

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

October 24, 2024 at 11:00 a.m.

1. [23-23834-E-7](#)  
[DNL-8](#)

ANTONETTE TIN  
Peter Macaluso

MOTION FOR TURNOVER OF  
PROPERTY  
8-7-24 [[177](#)]

1 thru 3

**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.

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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 Debtor, Debtor's Attorney, Chapter 7 Trustee, all creditors and parties in interest, parties requesting special notice, and Office of the United States Trustee on August 7, 2024. By the court's calculation, 36 days' notice was provided. 28 days' notice is required.

The Motion for Turnover 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). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion for Turnover is XXXXXXX.**

**October 24, 2024 Hearing**

The court continued the hearing on this Motion to afford Debtor in this case to comply with Trustee's demands for accountings under the penalty of perjury and to continue providing the Trustee with profits of the operating care home LLCs. Debtor was to provide Trustee's counsel with the profits by October 23, 2024. Order, Docket 235.

A review of the Docket on October 21, 2024, reveals nothing new has been filed with the court under this docket control number. At the hearing, **XXXXXXX**

## **REVIEW OF MOTION**

Nikki Farris, the Chapter 7 Trustee, (“Movant”) in the above entitled case and moving party herein, seeks an order for turnover compelling debtor Antonette Tin (“Debtor Tin”) to account for and turn over her interest in The Retreat at Skylake LLC (“Skylake LLC”) and The Retreat at Greenhurst LLC (“Greenhurst LLC”).

Movant argues that on the petition date, Debtor Tin held 100% ownership of Skylake LLC and Greenhurst LLC. She used these LLCs to hold care home businesses currently operating at 779 Skylake Way and 986 Greenhurst Way, Sacramento real properties, currently controlled by Debtor Tin and her spouse, Exequiel Fernando. Mot. 2:15-18, docket 177. According to Movant, monthly income from Debtor Tin’s interest in the LLCs is estimated to be at least \$16,000 per month. *Id.* at 2:19-22. A sale of these interests could generate income for the Bankruptcy Estate. However, Debtor Tin has not complied with accounting and turnover requests made by Movant on April 23, 2024, and August 1, 2024. *Id.* at 2:25-26.

Movant submits her own Declaration in support at Docket 180, authenticating the facts alleged in the Motion. Movant submits as Exhibits the prior requests for turn over and accounting. Docket 179.

On September 10, 2024, Movant submitted a Supplemental Declaration, detailing Bank of America’s response to a Rule 2004 Examination Request. Docket 216. Movant testifies as to large amounts of money being moved around among the entities post-petition, including a \$56,000 sum paid from Skylake LLC to a trust controlled by Debtor Tin, and Greenhurst LLC paying \$52,000 to a trust controlled by Mr. Fernando. *Id.* at ¶ 6.

## **DISCUSSION**

11 U.S.C. § 542 and Federal Rule of Bankruptcy Procedure 7001(1) permit a motion to obtain an order for turnover of property of the estate if the debtor fails and refuses to turnover an asset voluntarily. Federal Rule of Bankruptcy Procedure 7001(1) defines an adversary proceeding as,

(1) a proceeding to recover money or property, other than a proceeding to compel the debtor to deliver property to the trustee, or a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002.

In this case, Movant has initiated this proceeding to compel Debtor Tin to deliver accountings and business interests to Movant. The Federal Rules of Bankruptcy Procedure permit the trustee to obtain turnover from Debtor without filing an adversary proceeding. This Motion for injunctive relief, in the form of a court order requiring that Debtor turnover specific items of property, is therefore appropriate under Federal Rule of Bankruptcy Procedure 7001(1).

The filing of a bankruptcy petition under 11 U.S.C. §§ 301, 302 or 303 creates a bankruptcy estate. 11 U.S.C. § 541(a). Bankruptcy Code Section 541(a)(1) defines property of the estate to include “all legal or equitable interests of the debtor in property as of the commencement of the case.” If the debtor has an equitable or legal interest in property from the filing date, then that property falls within the debtor’s bankruptcy estate and is subject to turnover. 11 U.S.C. § 542(a).

A bankruptcy court may order turnover of property to debtor's estate if, among other things, such property is considered to be property of the estate. *Collect Access LLC v. Hernandez (In re Hernandez)*, 483 B.R. 713 (B.A.P. 9th Cir. 2012); *see also* 11 U.S.C. §§ 541(a), 542(a). Section 542(a) requires someone in possession of property of the estate to deliver such property to the trustee. Pursuant to 11 U.S.C. § 542, a trustee is entitled to turnover of all property of the estate from a debtor. Most notably, pursuant to 11 U.S.C. § 521(a)(4), Debtor is required to deliver all of the property of the estate and documentation related to the property of the estate to the Chapter 7 Trustee.

No opposition has been filed to this Motion by Debtor or any other party in interest.

The interests in the LLC's are property of the Bankruptcy Estate and it is not clear what will be "turned over." The Motion further requests that the Debtor turnover the proceeds of the LLCs that come into her possession, which would be the monies generated from the operations of the businesses therein.

