



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
December 11, 2018

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

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In re:	)	Case No.: 18-14325-MKN
	)	Chapter 13
JOE CHRISTOPHER BRICE and REGINA	)	
RESHELLE BRICE aka REGINA	)	
RESHELLE CHAMBERS,	)	Date: November 14, 2018
	)	Time: 1:30 p.m.
Debtors.	)	
	)	

**ORDER REGARDING MOTION FOR RELIEF FROM THE AUTOMATIC STAY;  
MOTION TO ABANDON CERTAIN ASSETS<sup>1</sup>**

On November 14, 2018, the court heard the Motion for Relief From the Automatic Stay (“Firebird MRAS”) brought by Firebird Living Trust Dated July 18, 2008 (“Firebird Trust”). The court also heard the Motion to Abandon Certain Assets (“US Abandonment Motion”) brought by the United States of America (“USA”). The appearances of counsel were noted on the record. After arguments were presented, both matters were taken under submission.

**BACKGROUND**

On July 23, 2018, Joe Christopher Brice and Regina Reschelle Brice aka Regina Reschelle Chambers (“Debtors”) filed a voluntary joint Chapter 13 petition (“Petition”) along with their schedules of assets and liabilities (“Schedules”), their statement of financial affairs (“SOFA”), a proposed Chapter 13 Plan #1, and other required information. (ECF Nos. 1 and 2).

<sup>1</sup> In this Order, all references to “ECF No.” are to the number assigned to the documents filed in the case as they appear on the docket maintained by the clerk of court. All references to “Section” are to the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532. All references to “FRBP” are to the Federal Rules of Bankruptcy Procedure.

1 On the same date, a notice of the Chapter 13 filing was issued scheduling a meeting of creditors  
2 for September 4, 2018 and notifying creditors of the appointment of a Chapter 13 trustee. (ECF  
3 No. 8). The Chapter 13 proceeding was assigned for administration to a panel Chapter 13  
4 trustee, Kathleen A. Leavitt (“Chapter 13 Trustee”).

5 On their Schedule “A/B,” Debtors listed a primary residence located at 8325 Jeeves Cir.,  
6 Las Vegas, NV 89149 (“Jeeves Property”) at a value of \$799,000. Debtors also listed a rental  
7 property located at 2437 Antlers Point, Henderson, NV 89074 (“Antlers Property”) at a value of  
8 \$499,990, and an additional rental property located at 4607 Reliant Street, North Las Vegas, NV  
9 89031 (“Reliant Property”) at a value of \$254,000. On their Schedule “C,” Debtors did not  
10 claim an exemption in any of the real property listed on Schedule “A/B.” On their Schedule  
11 “D,” Debtors listed “US Loan Servicing” (“US Loan”) as having a claim in the amount of  
12 \$544,867 secured by a first mortgage against the Jeeves Property,<sup>2</sup> a claim in the amount of  
13 \$134,333 secured by a first mortgage against the Reliant Property, and a claim in the amount of  
14 “Unknown” with respect to the Antlers Property. Debtors also listed a homeowner association,  
15 “CAMCO/HOA Day Break” with a claim secured by the Jeeves Property in the amount of \$350.  
16 US Loan as well as CAMCO HOA were included on the creditor matrix.

17 On August 3, 2018, the instant Firebird MRAS was filed and noticed to be heard on  
18 September 5, 2018. (ECF Nos. 14 and 16). Attached to the Firebird MRAS is the supporting  
19 Affidavit of Steven Pickett (“Pickett Affidavit”). The Firebird MRAS alleges that it sold the  
20 Jeeves Property to the Debtors in June 2017 and received a deed of trust to secure the payment of  
21 \$549,995. The MRAS alleges that relief from stay should be granted under Section 362 but  
22 identifies only Section 362(d)(2) as the legal basis for granting relief, while merely arguing that  
23 the Debtors have not provided adequate protection. See Firebird MRAS at 3:9-12.

