

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement  
Sacramento Federal Courthouse  
501 I Street, 7<sup>th</sup> Floor  
Courtroom 28, Department A  
Sacramento, California

**DAY: THURSDAY**  
**DATE: DECEMBER 16, 2021**  
**CALENDAR: 9:00 A.M. CHAPTER 7 CASES**

**RULINGS**

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling.

**"No Ruling"** means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

**"Tentative Ruling"** means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

**"Final Ruling"** means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

**CHANGES TO PREVIOUSLY PUBLISHED RULINGS**

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

**ERRORS IN RULINGS**

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [21-22054](#)-A-7     **IN RE: ANGELA YANG**  
[JHK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-9-2021    [\[18\]](#)

RICHARD KWUN/ATTY. FOR DBT.  
JOHN KIM/ATTY. FOR MV.  
DEBTORS DISCHARGED: 09/07/2021  
AMERICREDIT FINANCIAL SERVICES, INC. VS.

## **Final Ruling**

**Motion:** Stay Relief

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted in part, denied as moot in part

**Order:** Civil minute order

**Subject:** 2012 Kia Sorrento

**Value of Collateral:** \$3,227.00

**Aggregate of Liens:** \$4,438.51

**Discharge:** September 7, 2021

These minutes constitute the court's findings of fact and conclusions of law required by Fed. R. Civ. P. 52(a), *incorporated* by Fed. R. Bankr. P. 7052, 9014(c). The findings of fact are as set forth above; the conclusions of law are as set forth below.

Movant, Americredit Financial Services, Inc., seeks an order granting relief from the automatic stay to pursue its remedies under applicable nonbankruptcy law regarding a 2012 Kia Sorrento. A discharge was entered in this case on September 7, 2021. The entire balance of the loan is due. There is no equity in the vehicle.

## **DEFAULT OF RESPONDENT**

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated* by Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

## **STAY RELIEF**

"[A]fter notice and a hearing," the court may terminate, annul, modify or condition the stay: (1) "for cause, including the lack of adequate protection"; or (2) "with respect to a stay of an act against property [of the estate]" if the debtor lacks "equity" in that property and if that "property is not necessary for an effective reorganization." 11 U.S.C. § 362(d); *see also* Fed. R. Bankr. P. 4001(a)(1). The party seeking stay relief bears the burden of proof as to "the debtor's equity in the property" and on the validity and perfection of its security interest, as well as the amount of its debt. 11 U.S.C. § 362(g)(1); *In re Dahlquist*, 34 B.R. 476, 481 (Bankr. S.D. 1983). The party opposing stay relief, e.g.,

the debtor or Chapter 7 trustee, bears the burden of proof on all other issues. 11 U.S.C. § 362(g) (2).

#### As to the Debtor

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. The stay that protects the debtor terminates at the entry of discharge. 11 U.S.C. § 362(c) (2). In this case, discharge has been entered. As a result, the motion will be denied as moot as to the debtor.

#### As to the Estate

"[A]fter notice and a hearing," the court may terminate, annual, modify or condition the stay: (1) "for cause, including the lack of adequate protection"; or (2) "with respect to a stay of an act against property [of the estate]" if the debtor lacks "equity" in that property and if that "property is not necessary for an effective reorganization." 11 U.S.C. § 362(d); see also Fed. R. Bankr. P. 4001(a) (1). The party seeking stay relief bears the burden of proof as to "the debtor's equity in the property" and on the validity and perfection of its security interest, as well as the amount of its debt. 11 U.S.C. § 362(g) (1); *In re Dahlquist*, 34 B.R. 476, 481 (Bankr. S.D. 1983). The party opposing stay relief, e.g., the debtor or Chapter 7 trustee, bears the burden of proof on all other issues. 11 U.S.C. § 362(g) (2).

Section 362(d) (2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d) (2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a) (3) will be waived. No other relief will be awarded.

#### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Americredit Financial Services, Inc.'s motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the trustee in the property described in the motion, commonly

known as 2012 Kia Sorrento. Relief from the automatic stay as to the interest of the debtor in such property is denied as moot given the entry of the discharge in this case. 11 U.S.C. § 362(c)(2)(C).