At the hearing, the Parties identified the following items to be turned over to the Chapter 13 Trustee:

- A. \$5,562.00, which the Debtor represents is the January 1, 2024 through August 31, 2024 profit distribution for the Bankruptcy Estate's interest in The Retreat at Skylake LLC;
- B. \$5,022.00 which the Debtor represents is the January 1, 2024 through August 31, 2024 profit distribution for the Bankruptcy Estate's interest in The Retreat at Greenhurst LLC; and
- C. An Income and Expense Accounting for all revenues and expenses for January 1, 2024 through August 31, 2024 for both The Retreat at Skylake LLC and The Retreat at Greenhurst LLC.

The profit distributions and the accountings shall be delivered to Russell J. Cunningham, Esq., counsel for the Chapter 7 Trustee on or before September 26, 2024. The payment by the Debtor of the \$5,562.00 and \$5,022.00 to the Trustee by the Debtor is without prejudice to the rights and interests of the Bankruptcy Estate to profit distributions from each of the Limited Liability Companies, computation of profits and distributions for that period, and other rights and interests relating thereto.

The hearing on the Motion is continued to 10:30 a.m. on October 3, 2024.

### **Enforcement of Turnover Orders**

Though the court does not anticipate there being any failure by Debtor to comply with the order of this court, the Ninth Circuit has reaffirmed a bankruptcy judge's power to issue corrective sanctions, including incarceration, to obtain a person's compliance with a court order. *Gharib v. Casey (In re Kenny G Enterprises, LLC)*, No. 16-55007, 16-55008, 2017 U.S. App. LEXIS 13731 (9th Cir. July 28, 2017). Though an unpublished decision, *Gharib* provides a good survey of the reported decisions addressing the use of corrective sanctions by an Article I bankruptcy judge. *Id.* at \*2–5.

### **October 3, 2024 Hearing**

The court continued the hearing on this Motion to allow Debtor to make all required turnover payments to Trustee, and to provide Trustee with an accounting for all revenues and expenses, and the profit distribution calculation, for January 1, 2024 through August 31, 2024 for both The Retreat at Skylake LLC and The Retreat at Greenhurst LLC. Order, Docket 228.

As of the court's October 1, 2024 review of the Docket, no updated information had been filed with respect to the continued hearing.

At the hearing, counsel for the Trustee stated that from today's hearing, the Trustee is looking to address the following.

The Debtor has provided accounts for the two care home LLCs. The two LLCs had \$500,000 gross revenues for the first 8 months, but only \$11,000 profit. Twenty percent of the revenue is being paid for rent to the Debtor and her husband.

Half of the rent is for the current period, and half is for "catch up" payments to the insider for the prior year. The Trustee needs to further investigate these payments and the computation of the profits from the LLCs which are due the Bankruptcy Estate.

The Parties agreed that the Debtor, as the managing member of The Retreat at Skylake LLC and The Retreat at Greenhurst, LLC will provide an Income and Expense Accounting for all revenues and expenses, and the profit distribution calculation for October, November, and December, 2023, and for September 2024, all of which are post-petition months for which the Bankruptcy estate held the interests in the LLCs.

The Parties agreed that these Income and Expense Accounting for all revenues and expenses, and the profit distribution calculation will be made under penalty of perjury.

Additionally, the Debtor, as managing member of The Retreat at Skylake LLC and The Retreat at Greenhurst, LLC, shall distribute to the Trustee any and all profits relating to the Estate's interests in the LLC's for these periods.

The Income and Expense Accounting for all revenues and expenses, and the profit distribution calculation and distribution of the profits shall be made on or before 10:00 .m. on October 23, 2024, and be delivered to the office of Russell Cunningham, Esq., counsel for the Trustee by that time and date.

The hearing on the Motion is continued to 11:00 a.m. on October 24, 2024.

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 for Turnover of Property filed by Nikki Farris, 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 for Turnover is **XXXXXXX**.

2. [23-23834-E-7](#)  
[24-2178](#)  
DNL-1

ANTONETTE TIN  
Peter Macaluso

MOTION FOR PRELIMINARY  
INJUNCTION  
9-26-24 [[13](#)]

FARRIS V. ANTONETTE TIN,  
TRUSTEE OF THE 2018 ANTONETTE

**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.

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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 attorneys of records, Defendants, other parties in interest, and Office of the United States Trustee on September 26, 2024. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for a Preliminary Injunction 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). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion for a Preliminary Injunction is granted.</b>
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The Chapter 7 Trustee, Nikki Farris, Plaintiff in this adversary proceeding ("Movant") requests the court issue a preliminary injunction pursuant to Fed R. Bankr. P. 7064, Fed. R. Civ. P. 64, and Cal Code Civ. P. § 3439.07. Movant seeks a preliminary injunction that enjoins defendants, Antonette Tin and Exequiel Fernando, from selling, assigning, transferring, or otherwise dissipating the property transferred to or for the benefit of the 2018 Antonette Butlig Tin Trust ("ABT Trust") and the 2018 Exequiel Allan Fernando Trust ("EAF Trust"), including:

(a) Real property commonly known as 8983 Richborough Way, Elk Grove, CA ("8983 Richborough"), 779 Skylake Way, Sacramento, CA ("779 Skylake") and 986

