

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

September 1, 2022 at 10:30 a.m.

1.	<u>20-90115-E-7</u> ALI MUTHANA <u>21-9008</u> WF-4	CONTINUED MOTION FOR SUMMARY JUDGMENT 6-23-22 <u>[46]</u>
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MCGRANAHAN V. SUWAID ET AL

1 thru 2

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—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Defendants and Defendants' Attorneys on June 23, 2022. By the court's calculation, 42 days' notice was provided. 42 days' notice is required. Local Bankruptcy Rule 7056-1(a).

The Motion for Summary Judgment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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). 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).

The Motion for Summary Judgment for Plaintiff Trustee Michael McGranahan and against Defendant-Debtor Ali Saeed Muthana is granted.

Michael D. McGranahan (“Plaintiff-Trustee”) filed the instant adversary proceeding on July 26, 2021, against Bader Alikassim Suwaid and GNN Real Estate and Mortgage, Inc. (collectively, “Defendants”) on July 26, 2021. Dckt. 1. On July 1, 2022, Plaintiff-Trustee filed an Amended Complaint (Dckt. 33) adding Debtor Ali Muthana (“Defendant-Debtor”) as a defendant.

In the present Summary Judgment Motion, Plaintiff-Trustee only is seeking judgment on the claims asserted against Defendant-Debtor. The court reviews the Complaint, Amended Complaint, and Defendant-Debtor’s Answer in putting the present Motion against one defendant in context of all the claims asserted in this Adversary Proceeding.

Review of the Complaint

Plaintiff-Trustee alleges the property known as 2022 White Fall Court, Ceres, California 95307 (“Real Property”) became part of the bankruptcy estate upon commencement of the bankruptcy case. After the filing of the petition, on May 25, 2021, Defendant-Debtor executed a Grant Deed (“Post-petition Deed”) transferring title to the Real Property to Defendant Suwaid. The Post-petition deed was recorded on June 1, 2021, with the Stanislaus County Recorder as Document No. 2021-005088. Neither the Plaintiff-Trustee nor the Bankruptcy Court authorized the transfer. Plaintiff-Trustee alleges Defendant Suwaid had knowledge of the bankruptcy case and did not provide Debtor with present fair equivalent value for the transfer.

On May 28, 2021, Defendant Suwaid executed a deed of trust (“Postpetition Deed of Trust”) encumbering the Real Property in favor of Defendant GNN Real Estate and Mortgage, Inc. (“Defendant GNN”). The Postpetition Deed of Trust was recorded with the Stanislaus County Recorder on June 1, 2021, as Instrument No. 2021-052089. Neither the Trustee nor the Bankruptcy Court authorized the transfer. Plaintiff-Trustee alleges Defendant GNN had knowledge of the bankruptcy case at the time of the transfer and did not provide Debtor or anyone with present fair equivalent value for the transfer.

Claims for Relief

First Claim for Relief - Defendant-Debtor’s transfer of the Post-petition Deed of Trust was an unauthorized transfer as Defendant Suwaid was not a good faith purchaser of the Real Property and had knowledge of the commencement of the bankruptcy case at the time of the transfer and did not give fair value for the Post-petition Deed. ¶¶ 15-17.

Second Claim for Relief - Defendant Suwaid’s transfer of the Postpetition Deed of Trust was an unauthorized postpetition transfer of property of the estate and Defendant GNN was not a good faith purchaser of the Real Property with respect to the Postpetition Deed of Trust as they had knowledge of the bankruptcy case at the time of the transfer and did not give present fair equivalent value for the Postpetition Deed of Trust. ¶¶ 18-20.

Third Claim for Relief - The transfer of the Postpetition Deed and Postpetition Deed of Trust were unauthorized postpetition transfers of property of the estate and Plaintiff-Trustee is entitled to recover Real Property or the value of such from Defendants. ¶¶ 21-23.

Fourth Claim for Relief - Defendant-Debtor had no right or authority to transfer the Real Property pursuant to the Postpetition Grant Deed. Defendant Suwaid had no right or authority to transfer the Postpetition Deed of Trust. Plaintiff-Trustee is entitled to avoid transfers under the Postpetition Deed and Postpetition Deed of Trust and Plaintiff-Trustee is entitled to a declaration that the bankruptcy estate holds title to Real Property free and clear of the interests of Defendants. ¶¶ 24-28.

Plaintiff-Trustee requests the avoidance of the unauthorized post-petition transfers as to Defendant Suwaid and then to Defendant GNN pursuant to 11 U.S.C. §549. Plaintiff-Trustee alleges Defendants were not good faith purchasers of the Real Property, they had knowledge of the bankruptcy case, and that Defendant-Debtor did not receive present fair equivalent value for the transfer.

Plaintiff-Trustee seeks to recover the Real Property or the value of such property pursuant to 11 U.S.C. §550 because the Post-petition Deed and Post-petition Deed of Trust were unauthorized.

Lastly, Plaintiff-Trustee seeks declaratory relief stating the bankruptcy estate holds title in the Real Property free and clear of the interests of Defendant Suwaid and Defendant GNN.

Plaintiff-Trustee's Amended Complaint

On June 1, 2022, Plaintiff-Trustee filed an Amended Complaint (Dckt. 33), adding Defendant-Debtor as a party and alleging the additional facts relating to the case:

- (1) On or about May 28, 2021, Defendant Suwaid executed a rent free letter ("Letter") which granted Defendant-Debtor the right to occupy the Real Property rent free for ten (10) years.
- (2) Plaintiff-Trustee attached the Letter as Exhibit B to the end of the Amended Complaint. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents." Local Bankr. R. 9004-2(c)(1).

Counsel is reminded of the court's expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny a party's request. Local Bankr. R. 1001-1(g), 9014-1(l).

