



Honorable Mike K. Nakagawa
United States Bankruptcy Judge



Entered on Docket
September 12, 2019

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

* * * * *

In re:)	Case No.: 19-15207-MKN
)	Chapter 13
JOE CHRISTOPHER BRICE and)	
REGINA RESCHELLE BRICE)	Date: September 10, 2019
Aka REGINA RESCHELLE CHAMBERS,)	Time: 1:30 p.m.
)	
Debtors.)	

ORDER ON MOTION FOR CONTINUATION OF AUTOMATIC STAY TO ALL CREDITORS ON OST¹

On September 10, 2019, the court held an evidentiary hearing on the Motion for Continuation of Automatic Stay to All Creditors on OST (“Motion”). The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

BACKGROUND

On August 14, 2019, a voluntary Chapter 13 petition was filed by Joe Christopher Brice and Regina Reschelle Brice (“Debtors”). (ECF No. 1). Debtors reside at 8325 Jeeves Circle, Las Vegas, Nevada 89149 (“Jeeves Property”).

Debtors commenced a prior Chapter 13 proceeding denominated Case No. 18-14325-MKN on July 23, 2018, that was converted to Chapter 7 on February 25, 2019. Thereafter, the

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

1 assigned Chapter 7 trustee filed a motion to dismiss the case which the Debtors did not oppose.
2 On July 8, 2019, that prior bankruptcy proceeding was dismissed.

3 Because of the prior dismissal within one year of the commencement of the current case,
4 the automatic stay under Section 362(a) expires after 30 days under Section 362(c)(3)(A) unless
5 the Debtors timely obtain a continuation of the automatic stay under Section 362(c)(3)(B).

6 Absent a continuation of the automatic stay in this case, it will expire after September 13, 2019.

7 If the automatic stay expires under Section 362(c)(3), it no longer applies to the Debtors and it no
8 longer applies to property of the bankruptcy estate. See Reswick v. Reswick (In re Reswick),
9 446 B.R. 362, 373 (B.A.P. 9th Cir. 2011).

10 On August 19, 2019, Debtors filed the instant Motion. (ECF No. 14). The Motion is
11 supported by a joint affidavit signed under penalty of perjury by both Debtors (“Debtors
12 Affidavit”). (ECF No. 16). Pursuant to an Order Shortening Time (“OST”), the Motion was
13 scheduled to be heard on August 28, 2019. (ECF No. 18). The OST set a deadline of August 26,
14 2019, for any parties in interest to object to the Motion.

15 On August 28, 2019, the hearing proceeded. Counsel appeared on behalf of the Debtors
16 as well as counsel on behalf of the United States of America (“USA”) and creditor Firebird
17 Living Trust (“Firebird”). Firebird apparently holds a deed of trust against the Jeeves Property
18 securing a purchase money loan that may be in excess of \$600,000.² Although Firebird did not
19 file a written opposition prior to the hearing, its counsel requested the opportunity to examine the
20 Debtors regarding the representations contained in the Debtors Affidavit. In essence, Firebird
21 argues that the Debtors’ testimony is insufficient to overcome the presumption of a lack of good
22 faith in the filing of the latest bankruptcy case. The USA did not object, and the court orally
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26 ² In the prior bankruptcy case, Firebird filed a proof of claim on March 19, 2019, in the
27 amount of \$604,324.68 (“POC 10-1”). Attached as Exhibit “1” to that proof of claim is a copy
28 of a Note Secured by Deed of Trust dated June 26, 2017 (“Firebird Note”). Along with the
Firebird Note, the same exhibit includes a copy of a Short Form Deed of Trust and Assignment
of Rents Purchase Money Trust Deed of the same date (“Firebird Deed of Trust”), recorded in
the Clark County records on June 29, 2017.

1 granted the Motion as to all creditors except for Firebird. The hearing was continued to August
2 30, 2019, for counsel to appear for the scheduling of an evidentiary hearing. At the continued
3 hearing, a date of September 10, 2019, was selected to permit cross-examination of the Debtors.