24 On August 10, 2018, the USA filed opposition to the Firebird MRAS (“Opposition”).  
25 (ECF No. 21). A reply was never filed.  
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28 <sup>2</sup> Debtors also listed Steven D. Pickett & Cathy A. Pickett as Trustees of Firebird Living Trust (“Firebird”) as additional parties to be notified in connection with the Jeeves Property.

1 On September 6, 2018, the Chapter 13 Trustee filed an opposition to plan confirmation  
2 combined with a recommendation for dismissal. (ECF No. 24). On this same date, Debtors filed  
3 amended Schedules “A/B” and “C” as well as an amended SOFA (“SOFA 2”). (ECF Nos. 25  
4 and 26). The Schedules were amended only to include additional vehicles owned by the  
5 Debtors, and the SOFA 2 was amended to include: a transfer of a 2016 BMW vehicle to a law  
6 firm (Callister Law Group) in full satisfaction of a debt within 90 days of filing the bankruptcy  
7 petition,<sup>3</sup> and two sales of property within 2 years before filing the bankruptcy petition.

8 On October 10, 2018, the Chapter 13 Trustee filed an amended opposition to plan  
9 confirmation combined with a recommendation for dismissal. (ECF No. 34).

10 On October 11, 2018, Debtors filed an amended petition to reflect all other names used in  
11 the last 8 years (ECF No. 35) as well as amended Schedules and another amended SOFA  
12 (“SOFA 3”). (ECF No. 36). The SOFA 3 was amended to include: deposits of funds into three  
13 different checking or savings accounts, interests in five different incorporated and  
14 unincorporated businesses, transfers of vehicles to a family member, the seizure of three trucks  
15 by the USA, and ownership or membership interests in four of the previously identified  
16 incorporated and unincorporated businesses.

17 On October 17, 2018, the instant US Abandonment Motion was filed on behalf of the  
18 USA. (ECF No. 40). On this same date, the USA filed a “Motion to File Statement of  
19 Additional Facts Under Seal” (ECF No. 41), which was granted by an order entered on this  
20 court’s docket on October 22, 2018 (ECF No. 47). The US Abandonment Motion was set to be  
21 heard on November 14, 2018. (ECF No. 48). The USA argues that the interest of the Chapter 13  
22 bankruptcy estate in the Jeeves Property, Antlers Property, and Reliant Property (collectively, the  
23 “Brice Realty”) must be abandoned pursuant to Section 554(b) because exclusive jurisdiction

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24 <sup>3</sup> Question 6 of SOFA 2 asks whether the Debtors paid a creditor more than \$600 within  
25 90 days before they filed for bankruptcy. The Debtors answered “yes” and identified the creditor  
26 as Callister Law Group as being paid \$24,000 by transfer of a 2016 BMW vehicle in full  
27 satisfaction of legal fees. The date of payment is described as March 2018. The bankruptcy  
28 petition was filed on July 23, 2018. Ninety days prior to the petition date would have been April  
24, 2018. So, while SOFA 2 was signed under penalty of perjury, the court is uncertain whether  
the Callister Law Group was paid in March 2018 or within ninety days of the bankruptcy petition  
date.

1 over the property was obtained by the United States District Court in Nevada (“USDC”) through  
2 civil forfeiture actions commenced before the bankruptcy case was filed. The USA argues,  
3 however, that the bankruptcy court should require abandonment of any interest in personal  
4 property (“Brice Personalty”) even though the personalty is not the subject of a civil forfeiture  
5 action pending before the USDC. According to the USA, relinquishment of in rem jurisdiction  
6 over the Brice Personalty would allow the USDC to adjudicate “all interests in that property  
7 through a forfeiture proceeding, either civil or criminal.” US Abandonment Motion at 7:25-26.

8 On October 17, 2018, a separate motion for relief from stay was filed by Michael  
9 Rohland (“Rohland”) in connection with the Reliant Property (“Rohland MRAS”). (ECF No.  
10 42). That motion was noticed to be heard on November 14, 2018. (ECF No. 44). Rohland  
11 alleges that in August 2017, he entered into a contract to sell the Reliant Property to the Debtors,  
12 but that the Debtors subsequently defaulted on their monthly payments. Rohland asserts that in  
13 February 2018, the USA recorded a lis pendens against the Reliant Property.