Plaintiff-Trustee's Claims for Relief under their Amended Complaint largely remain the same:

First Claim for Relief (identical to Complaint) - Defendant-Debtor's transfer of the Post-petition Deed of Trust was an unauthorized transfer as Defendant Suwaid was not a good faith purchaser of the Real Property and had knowledge of the commencement of the bankruptcy case at the time of the transfer and did not give fair value for the Post-petition Deed. Amended Complaint, Dckt. 33 ¶¶ 16-18.

Second Claim for Relief (identical to Complaint) - Defendant Suwaid's transfer of the Postpetition Deed of Trust was an unauthorized postpetition transfer of property of the estate and Defendant GNN was not a good faith purchaser of the Real Property with respect to the Postpetition Deed of Trust as they had knowledge of the bankruptcy case at the time of the transfer and did not give present fair equivalent value for the Postpetition Deed of Trust. *Id.* at ¶¶ 19-21.

Third Claim for Relief (additional claim) - Defendant Suwaid's transfer of the rights under the Letter was an unauthorized postpetition transfer of property of the estate. Defendant-Debtor was not a good faith purchaser with rights granted in the Letter. Defendant-Debtor had knowledge of the bankruptcy case at the time of the transfer and did not give fair value for the Letter. *Id.* ¶¶ 22-24.

Fourth Claim for Relief (previously, "Third Claim for Relief" in the Complaint with additional reference to the Letter) - The transfer of the Postpetition Deed, Postpetition Deed of Trust, and Letter were unauthorized postpetition transfers of property of the estate and Plaintiff-Trustee is entitled to recover Real Property or the value of such from Defendants. *Id.* at ¶¶ 25-27.

Fifth Claim for Relief (previously, "Fourth Claim for Relief" in the Complaint with additional reference to waiving exemptions and the Letter) - Defendant-Debtor had no right or authority to transfer the Real Property pursuant to the Postpetition Grant Deed. By transferring title, Defendant-Debtor waived their claim to an exemption in the Real Property. Defendant Suwaid had no right or authority to transfer the Postpetition Deed of Trust. Plaintiff-Trustee is entitled to avoid transfers under the Postpetition Deed and Postpetition Deed of Trust and Plaintiff-Trustee is entitled to a declaration that the bankruptcy estate holds title to Real Property free and clear of the interests of Defendants. *Id.* at ¶¶ 28-33.

REVIEW OF THE MOTION FOR PARTIAL SUMMARY JUDGMENT AND RELATED PLEADINGS

The grounds stated with particularity, as required by Federal Rule of Civil Procedure 7(b), which is incorporated into Federal Rule of Bankruptcy Procedure 7007, consist of:

1. There is no genuine dispute of any material fact that the transfer memorialized in the Postpetition Deed and Letter constitutes an unauthorized post-petition transfer under 11 U.S.C. § 549(a). Motion, Dckt. 46 at 3:8-10.
2. There is no genuine dispute of any material fact that Plaintiff-Trustee is entitled to recover the Real Property pursuant to 11 U.S.C. § 550. *Id.* at 11-12.
3. There is no genuine dispute of any material fact that Plaintiff-Trustee is entitled to Declaratory Relief. *Id.* at 3:13-14.

Additionally, Plaintiff-Trustee provides supporting authority in the Notice, Memorandum of Points and Authorities, Request for Judicial Notice, Declaration of Plaintiff-Trustee, Declaration of Daniel L. Egan, a Separate Statement of Undisputed Facts, an Exhibit List, and “all papers filed in the case and underlying Chapter 7 Case.” *Id.* at 3:16-19.

Plaintiff-Trustee requests an order granting Summary Judgment in favor of Plaintiff-Trustee and against Defendant-Debtor for the following:

1. Plaintiff-Trustee’s Third Claim for Relief pursuant to § 549(a);
2. Plaintiff-Trustee’s Fourth Claim for Relief pursuant to § 550;
3. Plaintiff-Trustee’s Fifth Claim for Relief for Declaratory Relief;
4. Determining there is no just reason for delay and directing entry of final judgment in favor of Plaintiff-Trustee pursuant to Federal Rules of Civil Procedure 54(b); and
5. Determine that if not all relief is granted, certain material facts are not in genuine dispute.

Plaintiff-Trustee’s Memorandum of Points and Authorities

Plaintiff-Trustee filed a Memorandum of Points and Authorities in support of their Motion for Summary Judgment. Dckt. 52. The Memorandum restates the factual allegations addressed in the Complaint and Amended Complaint. Additionally, the Memorandum provides Plaintiff-Trustee’s supporting legal authority, discussed further below.

Plaintiff-Trustee and Defendant-Debtor’s Joint Stipulation

On July 14, 2022, Plaintiff-Trustee and Defendant-Debtor filed a joint stipulation stating the time for filing an answer to Plaintiff-Trustee’s First Amended Complaint is continued to August 18, 2022. Joint Stipulation, Dckt. 57.

Plaintiff-Trustee’s Supplemental Declaration and Exhibits

On August 5, 2022, Daniel L. Egan, Counsel for Plaintiff-Trustee, filed a supplemental declaration and exhibits in support of Plaintiff-Trustee’s Motion for Partial Summary Judgment against Defendant-Debtor. Dckts. 72, 73. Exhibits include: Exhibit H, Deed evidencing transfer from Defendant-Debtor to Defendant Suwaid, and Exhibit I, pages 81-82 of the 2004 Exam Transcript. Exhibits H and I, Dckt. 73.

Defendant-Debtor’s Answer To The Amended Complaint

Defendant-Debtor filed an answer (“Answer”) to the Amended Complaint on August 18, 2022. Answer, Dckt. 84.

Defendant-Debtor denies Defendant Suwaid had knowledge of the Case at the time of the transfer and did not provide Defendant-Debtor or anyone else present fair equivalent value for the transfer. *Id.* ¶ 4.