4 On September 3, 2019, an interim order was entered granting the Motion except with
5 respect to Firebird (“Interim Order”). (ECF No. 23).

6 On September 6, 2019, the USA filed a written objection to the Motion. (ECF No. 24).

7 On September 10, 2019, the evidentiary hearing was conducted at which both Debtors
8 testified and were cross-examined by counsel for Firebird. The court overruled the objection
9 filed by the USA in light of the Interim Order. The court also denied the USA’s oral motion to
10 vacate the Interim Order as to the USA. After presentation of live testimony and closing
11 argument, the court concluded the hearing prior to expiration of the 30-day period.

12 **DISCUSSION**

13 The presumption of a lack of good faith arising under Section 362(c)(3)(C) may be
14 rebutted by clear and convincing evidence. “[C]lear and convincing evidence ‘indicat[es] that
15 the thing to be proved is highly probable or reasonably certain. This is a greater burden than
16 preponderance of the evidence,...but less than evidence beyond a reasonable doubt...’” United
17 States v. Jordan, 256 F.3d 922, 930 (9th Cir. 2001), quoting Black’s Law Dictionary 577 (7th ed.
18 1999).

19 The sole inquiry is whether the Debtors’ current Chapter 13 case was filed in good faith
20 for purposes of satisfying Section 362(c)(3)(A).³ Chapter 13 relief is available only to
21 individuals with regular income that owe, on the bankruptcy petition date, less than \$419,275 in
22 noncontingent, liquidated unsecured debt and less than \$1,257,850 in similar secured debt.
23 There is no dispute that when the Debtors commenced the current case on August 14, 2019, the
24 automatic stay prevented Firebird from completing its foreclosure sale on the Jeeves Property
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27 ³ This inquiry is separate and apart from the two good faith requirements that a Chapter
28 13 debtor must meet to confirm a Chapter 13 plan, i.e., that “the plan has been proposed in good
faith and not by any means forbidden by law” and that “the action of the debtor in filing the
petition was in good faith.” 11 U.S.C. §§ 1325(a)(3) and (a)(7).

1 scheduled for August 15, 2019. According to Firebird's counsel, that foreclosure sale was
2 postponed to October 30, 2019.

3 There also is no dispute that the Debtors' Chapter 13 petition was accompanied by
4 schedules of assets and liabilities ("Schedules") that apparently provide all of the information
5 required by Section 521(a)(1). Additionally, there is no dispute that the Debtors filed a
6 proposed Chapter 13 plan that has been noticed for a confirmation hearing to take place on
7 October 31, 2019. (ECF Nos. 2 and 9). Moreover, there is no dispute that the Debtors filed a
8 Chapter 13 Statement of Your Current Monthly Income and Calculation of Commitment Period
9 ("CMI Form 22C"). (ECF No. 5).

10 Three paragraphs in the Debtors' written testimony drew most of the attention during the
11 evidentiary hearing. In their supporting affidavit, Debtors stated under penalty of perjury:

- 12 * During our last case, we had significant reduction in income because our business,
13 J&R Southern Fried Chicken, began to fail. We have since closed this business.
- 14 * Joint Debtor [Regina Brice] started a new business, RCB Custom Units. This
15 business has netted approximately \$1,200 per month. In addition, we have rented
16 out room in our property located at 8325 Jeeves Circle, Las Vegas, NV and we
17 are grossing approximately \$2,800.00 per month.
- 18 * Finally, Debtor [Joe Brice] believes he will be gainfully employed with the next 4
19 to 8 weeks and we believe we will also be able to bring in additional rental
20 income.

