

UNITED STATES BANKRUPTCY COURT
DEPARTMENT 5
JUDGE CHRISTOPHER B. LATHAM, PRESIDING
MONDAY, DECEMBER 8, 2014

10:00 AM

1 - 08-04147-CL Ch 7 STEAKHOUSE PARTNERS INC., A DELAWARE CORPORATION

- 1) SECOND INTERIM APPLICATION FOR COMPENSATION FOR JAMES L. KENNEDY, CHAPTER 7 TRUSTEE

Tentative Ruling: The court has reviewed Chapter 7 Trustee James L. Kennedy's second interim application for compensation. Having received no objection, and good cause appearing, the court **grants** the application and **awards** applicant \$45,000 in fees. The court excuses appearances at the December 8, 2014 hearing, and applicant may submit an order consistent with this tentative ruling.

- 2) FIRST INTERIM APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR NGS LLP, ACCOUNTANTS FOR TRUSTEE

Tentative Ruling: The court has reviewed NGS LLP's first interim application for compensation and reimbursement of expenses. Having received no objection, and good cause appearing, the court **grants** the application and **awards** applicant \$18,370 in fees and \$171.90. The court excuses appearances at the December 8, 2014 hearing, and applicant may submit an order consistent with this tentative ruling.

- 3) FIRST & FINAL APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR HULETT HARPER STEWART LLP, SPECIAL COUNSEL FOR TRUSTEE

Tentative Ruling: The court has reviewed Hulett Harper Stewart LLP's first and final application for compensation and reimbursement of expenses. Having received no objection, and good cause appearing, the court **grants** the application and **awards** applicant \$91,627.50 in fees and \$482.25 in costs. The court excuses appearances at the December 8, 2014 hearing, and applicant may submit an order consistent with this tentative ruling.

- 4) SECOND INTERIM APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR PYLE SIMS DUNCAN & STEVENSON, ATTORNEYS FOR TRUSTEE

Tentative Ruling: The court has reviewed Pyle Sims Duncan & Stevenson's second interim application for compensation and reimbursement of expenses. Having received no objection, and good cause appearing, the court **grants** the application and **awards** applicant \$341,756.50 in fees and \$1,998.92 in costs. The court excuses appearances at the December 8, 2014 hearing, and applicant may submit an order consistent with this tentative ruling.

- 5) MOTION FOR SUBSTANTIVE CONSOLIDATION OF JOINTLY ADMINISTERED CASES FILED BY TRUSTEE JAMES L. KENNEDY

Tentative Ruling: The court has reviewed the Trustee's motion for substantive consolidation of jointly administered cases. This case involves three Debtors: Steakhouse Partners Inc., case No. 08-04147-CL7; Paragon of Michigan, Inc., case No. 08-04153-CL7; and Paragon Steakhouse Restaurants, Inc., case No. 08-04152-CL7. Having received no objection, and for the following reasons, the court **grants** the motion.

This is not the first bankruptcy for these Debtors. In 2002, they filed voluntary Chapter 11 petitions in the United States Bankruptcy Court for the Central District of California, and the cases were jointly administered. There, the confirmed plan granted the unsecured creditors a security interest in virtually all of Debtors' assets. Debtors emerged from bankruptcy, but not for long. On May 15, 2008, they filed voluntary Chapter 11 petitions in this court. The cases were administratively consolidated (ECF No. 37). And on November 8, 2010, the court converted Debtors' cases to Chapter 7, and James L. Kennedy was appointed as the Chapter 7 Trustee (ECF No. 649). The Trustee now requests

that the court substantively consolidate the jointly administered cases.