As to each claim for relief, Defendant-Debtor states:

First Claim for Relief - Defendant-Debtor denies Defendant Suwaid was not a good faith purchaser. *Id.* ¶ 8. Defendant-Debtor denies Defendant Suwaid had knowledge of the commencement of the case at the time of transfer and did not give present fair equivalent value.

Second Claim for Relief - Defendant-Debtor has no information or belief to enable him to answer whether the transfer of Defendant Suwaid to Defendant GNN was an unauthorized transfer. *Id.* ¶ 10.

Third Claim for Relief - Defendant-Debtor denies that he was not a good faith purchaser of the Letter. *Id.* ¶ 13. Rather, Defendant-Debtor alleges he did in fact give present fair equivalent value for the Rent Free Letter. *Id.* Defendant-Debtor provides no evidence to support this. Additionally, Defendant-Debtor denies knowledge of the commencement of the bankruptcy case at the time of transfer. *Id.*

Fourth Claim for Relief - Defendant-Debtor alleges he has no information or belief to believe the transfer of the Postpetition Deed, Postpetition Deed of Trust, and Letter were unauthorized postpetition transfers, and therefore denies each allegation. *Id.* ¶ 15. Additionally, Defendant-Debtor denies Plaintiff-Trustee is entitled to recover the Real Property or value of such Real Property. *Id.* ¶ 16.

Fifth Claim for Relief - Defendant-Debtor denies each and every of the following:

1. Defendant-Debtor had no right to transfer the Real Property and as such waived any claims to exemptions on the Real Property.
2. Defendant Suwaid had no right to transfer the Postpetition Deed of Trust.
3. Defendant Suwaid had no authority to transfer rights under the Letter.
4. Plaintiff-Trustee is entitled to avoid the transfers under the Postpetition Deed, Postpetition Deed of Trust, and the Letter.
5. Plaintiff-Trustee is entitled to a declaration that the Estate holds title to the Real Property free and clear of the interests of all Defendants.

Id. ¶ 18.

Additionally, Defendant-Debtor alleges the following affirmative defenses:

1. Defendant-Debtor paid the equivalent value for the rights of the Letter because the Real Property “was going to be foreclosed if a new loan was not obtained and existing lender paid in full.” *Id.* ¶ 19. Additionally, Defendant-Debtor states 11 U.S.C. § 549(c) prevents Plaintiff-Trustee from avoiding Defendant Debtor’s rights.
2. Defendant Debtor is entitled to a lien on the Real Property for the value of the Letter.

**PRIOR GRANTING OF SUMMARY JUDGMENT MOTION AGAINST
CO-DEFENDANT BADER ALIKASSIM SUWAID**

On August 11, 2022, this court entered an order granting Plaintiff’s Motion for Summary Judgment against co-defendant Bader Alikassim Suwaid, the initial transferee from Debtor. Order, Dckt. 82. The relief granted by summary judgment is stated in said order as including:

IT IS ORDERED that the Motion For Summary Judgment is granted in favor of Plaintiff-Trustee and against Defendant Suwaid pursuant to 11 U.S.C. § 549(a) and the postpetition transfer of the real property commonly known as 2022 White Fall Court, Ceres, California 95307 (“Real Property”) is avoided and property of the bankruptcy estate.

IT IS FURTHER ORDERED pursuant to 11 U.S.C. § 550, Plaintiff-Trustee is entitled to recover the Real Property for the benefit of Debtor Ali Muthana’s (“Defendant-Debtor”) bankruptcy estate, E.D. Cal Case No. 20-90115.

Id.

The transfer to Defendant Suwaid has been determined to be avoidable pursuant to 11 U.S.C. § 549(a), the court determining among other things that no new value was provided by Defendant Suwaid.

Defendant Suwaid has not countered this evidence showing a close familial connection to the Defendant-Debtor. The evidence shows that Defendant Suwaid was aware of Defendant-Debtor’s (his step-father) financial distress and having to refinance the debt secured by the Property. The circumstantial evidence shows that Defendant Suwaid was aware of the financial distress and waited with the Defendant-Debtor until they wrongly thought the Defendant-Debtor’s bankruptcy case was concluded to make the transfer and refinance of the secured debt.

Even if Defendant Suwaid had no knowledge of the bankruptcy case, Defendant Suwaid would still had to of paid “fair equivalent value” for the Real Property. “The use of ‘present fair’ indicates an intent [by Congress] that the protection of § 549(c) be limited to truly innocent purchasers who have actually paid a fair price in the transaction.” *Miller v. NLVK, Ltd. Liab. Co. (In re Miller)*, 454 F.3d 899, 902 (8th Cir. 2006) (citing *Ford v. A.C. Loftin (In re Ford)*, 296 B.R. 537, 553 (Bankr. N.D. Ga. 2003)); *Phillips v. Whitaker (In re Phinner)*, 405 B.R. 170, 178 (E.D. Va. 2009). Courts have found that “it is appropriate to require that the transferee give either fair market value, or something very close to it.” *Shaw v. County of San Bernadino (In re Shaw)*, 157 B.R. 151, 154 (B.A.P. 9th Cir. 1993) (quoting *In re Powers*, 88 B.R. 294, 297 (Bankr. D. Nev. 1988)); see also 5 COLLIER ON BANKRUPTCY 549.06.

The Answer states Defendant Suwaid “paid the equivalent value for the Real Property.” *Id.* at 3:20-21. Separate from the allegations in Defendant Suwaid’s Answer, there is no supporting evidence of any consideration exchanged or sum of money paid. Additionally, Defendant-Debtor’s testimony provides Defendant Suwaid gave no money or consideration in exchange for Defendant-Debtor transferring title to him. See Exhibit F, Transcript of 2004 Examination, Dckt. 49 at p. 68:12-14. Defendant Suwaid provides no evidence or legal authority establishing why the borrowed money secured by a Deed of Trust on the transferred Real Property entitles Defendant Suwaid satisfying “fair equivalent value.”

