



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
March 26, 2020

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

In re: ) Case No.: 19-15207-MKN  
) Chapter 13  
JOE CHRISTOPHER BRICE and REGINA )  
RESHELLE BRICE aka REGINA )  
RESHELLE CHAMBERS, ) Date: March 25, 2020  
) Time: 1:30 p.m.  
Debtors. )  
)

**ORDER ON MOTION FOR RELIEF FROM THE AUTOMATIC STAY<sup>1</sup>**

On March 25, 2020, the court heard the Motion for Relief From the Automatic Stay (“Second MRAS”) brought by Firebird Living Trust Dated July 18, 2008 (“Firebird”). The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

**BACKGROUND<sup>2</sup>**

On December 23, 2019, an order was entered in the above-captioned case regarding a prior motion for relief from stay (“First MRAS”) brought by Firebird. (ECF No. 77). In that

<sup>1</sup> 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.

<sup>2</sup> Pursuant to FRE 201(b), the court takes judicial notice of all materials appearing on the dockets in the above-captioned case. See U.S. v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980). See also Bank of Am., N.A. v. CD-04, Inc. (In re Owner Mgmt. Serv., LLC Trustee Corps.), 530 B.R. 711, 717 (Bankr. C.D. Cal. 2015) (“The Court may consider the records in this case, the underlying bankruptcy case and public records.”).

1 order (“First MRAS Order”), the above-captioned debtors (“Debtors”) were directed to provide  
2 to Firebird an accounting of all rents received in connection with the property located at 8325  
3 Jeeves Circle, Las Vegas, Nevada 89149 (“Jeeves Property”). Additionally, Debtors were  
4 directed to remit all rents in their possession as well as subsequent rents to Firebird inasmuch as  
5 such rents constitute Firebird’s cash collateral under Section 363(a).<sup>3</sup>

6 On December 23, 2019, an order also was entered on the motion of the United States  
7 seeking a partial stay of this Chapter 13 case pending resolution of its motion for partial  
8 withdrawal of the reference that is pending before the United States District Court for the District  
9 of Nevada.<sup>4</sup> (ECF No. 79). In that order (“Stay Order”), the court denied the request because the  
10 United States had failed to meet its burden of proof under FRBP 5011(c).

11 On January 29, 2020, a hearing was conducted on Firebird’s ex parte request to terminate  
12 the automatic stay as to the Jeeves Property pursuant to the First MRAS Order, due to the  
13 Debtors’ failure to adequately account for the rents. The court ordered the assigned Chapter 13  
14 bankruptcy trustee to turnover to Firebird the amount of \$14,000 in rents that had been collected  
15 by the Debtors on the Jeeves Property, but otherwise denied relief from stay. (ECF No. 101).

16 On February 6, 2020, an order was entered overruling the Debtors’ objection to the proof  
17 of claim filed by Firebird in the amount of \$783,772.78. (ECF No. 100).<sup>5</sup>

18 On February 20, 2020, Firebird filed the instant Second MRAS.<sup>6</sup> (ECF No. 102). It was  
19

---

20 <sup>3</sup> The court also concluded that Firebird had failed to meet its burden of demonstrating  
21 that the Debtors lacked equity in the Jeeves Property because Firebird had not demonstrated the  
22 amount of its secured claim. See First MRAS Order at 6:11 to 8:8.

23 <sup>4</sup> In connection with civil forfeiture proceedings against the Debtors, the United States  
24 seeks to have the district court determine the disposition of the Jeeves Property and other assets  
25 that may be property of the Chapter 13 bankruptcy estate.

26 <sup>5</sup> The court having overruled the Debtors’ challenge to the amount of Firebird’s claim,  
27 the proof of claim currently stands as prima facie evidence under FRBP 3001(f) of the validity  
28 and amount of the Firebird’s claim.

<sup>6</sup> Attached as Exhibit 4 to the Second MRAS is a copy of the Amended Affidavit of  
Steven Pickett dated January 28, 2020.

1 noticed to be heard on March 25, 2020. (ECF No. 103).

2 On February 25, 2020, opposition to the Second MRAS was filed by the United States  
3 (“US Opposition”). (ECF No. 108).<sup>7</sup>

4 On March 4, 2020, Debtors filed a notice scheduling a hearing on confirmation of their  
5 proposed Chapter 13 plan (ECF No. 2) for April 16, 2020. (ECF No. 109).<sup>8</sup>

6 On March 13, 2020, Firebird filed a reply in support of its Second MRAS. (ECF No.  
7 112). On the same date, Firebird filed an opposition to confirmation of the Debtors’ proposed  
8 Chapter 13 plan, including a request for dismissal of the case (“Firebird Plan Objection”).<sup>9</sup> (ECF  
9 No. 113).