21 Debtors Affidavit at ¶¶ 3, 4 and 5. This written testimony appears to be consistent with other
22 representations made in the other documents filed by the Debtors under penalty of perjury. In
23 their income Schedule I, Debtors represent that their average monthly income includes \$2,800.00
24 from "room rental for Jeeves." They also explain that they intend to seek employment and to
25 rent another room. Additionally, they attest that they also intend to recover a separate parcel of
26 real property, move into that property, and then rent out all of the Jeeves Property. In their CMI
27 Form 22C, separate income details are provided for each Debtor. For the period February 1,
28 2019 through July 31, 2019, Debtor [Joe Brice] attests to monthly income for J&R Southern
Fried Chicken that ceased to exist in the prior three months. He also indicates monthly rents,
presumably from the Jeeves Property, of \$2,800 for each of the prior two months. He also

1 describes his Social Security income of \$1,431.70 for each of the prior six months. For the same
2 period, Joint Debtor [Regina Brice] attests that she received various amounts of income from
3 RCB Custom Units averaging \$1,848.33 per month for each of the prior six months. These
4 monthly rent and monthly Social Security figures, plus the average from RCB Custom Units,
5 come to \$6,080.03. These representations in their Schedule I and in their CMI Form 22C are
6 consistent with the Debtors' testimony in the support affidavit.

7 When cross-examined by Firebird's counsel, Debtors' live witness testimony was not
8 inconsistent with their written testimony. Debtor [Joe Brice] deferred to his spouse concerning
9 the receipt of monthly income from renting the Jeeves Property as well as amounts received from
10 her sale of wigs through operation of RCB Custom Units. Joint Debtor [Regina Brice] testified
11 that she had been collecting \$1,800 per month in rent from her daughter, and another \$1,000 in
12 rent from Ken Woods. She further testified that another \$750 in rent might be collected in the
13 near future from a nephew. Even though she apparently had been selling wigs for at least six
14 months prior to commencement of the current case, Joint Debtor [Regina Brice] testified that she
15 does not have a business license nor has RCB Custom Units⁴ been formally organized under
16 applicable state law.⁵ Both Debtors testified that they expect to obtain additional income at
17 \$12.00 per hour by providing elderly care services, but that neither had begun receiving such
18 income as of the evidentiary hearing. Debtor [Joe Brice] also testified that he is a disabled
19 veteran who separated from military service in 1991, and that he is pursuing a claim for veteran's
20 benefits. No testimony was offered, however, as to any income that the Debtor would receive, or
21 ongoing living expenses that would be covered, if his claim is successful.

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23 Based on these optimistic numbers and forecasts, Debtors believe that they will able to
24 successfully complete their Chapter 13. Their proposed Plan commits to making payments of
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26 ⁴ Presumably, "RCB" represents the initials of the Joint Debtor.

27 ⁵ No testimony was elicited as to whether sales taxes, if any, are collected and remitted to
28 the Nevada Department of Taxation, or whether quarterly estimated taxes, if any, from the
outside income are being paid to the Internal Revenue Service.

1 \$4,500 per month over 60 months commencing on September 30, 2019. Debtors also propose to
2 sell the Jeeves Property no later than September 2021, to net \$119,406 after the sale, and to
3 contribute that net sum to payments under their Chapter 13 plan. They also propose to make
4 monthly “conduit payments”, i.e., through the Chapter 13 trustee, in the amount of \$2,700.00 to
5 Firebird, and \$861.65 to creditor Michael Rohland, commencing in early 2020. Debtors further
6 propose to cure arrearages to Firebird in the total amount of \$35,000, over the 60-month life of
7 the Chapter 13 plan.

8 Whether any Chapter 13 debtors can actually make all of their proposed plan payments
9 is addressed by the feasibility requirement for confirming a Chapter 13 plan. Section 1325(a)(6)
10 requires a Chapter 13 debtor prove that “the debtor will be able to make all payments under the
11 plan and to comply with the plan.” Whether the amounts allegedly owed to Firebird are accurate
12 in the Debtors’ proposed Chapter 13 plan, as well as the monthly conduit amount proposed to be
13 paid, will be addressed by the secured claim treatment requirement for confirmation of a Chapter
14 13 plan. Section 1322(b)(2) prohibits a modification of the rights of creditors whose claims are
15 secured only by the Chapter 13 debtor’s principal residence. At the hearing, Debtors
16 acknowledged that the Firebird Note requires regularly monthly installments of principal and
17 interest in the amount of \$2,786.74, plus \$337.42 in estimated taxes, and \$157.92 in estimated
18 insurance, for a total payment of \$3,282.08. At the hearing, Joint Debtor [Regina Brice] also
19 acknowledged that she was unaware of the assignment of rents provision contained in the
20 Firebird Deed of Trust. Under that provision, Firebird’s lien also extends to the rents that are
21 being collected. Because Section 1322(b) applies to the Jeeves Property, these obligations owing
22 to Firebird, and the related rights under the Firebird Deed of Trust, cannot be modified.