To bolster Plaintiff-Trustee’s claims even further, Defendant Suwaid executed a rent free letter (the “Letter”) which granted Defendant-Debtor a possessory interest in the Real Property for ten (10) years, rent free and no consideration due from Defendant-Debtor. Statement of Undisputed Facts, Dckt. 53 at 2 ¶ 7; Exhibit E, Dckt. 49 at 65. . .

...

The court notes, interestingly, Defendant-Debtor did not sign the Letter. Although this is not purported to be the “deed,” there is language indicating the property was “deeded off.” If this were the deed transferring property from Defendant-Debtor to Defendant Suwaid, the absence of Defendant-Debtor’s (grantor’s) signature would create a void transfer. See California Civil Code § 1091. Regardless, if this were truly just the “rent free” letter, the court cannot imagine a scenario where a good faith purchaser of real property who gives “fair equivalent value” consideration for that property allows a tenant to live rent free for ten (10) years. This further supports the contention that Defendant Suwaid paid no consideration for the transfer of the Real Property.

Therefore, even if Defendant Suwaid had no knowledge of the bankruptcy case, Defendant Suwaid did not pay adequate consideration to be considered a “good faith purchaser.”

Civil Minutes, Mtn. Summary Jdgt. Against Defendant-Suwaid; Dckt. 80 at p. 10-11.

APPLICABLE LAW RE MOTION FOR SUMMARY JUDGMENT

In an adversary proceeding, summary judgment is proper when “[t]he movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a), incorporated by Fed. R. Bankr. P. 7056. The key inquiry in a motion for summary judgment is whether a genuine issue of material fact remains for trial. Fed. R. Civ. P. 56(c), incorporated by Fed. R. Bankr. P. 7056; *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248–50 (1986); 11 JAMES WM. MOORE ET AL., MOORE'S FEDERAL PRACTICE § 56.11[1][b] (3d ed. 2000). “[A dispute] is ‘genuine’ only if there is a sufficient evidentiary basis on which a reasonable fact finder could find for the nonmoving party, and a dispute [over a fact] is ‘material’ only if it could affect the outcome of the suit under the governing law.” *Barboza v. New Form, Inc. (In re Barboza)*, 545 F.3d 702, 707 (9th Cir. 2008), citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. at 248 (1986).

The party moving for summary judgment bears the burden of showing the absence of a genuine dispute of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986). To support the assertion that a fact cannot be genuinely disputed, the moving party must “cit[e] to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations ..., admissions, interrogatory answers, or other materials.” Fed. R. Civ. P. 56(c)(1)(A), incorporated by Fed. R. Bankr. P. 7056.

In response to a sufficiently supported motion for summary judgment, the burden shifts to the nonmoving party to set forth specific facts showing that there is a genuine dispute for trial. *Barboza*, 545 F.3d at 707, citing *Henderson v. City of Simi Valley*, 305 F.3d 1052, 1055–56 (9th Cir. 2002). The nonmoving party cannot rely on allegations or denials in the pleadings but must produce specific evidence, through affidavits or admissible discovery materials, to show that a dispute exists. *Id.* (citing *Bhan v. NME Hosps., Inc.*, 929 F.2d 1404, 1409 (9th Cir. 1991)). The nonmoving party “must do more than simply show that there is some metaphysical doubt as to the material facts.” *Matsushita Electric Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).

In ruling on a summary judgment motion, the court must view all of the evidence in the light most favorable to the nonmoving party. *Barboza*, 545 F.3d at 707 (citing *County of Tuolumne v. Sonora Cmty. Hosp.*, 236 F.3d 1148, 1154 (9th Cir. 2001)). The court “generally cannot grant summary judgment based on its assessment of the credibility of the evidence presented.” *Agosto v. INS*, 436 U.S. 748, 756 (1978). “[A]t the summary judgment stage [,] the judge’s function is not himself to weigh the evidence and determine the truth of the matter[,] but to determine whether there is a genuine issue for trial.” *Anderson*, 477 U.S. at 249.

ANALYSIS OF LEGAL AUTHORITIES TO TRANSFER AT ISSUE

Pursuant to 11 U.S.C. § 549(a), a trustee can avoid a transfer of estate property that occurs after the commencement of the case. 11 U.S.C. § 549(a) states:

(a) Except as provided in subsection (b) or (c) of this section, the trustee may avoid a transfer of property of the estate—

(1) that occurs after the commencement of the case; and

(2)

- (A) that is authorized only under section 303(f) or 542(c) of this title;
or
(B) that is not authorized under this title or by the court.

A trustee's *prima facie* case requires proof of a transfer that (1) is property of the estate, (2) occurred after the commencement of the case, and (3) that was not authorized by the court. *Fursman v. Ulrich (In re First Prot., Inc.)*, 440 B.R. 821, 827-28 (B.A.P. 9th Cir. 2010).

(1) Property of the Estate

Defendant-Debtor commenced his Chapter 7 Bankruptcy Case with the filing of ed their voluntary petition on February 11, 2020. Statement of Undisputed Facts, Dckt. 53. At the time the Bankruptcy Case was commenced, Defendant-Debtor was the owner of the Real Property. From the court's review, Defendant-Debtor's Bankruptcy Petition confirms this information. *See* E.D. Cal Bankr. Case No. 20-90115, Dckt. 1. Therefore, pursuant to 11 U.S.C. § 541, it is clear the Real Property was property of the estate at the time the petition was filed.

In a Chapter 7 case, property remains estate property until after the estate is fully administered, the court has discharged the trustee, and the court closes the case. 11 U.S.C. § § 350, 554. At the time the case is closed, any property scheduled and not otherwise administered is abandoned to the debtor and administered for purposes of § 350. 11 U.S.C. § 554(c).

Defendant-Debtor received their discharge on June 11, 2020. *Id.*, Order of Discharge, Dckt. 15. Upon review of the Chapter 7 case, the bankruptcy estate had not and has not closed. Therefore, the Real Property has remained property of the estate since February 11, 2020, the date of the petition.

