

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

December 14, 2023 at 10:00 a.m.

1. [22-20913-E-7](#)
[HSM-1](#)

ZACHARIAH DORSETT
George Burke

**CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
12-27-22 [[37](#)]**

GLEND A AZEVEDO, ET AL. VS.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, and Office of the United States Trustee on December 27, 2022. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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 Relief from the Automatic Stay is XXXXX.

December 14, 2023 Hearing

On November 30, 2023 the *Ex Parte* Motion to Amend the Order approving the sale of the Property was filed. The Amended Order was issued the same day. Amd. Ord.; Dckt 130.

At the hearing, XXXXXXXXXX

REVIEW OF MOTION AND PRIOR PROCEEDINGS

Glenda Azevedo and Randall Azevedo (“Movant”) seek relief from the automatic stay with respect to Zachariah Tesfaye Dorsett’s (“Debtor”) real property located in Lassen County, California, with APN’s 139-030-2011, 139-030-21-11, 139-030-22-11, 139-030-23-11, 139-030-24-11, 139-030-25-11 (“Property”). Movant has provided the Declaration of Randall Azevedo to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

Movant argues Debtor has not made any payments since September of 2020. Declaration, Dckt. 40. Movant also provides evidence that as of the petition date, the amount due under the Note through April 12, 2022 was \$112,863.56. *Id.* Movant argues that interest continues to accrue as of the date of Debtor’s filing of petition, April 13, 2022. *Id.*

Movant asserts that Debtor caused title to the Property to be transferred into his name on April 12, 2022, and then filed bankruptcy on April 12, 2022 to prevent a foreclosure sale that Movant had set for that day.

Movant further asserts that through this bankruptcy case was filed in 2022, no Chapter 13 Plan has been confirmed.

DEBTOR’S OPPOSITION

Debtor’s counsel filed an Opposition on January 10, 2023. Dckt. 47. Debtor asserts that the Movant will receive preference to the detriment of the other priority and unsecured creditors and the court should issue and order the court finds just, necessary and proper. The basis for this is stated as:

If the Court Grants the Motion then Movant will receive a preference to the detriment of the other priority and unsecured creditors. Debtor estimates market value of the subject land (collateral) at \$600,000 whereas Movant estimates collateral value at \$250,000 with a \$112,000 secured claim.

Opposition, p. 1:24-27; Dckt. 47.

The Opposition further notes that Debtor had ceased communicating with his counsel. *Id.* at 2:1-2.

Debtor also notes that there is a hearing on a Motion to Convert this case to one under Chapter 7 that has been filed by the Chapter 13 Trustee, which is set for hearing on February 22, 2023.

CONVERSION TO CHAPTER 7

On February 9, 2023, the court entered the order converting this case to one under Chapter 7.

DEBTOR’S POST-CONVERSION OPPOSITION PLEADINGS

On March 16, 2023, the Declaration of the Debtor was filed. Dckt. 70. The Declaration provides a summary of the Property and an “**information and belief**” statement that former owners invested more than \$1,000,000 in improvements to the Property. Debtor then states his opinion that the Property is worth \$600,000.

OPPOSITION OF CHAPTER 7 TRUSTEE

On March 23, 2023, Nikki Farris, the Chapter 7 Trustee filed her Opposition to the Motion for Relief. Dckt. 83. The Trustee believes that there is a recoverable equity in the Property for the Bankruptcy Estate and is moving forward with hiring a broker and listing the Property for Sale.

DISCUSSION

While the Chapter 7 Debtor has provided a declaration with his opinion that the Property is worth \$600,000, no opposition to the Motion has been filed by the Chapter 7 Trustee. At the hearing, Trustee’s counsel reported that the Trustee is moving forward to hire a real estate broker to market the Property.

Movant also asserts that Debtor caused title to the Property to be transferred into his name on April 12, 2022, and then filed bankruptcy on April 12, 2022 to prevent a foreclosure sale that Movant had set for that day. Exhibit 7, Dckt. 39, is a copy of a Grant Deed by which the Debtor, as the president of Ruckus Ranch, LLC, transferred title to the Property from Ruckus Ranch, LLC to Debtor. The Grant Deed states:

The undersigned Grantor(s) declare(s) Documentary Transfer Tax is \$0.00. Grantor and Grantees are comprised of the same parties and their proportional interest remains the same immediately following the transfer. Rev & TC § 11925.

