

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

**December 27, 2016 at 10:00 a.m.**

---

1. 15-29600-A-11 ANTIGUA CANTINA & GRILL, MOTION FOR  
RCO-1 INC. RELIEF FROM AUTOMATIC STAY  
CHARLES N. TAVERS VS. 4-28-16 [41]

**Tentative Ruling:** The motion will be denied without prejudice.

The movants, Charles N. Teavers IRA #887220801 (an undivided 300/625 interest) and Charles N. Travers Money Purchase Plan #887221940 (an undivided 326/625 interest), seek relief from the automatic stay as to the debtor's real property in Sacramento, California.

11 U.S.C. § 362(g) provides that:

"In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section—

"(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

"(2) the party opposing such relief has the burden of proof on all other issues."

In other words, the creditor has the burden of persuasion as to the value of and lack of equity in the property while the debtors have the burden of persuasion as to necessity to an effective reorganization. United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 375 (1988). The standard in a chapter 11 proceeding is a showing that "the property is essential for an effective reorganization that is in prospect." This means, that there must be "a reasonable possibility of a successful reorganization within a reasonable time." Timbers at 376. While bankruptcy courts demand a less detailed showing during the four months of exclusivity, "even within that period[,] lack of any realistic prospect of effective reorganization will require § 362(d)(2) relief." Timbers at 376.

According to the movant, the value of the property is \$765,700 and the encumbrances against the property total \$1,207,135. The movant's evidence of value is based on a broker's price opinion and an accompanying declaration of Michael Murphy. Docket 45, Ex. C.

On the other hand, the debtor has submitted its own evidence of value for the property. The debtor's "as is" value of the property is \$2,059,516.95.

The court is not persuaded that the movant has met its burden of persuasion on the value of the property. The declaration in support of the movant's broker's price opinion does not state that Mr. Murphy, the appraiser, inspected the

**December 27, 2016 at 10:00 a.m.**

inside and outside of the property. His declaration states only that he "prepared a Broker's Price Opinion and value analysis of [the property] for the purpose of arriving at an opinion of value." Docket 45, Ex. C at 1. Further, there is over a \$1 million discrepancy in the two valuations of the property and the movant has filed no reply to the debtor's opposition attempting to reconcile the discrepancy.

The movant has filed additional pleadings in support of the motion, including a reply with exhibits. But, none of the factual assertions in the reply are supported by admissible evidence, such as a declaration. See Local Bankruptcy Rule 9014-1(d)(6). Nor are the exhibits authenticated by a declaration. They are inadmissible hearsay. Fed. R. Evid. 802.

More, the movant's additional pleadings will be stricken, as the court has not reopened the record on the motion. Dockets 83 & 84. The record on this motion closed on May 24, seven days prior to the May 31 initial hearing on the motion. Docket 58.

The request in the reply for adequate protection payments will be denied also because that request is not in the motion. Docket 41 at 3-4. The court will not allow the movant to seek new relief in the reply, depriving the debtor from an opportunity to respond.

The movant has not met its burden of persuasion on value and equity in the property. The motion will be denied.

2.	15-29136-A-12	P&M SAMRA LAND	MOTION TO
	CGS-1	INVESTMENTS L.L.C.	WITHDRAW AS ATTORNEY
			11-29-16 [431]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditor respondent, the debtor, the chapter 12 trustee, the U.S. Trustee, and any other party 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 as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

Attorney William Healy of Campeau Goodsell Smith, L.C. asks for permission to withdraw as counsel for secured creditor IRA Services Trust Co. CFBO, Shankuntala D. Saini because Ms. Saini has not been paying for the movant's services.

Local Bankruptcy Rule 2017-1(e) provides that "Unless otherwise provided herein, an attorney who has appeared may not withdraw leaving the client in propria persona without leave of court upon noticed motion and notice to the client and all other parties who have appeared. The attorney shall provide an affidavit stating the current or last known address or addresses of the client and the efforts made to notify the client of the motion to withdraw. Withdrawal as attorney is governed by the Rules of Professional Conduct of the State Bar of California, and the attorney shall conform to the requirements of those

Rules. The authority and duty of the attorney of record shall continue until relieved by order of the Court issued hereunder. Leave to withdraw may be granted subject to such appropriate conditions as the Court deems fit."

