



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
July 07, 2022

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

In re:

NINETY-FIVE/TWO-FIFTEEN CENTER PART II, LLC,  
Debtor.

GUY SHANI, Trustees of the Shani Investments Inc.  
Defined Benefit Pension Plan and Trust; NITZAN SHANI,  
Trustees of the Shani Investments Inc. Defined Benefit  
Pension Plan and Trust,

Plaintiffs,

vs.

NINETY-FIVE/TWO-FIFTEEN CENTER PART II, LLC,  
a Nevada limited liability company; STAR ONE  
PROPERTIES, a Texas general partnership; SPRING  
VALLEY DEVELOPMENT, LLC, a Nevada limited  
liability company; RAKESH PATEL, an individual;  
REENA PATEL, an individual; DONALD J. KUNKLE, an  
individual; INGRID M. KUNKLE, an individual; DI  
KUNKLE SECOND FAMILY LIMITED  
PARTNERSHIP, a Nevada limited partnership, ARTS  
DISTRICT REAL ESTATE #1, LLC, a Nevada limited  
liability company; LAS VEGAS BOULEVARD HIGH  
RISE, LLC, a Nevada limited liability company; OSSO  
BLANCA ST. LAS VEGAS G.P., a California general  
partnership; LIBERTY TOWER CONDOMINIUMS, LLC,  
a Nevada limited liability company; and AKM GRADING,  
a Nevada sole proprietorship,

Defendants.

Case No. 19-16396-mkn  
Chapter 7

Adv. Proc. No. 20-01098-mkn

Date: June 15, 2022  
Time: 9:30 a.m.

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1 RAKESH PATEL, an individual,  
2 Counter-Claimant,  
3 vs.  
4 GUY SHANI, Trustee of the SHANI INVESTMENTS  
5 INC. DEFINED BENEFIT PENSION PLAN AND TRUST  
6 Counter-Defendant.

7 **ORDER ON MOTION TO DISMISS FOR LACK OF**  
8 **SUBJECT MATTER JURISDICTION<sup>1</sup>**

9 On June 15, 2022, the court heard the Motion to Dismiss for Lack of Subject Matter  
10 Jurisdiction FRCP 12(b)(1) brought by defendants Rakesh Patel and Reena Patel (“Patels”). The  
11 appearances of counsel were noted on the record. After arguments were presented, the matter  
12 was taken under submission.

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

14 On October 2, 2019, a voluntary “skeleton” Chapter 7 petition (“Petition”) was filed on  
15 behalf of Ninety-Five/Two Fifteen Center Part II, LLC (“Debtor”). (ECF No. 1). The Petition  
16 was signed by Daniel Barness (“Barness”) who attested that he is the “duly authorized  
17 representative” of the Debtor. The Petition describes the Debtor’s business as a “single asset real  
18 estate” under Section 101(51B). The case is assigned for administration to Chapter 7 panel

19 \_\_\_\_\_  
20 <sup>1</sup> In this Order, all references to “ECF No.” are to the number assigned to the documents  
21 filed in the above-captioned bankruptcy case as they appear on the docket maintained by the  
22 clerk of court. All references of “AECF No.” are to the documents filed in the above-captioned  
23 adversary proceeding. All references to “Section” or “§§ 101-1532” are to the provisions of the  
24 Bankruptcy Code. All references to “FRE” are to the Federal Rules of Evidence. All references  
to “FRBP” shall be to the Federal Rules of Bankruptcy Procedure. All references to “FRCP”  
shall be to the Federal Rules of Civil Procedure. All references to “NRS” are to the Nevada  
Revised Statutes.