IT IS FURTHER ORDERED that the 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

2. [21-23757](#)-A-7     **IN RE: YER THOR**  
[MC-1](#)

MOTION TO AVOID LIEN OF THE BEST SERVICE CO. INC.  
11-18-2021    [\[17\]](#)

MUOI CHEA/ATTY. FOR DBT.

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Prepared by moving party

**Judicial Lien Avoided:** \$12,156.15 - The Best Service Co., Inc.

**All Other Liens:**

- First Deed of Trust: \$139,683.00 US Bank Home Mortgage
- Second Deed of Trust: \$20,038.00 Secretary of Housing & Urban Development

**Exemption:** \$300,000.00

**Value of Property:** \$360,000.00

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security

interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

3. [21-23670](#)-A-7     **IN RE: MICHAEL DURAN**  
[LCL-1](#)

MOTION TO AVOID LIEN OF BANK OF AMERICA AND/OR MOTION TO  
AVOID LIEN OF CAPITAL ONE BANK  
10-29-2021    [\[13\]](#)

LUONG LECHAU/ATTY. FOR DBT.

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Denied without prejudice

**Order:** Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); see also *In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on FDIC-insured institutions must "be made by certified mail addressed to an officer of the institution" unless one of the exceptions applies. Fed. R. Bankr. P. 7004(h).

Service of the motion was insufficient. Service of the motion was not made by certified mail or was not addressed to an officer of the responding party. No showing has been made that the exceptions in Rule 7004(h) are applicable. See Fed. R. Bankr. P. 7004(h)(1)-(3).

The motion was served by certified mail on Bank of America, however it was addressed "Attn: Bankruptcy" and not to an officer of the institution, ECF No. 17, page 2. The motion was served by certified mail on Capital One Bank but was addressed "Attn: Bankruptcy" and not to an officer of the institution, ECF No. 17, page 2.

The motion does appear to have been served on the attorneys whose names appear on the abstracts of judgment attached to the motion. "An implied agency to receive service is not established by representing a client in an earlier action. We cannot presume from

[the attorney's] handling the litigation that resulted in the judicial lien that he is also authorized to accept service for a motion to avoid the judicial lien." *Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88, 93-94 (B.A.P. 9th Cir. 2004) (citations omitted). No evidence has been presented in the proof of service that the attorney or law firm served has been authorized to accept service of process on the responding party in this bankruptcy case.

#### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

The debtor's Motion to Avoid Judicial Lien of Bank of America, N. A. and Capital One Bank has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

4. [13-35275](#)-A-7     **IN RE: JAMES/JOCELYN GRIFFIN**  
[EJS-2](#)

MOTION TO AVOID LIEN OF ADVANTA BANK CORP.  
11-23-2021    [[38](#)]

ERIC SCHWAB/ATTY. FOR DBT.  
DEBTORS DISCHARGED: 03/17/2014

#### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Disposition:** Continued to January 31, 2022, at 9:00 a.m.

**Order:** Civil minute order

#### **BACKGROUND**

Debtor moves for an order avoiding the judicial lien of Advanta Bank Corp. under 11 U.S.C. § 522(f). Exhibits submitted in support of the motion include the following: FDIC Press Release, ECF No. 42, Exhibit C; Business Search-Entity Detail from the California Secretary of State, ECF No. 42, Exhibit D; and Utah Business Search detail from the Utah Secretary of State, ECF No. 42, Exhibit E. The debtor's attorney has also filed a declaration, ECF No. 41, describing his efforts to locate the proper party for service of process in this matter.

Advanta Bank Corp. is a defunct corporation, and the debtor is not able to exercise usual methods of service in this case.

#### **BANKRUPTCY RULE 7004 AND RULE 4**

"Effective service of process, made in compliance with Rule 7004 and Civil Rule 4, is a prerequisite to the bankruptcy court exercising

personal jurisdiction over a litigant." *In re 701 Mariposa Project, LLC*, 514 B.R. 10, 16 (B.A.P. 9th Cir. 2014) (citing cases).