Greenhurst Way, Sacramento, CA ('986 Greenhurst') (collectively "Trust Properties");

(b) Monthly rental payments for the Trust Properties (collectively "Rents") received by the Defendants from ANTONETTE TIN DBA PRECIOUS ANGELS CARE ("PAC"), THE RETREAT AT RICHBOROUGH, LLC ("Richborough LLC"), PRECIOUS ANGELS CARE, INC. ("PAC, Inc."), THE RETREAT AT SKYLAKE, LLC ("Skylake LLC"), THE RETREAT AT GREENHURST, LLC ("Greenhurst LLC") and THE RETREAT AT ROYAL GREEN, LLC ("Royal Green LLC") (collectively "Hospice Companies");

(c) Distributions for Tin's owner interest in and from the Hospice Companies (collectively "Draws") received by the Defendants;

(d) Funds transferred electronically (collectively "EF Transfers") from the accounts of Tin and the Hospice Companies into the Defendants' accounts;

(e) The proceeds of the Rents, Draws and EF Transfers (collectively "Proceeds"), including the funds held at deposit accounts in the name of the ABT Trust and EAF Trust, including without limitation, Bank of America #6053 (ABT checking), Bank of America #4798 (ABT savings), Wells Fargo Bank #9133 (ABT Trust checking), Wells Fargo Bank #0622 (ABT Trust savings), Wells Fargo Bank #2822 (EAF Trust Checking) and Wells Fargo #3220 (EAF Trust Savings) (collectively "Trust Accounts").

Mot. 2:1-3:2, Docket 13. Movant does not seek the relief as to wages earned and received from the Hospice Companies after the October 5, 2023 bankruptcy petition date. *Id.* at 3:3-4.

Movant argues the preliminary injunction should be issued because "the Trustee will likely succeed on the merits, the Trustee will suffer irreparable harm in the absence of preliminary relief, the balance of equities tips in her favor, and an injunction is in the public interest." *Id.* at 4:1-3.

Movant submits the Declaration of Nikki Farris in support. Docket 17. The Declaration goes into great detail of the facts of this case, including discussing various transfers Defendants have made into and out of the Trusts in an effort to avoid hiding assets. For example, Movant alleges that after Debtor-Defendant Tin became aware of the employment lawsuit against her, she withdrew cash in the amount of \$163,640.40 from the Trust Accounts to avoid paying a potential judgment. Decl. ¶ 38, Docket 17. The Declaration alleges similar conduct where Debtor-Defendant Tin used an account with Greenhurst LLC and Skylake LLC to make an indirect cash withdrawal disguised as a Home Depot purchase in the amount of \$40,790. *Id.* at ¶ 39. Trustee argues that, after reviewing the relevant financial information, it is apparent Defendants are concealing Estate property and attempting to hide assets, and the Defendants should not be trusted to safeguard rents and distributions pending trial.

## **DEBTOR-DEFENDANT TIN'S RESPONSE**

On October 9, 2024, Debtor-Defendant Tin filed a Reply styled as a quasi-opposition to the Motion. Docket 22. Debtor-Defendant Tin states:

1. Defendant is not in opposition, *per se*, to the requests made by the Trustee, and merely seeks clarification to the requests without agreeing to indentured servitude. *Id.* at 2:4-7.
2. Defendant agrees to complying with the refraining of the “selling, assigning, transferring, or otherwise dissipating the property transferred to or for the benefit of The 2018 Antonette Butlig Trust (“ABT Trust”). *Id.* at 2:8-11.
3. Defendant requests that if, the Defendant is not granted some type of Operating Agreement, and this Request for Injunction is not narrowly tailored, there is no motivation for this Debtor to continue any of the operations, and would seek to close the entities, utilize the 60 day window to transfer clients, as the “Business” does not hold the licensing right as they are personal to the Debtor and cannot be sold. *Id.* at 2:12-18.
4. Debtor-Defendant proceeds to identify a series of points of clarification. *Id.* at 2:20-3:22.
5. Debtor-Defendant seek an “Operating Agreement” as opposed to an injunction that caps the on-going damages, and allows the Defendant to operate. *Id.* at 4:11-13. Debtor-Defendant states she will wind up the business if there is no Operating Agreement.

## **MOVANT’S REPLY**

Movant filed a Reply to Defendant Tin’s Opposition on October 11, 2024. Docket 24. Movant states, since this Motion was filed, Movant has obtained even more evidence of intentional fraudulent transfers, and reiterates her request for the injunction.

## **DEFENDANT FERNANDO’S OPPOSITION**

On October 11, 2024, Defendant Fernando, trustee of the 2018 Exequial Allan Fernando Trust, and owner of real property located at 986 Greenhurst Way, Sacramento, CA, filed an Opposition and Declaration. Dockets 28, 29. Defendant Fernando states:

1. He purchased 986 Greenhurst on September 23, 2016, with Debtor Tin deeding her interest in 986 Greenhurst to him as his sole and separate property. Decl. ¶ 1, Docket 28.
2. Defendant Fernando has been unable to find the documentation showing his down payment from his 401(k) to purchase 986 Greenhurst, him being informed that the brokerage firm Charles Schwab purges records for the relevant time period. *Id.* at ¶ 3.
3. Defendant Fernando testifies there is a lease agreement for the Greenhurst LLC to operate out of 986 Greenhurst, but Defendant Fernando has been unable to locate the lease agreement. *Id.* at ¶ 4.