Substantive consolidation is an equitable remedy arising from the court's inherent authority to "ensure equitable treatment of all creditors." *Alexander v. Compton (In re Bonham)*, 229 F.3d 750, 764 (9th Cir. 2000) (quoting *Union Savings Bank v. Augie/Restivo Banking Co., Ltd. (In re Augie/Restivo Banking Co., Ltd)*, 860 F.2d 515, 518 (2d Cir. 1988)). Because this remedy overrides the presumption of corporate separateness, it is to be used "sparingly." See *In re Owens Corning Corp.*, 419 F.3d 195, 211 (3d Cir. 2005); *In re Bonham*, 229 F.3d at 767. That said, "[w]ithout the check of substantive consolidation, debtors could insulate money through transfers among inter-company shell corporations with impunity." *In re Bonham*, 229 F.3d at 764.

The test for substantive consolidation in the Ninth Circuit is a disjunctive two-factor analysis of: "(1) whether creditors dealt with the entities as a single economic unit and did not rely on their separate identity in extending credit; or (2) whether the affairs of the debtor are so entangled that consolidation will benefit all creditors." *In re Bonham*, 229 F.3d at 766 (quoting *Reider v. Fed. Deposit Ins. Corp. (In re Reider)*, 31 F.3d 1102, 1108 (11th Cir. 1994)). Here, both factors are satisfied.

First, creditors dealt with the Debtors as a single economic unit and did not rely on their separate identity in extending credit. Debtors' confirmed plan treats them as a single unit because it grants the unsecured creditors a lien on nearly all of Debtors' assets. And when Debtor Steakhouse Partners, Inc., filed quarterly and annual reports with the Securities and Exchange Commission, it provided consolidated financial information and removed any intercompany balances from the report. Further, the Debtors presented themselves as and operated as a single entity: Debtors used a centralized bank account, a single website, a single corporate office, a single telephone number, and a single accounting system.

Second, consolidation will benefit all creditors because Debtors' affairs are so entangled. After filing their second set of bankruptcy petitions, Debtors lost access to their accounting systems. As a result, the Trustee represents that recreating the records and accounting for intercompany transfers would be expensive and impracticable. The court finds the Trustee's assertion to be persuasive.

Because the standards for substantive consolidation are satisfied, the court **grants** the Trustee's motion. The court excuses appearances at the December 8, 2014 hearing, and the Trustee may submit an order consistent with this tentative ruling.

ATTORNEY: SUSAN C. STEVENSON (JAMES L. KENNEDY)
ATTORNEY: ENID M. COLSON (STEAKHOUSE PARTNERS INC, A DELAWARE CORP)
ATTORNEY: JULIA W. BRAND (STEAKHOUSE PARTNERS INC, A DELAWARE CORP)
ATTORNEY: J. RUDY FREEMAN (STEAKHOUSE PARTNERS INC, A DELAWARE CORP)
ATTORNEY: PETER E. GARRELL (STEAKHOUSE PARTNERS INC, A DELAWARE CORP)
ATTORNEY: JOHN KENNEDY (STEAKHOUSE PARTNERS INC, A DELAWARE CORP)
ATTORNEY: MARY TESTERMAN DUVOISIN (U.S. TRUSTEE)

10:00 AM

2 - 09-15097-CL Ch 7 THE MOBILE SOLUTION CORPORATION

- 1) FIRST & FINAL APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR ALAN MYERS CPA, ACCOUNTANT FOR TRUSTEE

Tentative Ruling: The court has reviewed Alan Myers CPA's first and final application for compensation and reimbursement. Based on the notice of errata (ECF No. 327) and to allow the full opposition period to run, the court **continues** this matter to **December 15, 2014 at 10:00 a.m.** The court excuses appearances at the December 8, 2014 hearing.

- 2) FIRST & FINAL APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR NORTON MOORE & ADAMS LLP, ATTORNEYS FOR TRUSTEE

Tentative Ruling: The court has reviewed Norton Moore & Adams LLP's first and final application for compensation and reimbursement of expenses. Based on the notice of errata (ECF No. 327) and to allow the full opposition period to run, the court **continues** this matter to **December 15, 2014 at 10:00 a.m.** The court excuses appearances at the December 8, 2014 hearing.

