filed claims on August 7, 2025. By the court's calculation, 19 days' notice was provided. The court set the hearing for August 26, 2025. Dckt. 629.

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

The Motion to Sell Property is granted.

The Bankruptcy Code permits Gary Farrar, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 1014 W. 18th Street, Merced, California 95340, APN: 031-113-008-000 ("Property").

The proposed purchaser of the Property is Tarnvir Singh Hundal and Harpreet Dhaliwal, and the terms of the sale are:

- A. Purchase price of \$220,000;
- B. Tenant is to remain in possession of the Property and any unused security deposit shall be remitted; and
- C. The sale is as is, where is and without representation and warranty.

Mot. 3:15-20.

Proposed Overbid Procedures

Movant also requests the overbidding procedures be as follows: each overbid is in at least \$5,000 increments, and proof of available funds be provided and a cashier's check in the amount of \$10,000. *Id.* at 3:22-24. The proposed procedures are reasonable and are adopted for purposes of this Motion.

Sale Free and Clear of Liens

The Motion seeks to sell the Property free and clear of the lien of SA Challenger, Inc. and WVJP 2021-4 LP. The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

(f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if—

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has argued the sale can be made free and clear of liens pursuant to 11 U.S.C. § 363(f)(2), stating:

- A. WVJP 2021-4 LP has consented to release its lien, and
- B. WVJP 2021-4 LP is the assignee of SA Challenger, Inc.

Mot. 5:10-15. Attached to Proof of Claim 2-1 filed by Movant is an Acknowledgment of Assignment of the SA Challenger, Inc. Judgment to Movant. POC 2-1, pp. 6-8.

Therefore, the sale will be made free and clear of the liens of SA Challenger, Inc. and WVJP 2021-4 LP.

DISCUSSION

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: **XXXXXXX**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because this sale will begin the process of liquidating assets of the Estate and to repay creditors.

Movant has estimated that a six percent broker's commission from the sale of the Property will equal approximately \$13,200. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than six percent commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court as there will not be any opposition to this Motion. Mot. 5:17-19.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

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 Sell Property filed by Gary Farrar, the Chapter 7 Trustee, ("Movant") 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 Gary Farrar, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) and (f)(2) to Tarnvir Singh Hundal and Harpreet Dhaliwal or nominee ("Buyer"), the Property commonly known as 1014 W. 18th Street, Merced, CA 95340, APN: 031-113-008-000 ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$220,000.00, on the terms and conditions set forth in the Purchase

August 26, 2025 at 10:00 a.m.

Agreement, Exhibit A, Dckt. 608, and as further provided in this Order.

- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, and other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Property is sold free and clear of the liens of SA Challenger, Inc. and WVJP 2021-4 LP, creditors asserting a secured claim, pursuant to 11 U.S.C. § 363(f)(2), with the lien of such creditor attaching to the proceeds. The Chapter 7 Trustee shall hold the sale proceeds; after payment of the closing costs, other secured claims, and amount provided in this order; pending further order of the court.
- D. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- E. The Chapter 7 Trustee is authorized to pay a real estate broker's commission in an amount not more than six percent of the actual purchase price upon consummation of the sale. The six percent commission shall be paid to Brian Brazeal of Re/Max Executive, the Estate's broker, and shall be split with any Buyer's broker.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and creditors that have filed claims on August 7, 2025. By the court's calculation, 19 days' notice was provided. The court set the hearing for August 26, 2025. Dckt. 629.

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----.

<p>The Motion to Sell Property is granted.</p>

The Bankruptcy Code permits Gary Farrar, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 1032 W. 18th Street, Merced, California 95340, APN: 031-113-006 ("Property").

The proposed purchaser of the Property is Tarnvir Singh Hundal and Harpreet Dhaliwal, and the terms of the sale are:

- A. Purchase price of \$220,000;
- B. Tenant is to remain in possession of the Property and any unused security deposit shall be remitted; and
- C. The sale is as is, where is and without representation and warranty.

Mot. 3:15-20.

Proposed Overbid Procedures

Movant also requests the overbidding procedures be as follows: each overbid is in at least \$5,000 increments, and proof of available funds be provided and a cashier's check in the amount of \$10,000. *Id.* at 3:22-24. The proposed procedures are reasonable and are adopted for purposes of this Motion.