"The decision to grant or deny counsel's motion to withdraw is committed to the discretion of the trial court." American Economy Ins. Co. v. Herrera, No. 06CV2395-WQH, 2007 WL 3276326, at \*1 (S.D. Cal. Nov. 5, 2007) (quoting Irwin v. Mascott, 2004 U.S. Dist. LEXIS 28264 (N.D. Cal. December 1, 2004), citing Washington v. Sherwin Real Estate, Inc., 694 F.2d 1081, 1087 (7th Cir.1982)). Factors considered by courts ruling on the withdrawal of counsel are (1) the reasons why 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. Herrera, at \*1 (citing Irwin, 2004 U.S. Dist. LEXIS 28264 at 4).

California Rule of Professional Conduct 3-700 provides that:

"(A) *In General.*

"(1) *If permission for termination of employment is required by the rules of a tribunal, a member shall not withdraw from employment in a proceeding before that tribunal without its permission.*

"(2) *A member shall not withdraw from employment until the member has taken reasonable steps to avoid reasonably foreseeable prejudice to the rights of the client, including giving due notice to the client, allowing time for employment of other counsel, complying with rule 3-700(D), and complying with applicable laws and rules.*

"(B) *Mandatory Withdrawal.*

"*A member representing a client before a tribunal shall withdraw from employment with the permission of the tribunal, if required by its rules, and a member representing a client in other matters shall withdraw from employment, if:*

"(1) *The member knows or should know that the client is bringing an action, conducting a defense, asserting a position in litigation, or taking an appeal, without probable cause and for the purpose of harassing or maliciously injuring any person; or*

"(2) *The member knows or should know that continued employment will result in violation of these rules or of the State Bar Act; or*

"(3) *The member's mental or physical condition renders it unreasonably difficult to carry out the employment effectively.*

"(C) *Permissive Withdrawal.*

"*If rule 3-700(B) is not applicable, a member may not request permission to withdraw in matters pending before a tribunal, and may not withdraw in other matters, unless such request or such withdrawal is because:*

"(1) *The client*

*(a) insists upon presenting a claim or defense that is not warranted under existing law and cannot be supported by good faith argument for an extension,*

modification, or reversal of existing law, or  
(b) seeks to pursue an illegal course of conduct, or  
(c) insists that the member pursue a course of conduct that is illegal or that is prohibited under these rules or the State Bar Act, or  
(d) by other conduct renders it unreasonably difficult for the member to carry out the employment effectively, or  
(e) insists, in a matter not pending before a tribunal, that the member engage in conduct that is contrary to the judgment and advice of the member but not prohibited under these rules or the State Bar Act, or  
(f) breaches an agreement or obligation to the member as to expenses or fees.

"(2) The continued employment is likely to result in a violation of these rules or of the State Bar Act; or

"(3) The inability to work with co-counsel indicates that the best interests of the client likely will be served by withdrawal; or

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

"(5) The client knowingly and freely assents to termination of the employment; or

"(6) The member believes in good faith, in a proceeding pending before a tribunal, that the tribunal will find the existence of other good cause for withdrawal."

The movant has been representing Ms. Saini since approximately March 2016 and, despite several invoices issued to Ms. Saini, she has paid for none of the movant's services, rendered as far back as March 2016. The movant did not receive a retainer from Ms. Saini upon commencement of services.

Ms. Saini executed an agreement with the movant, agreeing to pay for his services. The failure to do so has resulted in her breach of this agreement.

This is cause for permitting the movant's withdrawal pursuant to California Professional Conduct Rule 3-700(C)(1)(f). The court will permit the movant's withdrawal from this case. The motion will be granted.

3.	16-26574-A-7	LUIS GUTIERREZ	MOTION TO
	SLE-3		AVOID JUDICIAL LIEN
	VS. BEST SERVICE CO., INC.		10-23-16 [22]

**Final Ruling:** This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent creditor and any other party 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 as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

A judgment was entered against the debtor in favor of The Best Service Co., Inc. for the sum of \$13,746.57 on June 22, 2015. The debtor seeks to avoid a judicial lien based on a recordation of an abstract of the judgment, which lien allegedly attached to the debtor's residential real property in Elk Grove, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$299,194 as of the petition date. Dockets 19 & 1. The unavoidable liens totaled \$204,493.46 on that same date, consisting of a single mortgage in favor of Ditech. Dockets 19 & 1. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$100,000 in Schedule C. Dockets 19 & 1.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).