4. The lease provided for a monthly payment of \$5,000 which was paid until August 2020. Thereafter, the monthly payment was reduced to \$4,000.00. The reduction in the monthly payment resulted from a reduction of the income Greenhurst LLC was receiving. *Id.* at ¶ 5.
5. Debtor Fernando testifies he has never received more than the monthly payment from Greenhurst LLC except when Greenhurst LLC was paying arrearages for lease payments not made. *Id.* at ¶ 6.
6. Debtor Fernando authenticates the attached Exhibits in support of the Opposition.
7. As such, lease payments from the Greenhurst LLC to The 2018 Exequiel Allan Fernando Trust should not be enjoined in this Motion. Mem. 2:25-27, Docket 29.

## MOVANT'S REPLY

On October 14, 2024, Movant filed a Reply to Defendant Fernando's Opposition. Docket 31. Movant states:

1. The purported lease agreement is missing from Defendant Fernando's Exhibits. *Id.* at ¶ 6.
2. Foreclosure of 986 Greenhurst would likely be caused by Debtor Fernando's chronic gambling activities, not from paying the mortgage from other funds as Defendant Fernando has claimed. *Id.* at ¶ 5.
3. Community funds from the 401(k) were used to make the down payment on the 986 Greenhurst property, and Debtor Tin's failure to be involved in the 986 Greenhurst property is due to judgments purportedly affecting that property that were not yet avoided in her first Chapter 13 Case. *Id.* at ¶ 7.
4. There are similar circumstances surrounding the 865 Royal Green property purchased by Lynch. *Id.* at ¶ 8.
5. Defendant Fernando cannot be counted on to tell the truth, let alone preserve the status quo. *Id.* at ¶ 10.

## DISCUSSION

Fed. R. Bankr. P. 7064, titled "Seizure of Person or Property," incorporates Fed R. Civ. P. 64 in adversary proceedings. Fed. R. Civ. P. 64 states:

(a) Remedies Under State Law—In General. At the commencement of and throughout an action, every remedy is available that, under the law of the state where the court is located, provides for seizing a person or property to secure satisfaction of the potential judgment. But a federal statute governs to the extent it applies.



(b) Specific Kinds of Remedies. The remedies available under this rule include the following—however designated and regardless of whether state procedure requires an independent action:

- arrest;
- attachment;
- garnishment;
- replevin;
- sequestration; and
- other corresponding or equivalent remedies.

This rule permits state law to apply throughout an adversary proceeding where such a remedy is available regarding seizing a person or property to secure satisfaction of a potential judgment, unless there is a federal statute on point. No federal statute has been identified to the court. Movant identifies Cal. Civ Code § 3439.07 to be applicable, which states:

(a) In an action for relief against a transfer or obligation under this chapter, a creditor, subject to the limitations in Section 3439.08, may obtain:

(1) Avoidance of the transfer or obligation to the extent necessary to satisfy the creditor's claim.

(2) An attachment or other provisional remedy against the asset transferred or other property of the transferee in accordance with the procedures described in Title 6.5 (commencing with Section 481.010) of Part 2 of the Code of Civil Procedure, or as may otherwise be available under applicable law.

(3) Subject to applicable principles of equity and in accordance with applicable rules of civil procedure, the following:

**(A) An injunction against further disposition by the debtor or a transferee, or both, of the asset transferred or other property of the transferee.**

(B) Appointment of a receiver to take charge of the asset transferred or other property of the transferee.

(C) Any other relief the circumstances may require.

(Emphasis added). Collier's Treatise on Bankruptcy states, regarding Fed. R. Bankr. P. 7064:

Rule 7064 of the Federal Rules of Bankruptcy Procedure, which might have more descriptively been named "Provisional Remedies," makes Rule 64 of the Federal

Rules of Civil Procedure applicable in adversary proceedings. It is also made applicable by Rule 9014 in contested matters raised by motion, though it is difficult to imagine any contested matter in which use of any of the provisional remedies authorized under Civil Rule 64 would ever be appropriate, and it appears that there is no reported case in which Bankruptcy Rule 7064 has ever been utilized in connection with a contested matter. Bankruptcy Rule 7064 is not among those rules listed in Rule 1018 and is therefore not applicable in proceedings related to petitions commencing an involuntary case, contested petitions commencing a case ancillary to a foreign proceeding in pre-2005 Act cases, contested petitions for recognition in chapter 15 cases, or proceedings to vacate an order for relief.

The provisional remedies dealt with by Civil Rule 64, which are intended to secure the satisfaction of a judgment ultimately to be entered in the action, normally involve the seizure or restraint of defendant's property or some interest in that property. As such, they would not be applicable in an adversary proceeding or contested matter in a pending bankruptcy case in which the trustee or debtor is a defendant, as their application would be violative of the automatic stay provisions of section 362(a) of the Bankruptcy Code. These would include section 362(a)(3) ("any act to obtain possession of property of the estate ... or to exercise control over property of the estate") or, in some cases, section 362(a)(4) ("any act to create, perfect, or enforce any lien against property of the estate").

