UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

November 7, 2013 at 9:30 a.m.

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1. 12-36884-E-7 JENNY PETTENGILL
MF-1 Richard A. Hall

MOTION TO CONFIRM TERMINATION OR ABSENCE OF STAY AND/OR MOTION FOR RELIEF FROM AUTOMATIC STAY
10-10-13 [132]

CORRIGAN FINANCE LIMITED VS.

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 7 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on October 10, 2013. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

Tentative Ruling: The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

The court's tentative decision is to deny without prejudice the Motion for Relief from the Automatic Stay. 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, the court will make the following findings of fact and conclusions of law:

Movant seeks relief from the automatic stay pursuant to 11 U.S.C. § 362(d)(1), alleging that cause exists to allow them to continue dissolution litigation in the Superior Court of the State of California, County of Placer (Case No. SDR-0037138).

Movant claims that the subject property is not the property of the estate because Debtor did not schedule any interest in the subject property. Therefore, automatic stay does not apply to the Movant. Movant has not filed a proof of claim. The deadline to file a non-government claim is November 12, 2013.

Movant further contends that relief from automatic stay should be granted to allow the family court to proceed with the trial and address the all the issues in one forum. There is trial set for November 4, 2013 which is after the hearing on this motion. However, the family court is ready for trial and it will be held as soon as relief from automatic stay is granted. The Estate will not be prejudice if this relief is granted to the Movant. Debtors cannot dispute the ownership of the property. The bankruptcy court cannot enter final judgment since Debtor only raises state family law issues. Lastly, there are grounds for mandatory and permissive abstain in favor of the family court.

The Roman Rykuonov Declaration states Movant purchased the subject property, 1590 North Lake Boulevard in Tahoe City, California, for the gross price of $2.5 million, which was paid in cash. Movant is the record owner of the property. Debtor filed a motion to join Movant as a party to the dissolution proceedings in June 15, 2012. The purpose was to set aside the sale as a transfer of community property. Movant was joined as a party by a court's order entered on August 19, 2012. Movant has filed a motion for an order setting a trial on Debtor's claims and Movant's counterclaim for $200,000. The trial is set for November 4, 2013.

Movant submits the Terry A. Szucsko Declaration that was filed in *In re Stanislav Lazutkine*, United States Bankruptcy Court for the Eastern District of California (Case No. 13-21893-B-7) as Docket No. 56. Szucsko Declaration states that family court can efficiently administer the matter regarding the subject property in one forum.

The Reno F.R. Fernandez III Declaration states that the claims pending in the family court do not involve any issues of bankruptcy.

Szuckso Declaration and Fernandez Declaration state that if the automatic stay is not granted then Movant will be subject to hardship and prejudice because it may be barred from asserting and offsetting its counterclaims, there may be unnecessary delays including spoliation of evidence, dilapidation and decline in property, there will be unnecessary expenses litigating in multiple forums, and there is a risk of inconsistent findings and rulings.

CHAPTER 7 TRUSTEE'S OPPOSITION

The Chapter 7 Trustee, John Roberts requests a 30 day continuance to hire a counsel to represent the trustee and to fully brief the opposition. The Trustee has been interviewing counsel and proposed counsel, George Hollister of the Hollister Law Corporation. Counsel requested a continuance from Movant Counsel's in a motion filed in the Lzautkine Chapter 7 (Debtor's husband), prior to going on vacation, but that request was denied. One of the reason's behind the delay in retaining counsel is that there are no readily available resources to prosecute or defend the case.

As a preliminary opposition, the Trustee states Debtor's community interest in the subject property is listed in the Debtor's Amended Schedule B, in response to question # 21. (Dckt 112 at page 11).

MOVANT'S RESPONSE

Movant argues that Chapter 7 Trustee had ample time to retain counsel because this case was converted from Chapter 13 to Chapter 7 on July 1, 2013. On August 22, 2013, Chapter 7 Trustee refused to stipulate to relief from automatic stay and Movant informed the trustee that it will file a Motion for Relief from the Automatic Stay. Currently, there is no pending application to employ counsel on the docket. Movant argues that the Trustee's delay in hiring counsel does not establish a cause to continue the motion. Additionally, the Trustee has not opposed the merits of the motion.

DISCUSSION

First, the Debtor received her discharge on October 10, 2013. Granting of a discharge to an individual under Chapter 7 lifts the automatic stay by operation of law. See 11 U.S.C. § 362(c)(2)(C). There being no automatic stay, the motion is denied as moot as to the Debtor.