14 On November 2, 2018, oppositions were filed by the Debtors to the Firebird MRAS as  
15 well as the US Abandonment Motion. (ECF Nos. 52 and 53). On this same date, the USA filed  
16 a reply in support of the US Abandonment Motion. (ECF No. 56). Also, on this same date, the  
17 Chapter 13 Trustee filed an amended opposition to plan confirmation with recommendation for  
18 dismissal. (ECF No. 58).

19 On November 5, 2018, the Chapter 13 Trustee filed opposition to the US Abandonment  
20 Motion. (ECF No. 62).

21 On November 14, 2018, the Chapter 13 Trustee filed a further amended opposition to  
22 plan confirmation along with recommendation for dismissal. (ECF No. 66).

23 On November 14, 2018, the Firebird MRAS, the US Abandonment Motion, and the  
24 Rohland MRAS were heard by the court. Inasmuch as no opposition was filed to the Rohland  
25 MRAS, it was granted in open court. After arguments were presented on the Firebird MRAS and  
26 US Abandonment Motion, both matters were taken under advisement.

27 On November 26, 2018, an order was entered granting the Rohland MRAS. (ECF No.  
28 69).

1 On November 27, 2018, an order was entered denying confirmation of the Debtors'  
2 Chapter 13 plan and requiring an amended plan to be filed no later than December 3, 2018.  
3 (ECF No. 70).

4 On November 30, 2018, while the Firebird MRAS and US Abandonment Motion were  
5 still under submission, a Motion for Mandatory Partial Withdrawal of Reference (“Withdrawal  
6 Motion”) was filed on behalf of the USA. (ECF No. 74). The motion asserts that the USA  
7 “seeks only partial withdrawal, limited to the issues relating to the Brice Personalty and [Brice]  
8 Realty.” Withdrawal Motion at 5:12-13. Under 28 U.S.C. § 157(d) and Local Rule 5011, the  
9 Withdrawal Motion was transmitted to the USDC. No action on a withdrawal of the reference  
10 motion is taken by a bankruptcy court inasmuch as the determination to withdraw the matter is  
11 made solely by the district court.

12 On December 3, 2018, Debtors filed their proposed Chapter 13 Plan #2 in accordance  
13 with the prior order. (ECF No. 75). A hearing on confirmation of that proposed plan was  
14 noticed to be held on February 14, 2019. (ECF No. 76).

### 15 DISCUSSION

16 As previously mentioned, the Firebird MRAS seeks to terminate the automatic stay to  
17 permit the creditor to pursue its non-bankruptcy remedies with respect to the Jeeves Property.  
18 An order granting relief from stay already has been granted to Rohland with respect to pursuing  
19 non-bankruptcy remedies with respect to the Reliant Property. The US Abandonment Motion  
20 seeks to remove from the bankruptcy estate any interest in the Jeeves, Reliant, and Antlers  
21 properties, as well as any personal property to which the USA might request civil or criminal  
22 forfeiture.<sup>4</sup> Through withdrawal of the reference, the USA now seeks to have the USDC, rather  
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24 <sup>4</sup> On October 31, 2018, the Debtors filed an Application to Employ Matthew Q. Callister,  
25 Esq., as Special Counsel for Criminal Matter (“Special Counsel Employment Application”).  
26 (ECF No. 51). The Special Counsel Employment Application is brought under Section 327,  
27 which allows professional persons to be employed by a trustee of a bankruptcy estate if the  
28 professional is a “disinterested person.” Under FRBP 2014(a), an application for approval of  
professional employment must be accompanied by a verified statement of the professional’s  
connections with the debtor, creditors and other parties in interest, as well as their attorneys and  
accountants. Additionally, the professional’s connections with the Office of the United States  
Trustee, as well as any of its employees connections, must be disclosed. Professionals seeking

1 than the bankruptcy court, resolve “the issues relating to” the Brice Personalty as well as the  
2 Brice Realty.