10 COLLIER ON BANKRUPTCY ¶ 7064.01.

Looking to 13 Moore's Federal Practice - Civil § 64.13, that treatise provides a further discussion of the use of Federal Rule of Civil Procedure 64 for the preservation of assets, stating:

[f] Rule 64 Also Permits Other Equivalent Remedies

Rule 64 also permits "other corresponding or equivalent remedies." These include the following:

1. Writ of ne exeat, an order which restrains a person from leaving the jurisdiction or removing property from beyond the jurisdiction;
2. Trustee writ, the process of garnishment of intangibles;
3. Impoundment, the seizure and taking into the custody of the law or a court; and
4. Distringas, a mostly obsolete writ by which a defendant is compelled to appear by seizure of defendant's property.

Rule 64 empowers a district court to issue a preliminary injunction to prevent dissipation of a defendant's assets to ensure that any eventual judgment will be collectible, if such preliminary relief is authorized by the law of the forum state (see Ch. 64, Seizing a Person or Property).<sup>6.1</sup> Thus, in a case in which applicable state law recognized a "prejudgment attachment-type injunction" that was not

substantively distinguishable from a levy for attachment, it has been held that the district court had the power to issue a preliminary injunction freezing the defendant's assets.<sup>7</sup>

#### 6.1

Rule 64 empowers federal court to issue preliminary relief to preserve defendant's assets if authorized under forum state's law. Fed. R. Civ. P. 64(a) ("At the commencement of and throughout an action, every remedy is available that, under the law of the state where the court is located, provides for seizing a person or property to secure satisfaction of the potential judgment."); *Pineda v. Skinner Servs., Inc.*, 22 F.4th 47, 53–55 (1st Cir. 2021) (district court's power under Fed. R. Civ. P. 64 is not restricted to diversity actions, and it is not limited by *Grupo Mexicano de Desarrollo, S.A. v. Alliance Bond Fund, Inc.*, 527 U.S. 308, 318 n.3, 330–331, 119 S. Ct. 1961, 144 L. Ed. 2d 319 (1999), which addressed federal courts' traditional equitable powers under Fed. R. Civ. P. 65 and expressly did not decide whether federal court can issue preliminary relief to preserve defendant's assets under law of forum state).

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Court may freeze defendant's assets if permitted by applicable state law. *United States ex rel. Rahman v. Oncology Assocs.*, 198 F.3d 489, 494–501 (4th Cir. 1999) (alternatively holding that district court has equitable power to issue preliminary injunction freezing defendant's assets in any suit that seeks some equitable relief).

This is addition to the more commonly stated basis for issuing a preliminary injunction, Federal Rule of Bankruptcy Procedure 7065, which states:

Rule 65 F.R.Civ.P. applies in adversary proceedings, except that a temporary restraining order or preliminary injunction may be issued on application of a debtor, trustee, or debtor in possession without compliance with Rule 65(c).

Fed. R. Civ. P. 65 states:

#### (a) Preliminary Injunction.

(1) Notice. The court may issue a preliminary injunction only on notice to the adverse party. . .

#### (d) Contents and Scope of Every Injunction and Restraining Order.

(1) Contents. Every order granting an injunction and every restraining order must:

(A) state the reasons why it issued;

(B) state its terms specifically; and

(C) describe in reasonable detail—and not by referring to the complaint or other document—the act or acts restrained or required.

In this case, the court finds there are grounds for issuing the preliminary injunction. Movant has shown, through her testimony and exhibits, that assets that are property of the estate are being transferred without the knowledge or consent of the Chapter 7 Trustee. The preliminary injunction acts to preserve the *status quo* until Movant is able to determine that any transfers of assets of the estate are made properly. It may be that terms of the injunction are clarified so Defendants are satisfied with where the line is drawn, pending trial, and that mortgage payments are not allowed to go into default.

For both of the Trusts, the respective trustees seek to ensure that necessary expenses get paid and that they can fulfill their duties as trustees under applicable California law.

### **Structuring of Operation of the Trusts and Preservation of Assets Pending Final Judgment**

At the hearing, **XXXXXXX**

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 for a Temporary Restraining Order filed by Nikki Farris, 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, the court finding that Defendant Tin and Defendant Fernando have engaged in transferring assets of the Bankruptcy Estate without the knowledge or consent of the Chapter 7 Trustee, it therefore being necessary to preserve the status quo until trial or further order of the court.