The Grant Deed is dated April 12, 2022 and has an 11:35 a.m. recording time. *Id.*

The Property was transferred to Ruckus Ranch, LLC by Anthony Cole Woloscsuk, James Kirk, and Braeden M. Keena, as the three owners of undivided one-third interests by a Grant Deed recorded on April 12, 2022, at 11:35 a.m. Exhibit 6; Dckt. 39. This Grant Deed contains the same statement as above that the Transfer Tax is \$0.00 because the grantors and grantees are comprised of the same parties and that they each have a one-third interest in the property when owned by the Transferee, Ruckus Ranch, LLC. *Id.*

This transfer to Ruckus Ranch, LLC was recorded at the same time and the transfer from Ruckus Ranch, LLC to Debtor.

On Schedule A/B Debtor states that he owned 100% of the interests in Ruckus Ranch, LLC as of the April 12, 2022 filing of this Bankruptcy Case. It is not clear how by the transfer from Woloscsuk, Kirk, and Keena recorded at 11:35 a.m., as the owners of 1/3 of the interest in the Property, into Ruckus Ranch, LLC did not require the payment of transfer taxes because they each held a 1/3 interest in Ruckus Ranch, LLC, because a 100% interest for Debtor to transfer the Property out of Ruckus Ranch, LLC seconds later so that no Transfer Tax was owed.

Exhibit 8 filed by Movant, Dckt. 39, is the California Secretary of State Statement of Information for Ruckus Ranch, LLC. It was filed on September 20, 2020. The sole managing member is identified as

the Debtor. Michael Mapes is identified as an attorney who certifies the information in the Statement is correct.

Looking at the Grant Deed executed by Woloscsuk, Kirk, and Keena purporting to transfer the Property into Ruckus Ranch, LLC, in which they state they hold the same 1/3 interests in the Property as they did as individual owners (so no Transfer Tax was due) states that they signed the Grant Deed on August 26, 2016. Exhibit 6; Dckt. 39.


Seeing this great disparity between the purported transfer date from Woloscsuk, Kirk, and Keena into Ruckus Ranch, LLC and the delay in recording until April 12, 2022, six years later, and the April 12, 2022 filing of bankruptcy by Debtor, the court consulted the public record of the California Secretary of State as to Ruckus Ranch, LLC and whether it was a legal entity in the State of California.

From the Secretary of State's Official Website, the Secretary of State Reports that with respect to Ruckus Ranch, LLC, that it initially filed as an limited liability company on April 8, 2016, and:

RUCKUS RANCH, LLC
(201610510472)



Request
Certificate

<i>Initial Filing Date</i>	04/08/2016
<i>Status</i>	Suspended - FTB
<i>Standing - SOS</i>	Good
<i>Standing - FTB</i>	Not Good
<i>Standing - Agent</i>	Good
<i>Standing - VCFCF</i>	Good
<i>Inactive Date</i>	08/02/2021
<i>Formed In</i>	CALIFORNIA
<i>Entity Type</i>	Limited Liability Company - CA
<i>Principal Address</i>	448-450 US HIGHWAY 395 MILFORD, CA 96121
<i>Mailing Address</i>	448-450 US HIGHWAY 395 MILFORD, CA 96121
 <i>Statement of Info Due Date</i>	04/30/2022
<i>Agent</i>	1505 Corporation 2366 CALIFORNIA REGISTERED AGENT INC 1401 21ST STREET SUITE 370 SACRAMENTO, CA 95811

[https://bizfileonline.sos.ca.](https://bizfileonline.sos.ca.gov/search/business)

[gov/search/business.](https://bizfileonline.sos.ca.gov/search/business)

Thus, it appears that Ruckus Ranch, LLC ceased operating as a limited liability company and became inactive due to a Franchise Tax Board suspension on August 2, 2021.

The Grant Deed purporting to transfer Ruckus Ranch, LLC to Debtor is dated December 12, 2018, but not recorded until April 12, 2022. Exhibit 7; Dckt. 39. While dated December 12, 2018, the Notary Public Acknowledgment attached to the Grant Deed is dated April 12, 2022. It is unclear why a deed, if it was to transfer title states it is signed in 2018 but not notarized until four years later to be recorded the day Debtor filed his bankruptcy case.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$112,863.56 (Declaration, Dckt. 40), while the value of the Property is determined to be \$600,000.00, as stated in Schedules A/B and D filed by Debtor.