Fed. R. Bankr. P. 7004

(a) Summons; service; proof of service  
(1) Except as provided in Rule 7004(a)(2), Rule 4(a), (b), (c)(1), (d)(5), (e)-(j), (l), and (m) F.R.Civ.P. applies in adversary proceedings. Personal service under Rule 4(e)-(j) F.R.Civ.P. may be made by any person at least 18 years of age who is not a party, and the summons may be delivered by the clerk to any such person.

Fed. R. Bankr. P. 7004(a)(1).

Fed. R. Civ. P. 4(e)(1)

(e) Serving an Individual Within a Judicial District of the United States. Unless federal law provides otherwise, an individual--other than a minor, an incompetent person, or a person whose waiver has been filed--may be served in a judicial district of the United States by:

(1) *following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made; or*

Fed. R. Civ. P. 4(e)(1) (emphasis added).

Here, in a case where service is not possible under Fed. R. Bankr. P. 7004(h), Fed. R. Civ. P. 4(e)(1) authorizes service under state law in the state where the district court is located. In this case service under California law is proper.

**SERVICE UNDER CALIFORNIA LAW**

Cal. Civ. Proc. Code § 416.20

A summons may be served on a corporation that has forfeited its charter or right to do business, or has dissolved, by delivering a copy of the summons and of the complaint:

(a) To a person who is a trustee of the corporation and of its stockholders or members; or

(b) When authorized by any provision in Sections 2011 or 2114 of the Corporations Code (or Sections 3301 to 3303, inclusive, or Sections 6500 to 6504, inclusive, of the Corporations Code as in effect on December 31, 1976, with respect to corporations to which they remain applicable), as provided by such provision.

Cal. Civ. Proc. Code § 416.20.

Under California law if the corporation is dissolved the plaintiff must look to the appropriate section of the California Corporations Code to determine how to accomplish proper service.

California Corporations Code § 2011 provides the proper method for serving a defunct corporation as follows:

(b) Summons or other process against such a corporation may be served by delivering a copy thereof to an officer, director, or person having charge of its assets or, if no such person can be found, to any agent upon whom process might be served at the time of dissolution. *If none of those persons can be found with due diligence and it is so shown by affidavit to the satisfaction of the court, then the court may make an order that summons or other process be served upon the dissolved corporation by personally delivering a copy thereof, together with a copy of the order, to the Secretary of State or an assistant or deputy secretary of state. Service in this manner is deemed complete on the 10th day after delivery of the process to the Secretary of State.*

Cal. Corp. Code § 2011(b) (emphasis added).

The court concludes that to properly serve the respondent in this motion the debtor must bring the appropriate motion to serve the Secretary of State. The court will continue this motion to allow the debtor to bring the appropriate motion.

#### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the motion To Avoid Lien of Advanta Bank Corp. is continued to January 31, 2022, at 9:00 a.m.

IT IS FURTHER ORDERED that not later than January 13, 2022, the debtor shall file and set for hearing the appropriate motion requesting service of the Motion to Avoid Lien by the Secretary of State.



5. [21-22976](#)-A-7     **IN RE: THE DESIGN BUILD COMPANY, LLC**  
[TPK-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-11-2021    [\[83\]](#)

ANTHONY ASEBEDO/ATTY. FOR DBT.  
THOMAS KELLY/ATTY. FOR MV.  
CHRIS ROSALES VS.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Stay Relief to Pursue State-Court Litigation

**Notice:** LBR 9014-1(f)(1); written opposition filed by chapter 7 trustee

**Disposition:** Granted only to the extent specified in this ruling

**Order:** Civil minute order

**Subject:** Pending state-court litigation described in the motion

### **BACKGROUND**

Movants, Chris Rosales and Elyse Chiat-Rosales, seek relief from the automatic stay under 11 U.S.C. § 362(d)(1), to prosecute a state court action in the Sonoma County Superior Court to recover fraudulent and/or voidable transfers from the debtor to: John Currier personally; The Framing Company, a creditor in this case; and the Pepper Shack LLC.

Movants are unsecured creditors in this case and have filed a proof of claim in the amount of \$293,762.00, Claim No. 2. Movants have a cause of action against both the debtor and the above-named Co-Defendants for the claimed amount representing funds paid to the debtor for a construction project. The funds were not returned nor were these funds applied to the movants' project. Rather, these funds appear to have been the subject of a fraudulent and/or avoidable transfer to the Co-Defendants, ECF No. 83, 2:7-17.