Second, the case was converted from Chapter 13 to Chapter 7 on July 1, 2013, as such, it takes time for the Trustee to evaluate the Estate and value the property. The Trustee testified that he has been working towards retaining counsel and securing funds to pay for representation. Trustee states that George Hollister of the Hollister Law Corporation is a potential counsel for the Trustee. The Trustee raises an issue regarding Debtor's interest in the subject property as reported in the Amended Schedule B.

Third, while the Motion carefully states that Elias D. Bardis and Jane Ball-Bardis are not related to Corrigan Finance, Stanislav Lazutkine (Chapter 7 Debtor in Case 13-21893 and separated spouse of Debtor in this case), or the Debtor, the Motion is silent on the relationship as between Stanislav Lazutkine and Corrigan Finance.

The Motion does disclose that the Debtor filed a motion to join Corrigan Finance as a part to the state court dissolution proceeding seeking to set aside a transfer or alleged community property. The state court joined Corrigan Finance to that state court proceeding. Movant argues that since discovery in the state court proceeding is competed, they should be allowed to litigate the ownership issues of the property in state court.

What this court understands from the hearing on a motion for relief in the Lazutkine bankruptcy case, the Debtor asserts that she and Mr. Lazutkine purchased the property asserted to be owned by Corrigan. That Corrigan is an entity owned and/or controlled by Mr. Lazutkine, and that Mr. Lazutkine asserts that the property was not purchased by the Debtor and Mr. Lazutkine as their community property, but solely as an investment by Corrigan.

Bankruptcy Code Section 363(e)

In its reply to the Trustee's request for a continuance, Corrigan emphatically states,

> 14. Corrigan Finance does not waive Bankruptcy Code Section 362(e), which provides that the automatic stay terminates 30 days after a request for relief is filed unless the Court orders the stay continued in effect pending

> a final hearing. 11 U.S.C. § 362(e)(1). The statute further provides that Court may continue the automatic stay in effect only if there is a reasonable likelihood that the opposing party will prevail. Id. In light of the fact that the Trustee does not raise any grounds for opposing the Motion, there is no basis for continuing the automatic stay in effect.
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> 15. In any case, Bankruptcy Code Section 362(e) provides that the final hearing must be concluded within 30 days of the preliminary hearing, and the automatic stay terminates 60 days after the filing of the motion (unless extended by agreement or upon a specific finding of good cause) in an individual case. 11 U.S.C. § 362(e)(1)(2). The Trustee's delay in retaining counsel does not provide good cause to continue the hearing, and the Trustee's request to continue the hearing for 30 days leaves the Court with insufficient time to conduct a final hearing.

The court respects and honors Corrigan's demand that this court rule now on the motion for relief from the automatic stay.

Property of the Estate and Real Party in Interest

The court understands Debtor's contention, as expressed by Corrigan, to be that the property at issue is community property in which the Debtor had an interest when this case was commenced. Corrigan is correct, the Debtor did not list this property or an interest in the property on Schedule A or Amended Schedule A. Dckts. 13 at 3, 112 at 3. However, the creation of the bankruptcy estate and transfer of all property to the estate by operation of law is not dependant on the debtor listing an asset on the Schedules.

> 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). With certain exceptions, the estate is comprised of the debtor's legal or equitable interests in property "wherever located and by whomever held." *Id.* (emphasis supplied). The district court in which the bankruptcy case is commenced obtains exclusive in rem jurisdiction over all of the property in the estate. 28 U.S.C. § 1334(e); *Commodity Futures Trading Comm'n v. Co Petro Marketing Group, Inc.*, 700 F.2d 1279, 1282 (9th Cir. 1983)(interpreting 11 U.S.C. § 1471, the statutory precursor to 11 U.S.C. § 1334(e)). The court's exercise of "custody" over the debtor's property, via its exercise of *in rem* jurisdiction, essentially creates a fiction that the property - regardless of actual location - is legally located within the jurisdictional boundaries of the district in which the court sits. See *Katchen v. Landy*, 382 U.S. 323, 327, 15 L. Ed. 2d 391, 86 S. Ct. 467 (1966) [**10] (noting that bankruptcy courts have "constructive possession" over estate property) (internal quotation marks and citations omitted); *Commodity Futures*, 700 F.2d at 1282 (noting that under the bankruptcy code, "all property of the

> debtor, wherever located, is in custodia legis of the bankruptcy court."). This includes property outside the territorial jurisdiction of the United States. See *Stegeman*, 425 F.2d at 986 (construing extraterritorial jurisdictional reach of prior Bankruptcy Act); see also *Underwood v. Hilliard (In re Rimsat, Ltd.)*, 98 F.3d 956, 961 (7th Cir. 1996).