While asserting that there are hundreds of thousands of dollars of value in the Property, Debtor was not been able to prosecute a Plan in this Chapter 13 case. Nor did Debtor higher a Realtor and seek to preserve any of the asserted value for the Bankruptcy Estate. The court ordered the conversion of this bankruptcy case to one under Chapter 7 in part due to Debtor's failure, as the fiduciary of the Bankruptcy Estate, to act to preserve value of property for the Bankruptcy Estate

Looking at the Proofs of Claim filed in this case, with a value of \$600,000, the following liens encumber the Property:

270 Acres in Milford, CA.....	\$600,000	
Movant Deed of Trust.....	(\$125,000)	
Lossman Deed of Trust.....	(\$112,500)	Sch D, POC 9-2
Kirk Deed of Trust.....	(\$ 50,000)	Sch D, POC 8-1
Internal Revenue Service Lien.....	(\$ 30,631)	Amd POC 11-2

If the Property has a value of \$600,000, then there would be approximately \$283,869 in net proceeds (after 8% for costs of sale) recoverable for the Bankruptcy Estate. In the ten months from the filing of this case to it being converted to Chapter 7, Debtor, as the fiduciary of the Bankruptcy Estate, did nothing to recover the purported quarter of a million dollars of value for the Bankruptcy Estate. This is contrary to Debtor stating the Property has a value of \$600,000.

Continuance of Hearing to February 7, 2023.

At the hearing, the court addressed the issues concerning the administration of this case and the apparent substantial equity for the estate, which can be used to pay unsecured claims.

The hearing is continued to 1:30 p.m. on February 7, 2023, for the court to allow the administration of the Estate issues to be addressed in conjunction with the Trustee's Motion to Convert or Dismiss the case.

February 7, 2023 Hearing

At the hearing, the court addressed with the Parties the prosecution of this Motion in light of the court having ordered the case converted to one under Chapter 7 so that a Trustee may step in and administer the property of the Bankruptcy Estate in which there appears to be substantial non-exempt equity for the estate and creditors.

The court continues the hearing on Motion for Relief to assist the court in managing these proceedings and for Movant maintain this Motion in the event that the Chapter 7 Trustee were to determine that there is not value in the Property sufficient for it to be administered by the Trustee.

DISCUSSION

March 23, 2023 Hearing

The Motion requests relief from the stay pursuant to 11 U.S.C. § 362(d)(1), the “for cause,” grounds, and § 362(d)(2), the lack of equity in the Property and that it is not necessary for an effective reorganization.

At the hearing, Trustee’s counsel and Movant’s counsel agreed to continue the hearing to allow the Trustee time to market and sell the Property.

July 20, 2023 Hearing

No Status Report has been filed prior to the July 20, 2023 hearing. Additionally, no Motion to Sell has been filed regarding the Property. At the hearing, counsel for the Trustee reported that the Trustee is actively marketing the Property. The Parties have stipulated to a continuance. Dckt. 103.

September 21, 2023 Hearing

At the hearing, Movant agreed to continue the hearing one more time to allow the Trustee to the property sold, in contract, or appearing to move toward a sale.

Movant made it clear at the hearing that after the multiple delays and continuances, Movant was unlikely agree to a further continuance if it appears that the Trustee’s ability to sell the property was stalled.

NOVEMBER 30, 2023 HEARING

On November 6, 2023, the court entered its Order authorizing the Chapter 7 Trustee to sell the Property that secures Movant’s claim. Order; Dckt. 124. The sales price is \$325,000.00, with the liens to be paid through escrow. *Id.* As stated in the Civil Minutes from the hearing on the Motion to Sell, the Trustee projects there being \$146,000 in net proceeds for the Bankruptcy Estate after paying closing costs, expenses of sale, and Movant’s secured claim from escrow.

At the hearing, counsel for Movant advised the court that an *Ex Parte* Motion to Amend the order authorizing the sale to correct a typographical error has been filed.

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 Relief from the Automatic Stay filed by Glenda Azevedo and Randall Azevedo (“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 Relief from the Automatic Stay is
XXXXX.