The Chapter 7 trustee, J. Michael Hopper, opposes the motion contending that the movants lack standing to pursue the actions in state court and that the pursuit of claims for avoidable and/or fraudulent transfers is the exclusive prerogative of the chapter 7 trustee absent an abandonment of the claims. The trustee has not abandoned any claims belonging to the estate. The trustee is not opposed to the granting of relief such that the movants may prosecute other theories including the liquidation of the amount of the claim or for the purpose of pursuing available insurance covering the claim, ECF No. 90.,1:1-3.

### **STAY RELIEF**

Section 362(d)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be

pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

The Ninth Circuit Bankruptcy Appellate Panel has "agree[d] that the *Curtis* factors are appropriate, nonexclusive, factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009).

These factors include: "(1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms." *Sonnax Indus., Inc. v. TRI Component Prods. Corp. (In re Sonnax Indus., Inc.)*, 907 F.2d 1280, 1286 (2nd Cir. 1990) (citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984)).

Courts may consider whichever factors are relevant to the particular case. See *id.* (applying only four of the factors that were relevant in the case). The decision whether to lift the stay is within the court's discretion. *Id.*

#### **TRUSTEE HAS EXCLUSIVE RIGHT TO PURSUE TRANSFER AND AVOIDANCE ACTIONS**

"[T]he bankruptcy code endows the bankruptcy trustee with the exclusive right to sue on behalf of the estate." *Est. of Spirtos v. One San Bernardino Cty. Superior Ct.*, 443 F.3d 1172, 1176 (9th Cir. 2006).

This conclusion accords with the policies underlying the Bankruptcy Code. In Chapter 7 cases, it is the duty of the trustee to marshal the debtor's assets on behalf of unsecured creditors. See 11 U.S.C. § 704 (duties of the trustee). The trustee's powers to avoid preferences or fraudulent transfers are provided to aid in that process. *In re Conley*, 159 B.R. 323, 325 (Bankr. D. Idaho 1993).

*In re Conley*, 159 B.R. 323, (Bankr. D. Idaho 1993).

In addition to causes of action held by the debtor, the trustee also has the exclusive right to pursue claims which are provided in the Bankruptcy Code.

Distilled down, the bankruptcy trustee has standing to prosecute claims of the estate - those being the ones the debtor had and those given by Congress in the Bankruptcy Code, which in the matter before the court are fraudulent conveyances, preferences, or avoidable as provided in 11 U.S.C. § 544 (which includes claims held by creditors to avoid transfers), § 547, § 548, and § 550. *In re Mark One Corp.*, 619 B.R. 423, 436 (Bankr. E.D. Cal. 2020).

*In re Mark One Corp.*, 619 B.R. 423, (Bankr. E.D. Cal. 2020).

Sections 547 and 548 limit standing to assert actions under their respective sections to the trustee. 11 U.S.C. §§ 547(b), 548(a). The Bankruptcy Appellate Panel of the Ninth Circuit has stated "[i]ndividual creditors generally have no remedy to institute such an action [under 11 U.S.C. § 548] except through the trustee or debtor-in-possession." *In re Conley*, 159 B.R. 323, 324 (Bankr. D. Idaho 1993) citing *Hansen v. Finn (In re Curry and Sorensen, Inc.)*, 57 B.R. 824, 827 (9th Cir.B.A.P.1986).

*In re Conley*, 159 B.R. 323 (Bankr. D. Idaho 1993).

Any other approach in this case would lead to inappropriate results such as the chapter 7 trustee competing with the movants for the same funds.

"Because of a debtor's bankruptcy filing, individual creditors, like IRS, are prevented by the Code from exercising its right to pursue transferees of avoidable transfers; only the bankruptcy trustee can pursue avoidance actions." *In re CVAH, Inc.*, 570 B.R. 816, 835 (Bankr. D. Idaho 2017), *See also Estate of Spirtos v. One San Bernardino Cty. Superior Court*, 443 F.3d 1172, 1175 (9th Cir. 2006); *In re Conley*, 159 B.R. 323, 324-25 (Bankr. D. Idaho 1993) (citing *Hansen v. Finn (In re Curry & Sorensen, Inc.)*, 57 B.R. 824, 827 (9th Cir. BAP 1986)).