H.K & Shanghai Banking Corp. v. Simon (In re Simon), 153 F.3d 991, 996 (9th Cir. 1998).

It is only the bankruptcy trustee, debtor in possession, or Chapter 13 debtor who has the standing to sue or be sued to determine the rights and interests in property of the bankruptcy estate. 11 U.S.C. §§ 704(a), 1106, 1107, 1203, 1303; *McGuire v. United States*, 550 F.3d 903, 914 (9th Cir. 2008); *Estate of Spirtos v. One San Bernardino County Superior Court Case Numbered SPR 02211*, 443 F.3d 1172, 1175 (9th Cir. 2006) ("We therefore reaffirm our previous reasoning and that of our sister circuits and hold that the bankruptcy code endows the bankruptcy trustee with the exclusive right to sue on behalf of the estate."); *Houston v. Eiler (In re Cohen)*, 305 B.R. 886 (B.A.P. 9th Cir. 2003).

Exhibit G provided by Corrigan is a identified as a "Pleading on Joinder" filed by the Debtor in the state court action. Dckt. 138 at 37-46. In this pleading the Debtor asserted various allegations, including the following (identified by paragraph number in that pleading).

> 13. Tile Trusball Entities and Corrigan's Relationship. Petitioner is informed and 9 believes, and thereon alleges, that Corrigan is owned, controlled, and operated by Respondent, 10 and it (I) is a vehicle for the transfer of funds from Respondent's foreign businesses to the U.S. for lifestyle acquisitions, (2) used to conceal Respondent's true net worth, and (3) operates as a 12 "tax shelter." By way of relevant background, several years ago, Respondent was simultaneously put in touch with a private banker at Julius Baer bank in Switzerland (Nicholas Solomatine), as well as Maria Teplyakova and Andrey Schildbach, apparently two individuals known to Solomatine. Teplyakova and Schildbach are principals at Trusban Secretaries Limited, a company that, for a fee, creates a "paper trail" to facilitate offshore transfer of assets. Specifically, Trusban, on behalf of Corrigan at Respondent's direction, created powers of attorney, produced passport photos and facilitated transfer of funds.
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> 14. Petitioner is informed and believes, and thereon alleges, that Respondent has unilateral control over Corrigan money transfers, investments, the start-up of Corrigan, executive decisions, and all other primary roles associated with being a controlling owner.
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> 15. Corrigan Is a Community Business. Respondent started Corrigan during marriage. Petitioner is informed and

believes, and thereon alleges, that Respondent is the controlling owner of Corrigan. During marriage, Respondent advised Petitioner that he had set up a company in Nevis Island to do "foreign country investments" (including investments in the U.S.). He also said that he set up the company to avoid taxation of funds being brought into the U.S. from Swiss Bank accounts, and that it was a legal tax-sheltering tool.

17. Petitioner is informed and believes, and thereon alleges, that Respondent has an ownership interest in Corrigan and its assets, such as the Tahoe Home and millions of dollars on account in a Swiss bank. For example, among other things, (1) Respondent's statements to Petitioner (and others) confirm that interest; (2) documentation suggesting that Corrigan's only investment activities involve the Tahoe Home, Armored Wolf LLC, capital for Loomis Leasing, all of which were community assets; (3) documentation suggesting that the agents involved in these transactions believed them to be personal transactions; (4) Respondent's documented high level of involvement in these transactions; (5) common executives, management, shareholders, and/or owners among businesses Respondent admittedly owns (e.g., the MetProm Group); (6) transactions (e.g., loans) between said businesses; and (7) lack of documentary evidence indicating that Respondent consulted with anyone else regarding these transactions (e.g., other "owners" of Corrigan that Respondent could not identify at his deposition).

20. The Tahoe Home Was a Community Purchase. In April 2009, Respondent and Petitioner began shopping for a townhome for themselves in New York City. Respondent put an offer on an 82nd Street townhouse that ultimately fell through. At that time, they decided to look "closer to home," and ultimately settled on the Tahoe Home. They purchased it for $2.5 million in cash in June 2009.