### 10 DISCUSSION

11 The parties to this dispute are familiar with the factual and procedural circumstances of  
12 this Chapter 13 case as set forth in the First MRAS Order as well as the Stay Order. Those  
13 orders are incorporated by reference.

14 Firebird again seeks relief from stay under Section 362(d)(2). It again alleges that the  
15 Debtors lack equity in the Jeeves Property and that it is not necessary to an effective  
16 reorganization. It again asserts that there is no reasonable possibility of the Debtors’ Chapter 13  
17 plan being confirmed within a reasonable time. Firebird does not seek relief from stay for cause  
18 under Section 362(d)(1) except to the extent the statute is cited in its reply.

19 The United States opposes relief from stay under any circumstances for the same reasons  
20 advanced previously: it has seized the Jeeves Property as part of a civil forfeiture proceeding  
21 against the Debtors and has recorded a lis pendens against the property. See Stay Order at 4 &

---

22 <sup>7</sup> Debtors did not file a joinder in the opposition filed by the United States. At the  
23 hearing on the Second MRAS, Debtors’ counsel orally joined in the opposition.

24 <sup>8</sup> The Chapter 13 trustee assigned to the case, Rick A. Yarnall (“Chapter 13 Trustee”),  
25 previously filed an objection to confirmation of the Debtors’ only proposed plan, that also  
26 requests that the case be dismissed (“Trustee Objection”). (ECF No. 76). No other plans have  
been proposed by the Debtors.

27 <sup>9</sup> At the hearing on the Second MRAS, Debtors’ counsel represented that the Debtors  
28 intended to seek confirmation of their Chapter 13 plan rather than voluntarily dismissing this  
Chapter 13 case pursuant to Section 1307(b).

nn. 11 and 12. If Firebird were to initiate a nonjudicial foreclose sale of the Jeeves Property under applicable Nevada law, the United States argues that it cannot bid at any foreclosure sale to protect its interests. Moreover, the United States, rather than the Debtors, argues that the Debtors have a claim against Firebird under Nevada law for unjust enrichment that would entitle the Debtors to restitution of up to \$128,445. See US Opposition at 6:13 to 8:2. For that reason, the United States, rather than the Debtors, argues that there is equity in the Jeeves Property that should be protected by the automatic stay.

The obvious problem with the United States' position is that the Debtors have never disclosed a claim against Firebird for unjust enrichment. Debtors have filed schedules of assets and liabilities ("Schedules") under penalty of perjury on three occasions in this Chapter 13 proceeding. (ECF Nos. 1, 84, and 94). In their two property Schedules "A/B," Debtors were directed at Question 33 to describe all "Claims against third parties, whether or not you have filed a lawsuit or made a demand for payment." At Question 34, Debtors were directed to describe "Other contingent and unliquidated claims of every nature, including counterclaims of the debtor and rights to set off claims." Debtors attested that they have claims in response to both questions, but none of them include an unjust enrichment claim against Firebird. In other words, the United States is raising a claim that the Debtors may be barred from asserting by judicial estoppel. See, e.g., Ah Quin v. County of Kauai Dept. of Transp., 733 F.3d 267 (9th Cir. 2013) (judicial estoppel may apply when individual debtor fails to disclose employment discrimination claim in prior bankruptcy proceeding).

Under these circumstances, the court concludes that Firebird has met its burden under Section 362(g)(1) of demonstrating that the Debtors lack equity in the Jeeves Property. For relief from stay under Section 362(d)(2), the burden then shifts to the Debtors to demonstrate a reasonable possibility of a successful reorganization in a reasonable amount of time. See generally, United Savings Assoc. of Texas v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 376 (1988). Based on the record before the court, however, the Debtors have failed to meet that burden.