(2) Occurred After Commencement of the Case

As stated above, Defendant-Debtor's voluntary petition was filed February 11, 2020. *See* E.D. Cal Bankr. Case No. 20-90115, Dckt. 1.

On or about May 25, 2021, Defendant-Debtor granted to Defendant Suwaid a Quit Claim Deed to the Real Property. Supplemental Exhibits, Exhibit H, Dckt. 73. This transfer was clearly after the commencement of the case. The Letter was then executed on or about May 27, 2021. Exhibit E, Dckt. 49. The Letter, therefore, granting Defendant-Debtor free rent for ten (10) years with no cost to him, occurred after the commencement of the case.

(3) Not Authorized By the Court

There is no evidence to support the postpetition transfer in the Real Property through the Deed of Trust and, subsequently, the Letter was authorized by the court.

Therefore, unless an exception applies, the transfer of the Real Property to Defendant-Debtor through the Letter was a clear violation of the bankruptcy code and is still property of the estate.

Defendant-Debtor's First Affirmative Defense
Good Faith Purchaser under 11 U.S.C. § 549(c)

The exceptions to § 549(a) include § 549(b), which deals with involuntary cases, and § 549(c), which is not limited to involuntary cases. Under 11 U.S.C. § 549(c) (emphasis added):

The trustee **may not avoid** under subsection (a) of this section a **transfer** of an interest in real property **to a good faith purchaser without knowledge of the commencement of the case and for present fair equivalent value**

Here, Defendant-Debtor's Answer states Defendant-Debtor denies each and every allegation to Plaintiff-Trustee's Paragraph 24 of their Amended Complaint. Essentially, Defendant-Debtor is denying that they had knowledge of the commencement of the bankruptcy case at the time of the transfer under the Letter. Commencement, or commence, is the beginning of proceedings.^{F.N. 1}

It is clear Defendant-Debtor had knowledge of the start of their voluntary bankruptcy proceeding. Therefore, under 11 U.S.C. § 549(c), Defendant-Debtor does not fall within the exception of a good faith purchaser. Further, the affirmative denial in Paragraph 13 of his Answer (Dckt. 84) to the of the allegation in Paragraph 24 of the Amended Complaint (Dckt. 33) that Defendant-Debtor had knowledge of the voluntary Chapter 7 case he commenced is clearly false. This denial was made subject to the certifications as provided in Federal Rule of Bankruptcy Procedure 9011.

FN.1. <https://www.merriam-webster.com/dictionary/commence>

Additionally, even if Defendant-Debtor was a good faith transferee, he would still had to of paid "fair equivalent value" for the Real Property. "The use of 'present fair' indicates an intent [by Congress] that the protection of § 549(c) be limited to truly innocent purchasers who have actually paid a fair price in the transaction." *Miller v. NLVK, Ltd. Liab. Co. (In re Miller)*, 454 F.3d 899, 902 (8th Cir. 2006) (citing *Ford v. A.C. Loftin (In re Ford)*, 296 B.R. 537, 553 (Bankr. N.D. Ga. 2003)); *Phillips v. Whitaker (In re Phinner)*, 405 B.R. 170, 178 (E.D. Va. 2009). Courts have found that "it is appropriate to require that the transferee give either fair market value, or something very close to it." *Shaw v. County of San Bernadino (In re Shaw)*, 157 B.R. 151, 154 (B.A.P. 9th Cir. 1993) (quoting *In re Powers*, 88 B.R. 294, 297 (Bankr. D. Nev. 1988)); *see also* 5 COLLIER ON BANKRUPTCY 549.06.

The Answer states Defendant-Debtor "paid the equivalent value for the rights of Rent Free Letter in regards to the real property, as it was going to be foreclosed if a new loan was not obtained and existing lender paid in full." Answer, Dckt. 84 at ¶ 19. Separate from the assertions in Defendant-Debtor's Answer, there is no supporting evidence of any consideration exchanged or sum of money paid for the Letter. A creditor's right to foreclose on property has not been shown to be consideration paid by Defendant-Debtor.

The Letter purports to have given Defendant-Debtor a possessory interest in the Real Property for ten (10) years, rent free and no consideration due from Defendant-Debtor. Statement of Undisputed Facts, Dckt. 53 at 2 ¶ 7; Exhibit E, Dckt. 49 at 65. The language of the Letter is below:

05/27/2021

Rent Free Letter

Property Address: 2022 White Fall Court, Ceres, CA 95307

Terms: [Defendant Suwaid] will allow [Defendant-Debtor] to live in the subject property for 10 years rent free with no cost to him. If the contract is to be breached, then [Defendant Suwaid] will have to pay [Defendant-Debtor] up to 10 years of market rent. [Defendant-Debtor] deeded off to [Defendant Suwaid].

Sincerely
/s/ [Defendant Suwaid]

Witnesses:
/s/ Joel Bhatti

/s/ Karen Bhatti

Exhibit E, Dckt. 49 at 65.

Defendant-Debtor provides no evidence or legal authority establishing how living rent free in the Real Property constitutes fair equivalent value. Rather, Defendant-Debtor states by Defendant Suwaid obtaining a new loan to pay the existing lender, fair equivalent value is satisfied. The court finds Defendant-Debtor paid no consideration for the Letter, bolstering the claim Defendant-Debtor is not a good faith purchaser pursuant to 11 U.S.C. § 549(c).

Therefore, Defendant-Debtor did not pay adequate consideration to be considered a “good faith purchaser” of possessory rights under the Letter. Thus, any transferred he received in the Property is subject to being avoided pursuant to 11 U.S.C. § 549(a).

*Defendant-Debtor’s Second Affirmative Defense
Entitled to Lien under 11 U.S.C. § 549(c)*

Defendant-Debtor’s second affirmative defense argues they are still entitled to “a lien on the real property pursuant to 11 U.S.C. [§] 549(c) for the value of the rights of the Rent Free Letter.”