3 One of the fundamental issues in a Chapter 13 proceeding is whether any plan proposed  
4 by the debtors meets the “best interest of creditors test.” A requirement for confirming a Chapter  
5 13 plan is that “the value, on the effective date of the plan, of property to be distributed...on  
6 account of each allowed unsecured claim is not less than the amount that would be paid on such  
7 claim if the estate of the debtor were liquidated under chapter 7...” 11 U.S.C. § 1325(a)(4). To  
8 determine what would be liquidated in a Chapter 7 proceeding, both the parties and the court  
9 must know what assets are included in the bankruptcy estate. Moreover, until a liquidation  
10 analysis is performed, the court cannot determine whether a proposed Chapter 13 plan will  
11 distribute to allowed unsecured claims an amount at least equal to a Chapter 7 distribution. In  
12 addition, because a Chapter 13 plan may not provide for payments over a period longer than five  
13 years, see 11 U.S.C. § 1322(d), neither the parties nor the court will be able to determine whether  
14 the total payments required by the plan can be made through the maximum number of payments.  
15 In other words, the court might not be able to determine whether the proposed Chapter 13 plan is  
16 feasible. See 11 U.S.C. § 1325(a)(6).

17 Separate and apart from the best interests and feasibility requirements to confirm a  
18 Chapter 13 plan, debtors in Chapter 13 are usually required to devote their “projected disposable  
19 income” to the payment of unsecured claims if the Chapter 13 trustee or an unsecured creditor  
20 \_\_\_\_\_  
21 permission to be employed must file an application or motion to be employed. Disclosure of  
22 these connections is required to enable the court, rather than the professional, to determine  
23 whether the professional is a disinterested person as required by Section 327(a). A “disinterested  
24 person” may not have “an interest materially adverse to the interest of the estate...by reason of  
25 any...relationship to, connection with, or interest in, the debtor, or for any other reason.” 11  
26 U.S.C. § 101(14)(C). In this instance, the Special Counsel Employment Application does not  
27 include the verified statement required by FRBP 2014(a). More importantly, nowhere in the  
28 Special Counsel Employment Application is there a disclosure that the Debtors may have  
transferred a BMW vehicle worth \$24,000 in full satisfaction of proposed counsel’s outstanding  
fees within ninety days of filing their Chapter 13 petition. See note 3, supra. This transfer was  
disclosed in SOFA 2, which was executed by the Debtors under penalty of perjury. Under  
Section 547(b), a transfer under the circumstances attested in SOFA 2, and reiterated in SOFA 3,  
likely would be avoidable by the bankruptcy estate, thereby subjecting the recipient to liability  
under Section 550(a)(1).

1 objects to plan confirmation. See 11 U.S.C. § 1325(b)(1)(B). The calculation of projected  
2 disposable income takes into account the amounts spent by the debtors to pay the creditor whose  
3 claim is secured by the primary residence. See 11 U.S.C. § 1325(b)(3) and 11 U.S.C. §  
4 707(b)(2)(A)(iii)(II). In the absence of such an expense, there obviously may be a greater  
5 amount of disposable income available to pay unsecured creditors under the proposed Chapter 13  
6 plan. As previously mentioned, the Debtors have filed an amended Chapter 13 plan, and a  
7 hearing to confirm that proposal is now scheduled for February 14, 2019. Because the Brice  
8 Realty includes the Jeeves Property that the debtors claim as their primary residence, the “issues  
9 relating to” that property clearly include whether the proposed Chapter 13 plan can be  
10 confirmed.

11 Thus, separate and apart from the issues underlying the Firebird MRAS and the US  
12 Abandonment Motion, the Withdrawal Motion raises the prospect of inconsistent decisions  
13 between this court and the USDC. Moreover, if the USA is correct that the bankruptcy court  
14 never obtained jurisdiction over the Brice Realty due to the civil forfeiture proceedings filed in  
15 the USDC prior to the commencement of this Chapter 13 case, then the effectiveness of any  
16 related order issued by this bankruptcy court is in doubt.