Sale Free and Clear of Liens

The Motion seeks to sell the Property free and clear of the lien of SA Challenger, Inc. and WVJP 2021-4 LP. The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

(f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has argued the sale can be made free and clear of liens pursuant to 11 U.S.C. § 363(f)(2), stating WVJP 2021-4 LP has consented to release its lien, and WVJP 2021-4 LP is the assignee of SA Challenger, Inc. Mot. 5:10-15. Attached to Proof of Claim 2-1 filed by Movant is an Acknowledgment of Assignment of the SA Challenger, Inc. Judgment to Movant. POC 2-1, pp. 6-8.

Therefore, the sale will be made free and clear of the liens of SA Challenger, Inc. and WVJP 2021-4 LP.

DISCUSSION

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: **XXXXXXX**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because this sale will begin the process of liquidating assets of the Estate and to repay creditors.

Movant has estimated that a six percent broker's commission from the sale of the Property will equal approximately \$13,200. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than six percent commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court as there will not be any opposition to this Motion. Mot. 5:17-19.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

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 Sell Property filed by Gary Farrar, the Chapter 7 Trustee, ("Movant") 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 Gary Farrar, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) and (f)(2) to Tarnvir Singh Hundal and Harpreet Dhaliwal or nominee ("Buyer"), the Property commonly known as 1032 W. 18th Street, Merced, California 95340, APN: 031-113-006 ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$220,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 617, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, and other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Property is sold free and clear of the liens of SA Challenger, Inc. and WVJP 2021-4 LP, creditors asserting a secured claim, pursuant to 11 U.S.C. § 363(f)(2), with the lien of such creditor attaching to the proceeds. The

Chapter 7 Trustee shall hold the sale proceeds; after payment of the closing costs, other secured claims, and amount provided in this order; pending further order of the court.

D. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

E. The Chapter 7 Trustee is authorized to pay a real estate broker's commission in an amount not more than six percent of the actual purchase price upon consummation of the sale. The six percent commission shall be paid to Brian Brazeal of Re/Max Executive, the Estate's broker, and shall be split with any Buyer's broker.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and creditors that have filed claims on August 7, 2025. By the court's calculation, 19 days' notice was provided. The court set the hearing for August 26, 2025. Dckt. 629.

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing -----

The Motion to Sell Property is granted.
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The Bankruptcy Code permits Gary Farrar, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 1022 W. 18th Street, Merced, California 95340, APN: 031-113-007-000 and 1040 W. 18th Street, Merced, CA 95340, APN: 031-113-004-000 ("Property").

The proposed purchaser of the Property is Tarnvir Singh Hundal and Harpreet Dhaliwal, and the terms of the sale are:

- A. Purchase price of \$660,000; and
- B. The sale is as is, where is and without representation and warranty.

Mot. 3:19-21.

Proposed Overbid Procedures

Movant also requests the overbidding procedures be as follows: each overbid is in at least \$1,000 increments, and proof of available funds be provided and a cashier's check in the amount of \$10,000. *Id.* at 3:22-25. The first initial overbid must be at least \$665,000. *Id.* The proposed procedures are reasonable and are adopted for purposes of this Motion.

Sale Free and Clear of Liens

The Motion seeks to sell the Property free and clear of the lien of SA Challenger, Inc. and WVJP 2021-4 LP. The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

(f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has argued the sale can be made free and clear of liens pursuant to 11 U.S.C. § 363(f)(2), stating WVJP 2021-4 LP has consented to release its lien, and WVJP 2021-4 LP is the assignee of SA Challenger, Inc. Mot. 5:10-16. Therefore, the sale will be made free and clear of the liens of SA Challenger, Inc. and WVJP 2021-4 LP.

DISCUSSION

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: **XXXXXXX**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because this sale will begin the process of liquidating assets of the Estate and to repay creditors.