~~IT IS FURTHER ORDERED~~ that Defendants, Antonette Tin and Exequiel Fernando, are enjoined, pending further order of the court, from selling, assigning, transferring, or otherwise dissipating the property transferred to or for the benefit of the 2018 Antonette Butlig Tin Trust (“ABT Trust”) and the 2018 Exequiel Allan Fernando Trust (“EAF Trust”), including:

~~(a) Real property commonly known as 8983 Richborough Way, Elk Grove, CA (“8983 Richborough”), 779 Skylake Way, Sacramento, CA (“779 Skylake”) and 986 Greenhurst Way, Sacramento, CA (“986 Greenhurst”) (collectively “Trust Properties”);~~

~~(b) Monthly rental payments for the Trust Properties (collectively “Rents”) received by the Defendants from ANTONETTE TIN~~

~~DBA PRECIOUS ANGELS CARE (“PAC”), THE RETREAT AT RICHBOROUGH, LLC (“Richborough LLC”), PRECIOUS ANGELS CARE, INC. (“PAC, Inc.”), THE RETREAT AT SKYLAKE, LLC (“Skylake LLC”), THE RETREAT AT GREENHURST, LLC (“Greenhurst LLC”) and THE RETREAT AT ROYAL GREEN, LLC (“Royal Green LLC”) (collectively “Hospice Companies”);~~

~~————— (c) Distributions for Tin’s owner interest in and from the Hospice Companies (collectively “Draws”) received by the Defendants;~~

~~————— (d) Funds transferred electronically (collectively “EF Transfers”) from the accounts of Tin and the Hospice Companies into the Defendants’ accounts;~~

~~————— (e) The proceeds of the Rents, Draws and EF Transfers (collectively “Proceeds”), including the funds held at deposit accounts in the name of the ABT Trust and EAF Trust, including without limitation, Bank of America #6053 (ABT checking), Bank of America #4798 (ABT savings), Wells Fargo Bank #9133 (ABT Trust checking), Wells Fargo Bank #0622 (ABT Trust savings), Wells Fargo Bank #2822 (EAF Trust Checking) and Wells Fargo #3220 (EAF Trust Savings) (collectively “Trust Accounts”).~~

**FARRIS V. ANTONETTE TIN,  
TRUSTEE OF THE RA CORONEL**

**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.

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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 attorneys of records, Defendants, and Office of the United States Trustee on September 24, 2024. By the court's calculation, 30 days' notice was provided. 28 days' notice is required.

The Motion for Judgment on the Pleadings 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). The defaults of the non-responding parties and other parties in interest are entered.

**The Motion for Judgment on the Pleadings is granted.**

The Chapter 7 Trustee, Nikki Farris, Plaintiff in this adversary proceeding ("Movant") filed this adversary proceeding on August 20, 2024, and now moves this court for an Order granting Judgment on the Pleadings pursuant to Federal Rule of Civil Procedure 12(c).

**Summary of Complaint**

The Complaint is summarized as follows:

1. On June 12, 2020, defendant Tin's stepfather, ROBERTO ADEM CORONEL ("Decedent") established a trust ("RAC Trust") by executing a declaration ("Declaration"), a copy of which is filed herewith as Exhibit A to the Complaint.
2. Declaration Section 2.01 identified the Decedent as primary beneficiary and Tin as secondary beneficiary.
3. Declaration Section 7.01 identified the Decedent as trustee and Tin as successor trustee.

4. On June 17, 2020, by Trust Transfer Deed, the Decedent conveyed his interest in the Sacramento County real property commonly known as 8865 Haflinger Way, Elk Grove, CA 95757, AP #132-1070-047-0000 (“8865 Haflinger”) to himself as trustee of the RAC Trust. A copy of the deed is filed herewith as Exhibit B.
5. On February 27, 2021, the Decedent passed away.
6. On April 13, 2021, by Trust Transfer Deed, as successor trustee, Tin conveyed the RAC Trust’s interest in 8865 Haflinger to herself as trustee of the RAC Trust. A copy of the deed, which was recorded on April 28, 2021, is filed herewith as Exhibit C. On February 8, 2022, by Grant Deed (dated January 28, 2022), Tin and her spouse, as joint tenants, conveyed their interest in 8865 Haflinger to Tin, as trustee of the RAC Trust. A copy of the deed, which was recorded on February 18, 2022, is filed herewith as Exhibit D.
7. On August 9, 2022, by Grant Deed, Tin and her spouse, as joint tenants, conveyed 8865 Haflinger to Tin as trustee of the RAC Trust. A copy of the deed, which was recorded on August 12, 2022, is filed herewith as Exhibit E.
8. Tin’s beneficial interest in the RAC Trust, 8865 Haflinger, all other property of the RAC Trust and proceeds thereof (collectively “Subject Property”) are property of the bankruptcy estate that the Trustee may use, sell or lease.
9. The Subject Property is not of inconsequential value or benefit to the bankruptcy estate.
10. Based upon the foregoing, the Trustee is entitled to an order and judgment compelling Tin to account for and deliver the Subject Property to the Trustee, under 11 U.S.C. Section 542.

### **Summary of Answer**

Debtor-Defendant Tin filed an Answer to the complaint on September 20, 2024. Docket 7. Debtor-Defendant Trustee Tin admits the allegations in paragraphs 1-23 of the Complaint, but denies the information in paragraphs 24 and 25. *Id.* at 3:2-6.

### **THE MOTION**

Movant asserts, at its most fundamental premise, that Debtor-Defendant Trustee Tin’s interest in the RAC Trust, 8865 Haflinger, all other property of the RAC Trust and proceeds thereof (collectively “Subject Property”) are property of the bankruptcy estate that the Trustee may use, sell or lease. Mot. 4:9-12, Docket 9. Trustee filed this Complaint as Debtor-Defendant has failed to cooperate in turning over her interest in the 8865 Haflinger property. Movant states that Debtor-Defendant has been attempting to

circumvent her turn over duties by relying on the spendthrift clause in the RAC Trust. Such reliance is misplaced, according to Trustee, as the interests of the Debtor-Defendant are all property of the Estate.