- 3) FIRST & FINAL APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR GERALD H. DAVIS, CHAPTER 7 TRUSTEE

Tentative Ruling: The court has reviewed Chapter 7 Trustee Gerald H. Davis's first and final application for compensation and reimbursement of expenses. Based on the amended notice of hearing (ECF No. 327) and to allow the full opposition period to run, the court **continues** this matter to **December 15, 2014 at 10:00 a.m.** The court excuses appearances at the December 8, 2014 hearing.

ATTORNEY: RICHARD C. NORTON (GERALD H. DAVIS)
ATTORNEY: CHRISTINE E. BAUR (THE MOBILE SOLUTION CORPORATION)

3 - 11-07600-CL Ch 7 TERRENCE R. & THERESA TRAVIS

- 1) FINAL APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR R. DEAN JOHNSON CPA, ACCOUNTANT FOR TRUSTEE

Tentative Ruling: The court has reviewed R. Dean Johnson CPA's final application for compensation and reimbursement of expenses. Having received no objection, and good cause appearing, the court **grants** the application and **awards** applicant \$6,583 in fees and \$263 in costs. The court excuses appearances at the December 8, 2014 hearing, and applicant may submit an order consistent with this tentative ruling.

- 2) FIRST & FINAL APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR RICHARD M KIPPERMAN, CHAPTER 7 TRUSTEE

Tentative Ruling: The court has reviewed Chapter 7 Trustee Richard Kipperman's first and final application for compensation. Having received no objection, and good cause appearing, the court **grants** the application and **awards** applicant \$25,357.34 in fees, \$1,613.75 in costs, and up to \$200 in additional costs reasonably incurred for post-application services. The court excuses appearances at the December 8, 2014 hearing, and applicant may submit an order consistent with this tentative ruling.

- 3) FIRST & FINAL APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR FOLEY LARDNER LLP, ATTORNEYS FOR FORMER CHAPTER 11 TRUSTEE; AND FIRST & FINAL APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR FOLEY LARDNER LLP, ATTORNEYS FOR CHAPTER 7 TRUSTEE

Tentative Ruling: The court has reviewed Foley & Lardner LLP's first and final application for compensation and reimbursement of expenses. Having received no objection, and good cause appearing, the court **grants** the application and **awards** applicant \$9,701 in fees for work performed for the former Chapter 11 Trustee. The court also **grants** the application and **awards** applicant \$451,920 in fees and \$10,852.67 for costs for work performed for the Chapter 7 Trustee. The court excuses appearances at the December 8, 2014 hearing, and applicant may submit an order consistent with this tentative ruling.

ATTORNEY: KATHRYN M.S. CATHERWOOD (RICHARD M KIPPERMAN)
ATTORNEY: KERRY A. DENTON (THERESA TRAVIS, TERRENCE R. TRAVIS,
THERESA TRAVIS)

10:00 AM

4 - 12-10532-CL Ch 7 DORIS ANGELINE SUMNER

MOTION TO VACATE CONVERSION OF CASE FROM CHAPTER 13 TO CHAPTER 7 FILED BY DEBTOR

Tentative Ruling: The court has reviewed Debtor's unopposed motion to vacate. For the following reasons, the court **grants** the motion. Debtor is a 91-year-old widow who suffered a fall and was hospitalized several months ago. During her recovery, and concerned about the burden of Chapter 13 plan payments, Debtor's counsel - Bruce Babcock, Esq. - advised Debtor on her case conversion options. Debtor apparently seemed agreeable to conversion. And, accordingly, Mr. Babcock converted her case to one under Chapter 7.

Mr. Babcock now alleges, however, that Debtor may not have had the capacity to fully understand the consequences of conversion. And she herself declares that she does not remember much from the conversation. She asserts that she is willing and able to complete her Chapter 13 plan. And she states that she has a friend who will assist her in making plan payments, if necessary.