Movant has estimated that a six percent broker's commission from the sale of the Property will equal approximately \$39,600.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than six percent commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court as there will not be any opposition to this Motion. Mot. 5:17-19.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

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 Sell Property filed by Gary Farrar, the Chapter 7 Trustee, (“Movant”) 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 Gary Farrar, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) and (f)(2) to Tarnvir Singh Hundal and Harpreet Dhaliwal or nominee (“Buyer”), the Property commonly known as 1022 W. 18th Street, Merced, CA 95340, APN: 031-113-007-000 and 1040 W. 18th Street, Merced, California 95340, APN: 031-113-004-000 (“Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$660,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 626, and as further provided in this Order.
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, and other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Property is sold free and clear of the liens of SA Challenger, Inc. and WVJP 2021-4 LP, creditors asserting a secured claim, pursuant to 11 U.S.C. § 363(f)(2), with the lien of such creditor attaching to the proceeds. The Chapter 7 Trustee shall hold the sale proceeds; after payment of the closing costs, other secured claims, and amount provided in this order; pending further order of the court.
- D. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

E. The Chapter 7 Trustee is authorized to pay a real estate broker's commission in an amount not more than six percent of the actual purchase price upon consummation of the sale. The six percent commission shall be paid to Brian Brazeal of Re/Max Executive, the Estate's broker, and shall be split with any Buyer's broker.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

4. [24-22531-E-11](#) **R & A ENTERPRISES, LLC** **CONTINUED STATUS CONFERENCE RE:**
[CAE-1](#) **VOLUNTARY PETITION**
6-10-24 [1]

SUBCHAPTER V

Debtor's Atty: Stephen M. Reynolds

Notes:

Continued from 8/12/25 to be conducted in conjunction with the hearing on confirmation of the Subchapter V Plan.

The Status Conference is continued to October 8/15/29, 2025, to be conducted by the Hon. Christopher M. Klein, the Bankruptcy Judge to whom this Case is being transferred, in Courtroom 35 of this Court, 501 I Street, Sixth Floor, Sacramento, California.

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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on all creditors and parties in interest on July 21, 2025. By the court's calculation, 35 days' notice was provided. 42 days' notice is required. At the hearing, **XXXXXXX**

The Confirmation of Plan of Reorganization has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(b). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The Confirmation of Plan of Reorganization is **XXXXX.**

The Plan Proponent has complied with the Service and Filing Requirements for Confirmation:

July 14, 2025: Plan filed;

August 20, 2025: Last Day to file Objections to Confirmation

August 20, 2025: Last Day to file evidence in support of confirmation, Tabulation of Ballots, Proof of Service.

Table of Classes

Creditor/Class	Treatment	
Class 1: Priority Claims	Claim Amount	Estimated \$20,065.67
	Impairment	Unimpaired
	Paid in full within 14 days of the Effective Date.	

Class 2: Patriot Bank, N.A.	Claim Amount	\$3,785,609.62, at the time of filing
	Impairment	Impaired
	Class 2 shall receive the monthly payments in the amount described in Exhibit B. The interest paid shall be the contract rate which will fluctuate in response to variations in the reference interest rate; Wall Street Journal Prime Rate. Upon completion of the Plan term monthly payments shall continue until the obligation is satisfied pursuant to the original terms of the Note. Default interest after June 10, 2024 is waived. Early payment penalties or charges are waived. Lender approval of any purchase offer shall not be required so long as Patriot Bank, N.A. is paid in full through a sale escrow. Loan shall be deemed current upon Plan confirmation so long as there is no default under the Plan. Debtor shall not be required to maintain a deposit account with Patriot Bank, N.A. Debtor shall pay the “hypothetical arrearage” described in Proof of Claim No. 2, filed August 19, 2024 no later than within 60 months of Plan confirmation. Late fees collected pursuant to the Cash Collateral Orders entered by this Court shall be credited to the “hypothetical arrearage”.	
Class 3: Non-Priority Unsecured Creditors	Claim Amount	unknown
	Impairment	Impaired
	These creditors will not receive a distribution.	
Class 4: Equity security holders of the Debtor	Claim Amount	-----
	Impairment	Impaired
	The two equity security holders will retain their interest in the Debtor. They shall remain as the managers of the Debtor.	