## **OPPOSITION**

On October 9, 2024, Defendant-Debtor Trustee Tin filed an Opposition to the Motion. Docket 16. Defendant argues that, indeed, 8865 Haflinger Way is part of the Bankruptcy Estate; however, judgment in favor of Movant is improper as the 8865 Haflinger Way property is of little or inconsequential value to the Estate, when considering priority claims for unpaid taxes. Therefore, Debtor-Defendant Trustee Tin does not need to turn it over. Opp'n 3:12-4:5, Docket 16.

Furthermore, Defendant-Debtor Trustee Tin argues that they have not been relying on the spendthrift provision to frustrate turn over efforts, but have only failed to turn over the property because it has no value to the Estate. Defendant-Debtor Trustee Tin proceeds to argue that the RAC Trust is not relevant and should be distributed out in accordance with section 5.05 of the RAC Trust instrument.

## **MOVANT'S REPLY**

Movant filed a Reply on October 11, 2024. Docket 18. Movant states that there is value in the 8865 Haflinger property for the Estate, and there is no supporting law offered by Defendant-Debtor Tin to support the argument that unsecured priority debt will be an impediment to distributions from the Haflinger property. *Id.* at ¶¶ 7-8. Movant estimates a sale of the Haflinger property would actually net \$99,163.59 for the Estate.

Moreover, the Opposition also fails to address other property of the RAC Trust, to include Bank of America account #7963 that has stood in Tin's name in her capacity as trustee of the RAC Trust since June 1, 2021. Both account #7963 and its \$17,245.94 petition date balance were omitted from Tin's original and amended schedules. *Id.* at ¶ 9. The Opposition offers no credible excuse for Tin's continuing failure to account for and turn over 8865 Haflinger and account #7963, both of which to this day stand in her name as trustee of the RAC Trust. *Id.* at ¶ 12.

## **APPLICABLE LAW**

### **Federal Rule of Civil Procedure 12(c) Standard**

On a motion for judgment on the pleadings under Federal Rule of Civil Procedure 12(c), the allegations of the non-moving party must be accepted as true, while the allegations of the moving party, which have been denied, are assumed to be false. *Hal Roach Studios, Inc. v. Richard Feiner & Co., Inc.*, 896 F.2d 1542, 1548 (9th Cir. 1989). Judgment on the pleadings is proper when the moving party clearly establishes on the face of the pleadings that no material issue of fact remains to be resolved and that it is entitled to judgment as a matter of law. *Id.* Dismissal is proper only if it appears beyond a doubt that the non-moving party can prove no set of facts in support of its claim that would entitle him to relief. *New.Net, Inc. v. Lavasoft*, 356 F. Supp. 2d 1090, 1115 (C.D. Cal. 2004). While the court must construe the complaint and resolve all doubts in the light most favorable to the non-moving party, the court does not need to accept as true conclusory allegations or legal characterizations. *Id.* (citing *General Conference Corp. of Seventh-Day Adventists v. Seventh-Day Adventist Congregational Church*, 887 F.2d 228, 230 (9th Cir. 1989); *McGlinchy v. Shell Chemical Co.*, 845 F.2d 802, 810 (9th Cir. 1988)).



A motion for judgment on the pleadings based on Federal Rule of Civil Procedure 12(c) is a functional equivalent of a motion to dismiss under Federal Rule of Civil Procedure 12(b), requiring the same underlying analysis. *Dworkin v. Hustler Magazine, Inc.*, 867 F.2d 1188, 1192 (9th Cir. 1989). Thus, for a complaint to withstand a Rule 12(c) motion for judgment on the pleadings, it must contain more detail than “bare assertions” that are “nothing more than a formulaic recitation of the elements” required for the claim. *Ashcroft v. Iqbal*, 556 U.S. 662, 681 (2009). Courts must draw upon their “experience and common sense” when evaluating the specific context of the complaint and whether it contains the necessary detail to state a plausible claim for relief. *Id.* at 679. The factual content on the face of the complaint—not conclusory statements in the pleading—and reasonable inferences drawn from those facts must plausibly suggest that the plaintiff could be entitled to relief for the pleading to survive a Rule 12(c) motion. *See id.* at 677.

## DISCUSSION

Judgment on the Pleadings requires that the moving party shows that no material issues of fact remains to be resolved and that it is entitled to judgment as a matter of law. In this case, there are no material issues of fact still in dispute.

Trustee’s complaint seeks the turnover of Debtor-Defendant Tin’s interest in the RAC Trust, including her interest in the 8865 Haflinger property and related trust account ending in #7963. The Complaint, Docket 1 at ¶ 23, states:

Tin’s beneficial interest in the RAC Trust, 8865 Haflinger, all other property of the RAC Trust and proceeds thereof (collectively “Subject Property”) are property of the bankruptcy estate that the Trustee may use, sell or lease.