The court finds that the pursuit of fraudulent transfer or avoidance actions is the exclusive prerogative of the chapter 7 trustee and that the movants lack standing to pursue such remedies. Because the chapter 7 trustee has agreed, the moving party shall have relief from stay for the limited purpose of pursuing litigation which is not related to fraudulent transfer or avoidance actions. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any judgment, except: (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this court.

Having considered the motion's well-pleaded facts, oppositions, and replies, if any, and having heard oral argument presented at the hearing, the court finds cause to grant stay relief subject to the limitations described in this ruling.

The motion will be granted to the extent specified herein, and the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

#### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Movant's motion for relief from the automatic stay has been presented to the court. Having considered the motion, oppositions, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the automatic stay is vacated to allow the movant to pursue, through judgment, state-court litigation limited to causes of action unrelated to fraudulent transfer or avoidance actions. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any judgment, except: (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this court. No other relief is awarded.

IT FURTHER ORDERED that actions to recover fraudulent transfers or avoidance actions are confirmed to the chapter 7 trustee.

6. [21-22976](#)-A-7     **IN RE: THE DESIGN BUILD COMPANY, LLC**  
[TPK-3](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
11-11-2021    [\[77\]](#)

ANTHONY ASEBEDO/ATTY. FOR DBT.  
THOMAS KELLY/ATTY. FOR MV.  
PAMELA BARTH VS.  
RESPONSIVE PLEADING

### **Tentative Ruling**

**Motion:** Stay Relief to Pursue State-Court Litigation  
**Notice:** LBR 9014-1(f)(1); written opposition filed by chapter 7 trustee  
**Disposition:** Granted only to the extent specified in this ruling  
**Order:** Civil minute order

**Subject:** Pending state-court litigation described in the motion

### **BACKGROUND**

Movants, Pamela and James Barth, seek relief from the automatic stay under 11 U.S.C. § 362(d)(1), to prosecute a state court action in the Sonoma County Superior Court to recover fraudulent and/or avoidable transfers from the debtor to: John Currier personally; The Framing Company, a creditor in this case; and the Pepper Shack LLC.

Movants are unsecured creditors in this case and have filed a proof of claim in the amount of \$151,037.12, Claim No. 1. Movants have a cause of action against both the debtor and the above-named Co-Defendants for the claimed amount representing funds paid to the debtor for a construction project. The funds were not returned nor were these funds applied to the movants' project. Rather, these funds appear to have been the subject of a fraudulent and/or avoidable transfer to the Co-Defendants, ECF No. 77.

The Chapter 7 trustee, J. Michael Hopper, opposes the motion contending that the movants lack standing to pursue the actions in state court and that the pursuit of claims for avoidable and/or fraudulent transfers is the exclusive prerogative of the chapter 7 trustee absent an abandonment of the claims. The trustee has not abandoned any claims of the estate. The trustee is not opposed to the granting of relief such that the movant may prosecute other theories including the liquidation of the amount of the claim or for the purpose of pursuing available insurance covering the claim, ECF No. 92, 1:20-23.

### **STAY RELIEF**

Section 362(d)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

The Ninth Circuit Bankruptcy Appellate Panel has "agree[d] that the *Curtis* factors are appropriate, nonexclusive, factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009).

These factors include: "(1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms." *Sonnax Indus., Inc. v. TRI Component Prods. Corp. (In re Sonnax Indus., Inc.)*, 907 F.2d 1280, 1286 (2nd Cir. 1990) (citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984)).

Courts may consider whichever factors are relevant to the particular case. See *id.* (applying only four of the factors that were relevant in the case). The decision whether to lift the stay is within the court's discretion. *Id.*

#### **TRUSTEE HAS EXCLUSIVE RIGHT TO PURSUE TRANSFER AND AVOIDANCE ACTIONS**

"[T]he bankruptcy code endows the bankruptcy trustee with the exclusive right to sue on behalf of the estate." *Est. of Spirtos v. One San Bernardino Cty. Superior Ct.*, 443 F.3d 1172, 1176 (9th Cir. 2006).