Rule 60(b)(6) of the Federal Rules of Civil Procedure allow the court to vacate orders for "any [] reason that justifies relief." This provision "has been used sparingly as an equitable remedy to prevent manifest injustice" and "is to be utilized only where extraordinary circumstances [exist]." *Fantasyland Video, Inc. v. County of San Diego*, 505 F.3d 996, 1005 (9th Cir. 2007) (quoting *United States v. Alpine Land & Reservoir Co.*, 984 F.2d 1047, 1049 (9th Cir. 1993)). Given: (1) Debtor's advanced age; (2) her injury; (3) her readiness to complete her plan; (4) that creditors will benefit from plan completion; and (5) the absence of any opposition, the court finds cause under Rule 60(b)(6) to **grant** the motion. Accordingly, the court excuses appearances at the December 8, 2014 hearing, and will prepare its own order.

ATTORNEY: BRUCE R. BABCOCK (DORIS ANGELINE SUMNER)

5 - 12-10600-CL Ch 13 DONALD & VIRGINIA LORENE GRAF

MOTION FOR RELIEF FROM STAY, RS #CJO-1 FILED BY U.S. BANK TRUST NA, AS TRUSTEE FOR LSF8 MASTER PARTICIPATION TRUST, BY CALIBER HOME LOANS INC, AS IT ATTORNEY IN FACT, AND ITS SUCCESSIONS AND/OR ASSIGNEES

ATTORNEY: PEDRO S. BONILLA (DONALD GRAF, VIRGINIA LORENE GRAF)
ATTORNEY: CHRISTINA O (U.S. BANK TRUST NA)

10:00 AM

6 - 13-09091-CL Ch 7 VIRGILIO POBLIO MADURO

- 1) FINAL APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR R. DEAN JOHNSON CPA, ACCOUNTANT FOR TRUSTEE

Tentative Ruling: The court has reviewed R. Dean Johnson CPA's final application for compensation and reimbursement of expenses. Having received no objection, and good cause appearing, the court **grants** the application and **awards** applicant \$776 in fees and \$114.68 in costs. The court excuses appearances at the December 8, 2014 hearing, and applicant may submit an order consistent with this tentative ruling.

- 2) FIRST & FINAL APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR KIRBY & MCGUINN APC, ATTORNEYS FOR TRUSTEE

Tentative Ruling: The court has reviewed Kirby & McGuinn APC's first and final application for compensation and reimbursement of expenses. Having received no objection, and good cause appearing, the court **grants** the application and **awards** applicant \$7,870 in fees, \$132.48 in costs, and up to \$1,000 in additional fees and costs reasonably incurred for post-application services. The court excuses appearances at the December 8, 2014 hearing, and applicant may submit an order consistent with this tentative ruling.

ATTORNEY: ROBERTA S. ROBINSON (LEONARD J. ACKERMAN)
ATTORNEY: STEVEN M. BENSON (VIRGILIO POBLIO MADURO)

7 - 13-11754-CL Ch 7 GLENN F. & LYNN M. HINTON

ADV: 14-90036

GARRY A. BAILEY & BROOKE T. BAILEY & INDIVIDUALLY v. LYNN M. HINTON & GLENN F. HINTON

PRE-TRIAL STATUS CONFERENCE

ATTORNEY: TAVY A. DUMONT (BROOKE T. BAILEY, GARRY A. BAILEY)
ATTORNEY: JONATHAN WEISS (BROOKE T. BAILEY, GARRY A. BAILEY)
ATTORNEY: CARL H. STARRETT (LYNN M. HINTON)
OTHER: GLENN F. HINTON

AMENDED MOTION FOR RELIEF FROM STAY, RS #SD-1 FILED BY CRAIG AND ROBIN GRISWOLD, TRUSTEES OF THE CRAIG AND ROBIN GRISWOLD DECLARATION TRUST

Tentative Ruling: The court has reviewed Craig and Robin Griswold's ("Movants") motion for stay relief and Debtor's response and status report. Movants request stay relief to liquidate their claim in the state court. But the claim was already liquidated through the claims process in this court. Accordingly, the court **denies** the motion.

