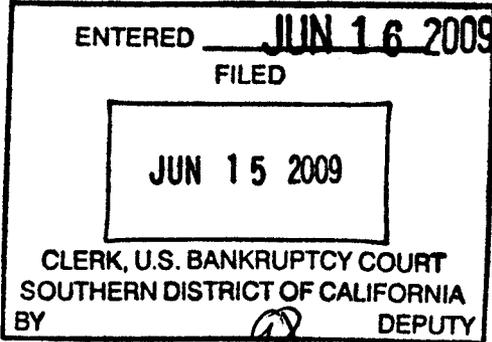


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WRITTEN DECISION - NOT FOR PUBLICATION

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF CALIFORNIA

In re)	Case No. 07-04948-B7
)	
JOEL ESGUERRA FORRAL,)	ORDER ON WALDEN FAMILY
)	PARTNERSHIP MOTION TO
Debtor.)	COMPEL DISTRIBUTION OF
)	RENT PROCEEDS

This matter came on regularly for hearing on the motion by the Walden Family Partnership, through its assignee David Walden, to compel the trustee to distribute accumulated rent proceeds.

The Court has subject matter jurisdiction over this proceeding pursuant to 28 U.S.C. § 1334 and General Order No. 312-D of the United States District Court for the Southern District of California. This is a core proceeding pursuant to 28 U.S.C. § 157(b).

Discussion

Prior to the filing of the present case, Joel Forral and the Walden Family Partnership co-owned a commercial property, with a tenant occupying approximately one-half of the property. After

1 the filing, the trustee took over the collection of rents and
2 payment of the property's expenses. The property has since been
3 sold. In the interim, the Walden Family Partnership has sought
4 payment of its portion of the accumulated net rents.

5 At the hearing, the parties agreed that the gross rent
6 proceeds are \$66,543.22 and, for purposes of this motion they
7 agreed that operating expenses, not including attorney fees, are
8 \$30,648. The dispute boiled down to disagreement over whether
9 two categories of attorneys' fees, earned by and awarded to
10 trustee's counsel could properly be charged against the Walden
11 Family Partnership's portion of the rent proceeds.

12 The first category of fees are those incurred in negotiating
13 a cash collateral agreement with Union Bank. Those fees total
14 \$7,455. In the Court's view, the fees were necessarily incurred
15 by the trustee in his management of the bankruptcy estate.
16 However, following the reasoning of the Ninth Circuit in In re
17 Flynn, 418 F.3d 1005 (2005), the Court concludes that while the
18 fees were a necessary expense of the bankruptcy estate they are
19 not chargeable against the co-owner's portion of the rents, even
20 though the co-owner may have benefitted from the protection
21 bankruptcy afforded the property, as well as from management by
22 the trustee. The co-owner did not seek any of that, and should
23 not be charged for it.

24 The second category of fees involve those incurred in
25 dealing with the tenant, which was late in paying rent,
26 utilities, and in holding over possession of the property. Those

1 fees total \$5,812, and in the Court's view are properly
2 chargeable *pro rata* to the co-owner's share of the rent proceeds
3 because those proceeds might not exist without those efforts.

4 At the hearing, Mr. Walden noted a seeming inconsistency
5 between a charge for three tenths of an hour (.3) on 4/23/08
6 concerning delinquent rent, and the trustee's cash receipts
7 record showing that the April 2008 rent was paid on April 4.
8 Trustee's counsel testified that she believed that entry actually
9 related to delinquent payment of utilities, not rent. The Court
10 is persuaded that the attorneys' fees incurred by the trustee in
11 dealing with the tenant were both reasonable and reasonably
12 necessary.

13 Conclusion

14 For the foregoing reasons, the Court finds and concludes
15 that the gross rents of \$66,543.22, less agreed operating
16 expenses of \$30,648, yields net rents of \$35,895.22. The Court
17 further finds and concludes that the net rents are properly
18 chargeable for the attorneys' fees expended in helping create the
19 rent proceeds. Those fees are \$5,823 which, when subtracted from
20 the net rents yields \$30,083. Divided equally with the
21 bankruptcy estate, the Walden Family Partnership is entitled to
22 distribution of \$15,041.61.

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