This conclusion accords with the policies underlying the Bankruptcy Code. In Chapter 7 cases, it is the duty of the trustee to marshal the debtor's assets on behalf of unsecured creditors. See 11 U.S.C. § 704 (duties of the trustee). The trustee's powers to avoid preferences or fraudulent transfers are provided to aid in that process. *In re Conley*, 159 B.R. 323, 325 (Bankr. D. Idaho 1993).

*In re Conley*, 159 B.R. 323, (Bankr. D. Idaho 1993).

In addition to causes of action held by the debtor, the trustee also has the exclusive right to pursue claims which are provided in the Bankruptcy Code.

Distilled down, the bankruptcy trustee has standing to prosecute claims of the estate - those being the ones the debtor had and those given by Congress in the Bankruptcy Code, which in the matter before the court are fraudulent conveyances, preferences, or avoidable as provided in 11 U.S.C. § 544 (which includes claims held by creditors to avoid transfers), § 547, § 548, and § 550. *In re Mark One Corp.*, 619 B.R. 423, 436 (Bankr. E.D. Cal. 2020).

*In re Mark One Corp.*, 619 B.R. 423, (Bankr. E.D. Cal. 2020).

Sections 547 and 548 limit standing to assert actions under their respective sections to the trustee. 11 U.S.C. §§ 547(b), 548(a). The Bankruptcy Appellate Panel of the Ninth Circuit has stated "[i]ndividual creditors generally have no remedy to institute such an action [under 11 U.S.C. § 548] except through the trustee or debtor-in-possession." *In re Conley*, 159 B.R. 323, 324 (Bankr. D. Idaho 1993) citing *Hansen v. Finn (In re Curry and Sorensen, Inc.)*, 57 B.R. 824, 827 (9th Cir.B.A.P.1986).

*In re Conley*, 159 B.R. 323 (Bankr. D. Idaho 1993).

Any other approach in this case would lead to inappropriate results and the chapter 7 trustee competing with the movants for the same funds.

"Because of a debtor's bankruptcy filing, individual creditors, like IRS, are prevented by the Code from exercising its right to pursue transferees of avoidable transfers; only the bankruptcy trustee can pursue avoidance actions." *In re CVAH, Inc.*, 570 B.R. 816, 835 (Bankr. D. Idaho 2017), *See also Estate of Spirtos v. One San Bernardino Cty. Superior Court*, 443 F.3d 1172, 1175 (9th Cir. 2006); *In re Conley*, 159 B.R. 323, 324-25 (Bankr. D. Idaho 1993) (citing *Hansen v. Finn (In re Curry & Sorensen, Inc.)*, 57 B.R. 824, 827 (9th Cir. BAP 1986)).

The court finds that the pursuit of fraudulent transfer or avoidance actions is the exclusive prerogative of the chapter 7 trustee and that the movants lack standing to pursue such remedies. Because the chapter 7 trustee has agreed, the moving party shall have relief from stay for the limited purpose of pursuing litigation which is not related to fraudulent transfer or avoidance actions. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any judgment, except: (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this court.

Having considered the motion's well-pleaded facts, oppositions, and replies, if any, and having heard oral argument presented at the hearing, the court finds cause to grant stay relief subject to the limitations described in this ruling.

The motion will be granted to the extent specified herein, and the stay of the order provided by Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

#### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Movant's motion for relief from the automatic stay has been presented to the court. Having considered the motion, oppositions, and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the automatic stay is vacated to allow the movant to pursue, through judgment, state-court litigation limited to causes of action unrelated to fraudulent transfer or avoidance actions. But no bill of costs may be filed without leave of this court, no attorney's fees shall be sought or awarded, and no action shall be taken to collect or enforce any judgment, except: (1) from applicable insurance proceeds; or (2) by filing a proof of claim in this court. No other relief is awarded.

IT FURTHER ORDERED that actions to recover fraudulent transfers or avoidance actions are confirmed to the chapter 7 trustee.