In 2012, Movants sued Debtor in state court for at least \$50,000. Debtor submitted a voluntary Chapter 13 petition in April 2014 (ECF No. 1). Movants filed their claim on August 14, in the amount of \$350,000 (Claim No. 2-1). As proof of their claim, Movants attached the state court complaint. Debtor objected (ECF No. 21), and the court overruled the objection (ECF No. 29). Debtor did not appeal the order. So that order is final and the matter res judicata.

Movants now seek stay relief "to proceed to Superior Court in order to liquidate the claim." [ECF No. 32, pg. 2.] They assert that they must return to state court to: resolve the issues and "liquidate the damages so that the Trustee can properly pay the claim"; "establish the fact and amount of the Debtor's liability"; and "liquidate the claim so that it may be properly administered by the Trustee." [*Id.*, pg. 4.]

The claim's amount has already been adjudicated. Accordingly, so far as Movants seek to liquidate their claim, cause does not exist because the state court has nothing left to decide. Lifting the stay would serve no purpose.

For the foregoing reasons, the court **denies** the motion and awards Debtor's counsel guideline fees of \$625. If Movants are willing to submit on this tentative ruling, they may notify the courtroom deputy and opposing counsel, and the court will excuse appearances at the December 8, 2014 hearing. It will then issue an order.

ATTORNEY: DAVID L. SPECKMAN (GREGORY B. EDWARDS)
ATTORNEY: STEVEN J. DIAMOND (CRAIG GRISWOLD, ROBIN GRISWOLD)

10:00 AM

9 - 14-05047-CL Ch 7 ERICCA DAWN CUTRI

OBJECTIONS TO DEBTOR'S CLAIM OF EXEMPTIONS FILED BY TRUSTEE

Tentative Ruling: The court will **hear** the matter. It has reviewed the Trustee's objection to Debtor's exemption claim, Debtor's amended schedules and opposition, and the Trustee's reply. The court intends to permit the parties to supplement the record and provide additional briefing.

Debtor filed a voluntary Chapter 7 petition on June 25, 2014, when she was in the midst of a divorce case. She claimed an interest in a 401(k) plan that a June 23, 2014 family court order had awarded her. The Trustee objected to Debtor's exemption of the 401(k). Debtor then amended her schedules and opposed the Trustee's objection. She now claims the 401(k) is still ERISA-qualified and thus not property of the estate under § 541(c)(2) and *Patterson v. Shumate*, 504 U.S. 753 (1992). In the alternative, she asserts that the subject amount is exempt under C.C.P. § 703.140(b)(5) and (10)(E). The Trustee, on the other hand, claims that the estate has an interest in the 401(k) for two reasons: first, the family court order requires the 401(k) to be liquidated; and, second, the Debtor received the 401(k), in part, as an equalization payment.

Exemptions are determined as of the petition date. One issue is whether, on the day of the petition, Debtor had an interest in a 401(k). Neither party submitted copies of the 401(k) documents. Nor have they provided a copy of family court's order of June 23, 2014. So the court cannot determine what Debtor's interest was.

The parties should come prepared to discuss these matters. The court intends to allow the parties to supplement the record with additional documents, such as the 401(k) and the pre-petition divorce court orders. The court also intends to permit additional briefing on the matter.

ATTORNEY: THOMAS F. MILES (ERICCA DAWN CUTRI)

10 - 14-06528-CL Ch 13 NICHOLAS GORDON & KAREN ANN KNOLLENBERG

MOTION FOR RELIEF FROM STAY, RS #PD-1 FILED BY U.S. BANK TRUST NA, AS TRUSTEE FOR LSF8 MASTER PARTICIPATION TRUST

Court Deputy Note: Off calendar. Court Modified Order on Stipulation Granting Adequate Protection entered 12/5/14 (re ECF No. 57).