First, such a claim still requires the purchaser to be in “good faith,” and to not have knowledge of the bankruptcy proceedings. 11 U.S.C. § 549(c). As addressed above, Defendant-Debtor had knowledge of their own bankruptcy proceeding. Second, Defendant-Debtor provides no evidence there was any “present value given” for the Letter.

Defendant-Debtor has not met their burden in proving they are entitled to any protections as a good faith purchaser. Therefore, pursuant to 11 U.S.C. § 550(a), Plaintiff-Trustee is entitled to recover the rights granted under the Letter for the benefit of the estate.

Additionally, what Defendant-Debtor asserts is the consideration given, is actually the value that Defendant-Debtor purports to have received via the Rent Free Letter – Defendant-Debtor’s right to live the Property rent free for ten years. Defendant-Debtor shows no legal or factual basis for how his receiving ten years rent free possession is consideration that Defendant-Debtor has given to acquire ten years rent free possession of the Property.

**Requested Avoidance Free and Clear of
Exemption**

Plaintiff-Trustee additionally requests, pursuant to 11 U.S.C. §§ 522(g), 550, that the Real Property is recovered free and clear of any claimed exemption from Debtor. 11 U.S.C. § 522(g) limits debtors from exempting property that a trustee recovers under § 550.

Under 11 U.S.C. § 550, the Trustee can recover Real Property from the initial transferee or any immediate or mediate transferee of such initial transferee to the extent the transfer is avoided under 11 U.S.C. § 549. 11 U.S.C. § 522(g) disallows exemptions for property a trustee recovers under § 550.

Here, Plaintiff-Trustee is recovering property, pursuant to § 550, from an avoided transfer under 11 U.S.C. § 549. This falls squarely within non-exempt property under § 522(g). Therefore, Plaintiff-Trustee is entitled to recover the property free and clear of any claimed exemption from Defendant-Debtor.

The court further notes that this post-petition transfer was done by Defendant-Debtor, knowing he was in bankruptcy and seeking to deprive the bankruptcy estate of its property. Debtor commenced his voluntary Chapter 7 Bankruptcy Case on February 11, 2020, with the assistance of experienced bankruptcy counsel (the court's files show his counsel as counsel of record in 107 bankruptcy cases, the vast majority of which are Chapter 7 bankruptcy cases dating back to January 2011). This is not a situation with an least sophisticated, unrepresented consumer who is stumbling his way through a bankruptcy case.

Relief Granted by Summary Judgment Against Defendant-Debtor

Defendant Suwaid's transfer of the rights under the Letter was an unauthorized postpetition transfer of property of the estate. Defendant-Debtor was not a good faith purchaser with rights granted in the Letter. Defendant-Debtor had knowledge of the bankruptcy case at the time of the transfer and did not give fair value for the ten years of rent free possession of the Property. *Id.* ¶¶ 22-24.

Fourth Claim for Relief (previously, "Third Claim for Relief" in the Complaint with additional reference to the Letter) - The transfer of the Postpetition Deed, Postpetition Deed of Trust, and Letter were unauthorized postpetition transfers of property of the estate and Plaintiff-Trustee is entitled to recover Real Property or the value of such from Defendants. *Id.* at ¶¶ 25-27.

Fifth Claim for Relief (previously, "Fourth Claim for Relief" in the Complaint with additional reference to waiving exemptions and the Letter) - Defendant-Debtor had no right or authority to transfer the Real Property pursuant to the Postpetition Grant Deed. By transferring title, Defendant-Debtor waived their claim to an exemption in the Real Property. Defendant Suwaid had no right or authority to transfer the Postpetition Deed of Trust. Plaintiff-Trustee is entitled to avoid transfers under the Postpetition Deed and Postpetition Deed of Trust and Plaintiff-Trustee is entitled to a declaration that the bankruptcy estate holds title to Real Property free and clear of the interests of Defendants. *Id.* at ¶¶ 28-33.

Plaintiff-Trustee is therefore entitled to summary judgment on the following:

1. Plaintiff-Trustee's Third Claim for Relief pursuant to § 549(a)
 - a. Defendant-Bader Alikassim Suwaid's transfer of ten years rent free possession of the Real Property was an unauthorized post-petition transfer of the Real Property that is avoided pursuant to 11 U.S.C. § 549(a).
2. Plaintiff-Trustee's Fourth Claim for Relief pursuant to § 550
 - a. By the avoidance of the transfer, all interests and rights in the Real Property obtained by Defendant-Debtor are recovered by and are interests and rights of the Bankruptcy Estate in the Ali Saeed Muthana Chapter 7 Bankruptcy Case (20-90115).
3. Plaintiff-Trustee's Fifth Claim for Relief for Declaratory Relief pursuant to 11 U.S.C. §§ 522(g), 549(a), 550(a)
 - a. That all interests and rights of Defendant-Debtor obtained pursuant to the Rent Free Letter are property of the Bankruptcy Estate in the Ali Saeed Muthana Chapter 7 Bankruptcy case and Defendant-Debtor has no interest or rights in the Real Property pursuant to the avoided transfer.
 - b. That Defendant-Debtor cannot claim a homestead exemption in the Real Property recovered, and interests and rights therein, that have been avoided, Defendant-Debtor having made the voluntary post-petition transfer (11 U.S.C. § 522(g) allowing an exemption to be claim in avoided transfer of the Real Property only if it was not a voluntary transfer).
4. Defendant-Debtor's First Affirmative Defense pursuant to § 549(c)
 - a. Defendant-Debtor has not met their burden showing that he was a good faith purchaser without knowledge of the commencement of the case and that he paid present fair equivalent value of the Real Property, and cannot such defense under 11 U.S.C. § 549(c).
5. Defendant Suwaid's Second Affirmative Defense pursuant to § 549(c)
 - a. Defendant-Debtor has not met their burden showing he was a good faith purchaser without knowledge of the commencement of the case and paid any present value of the Real Property, and that Defendant-Debtor cannot claim and has no lien on the Real Property.