17 Rather than simply delaying any decision on the submitted matters pending the outcome  
18 of the Withdrawal Motion, the court resolves them as follows:

- 19 1. The Firebird MRAS will be denied without prejudice. Firebird alleges that it is owed  
20 a total of \$571,388.26, as of August 6, 2018. See Pickett Affidavit at ¶ 5. The only  
21 evidence of value of the Jeeves Property in the record is the Debtors’ original  
22 Schedule “A/B” filed on July 23, 2018. In that Schedule, Debtors attest that the  
23 property has a value of \$799,000. Firebird has offered no evidence disputing that  
24 value, nor has it offered any evidence that the Jeeves Property has depreciated in  
25 value after the bankruptcy was commenced. Because there is no evidence that the  
26 Jeeves Property is depreciating in value, Firebird has not met its burden of  
27 demonstrating cause for relief from stay, including a lack of adequate protection,  
28 under Section 362(d)(1). See First Fed. Bank of Calif. v. Weinstein (In re Weinstein).

1 227 B.R. 284, 296 (B.A.P. 9th Cir. 1998). Moreover, because the only evidence  
2 before the court also suggests that the value of the Jeeves Property far exceeds the  
3 amount of Firebird's claim, Firebird has not met its burden of proving that the  
4 Debtors lack equity in the property as required by Section 362(d)(2). See 11 U.S.C. §  
5 362(d)(2)(A); 11 U.S.C. § 362(g)(1). No suggestion has been made that Sections  
6 362(d)(3) and 362(d)(4) are applicable in this matter.

- 7 2. The US Abandonment Motion will be denied without prejudice. Under Section  
8 554(b), a party in interest may request an order compelling the abandonment of "any  
9 property of the estate that is burdensome to the estate or that is of inconsequential  
10 value and benefit to the estate." 11 U.S.C. § 554(b). The burden of proof rests with  
11 the party requesting the abandonment. See Gill v. Kirresh (In re Gill), 574 B.R. 709,  
12 714 (B.A.P. 9th Cir. 2017). In this instance, the USA maintains that the Brice Realty  
13 is not property of the estate at all because of the pre-bankruptcy forfeiture proceeding  
14 that it commenced in the USDC. If that is correct, it appears that the USA is seeking  
15 a declaration of the estate's interest in the Brice Realty that must be sought through  
16 commencement of an adversary proceeding. See Fed. R. Bank. P. 7001(2) and Fed.  
17 R. Bankr. P. 7001(9). Moreover, the USA concedes that this court has jurisdiction  
18 over the Brice Personalty but has offered no evidence of the value of such personal  
19 property. Without such evidence, it has not met its obligation to prove that such  
20 items meet any of the descriptives under the statute, i.e., that they are burdensome or  
21 of inconsequential value and benefit to the estate.

22 In addition to this disposition of the Firebird MRAS and the US Abandonment Motion, the court  
23 also concludes that hearing on confirmation of the Debtors' proposed Chapter 13 Plan #2 should  
24 be held for status purposes only in light of the concerns expressed in this Order.

25 **IT IS THEREFORE ORDERED** that the Motion for Relief From the Automatic Stay,  
26 brought by Firebird Living Trust Dated July 18, 2008, Docket No. 14, be, and the same hereby  
27 is, **DENIED WITHOUT PREJUDICE.**

28 **IT IS FURTHER ORDERED** that the Motion to Abandon Certain Assets brought by

1 Joe Christopher Brice and Regina Reschelle Brice, Docket No. 40, be, and the same hereby is,  
2 **DENIED WITHOUT PREJUDICE.**

3 **IT IS FURTHER ORDERED** that the hearing set for February 14, 2019, at 1:30 p.m.  
4 on confirmation of the Debtors' proposed Chapter 13 Plan #2, Docket No. 75, will be conducted  
5 on a **status basis only**, and may thereafter be continued as appropriate in this case.

6  
7 Copies sent via CM/ECF ELECTRONIC FILING

8 Copies sent via BNC to:  
9 JOE CHRISTOPHER BRICE  
10 REGINA RESCHELLE BRICE  
11 8325 JEEVES CIR.  
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