ATTORNEY: CRAIG S. TRENTON (KAREN ANN KNOLLENBERG, NICHOLAS GORDON KNOLLENBERG)

ATTORNEY: ROBERT ZAHRADKA (U.S. BANK TRUST NA)

11 - 13-05089-CL Ch 7 PAUL C & ANITA J. DIFRANCESCO

- 1) NOTICE OF INTENDED ACTION RE INTENT TO SELL STOCK IN STW RESOURCES HOLDING CORP, FREE & CLEAR OF LIENS, SUBJECT TO OVERBID AND TO COMPROMISE OR SETTLE CONTROVERSY FILED BY TRUSTEE

Tentative Ruling: The court has reviewed Chapter 7 Trustee Gerald Davis's (the "Trustee") notice of intended action to settle the estate's claims with Viewpoint Securities, LLC ("Viewpoint"), Debtors Paul C. and Anita J. DiFrancesco's ("Debtors") opposition, Seth Leyton's reply, and the Trustee's reply. For the following reasons, the court **grants** the motion and **approves** the settlement.

Debtors filed a voluntary Chapter 7 petition on May 15, 2013 (ECF No. 1). Over a year later, on September 9, 2014, they amended their Schedule B to list two claims against Viewpoint and estimated they were worth \$262,500 (ECF No. 69). A month later, on October 10, 2014, the Trustee proposed to settle those claims with Viewpoint for \$25,000 (ECF No. 70, Attachment "B").

Debtors oppose the proposed settlement and claim it is not based upon the Trustee's reasonable business judgment (ECF No. 84). They allege the Trustee failed to investigate the asset because he never discussed the claims with Debtors. Instead, Debtors allege, the Trustee only discussed it with Viewpoint. Debtors further claim the settlement is unnecessary, as they will pay off all of the estate's claims with other funds. The Trustee, on the other hand, represents that he investigated the claims, contacted third parties, and reviewed hundreds of documents (ECF No. 97). So it appears, contrary to Debtors' assertions, that the Trustee did exercise diligence in investigating the claims.

In addition, the court must determine whether the settlement is "fair and equitable" under Rule 9019. *Martin v. Kane (In re A & C Properties)*, 784 F.2d 1377, 1381 (9th Cir. 1986); *see also Fitzgerald v. Ninn Worx Sr, Inc. (In re Fitzgerald)*, 428 B.R. 872, 884 (B.A.P. 9th Cir. 2010). To make this determination, it must consider:

- (a) The probability of success in the litigation; (b) the difficulties, if any, to be encountered in the matter of collection; (c) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; (d) the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

In re A & C Properties, 784 F.2d at 1381 (quoting *In re Flight Transportation Corporation Securities Litigation*, 730 F.2d 1128, 1135 (8th Cir. 1984)).

In the notice of intended action, the Trustee represented that: the outcome of the lawsuit is extremely uncertain; any judgment against Viewpoint may be difficult to collect because it has no known assets; the litigation may be complex, costly, and could involve excessive delay; and that the settlement is in the interest of the creditors. Debtors contest only the second *A & C Properties* factor. They claim that Seth Leyton's offer to purchase shares of stock for \$400,000 suggests that Viewpoint may have the ability to pay the claims. But Viewpoint and Mr. Leyton are distinct - Viewpoint is its own entity. Accordingly, the court finds that the Trustee's representations satisfy the *A & C Properties* factors.

For these reasons, the court therefore **grants** the Trustee's request and **approves** the settlement with Viewpoint. The court leaves to the Trustee's discretion whether accepting a gift from Debtors to the estate in lieu of settling the claims comports with his fiduciary obligations and business judgment. If Debtors are willing to submit on this tentative ruling, they may notify the courtroom deputy and opposing counsel. The Trustee may then submit an order consistent with this tentative ruling.