Requested Entry of Separate Judgment

Plaintiff-Trustee makes an additional request that the court finds there is no reason for delay and directing entry of final judgment in favor of Trustee pursuant to Federal Rules of Civil Procedure 54(b). Plaintiff-Trustee provides limited analysis for why an entry of final judgment on these claims would be proper.

Rule 54(b) is designed to permit just such an immediate appeal on an otherwise final decision in a multi-claim or multi-party action. 10 Moore's Federal Practice - Civil § 54.21 (2022).

Here, the court has granted the Plaintiff-Trustee's Motion for Summary Judgment against Defendant-Suwaed and will enter judgment for the Plaintiff-Trustee thereon.

The other defendant in this Adversary Proceeding is GNN Real Estate and Mortgage, Inc. ("Defendant GNN Real Estate"), the party who made the new loan to refinance the pre-petition debt that was in default. No motion for summary judgment is pending against Defendant GNN Real Estate.

At the hearing, **XXXXXXXXXXXX**

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 Summary Judgment filed by Michael D. McGranahan ("Plaintiff-Trustee") against Ali Muthana ("Defendant-Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion For Summary Judgment is granted in favor of Plaintiff-Trustee and against Defendant-Debtor on the Third and Fourth Claims for Relief in the Amended Complaint pursuant to 11 U.S.C. § 549(a) and 11 U.S.C. § 550(a) and that the postpetition transfer of rights and interests of the real property commonly known as 2022 White Fall Court, Ceres, California 95307 ("Real Property") under the Rent Free Letter, evidenced by Exhibit E, Dckt. 49, are avoided and all rights and interests there are property of the Bankruptcy Estate in Defendant-Debtor's bankruptcy estate, E.D. Cal Case No. 20-90115.

IT IS FURTHER ORDERED that the Motion for Summary Judgment is granted in favor of Plaintiff-Trustee and against Defendant-Debtor on the Fifth Cause of Action and that Defendant-Debtor:

(A) has no rights or interests in the Real Property recovered by Plaintiff-Trustee pursuant to 11 U.S.C. § 549; and

(B) cannot claim an exemption in the Real Property recovered by Plaintiff-Trustee pursuant to 11 U.S.C. § 549

IT IS FURTHER ORDERED that the Motion for Summary Judgment is granted in favor of Plaintiff-Trustee and against Defendant-Debtor on the two Affirmative Defenses stated in the Answer, and that Defendant-Debtor cannot assert pursuant to 11 U.S.C. § 549(c)

(A) any right or interest in the Real Property recovered by Plaintiff-Trustee pursuant to 11 U.S.C. § 549; and

(B) any right or interest in the Real Property recovered by Plaintiff-Trustee pursuant to 11 U.S.C. § 549.

~~**IT IS FURTHER ORDERED** pursuant to Federal Rules of Civil Procedure 54(b), a separate final judgment is entered for Plaintiff-Trustee and against Defendant-Debtor, with the court to enter separate judgment for the other claims against the other Defendants in this Adversary Proceeding.~~

2.

[20-90115-E-7](#) **ALI MUTHANA**
[21-9008](#)
CAE-1

CONTINUED STATUS CONFERENCE
RE: AMENDED COMPLAINT
6-1-22 [33]

MCGRANAHAN V. SUWAID ET AL

Plaintiff's Atty: Daniel L. Egan, Jason Eldred

Defendant's Atty:

David C. Johnston [Bader Alikassim Suwaid]

Timothy J. Silverman [GNN Real Estate and Mortgage, Inc.]

Gurjeet Rai [Ali Saeed Muthana]

Adv. Filed: 7/26/21

Answer: 8/27/21

Amd. Cmplt. Filed: 6/1/22

Answer: 8/18/22 [Ali Muthana]

Nature of Action:

Recovery of money/property -other

Validity, priority or extent of lien or other interest in property

Declaratory judgment

Notes:

Continued from 8/4/22 to be conducted in conjunction with the hearing on the Motion for Summary Judgment.

The Status Conference is XXXXXXX
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The court has granted Motions for Summary Judgment filed by Plaintiff-Trustee Michael D. McGranahan against Defendant Bader Alikassim Suwaid and Defendant-Debtor Ali Muthana, avoiding all interests transferred to them post-petition and determining that neither has any lien on the Real Property recovered by the Trustee.

With respect to the third Defendant, GNN Real Estate and Mortgage, Inc., counsel for Plaintiff-Trustee reported **XXXXXXX**

3. [16-24854-E-7](#) **VERNON DECK** **MOTION TO APPOINT TRUSTEE**
 Scott Sagaria **8-3-22 [\[85\]](#)**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter. If the court’s tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order for Hearing on Request of Debtor for Appointment of Chapter 7 Trustee was served by the Clerk of the Court on Debtor (*pro se*), and Chapter 13 Trustee as stated on the Certificate of Service on August 9 and 10, 2022. The court computes that 20 and 21 days’ notice has been provided.

The Motion to Appoint Trustee is XXXXXXXXXXXX

On January 14, 2022, Debtor Vernon Ray Deck filed a Motion to Reopen this Bankruptcy Case, which Motion was granted on January 14, 2022 (Dckt. 57). On February 24, 2022, Debtor filed a Motion titled “Motion to Void Assignments During Stay; Void Wrongful Foreclosure Sale; and Quiet Title to Vernon Ray Deck 11 U.S.C. §§ 727, 362, 544, 547, 548, 105; 28 U.S.C. § 1367; CA Penal Code § 115” (“Motion to Void Assignments”). Dckt. 62.