21. The Parties together chose the property, negotiated the price, proceeded with the acquisition, and worked with an engineering company in Tahoe City to receive all the necessary permits. They even discussed primarily living in Tahoe City and switching high schools for Petitioner's son. After they purchased the Tahoe Home, Petitioner bought all furniture and fine art on behalf of the community or herself. Respondent continues to pay bills (including utilities) for the Tahoe Home (allegedly on behalf of MetProm, although he has not yet been reimbursed). Respondent told friends that the Tahoe Home was for the Parties' retirement and for their children, and he referred to the residence as the "Lazoutkine family home." Respondent also purchased a boat for personal use at the Tahoe Home. And on September 11, 2010, the Parties personally donated use of the Tahoe Home to a benefit auction for the American

> Cancer Society. The two-night stay was auctioned in their names, and bought by an individual for $1,800.

The state court ordered that Corrigan be joined to the state court proceeding to determine the community property claims of the Debtor. The Pleading on Joinder is undated and does not have a state court filed stamp. However, the state court judge's order for the joinder of Corrigan to the state court proceeding is file stamped April 19, 2012.

The Debtor commenced this bankruptcy case on September 19, 2012. As of that date, the Debtor could no longer litigate the property right of the bankruptcy estate, including the community property rights with respect to the Lake Tahoe Property which is the subject of the present motion.

The District Court and Bankruptcy Court are granted exclusive federal court jurisdiction for all property of the bankruptcy estate. 28 U.S.C. § 1334(e). While the court may elect to allow another forum to address issues concerning property of the estate, such remains in the sound discretion of the bankruptcy or district court judge.

In connection with the present motion, relief from the automatic stay is not warranted. Corrigan seeks relief to pursue litigation against the Debtor to determine if the Tahoe Property was community property. However, such a proceeding would be of no force and effect, since the Debtor has no standing to litigate those rights. Only the bankruptcy trustee may litigate those rights.

While Corrigan professes that the stay should be terminated to facilitate judicial economy, doing so would result in a substantial waste of judicial resources in the state court and render an invalid judgment. It is surprising to this court that Corrigan would seek such a result. There are several alternatives for which such relief was sought. Corrigan and its counsel were unaware that a bankruptcy trustee controls the property of the bankruptcy estate and is the person with standing to sue and be sued with respect to disputes concerning such rights. Alternatively, Corrigan may merely be seeking a facially valid document with which to undertake transactions regardless of their validity and legality. Neither present the court with a positive outlook on this motion.

With respect to Corrigan's "great concern" that discovery has been completed in the state court action, there is a simple fix if this matter has to be tried in federal court. The federal court may authorize and allow the use of all discovery in the federal court proceeding.

While Corrigan asserts that the case is ready to be tried in state court, it does not clearly state whether there is a trial date or merely that the matter will go to the master calendar clerk for assignment, if a judge is available. As many litigants have discovered, due to the tremendous case load in the State Superior Court, very few civil matter actually go to trial on the first, second, or third "trial dates."

Finally, Corrigan's concerns that if the Lake Tahoe Property is not quickly sold it will suffer from dilapidation and loss of value may be simply addressed. The property can be sold and the proceeds deposited with

the Clerk of the United States Bankruptcy Court. Such funds can then be held safe and secure for whomever is determined to be the actual owner or owners of the Lake Tahoe Property.

Corrigan has not shown cause for termination of the automatic stay pursuant to 11 U.S.C. § 362(d)(1) and, notwithstanding the testimony of counsel for Corrigan, has not shown that the alleged community property is not property of the bankruptcy estate. Further, Corrigan offers no explanation as to how it has been proceeding with attempting to litigate the possible rights of the estate in California State court since the September 19, 2012 filing of this bankruptcy case. FN.1

FN.1. The court is mystified at the declaration provided by counsel for Corrigan. He seeks to provide hearsay testimony he had with other counsel for Corrigan. He opines as to his personal opinion as to the state court and his conclusions that this should be tried in state court. This "declaration" is little more than legal argument. What counsel appears to admit is that (1) the community property rights have been asserted, (2) the community property rights have to be adjudicated, and (3)Corrigan seeks to do that in a forum and proceeding which does not include the only person with standing to have the estate's rights adjudicated – the Chapter 7 Trustee. Lastly, counsel choosing to transform himself from an attorney for a party to a witness may well waive the attorney-client privilege with respect to his testimony in this Contested Matter.

The Motion for Relief from the Automatic Stay is denied without prejudice.

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.
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> The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,
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> **IT IS ORDERED** the Motion for Relief from the Automatic Stay is denied without prejudice.