- 2) MOTION TO SELL STOCK IN STW RESOURCES HOLDING CORP, FREE & CLEAR OF LIENS, SUBJECT TO OVERBID FILED BY TRUSTEE GERALD H. DAVIS (fr. 11/17/14)

Tentative Ruling: The court will **hear** the matter. The court has reviewed the parties' submissions. The Trustee proposes to sell, free and clear of liens and subject to overbid, the 8,512,662 shares of stock in STW Resources Holding Corp. ("STW"). This proposal drew opposition from STW and Debtors Paul C. and Anita J. DiFrancesco ("Debtors"). For the following reasons, the court concludes that the Trustee's proposed procedures are not acceptable in their present form. Accordingly, the Trustee will need to change the procedures and re-notice the sale.

The procedures lack standard provisions. For instance, they do not provide for any marketing of the shares - nor does the Trustee describe his marketing attempts. Nor do they allow potential purchasers an opportunity to inspect the asset. And there is no deadline for a party to object to the sale. Last, the Trustee and Mr. Leyton already agreed to waive ¶ 4.9, which would have returned any excess funds to the buyer, not Debtors.

STW claims the sale would violate various securities law. It asserts that the stocks are restricted and subject to Securities Act Rule 144. But Debtor Paul DiFrancesco's declaration contradicts this. He declared that as "of mid-October 2014, the restrictions on the STW shares have been lifted." [ECF No. 84-1, pg. 4.] So this objection may be moot. In addition, the Trustee need not necessarily sell the property by public auction. *See* Fed. R. Bankr. Proc. 6004(f)(1).

STW next claims that Rule 144 limits the sale of restricted shares to 1% of the outstanding shares of the company during any three-month period. As above, this objection may be moot if the shares are no longer restricted. Moreover, Mr. Leyton asserts that the stocks are now less than 1% of the available shares, as STW has initiated a reverse stock split and then more than quadrupled the number of available shares.

STW also alleges that Mr. Leyton is a straw-buyer and intends to resell the shares as a broker. But Mr. Leyton denies this, and STW offers no evidence in support.

STW and Debtors assert that Mr. Leyton is not a good faith purchaser because: (1) he may have malicious intent for the stock, given his antagonistic history with STW; and (2) he is buying the stock at a fraction of its value. As an initial matter, and as the Trustee points out, the court need not find that the purchaser is a good faith purchaser to approve the sale. *See In re M Capital Corp.*, 290 B.R. 743, 749 (B.A.P. 9th Cir. 2003).

A good faith purchaser is one who buys "in good faith" and "for value." *Id.* at 746 (quoting *Ewell v. Diebert (In re Ewell)*, 958 F.2d 276, 281 (9th Cir.1992)). And "lack of good faith is shown by 'fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.'" *Id.* (quoting *Ewell*, 958 F.2d at 281).

STW and Debtors do not allege fraud, collusion, or unfair advantage on Mr. Leyton's part. Instead, they point to his history with STW. This is insufficient. As to value, the Trustee claims that the sale price is 4.7 cents per share - 78% of the stock's value as of the petition date. Moreover, the possibility of an overbid, provided the Trustee effectively markets the sale, ensures a fair value.

Last, STW claims it is entitled to adequate protection because it will be harmed if the sale of its stock goes forward. The Trustee contends that STW cites no case law that suggests § 363(e) applies to an entity that may be harmed by a sale. Section 363(e) applies to those who hold an "interest" in the estate's property, such as a lien or security interest, and requires the court to provide adequate protection. STW's stock is public and may be sold at will. So the court is unconvinced that halting the sale of this stock is somehow necessary for STW's protection.

The parties should come prepared to address these points.