25 <sup>2</sup> Pursuant to FRE 201(b), the court takes judicial notice of all materials appearing on the  
26 docket in the above-captioned adversary proceeding and the above-captioned Bankruptcy Case  
27 See U.S. v. Wilson, 631 F.2d 118, 119 (9th Cir. 1980); see also Bank of Am., N.A. v. CD-04,  
28 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 trustee Shelley D. Krohn (“Trustee”). Attached to the Petition is a list of nine other Chapter 7  
 2 cases pending in this district filed by related entities, all of which apparently are assigned to the  
 3 Trustee. The debtor in one of those other cases is identified as Ninety-Five/Two-Fifteen Center,  
 4 LLC, denominated Case No. 19-15837-mkn.<sup>3</sup> Also attached is a List of Equity Security Holders  
 5 identifying eighteen individual and non-individual members of the limited liability company that  
 6 is the Debtor in the instant case (“Equity Holders List”). According to that list, the largest  
 7 percentage (24.9%) membership interest in the Debtor is held by DI Kunkle Second Family  
 8 LTD. PTNSHP.<sup>4</sup>

9 On October 29, 2019, schedules of assets and liabilities (“Schedules”) and a statement of  
 10 financial affairs (“SOFA”) was filed on behalf of the Debtor. (ECF No. 14). Part 9 of property  
 11 Schedule “A/B” attests that the Debtor has an interest in one parcel of real property identified as  
 12 APN 125-21-301-002, legally described as: PT NE4 SW4 SEC 21 19 60, Las Vegas, Clark  
 13 County, State of Nevada (“Parcel 002”). Part 11 of the same Schedule attests that the Debtor  
 14 owns a cause of action against third parties described as “Possible quiet title and claims for  
 15 preferential judicial sale of Debtor’s interest in real property (APN 125-21-301-002) against LLC  
 16 members Kunkle and/or Fidler, et al.” Part 2 of creditor Schedule “E/F” includes non-priority  
 17 unsecured claims for all of the parties appearing on the Equity Holders List, based on “possible  
 18 claims arising from wrongful acts in connection with investments in company.”

19 Part 3 of the SOFA attests that within one year before the Debtor filed the Petition, it was  
 20 involved in two actions that had been commenced in the Eighth Judicial District Court, Clark  
 21 County, Nevada (“State Court”): (1) Rakesh Patel and Reena Patel (“Patels”) v. Ninety Five Two  
 22 Fifteen Center, LLC, Ninety Five Two Fifteen Center Part II, LLC, Star One Properties, David  
 23 A. Rifkind, Helen R. Rifkind, Guy Shani, and Nitzan Shani, denominated Case No. A-18-  
 24 785851-C, and (2) Marla Fidler, Jonathan Fidler, and Harriet Fidler (“Fidlers”) v. Michael Bash,  
 25 Havard Oxford, LLC, Emerson Twain, LLC, Ninety-Five Fort Apache Complex, LLC, Ninety-

26  
 27 <sup>3</sup> According to Part 9 of property Schedule “A/B” at ECF No. 9 in the latter proceeding,  
 28 that entity has a joint tenancy interest in “3.14 acres of unimproved land located at 6705 US Hwy  
 95, APN 125-21-301-003.”

<sup>4</sup> It is not clear what source of information was used to prepare the Equity Holders List.

1 Five/Two Fifteen Center Part II, LLC, Palm Eight Land Development, LLC, and Berkley  
 2 Enterprises, Inc., denominated Case No. 18-771426-B (“Fidler Action”). The first action is  
 3 described as “Pending” while the latter action is described as “Concluded.” Part 6 of the SOFA  
 4 attests that on August 27, 2019, Arts District Real Estate #1 LLC (“Arts District”) received from  
 5 the Debtor “3.79 acres of land located on West Frontage Road/OSO Blanca Road adjacent to  
 6 [the] Oran K. Gragson Freeway/US Highway No. 95 in Las Vegas, NV 89149; APN 125-21-  
 7 301-002; purchased for \$10,000.00.”

8 On November 27, 2019, the Trustee filed a notice of assets that included a March 5,  
 9 2020, bar date for proofs of claim to be filed. (ECF No. 21).