The court issued an Order (Dckt. 64) setting a Scheduling Conference on the Motion to Avoid Assignments. The court’s order contains a detailed discussion of the Motion to Void Assignments, the related law, and some issues arising from the face to the Motion to Void Assignments. These included the need to commence an adversary proceeding for some of the claims; the scope of the automatic stay and whether it applied to transfers of notes and security interests that were not property of the bankruptcy estate (but the liens encumbered property of the bankruptcy estate); the scope of the Discharge Injunction (11 U.S.C. § 524(a)); and pre-petition avoidable preferences and fraudulent conveyances (11 U.S.C. §§ 547, 548).

A productive Scheduling Conference was conducted on March 9, 2022, and thereon concluded. Civil Minutes, Dckt. 74. Much of what is discussed in the Civil Minutes is what was stated

in the Order setting the Scheduling Conference. The additions from the March 9, 2022 Status Conference are on page 2 of the Civil Minutes. The additions conclude with:

At the Status Conference, the court addressed with Mr. Deck various procedural and legal issues relating to his Motion. Mr. Deck engaged in a constructive discussion, including the court's observations that "real persons" such as Mr. Deck could benefit from having experienced federal court counsel with bankruptcy knowledge understand not only the proper procedures in federal court, but his rights under federal and state law.

The court concluded that dismissal without prejudice of the present motion was proper, to which Mr. Deck did not object. The court will order the Clerk of the Court to not re-close this bankruptcy file until after June 15, 2022, to afford Mr. Deck and any counsel he may retain the opportunity to fully review the legal and factual issues and commence such adversary proceedings or motions.

Civil Minutes, p. 2; Dckt. 74.

Overview of Debtor's Bankruptcy Case ^{FN.1.}

FN.1. The court is reviewing the history of this case and the request, as well as the prior Status Conference in light of Debtor being in *pro se* and his frustration in trying to find counsel. The court appreciates that for non-lawyer parties, the judicial process may be frustration and much of what is said can sound like "legal gibberish." Thus, this more detained analysis and setting the matter for a hearing is being done by the court.

Debtor commenced this Bankruptcy Case on July 25, 2016, as a voluntary Chapter 13 case. On September 16, 2016, Debtor filed a Voluntary Conversion of this case to one under Chapter 7. Dckt. 21. Debtor received his discharge on December 27, 2016. No objections to discharge or complaints for nondischargeability were filed, and Debtor Bankruptcy Case was smoothly prosecuted.

The Chapter 7 Trustee reported that this was a No Distribution Case (no monies to be disbursed by the Trustee to creditors). Notice of No Distribution, Dckt. 52.

This Bankruptcy Case was closed and the Chapter 7 Trustee was discharged on December 1, 2017. Final Decree, Dckt. 54.

Debtor's Request for Appointment of a Trustee

On August 3, 2022, Debtor filed a Request for the court to appoint a Trustee. Dckt. 85. The grounds for requesting the appointment of a Trustee stated by Debtor are summarized as follows:

- a. The Trustee previously appointed in this case has retired and now represents the "other side."
- b. National banks have an unfair advantage given the "seasoned counsel" they have, while the Debtor has been unable to obtain counsel.

- c. The rights of the Bankruptcy Estate and the Debtor remain undefended though there are unresolved “Top-Level Issues.”
- d. Debtor requests that a Trustee be appointed to represent the interests of both the Bankruptcy Estate and the Debtor.
- e. Debtor has contacted a “myriad of attorneys, referral services, or law schools,” but has been unable to obtain counsel.
- f. None of the attorneys Debtor contacted would explain the rights Debtor has and possible remedies Debtor may seek.
- g. It is necessary for the court to appoint a new Chapter 7 trustee in this case, otherwise “extreme prejudice would come to [Debtor] without proper representation to defend his home, the bankruptcy estate, and his full rights as a matter of law.”

Overview of Issues

As the court addressed in the Order for Status Conference and at the hearing thereon, there are some fundamental legal issues for the assertions that the automatic stay has been violated, as well as to whether there is a preferential transfer or fraudulent conveyance.

In the present request, issues arise as to what rights and interests remain in the Bankruptcy Estate for a Chapter 7 Trustee to administer. When a bankruptcy case is closed, all remaining property of the bankruptcy estate is abandoned back to the bankruptcy debtor. 11 U.S.C. § 554(c). Even though a bankruptcy case is reopened, such property abandoned to the debtor is not wrestled back into the bankruptcy estate.

A bankruptcy trustee is the fiduciary of the bankruptcy estate, and is not a representative of or a fiduciary of the debtor. At times in a bankruptcy case, the Chapter 7 trustee and debtor can be mortal enemies.

It appears that Debtor, unable to obtain counsel, sees there being substantial moral wrongs to be righted and legal rights of Debtor to be enforced. However, such falls to the Debtor to right and enforce, and a Chapter 7 trustee is not an indentured representative of a debtor.

Here, Debtor believes that transfers of the notes evidencing pre-petition obligations of Debtor and deeds of trust securing such notes were in violation of the automatic stay. If so, such might be stay violations for a Chapter 7 trustee to enforce. But if so, then the question exists whether such have been abandoned to, and are rights to be enforced by Debtor.

Based on what Debtor has presented, the court cannot find grounds to order the appointment of a Chapter 7 trustee in this reopened case. Generally, it is the U.S. Trustee who files such motions seeking such appointment in reopened cases.

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 Appoint 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 Appoint Trustee is
XXXXXXXXXXXXXXXX

FINAL RULINGS

4. 22-21875-E-7 **JEREMY STRUTHERS**
Gary Fraley

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**
8-12-22 [[12](#)]

Final Ruling: No appearance at the September 1, 2022 hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor, Debtor's Attorney, and Chapter 7 Trustee as stated on the Certificate of Service on August 13 and 14, 2022. The court computes that 18 and 19 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$338.00 due on July 29, 2022.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

The court's docket reflects that the default in payment that is the subsection of the Order to Show Cause has been cured.

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

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

The Order to Show Cause having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.