ATTORNEY: RICHARD C. NORTON (GERALD H. DAVIS)
ATTORNEY: JEFFERY S. STYERS (ANITA J. DIFRANCESCO, PAUL C
DIFRANCESCO)

11:00 AM

1 - 12-09495-CL Ch 7 OLIVER SCHWARZ
REAFFIRMATION AGREEMENT BETWEEN DEBTOR AND SHEFFIELD
FINANCIAL CORPORATION

ATTORNEY: JOHN L. SMAHA (OLIVER SCHWARZ)

2 - 14-07100-CL Ch 7 CHARLES DONALD & MARIA GUADALUPE KELLY
REAFFIRMATION AGREEMENT BETWEEN DEBTORS AND TOYOTA MOTOR
CREDIT CORPORATION

ATTORNEY: NIKHIL CHAWLA (CHARLES DONALD KELLY, MARIA GUADALUPE
KELLY)

3 - 14-07125-CL Ch 7 DAVID ELIAS ORTIZ
REAFFIRMATION AGREEMENT BETWEEN DEBTOR AND JPMORGAN
CHASE BANK NA

4 - 14-07669-CL Ch 7 JOSEPH S & CLARITA D SANTOS
1) AMENDED REAFFIRMATION AGREEMENT BETWEEN DEBTORS AND
TOYOTA MOTOR CREDIT CORPORATION (fr. 11/10/14)

2) REAFFIRMATION AGREEMENT BETWEEN DEBTORS AND NAVY FEDERAL
CREDIT UNION - #9982 (fr. 11/10/14)

ATTORNEY: ANDREA WHITEHILL (CLARITA D SANTOS, JOSEPH S SANTOS)

5 - 14-07686-CL Ch 7 PAULA KAY SINGLETARY
REAFFIRMATION AGREEMENT BETWEEN DEBTOR AND 21ST MORTGAGE
CORPORATION (fr. 11/10/14)

ATTORNEY: THOMAS F. MILES (PAULA KAY SINGLETARY)

6 - 14-07853-CL Ch 7 PACO FRANCISCO STEPHENS
REAFFIRMATION AGREEMENT BETWEEN DEBTOR NAVY FEDERAL
CREDIT UNION

ATTORNEY: DAVID G. WEIL (PACO FRANCISCO STEPHENS)

11:00 AM

7 - 14-08399-CL Ch 7 MARY ELLEN MORALES

REAFFIRMATION AGREEMENT BETWEEN DEBTOR AND MISSION FEDERAL CREDIT UNION

Tentative Ruling: The court has reviewed Debtor's reaffirmation agreement with MISSION FEDERAL CREDIT UNION. Because the creditor is a credit union, the presumption of undue hardship does not arise. 11 U.S.C. § 524(m)(2). And the court finds the reaffirmation agreement is in Debtor's best interest. It therefore **approves** the agreement. The court excuses appearances at the December 8, 2014 hearing, and will prepare an order.

ATTORNEY: WILFRED E. BRIESEMEISTER (MARY ELLEN MORALES)

02:00 PM

1 - 14-07283-CL Ch 11 NATIONAL DEBT DEFENSE, INC., A CORPORATION

STATUS CONFERENCE ON CHAPTER 11 PETITION (fr. 10/22/14)

ATTORNEY: CHRISTOPHER V. HAWKINS (NATIONAL DEBT DEFENSE, INC., A CORPORATI)

ATTORNEY: KRISTIN MIHELIC (U.S. TRUSTEE)

02:30 PM

1 - 14-02962-CL Ch 11 JAMES BERTRAM MORRIS

1) STATUS CONFERENCE ON CHAPTER 11 PETITION (fr. 11/10/14)

2) MOTION TO CONVERT CASE TO CHAPTER 7 FILED BY U.S. TRUSTEE

ATTORNEY: MARCO A. TORRES (JAMES BERTRAM MORRIS)

ATTORNEY: EDWARD RUBACHA (JEANEEN MCGEE)

ATTORNEY: KRISTIN MIHELIC (U.S. TRUSTEE)

03:30 PM

1 - 11-17067-CL Ch 11 RICHARD JULIAN CHEROSKE

STATUS CONFERENCE ON CHAPTER 11 PETITION (fr. 10/27/14)

ATTORNEY: CHRISTOPHER B. GHIO (THOMAS C. HEBRANK)

ATTORNEY: DAVID A. ORTIZ (U.S. TRUSTEE)

OTHER: RICHARD JULIAN CHEROSKE