Tabulation of Ballots:

Class	Voting	Ballot Percentage Calculation	Claim Percentage Calculation
Class 1 (Unimpaired)	No Ballots Received	N/A	N/A
Class 2 (Impaired)	For: 0 Against: 1	100%	100%
Class 3 (Impaired)	No Ballots Received	N/A	N/A
Class 4 (Impaired)	For: 1 Against: 0	50%	50%

OPPOSITION

Patriot Bank, N.A. (“Patriot Bank” or “Bank”) filed an Opposition to confirmation on August 20, 2025. Docket 129. Patriot Bank states:

1. Debtor in Possession operates at small loss on average. The Plan would rely on fanciful projections that show Debtor in Possession having surplus income of hundreds of thousands of dollars per year. Opp’n 1:24-2:1.
2. The Plan proposes to pay nothing on the Bank’s arrearage of approximately \$308,751.86 for a full five years, and provides that such arrearage amount accrue interest at 0%. *Id.* at 2:6-8.
3. The Plan proposes to claw back from the Bank (“credit”) numerous prior payments - all of the “late” payments - that were previously ordered by the court under the cash collateral orders. The Plan proposes to treat the loan as “current” on confirmation, and re-write the loan to require only a regular monthly payment. *Id.* at 2:8-11.
4. Debtor has been given 15 months in this SubChapter V Chapter 11 bankruptcy without a plan on the idea that it is close to selling the Car Wash and paying the Bank. The sale of the Car Wash has been the focus of the Debtor’s representations all along in this case, and the reason the Debtor was given so much time in SubChapter V without a plan. It now appears that the Debtor is unable and unwilling to propose a confirmable plan. . . The Debtor should be removed from possession pursuant to 11 U.S.C. Section 1185 so that a Trustee can manage the overdue sale of the Car Wash to pay the Bank. *Id.* at 2:16-24.
5. The MORs for June 2024 through June 2025 show a net operating lost of (\$2,742.45). *Id.* at 4:23-5:11.
6. There have been violations of cash collateral orders. For example, the June **2025 Monthly Operating Report (ECF 120) shows that the Debtor paid \$10,000 to John Richter [the managing member of the Debtor] for “business loan interest”. There was no authorization for such a payment, [or for the Debtor/Debtor in Possession for obtaining such post-petition credit from the managing member if this was not in the “ordinary course of business” for the Debtor/Debtor in Possession].** The court’s orders and the cash collateral stipulations all incorporate the terms of the original stipulation (ECF 44), which provide that payments not specifically authorized under the approved budgets are a violation and a default under court’s orders, and that the Debtor’s use of cash collateral shall automatically terminate unless the Debtor cures the default within 10 days of notice to cure from the Lender. Opp’n 5:16-22.

7. The Bank is providing notice of termination of authority to use cash collateral with this Opposition, and unless the Debtor cures the defaults noted above, or obtains a court order authorizing the violations, the Debtor's authority to use of cash collateral will cease on August 30, 2025. *Id.* at 6:3-6.
8. Section 506(b) provides that postpetition interest, fees, costs and charges are allowed as part of a secured claim which is fully secured, meaning that the value of the collateral exceeds the amount of the claim. Here, the Plan uses a \$6.5 million value for Car Wash, and the Schedules value the Car Wash at \$3.8 million. Thus, the Bank's claim is over-secured. If a claim is oversecured, postpetition interest, postpetition fees, costs and charges will be allowed at the rate specified in the relevant contract, subject to review for reasonableness. 11 U.S.C. Section 506(b). Opp'n 6:8-13.
9. The Amended Plan is unconfirmable because it fails to provide full and proper treatment for the Bank's fully secured claim. The treatment provided for the Bank's Secured Claim is not fair and equitable under Sections 1129(b)(1) and (b)(2).
10. Instead of providing for a prompt sale and a prompt cure of the loan, the Plan proposes to (1) not pay the arrearage, until month 60 (assuming at that time there is any money to pay it), (2) not pay any interest on the arrearage as mandated by the loan documents and Section 506(b); and (3) not pay the actual monthly payments owing to the Bank but a lower amount based upon a fiction that the loan is "current;" and (4) significantly underpay the Bank in order to improperly allow the Debtor to use the Bank's cash collateral post-plan to instead benefit the Debtor's insider. Opp'n at 7:11-17.
11. The Amended Plan must provide "appropriate remedies" in the event that plan payments are not made § 1191(c)(3)(B). The Amended Plan does not provide sufficiently for such remedies. At a minimum, the Amended Plan must provide (1) for postpetition reporting so that the Bank and the Trustee can monitor if the Debtor is properly performing the Plan, and (2) must provide for the liquidation of assets and for conversion of the case following default in plan payments. Instead, the Plan at 8.13 only provides that upon default, a Creditor may make a motion for appropriate relief. Opp'n 9:6-12.