Debtor-Defendant Tin accepted this fact as true in the Answer. *See* Answer at 3:5-6, Docket 7. Therefore, it logically follows that Debtor-Defendant is required to comply with turn over requests from the Chapter 7 Trustee.

In explaining why she is not complying with turn over requests, Debtor-Defendant Tin simply states in her opinion she has deemed the 8865 Haflinger property of inconsequential value to the Estate, so there is no need for her to turn over the property. There is no legal support given for such a contention, and for good reason.

The premise of this argument is Debtor-Defendant Tin in her individual bankruptcy case, owes approximately (\$103,363.45) in priority unsecured taxes to the California Franchise Tax Board and the Internal Revenue Service. Since both Defendant-Debtor Tin and the Plaintiff-Trustee project around \$90,000 in equity to be recovered from a sale, Defendant-Debtor Tin asserts that the priority unsecured claims will exhaust that amount, thus leaving nothing for general unsecured claims, and therefore the Property is of inconsequential value to the Estate.

However, this argument ignores the fact that the Internal Revenue Service and the California Franchise Tax Board are both creditors with unsecured claims in the case - the priority unsecured claims. There is value to be recovered for the Bankruptcy Estate to be paid to creditors with unsecured claims in this case.

For these reasons, when construing the facts in favor of the Defendant-Debtor, the Motion is granted, the court finding there are no material issues of fact that remain.

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 Judgment on the Pleadings filed by the Chapter 7 Trustee, Nikki Farris, Plaintiff in this adversary proceeding (“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 pursuant to Fed. R. Bankr. P. 7012 and Fed. R. Civ. P. 12(c), the court finding there are no material issues of fact that remain in dispute. Judgment shall be entered in favor of the Trustee-Plaintiff and against Antonette Tin, in her capacity as Trustee of the RA Coronel Family Trust to distribute all assets of the Trust to Nikki Farris, as Chapter 7 Trustee of the Antonette Tin and The Retreat at Royal Green, LLC Consolidated Bankruptcy Cases on or before **XXXXXXX** 2024.

Counsel for the Plaintiff-Trustee shall prepare a proposed judgment consist with this court’s ruling and lodge it with the court.

# FINAL RULINGS

4. [23-23242-E-7](#)  
[24-2038](#)

**BRYAN GALLINGER**  
**Peter Macaluso**

**MOTION BY MATTHEW V. BRADY TO  
WITHDRAW AS ATTORNEY**  
**9-18-24 [36]**

**GALLINGER V. LEVICK FAMILY  
TRUST ET AL**

**Final Ruling: No appearance at the October 24, 2024 Hearing is required.**

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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 Debtor’s Attorney, Chapter 7 Trustee, attorneys of record, and Office of the United States Trustee on September 17, 2024. By the court’s calculation, 37 days’ notice was provided. 28 days’ notice is required. However, moving party did not serve the Debtor, who appears to be left in *pro se* if the Motion were granted, which service is required by E.D. CAL. LOCAL R. 182(d). As addressed below, the Debtor client appeared at the prior hearing with his Chapter 7 Counsel, at which the court announced its ruling to dismiss this Adversary Proceeding.

The Motion to Withdraw as Attorney 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). The defaults of the non-responding parties and other parties in interest are entered.

<p><b>The Motion to Withdraw as Attorney is granted.</b></p>
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Matthew Brady (“Movant”), counsel of record for Bryan G. Gallinger (“Debtor”), filed a Motion to Withdraw as Attorney as Debtor’s counsel in the adversary proceeding in this bankruptcy case. Movant states the following:

- A. The Motion is brought pursuant to Local Bankruptcy Rule 2017-1(e) and California Rule of Professional Conduct 1.16(b)(8). Mot. 1:19-22, Docket 36.
- B. Counsel cannot effectively represent Debtor due health complications Counsel is experiencing. *Id.* at 2:23-28.

## 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. LOCAL 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 cause to the administration of justice; and (4) the degree to which withdrawal will delay the resolution of the case. *Williams v. Troehler*, No. 1:08cv01523 OWW GSA, 2010 U.S. Dist. LEXIS 69757 (E.D. Cal. June 23, 2010). FN.1.

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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.

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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*, 26 Cal. Rptr. 2d 554 (Cal. Ct. App. 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 559.

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. LOCAL R. 180(e).

Termination of the attorney-client relationship under the Rules of Professional Conduct is governed by Rule 3-700. Counsel may not seek to withdraw 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 or (3) Counsel's mental or physical condition renders it unreasonably difficult to carry out the employment effectively. CAL. R. PROF'L CONDUCT 3-700(B).

Permissive withdrawal is limited to certain situations, including the one relevant for this Motion:

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

CAL. R. PROF'L CONDUCT 3-700(c)(4).

## DISCUSSION

As a ground for the Motion to Withdraw as Attorney, Movant states that his health has been declining, having spent time in the hospital for a heart condition. Movant's doctor has told him he needs to cut back on the work load. Those are sufficient reasons for permissive withdrawal.

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 Withdraw as Attorney filed by Matthew Brady ("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 to Withdraw as Attorney is granted, and Movant is permitted to withdraw as counsel for Bryan G. Gallinger ("Debtor"), and Bryan G. Gallinger is substituted in *pro se* in his place.