The record consists of a Chapter 13 plan that was filed along with the Debtor's Chapter

13 petition. Although the Chapter 13 Trustee raised a variety of substantive objections to plan confirmation, see Trustee Objection at 2:12-19, no steps have been taken to address the objections by filing an amended plan.<sup>10</sup> Although Firebird also objects to confirmation of the original Chapter 13 plan by essentially repeating the objections raised by the Chapter 13 Trustee, see Firebird Plan Objection at 2:13 to 3:9 and 3:13-16, Firebird also asserts that the Debtors lack sufficient income to make the payments proposed in the plan. Id. at 3:10-12. Debtors previously testified that the rents from the Jeeves Property would be a significant source of the income available to propose a Chapter 13 Plan. See Order on Motion for Continuation of the Automatic Stay at 4:19 to 6:8, entered September 12, 2019. (ECF No. 25). Debtors subsequently testified that the majority of their plan payments to the Chapter 13 Trustee have been from the rents from the Jeeves Property, see Amended Affidavit of Joe Christopher Brice and Regina Reschelle Brice Regarding Accounting for Jeeves' Property at ¶¶ 7-8, dated January 9, 2020 (ECF No. 87), and that they no longer have tenants. Id. at ¶ 4. Other than the Debtors' apparent desire to seek confirmation of their original plan, see note 9, supra, they have offered no evidence that their only proposed Chapter 13 plan can be confirmed.<sup>11</sup> As a result, Debtors have failed to meet their burden under Section 362(g)(2) of demonstrating that the Jeeves Property is necessary to an effective reorganization. Relief from stay under Section 362(d)(2) therefore is appropriate.

Section 362(d) describes the manner in which relief from stay may be granted by the court: terminating, annulling, modifying, or conditioning, the automatic stay. Having considered the entire record, including the lis pendens recorded by the United States, the court will grant relief to Firebird by modifying the automatic stay. Firebird shall be authorized, but not required, to proceed against the Jeeves Property by way of judicial foreclosure in the appropriate court, rather than by nonjudicial foreclosure. The United States shall be authorized, but not required, to

---

<sup>10</sup> The Chapter 13 Trustee also asserted that the Debtors had failed to provide a variety of necessary information, see Trustee Objection at 2:4-8, but no evidence or representations have been offered or made that the Debtors have complied.

<sup>11</sup> Moreover, there is no dispute that the Debtors commenced a prior Chapter 13 proceeding on July 23, 2018, denominated Case No. 18-14325, in which they never confirmed a Chapter 13 plan. After conversion to Chapter 7, that bankruptcy case was dismissed without a discharge because the Debtors failed to attend their Chapter 7 meeting of creditors.

1 assert its claims and interests against the Jeeves Property, in any such judicial foreclosure  
2 proceeding, or in any other appropriate court having jurisdiction over the parties. In such  
3 judicial foreclosure proceeding against the Jeeves Property, the Debtors may be named as  
4 parties, if necessary, but no claims as a personal liability of the Debtors may be asserted in such  
5 proceedings, without further order of this bankruptcy court.

6 **IT IS THEREFORE ORDERED** that the Motion for Relief from the Automatic Stay,  
7 brought by Firebird Living Trust Dated July 18, 2008 ("Firebird"), Docket No. 102, be, and the  
8 same hereby is, **GRANTED AS SET FORTH HEREIN**.

9 **IT IS FURTHER ORDERED** that Firebird is authorized, but not required, to proceed  
10 against the real property located at 8325 Jeeves Circle, Las Vegas, NV 89149 ("Jeeves  
11 Property"), by way of judicial foreclosure in any appropriate court of competent jurisdiction.

12 **IT IS FURTHER ORDERED** that the United States is authorized, but not required, to  
13 assert its claims and interests against the Jeeves Property, in any such judicial foreclosure  
14 proceeding, or in any other appropriate court having jurisdiction over the matter.

15 **IT IS FURTHER ORDERED** that in such judicial foreclosure proceeding against the  
16 Jeeves Property, the above-captioned Debtors may be named as parties, if necessary, but no  
17 claims as a personal liability of the Debtors may be asserted in such proceedings without further  
18 order of this bankruptcy court.

19 **IT IS FURTHER ORDERED** that the relief granted by this Order is without prejudice  
20 to the interests, rights, or claims of any parties that may otherwise be asserted in the above-  
21 captioned bankruptcy case.

22  
23 Copies sent to all parties via BNC

24 Copies sent via CM/ECF ELECTRONIC FILING

25 Copies sent via BNC to:  
26 JOE CHRISTOPHER BRICE  
27 REGINA RESCHELLE BRICE  
28 8325 JEEVES CIR.  
LAS VEGAS, NV 89149