DISCUSSION

11 U.S.C. § 506(b)

One of Patriot Bank's main objections revolves around 11 U.S.C. § 506(b). That Section provides:

(b) To the extent that an allowed secured claim is secured by property the value of which, after any recovery under subsection (c) of this section, is greater than the amount of such claim, there shall be allowed to the holder of such claim, interest on such claim, and any reasonable fees, costs, or charges provided for under the agreement or State statute under which such claim arose.

11 U.S.C. § 506(b). Collier's Treatise states regarding this Section:

Section 506(b) governs the allowance of postpetition interest, fees, costs and charges as part of a secured claim. In general, postpetition interest, fees, costs and charges will not be allowed as part of a secured claim unless the claim is "oversecured," meaning that the relevant value of the collateral exceeds the amount of the claim after taking into account any amounts chargeable to the collateral under section 506(c). If a claim is oversecured, postpetition interest will be allowed at the rate specified in the relevant contract (if any), or under otherwise applicable nonbankruptcy law. In the case of postpetition fees, costs and charges, the allowance of these expenses as part of an oversecured claim is subject to a determination as to their reasonableness under federal bankruptcy law.

4 COLLIER ON BANKRUPTCY ¶ 506.04.

For example, suppose that a creditor holds a lien on an office building owned by the estate to secure a debt of \$1 million. Assume that the value of the building is \$1.1 million. Because the value of the building is \$100,000 greater than the amount of the secured claim, the secured creditor's claim is "oversecured" by \$100,000 (provided, of course, that there are no senior liens on the property). Accordingly, pursuant to section 506(b), the creditor would be entitled to add up to \$100,000 worth of postpetition interest and allowed fees, costs or charges to the amount of its secured claim. However, any amount of postpetition interest and allowed postpetition fees, costs or charges that exceeded \$100,000 would not be included in the creditor's secured claim. The excess portion representing postpetition interest would be subject to disallowance under section 502(b)(2).

Id. at [1].

The court must begin with the language of the statute itself. *Landreth Timber Co. v. Landreth*, 471 U.S. 681, 685 (1985). Here, the statute is unambiguous. If secured creditor is oversecured, as appears to be the case here, then interest, fees, costs, or charges provided for under the agreement become part of the secured claim. The Plan proposes to waive late fees or penalties, which are costs arising from the underlying agreement.

The Plan would violate 11 U.S.C. § 506(b) if confirmed.

Other Issues

It appears Debtor in Possession has failed to pay at least two months of cash collateral adequate protection payments, violating the Cash collateral Order at Docket 105. Under the terms of the Stipulation for use of cash collateral, Docket 76, Patriot Bank has the right to terminate the use of its cash collateral if

any for the given events occurs. One such event is Debtor failing to make adequate protection payments as specified in the Order. Here, Debtor in Possession has failed to make adequate protection payments as specified in the Order, and Patriot Bank has invoked its right to terminate Debtor's authorization of use of cash collateral.

There are issues with revenues and expenditures in the case. Debtor in Possession over the months this case has gone on informing parties and the court that it was pursuing a sale of Debtor in Possession's assets. The court authorized the employment of a broker to market and sell property of the Estate on April 23, 2025. Docket 111. In a change of events, Debtor in Possession proposes to continue operations. The court would expect to see substantial profits in the coming months leading to filing the Plan to support such a change of direction in case prosecution.

However, in analyzing the MORs and comparing the MORs to the future predictions, there are gross disparities. For example: in the most recently filed MOR, Debtor in Possession reports income of \$103,052.70, but expenses of \$98,613.08. MOR, Docket 120. Debtor in Possession's Feasibility Analysis shows costs for the life of the case to be at or below \$50,000, almost a 50% decrease in costs to operate. Ex. C to Plan at 13-17, Docket 119. Similarly the average profits over the last 13 months are \$76,796.89, but the future projections average well above \$100,000 in the Effective Date feasibility Analysis. *Id.*

Expenses prior to the June 2025 MOR have been lower, but the court has reviewed the Declaration of Mr. Richter and supporting Memorandum and there is no explanation as to why there was an increase or why the court should expect lower expenses to remain.

At the hearing, **XXXXXXX**

~~The Plan is not confirmed, and the Motion is denied.~~

~~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 Confirm the Plan filed by the Debtor R & A Enterprises, LLC, 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 Confirm the Plan is denied.~~