23 There is no doubt that the Debtors will have a variety of hurdles to address at the October
24 31, 2019 hearing on confirmation of their proposed Chapter 13 plan. Among the additional
25 hurdles is the Joint Debtor [Regina Brice]’s receipt of cash for the rents and the sale of wigs,
26 without depositing the cash into a bank account. Debtors previously disclosed that they have
27 several bank accounts, see Schedule A/B at line 17, and it is unlikely that a Chapter 13 trustee
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1 assigned to a case could or would accept monthly plan payments in cash.⁶ Even prior to the
2 scheduled plan confirmation hearing, nothing would prevent Firebird or any other party in
3 interest, including the USA, from seeking other relief.⁷ For example, in the prior Chapter 13
4 case, Debtors apparently were not receiving rents from any source until June 2019. Compare
5 CMI Form 22C at 4, line 6. Under Section 363(a), those rents apparently constitute “cash
6 collateral” in which Firebird has an interest under the assignment of rents clause in its deed of
7 trust. If the Debtors are in the business of renting portions of the Jeeves Property on an ongoing
8 basis under Section 1304(a), then the cash collateral arguably may not be used by the Debtors
9 without the consent of Firebird or prior authorization from the court under Section 363(c).
10 Adequate protection might be required under Section 363(e) upon request.

11 Notwithstanding the plan confirmation difficulties on the horizon, no suggestion has been
12 made that the Debtors do not meet the eligibility requirements for relief under Chapter 13. That
13 the Debtors filed the current Chapter 13 case on the day before the Firebird foreclosure sale on
14 the Jeeves Property is neither uncommon nor unsurprising. That the Debtors filed the current
15 Chapter 13 case within one year of dismissal of a prior bankruptcy case also is neither
16 uncommon nor unsurprising, and was contemplated by Congress through the limits it placed on
17 repeat filers under Section 362(c).

18 Under these circumstances, the court finds that there is a high probability that the Debtors
19 filed the current case in good faith. Whether they can confirm a proposed Chapter 13 plan is not
20 before the court. Debtors therefore have overcome the presumption of a lack of good faith by
21 clear and convincing evidence. As a result, the court concludes solely for purposes of Section
22 362(c)(3), that the Chapter 13 case was filed in good faith.

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26 ⁶ Presumably, Debtor [Joe Brice] requires an active bank account if he receives direct
deposits of his monthly Social Security payments.

27 ⁷ Because plan confirmation is likely to be a contested matter, nothing prevents Firebird
28 or any other party in interest from initiating discovery under FRBP 9014(c), including taking the
deposition of any renters of the Jeeves Property or customers of RCB Custom Units.

1 **IT IS THEREFORE ORDERED** that the Motion for Continuation of Automatic Stay to
2 All Creditors on OST, brought by the above-captioned debtors, Docket No. 14, be, and the same
3 hereby is, **GRANTED** with respect to creditor Firebird Living Trust.

4 **IT IS FURTHER ORDERED** that the relief set forth in the Interim Order on Motion for
5 Continuation of Automatic Stay as to All Creditors on OST, Docket No. 23, is **GRANTED** on a
6 final basis.

7 **IT IS FURTHER ORDERED** that this order is entered without prejudice to any other
8 relief that may be sought in this bankruptcy proceeding by Firebird Living Trust, the United
9 States of America, or any other creditor or party in interest.

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11 Copies sent via CM/ECF ELECTRONIC FILING

12 Copies sent via BNC to:
13 JOE CHRISTOPHER BRICE
14 REGINA RESCHELLE BRICE
15 8325 JEEVES CIR.
16 LAS VEGAS, NV 89149

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