10 On December 9, 2019, Spring Valley Development, LLC (“Spring Valley”), timely filed  
 11 a proof of claim in the amount of \$1,159,860, allegedly based on a development agreement that  
 12 limits its claim to a maximum of 39 percent of the value of Parcel 002 (“Spring Valley POC”).<sup>5</sup>

13 On December 10, 2019, Arts District timely filed a proof of claim in the amount of  
 14 \$1,000,000, allegedly based on a recorded judgment entitling it to priority under Section  
 15 507(a)(2).<sup>6</sup> On the same date, Arts District filed a separate proof of claim in the same amount  
 16 alleging the same priority, to which is attached a copy of a “Writ of Execution” entered by the  
 17 State Court in the Fidler Action. The writ indicates that it was issued to collect a judgment  
 18 entered on April 12, 2019, in favor of the Fidlers (“Fidler Judgment”),<sup>7</sup> in the principal amount

19 \_\_\_\_\_  
 20 <sup>5</sup> The Spring Valley POC is signed by Spring Valley’s counsel as its authorized agent.

21 <sup>6</sup> These proofs of claim identify the claimant as “Art District” rather than “Arts District.”  
 22 The claimant is not an individual and these proofs of claim are not executed by an authorized  
 agent on behalf of the claimant as required by FRBP 3001(b).

23 <sup>7</sup> “There is no dispute that on August 22, 2019, the Fidlers assigned all of their rights  
 24 under the Fidler Judgment to Arts District. There is no dispute that on August 27, 2019, the  
 25 Debtor’s interest in Parcel 002 was acquired by Arts District at a sheriff’s sale through a credit  
 bid of \$10,000. There is no dispute that under Nevada law, the Debtor has a one-year right of  
 26 redemption (“Redemption Rights”) commencing from the date of the sheriff’s sale, i.e., through  
 August 27, 2020. There is no dispute that the Redemption Rights constitute a legal interest held  
 27 by the Debtor when the Chapter 7 was commenced, and therefore constitutes property of the  
 estate under Section 541(a)(1). There is no dispute that the Trustee has exclusive authority to  
 28 exercise the Redemption Rights on behalf of the bankruptcy estate, but currently does not have  
 funds available to do so.” See Order on Motion for Approval of Settlement Agreement with Arts

1 of \$160,000.<sup>8</sup>

2 On January 13, 2020, the Trustee filed an application to employ a real estate agent to sell  
3 Parcel 002. (ECF No. 31). The Trustee’s declaration in support of the application states that “I  
4 have determined that the assets of this estate consist of real property legally described as PT NE4  
5 SW4 SEC 21 19 60, Las Vegas, Clark County, State of Nevada, APN 125-21-301-002...” The  
6 declaration does not indicate the basis for that determination, i.e., whether it is based on the  
7 representation in Schedule “A/B,” or, on a title report.

8 On January 31, 2020, an order was entered granting the Trustee’s application to employ a  
9 real estate agent to sell Parcel 002 under an exclusive real estate listing agreement. (ECF No.  
10 42). Under Section 2 of the listing agreement, the listing agreement expires six months after  
11 entry of the order, i.e., approximately July 31, 2020.

12 On February 6, 2020, a motion to dismiss the Chapter 7 case (“Kunkle Dismissal  
13 Motion”) was filed on behalf of DI Kunkle Second Family LTD Partnership (“Kunkle”). (ECF  
14 No. 46). The motion asserts that the filing of the Chapter 7 petition was unauthorized.<sup>9</sup>

15 On February 26, 2020, the Trustee filed opposition to the Kunkle Dismissal Motion,  
16 accompanied by the Declaration of Daniel I. Barness. (ECF Nos. 59 and 60). On the same date,  
17 Barness filed a separate opposition (ECF No. 61) to which he attaches an additional declaration,  
18 in addition to a separate request for judicial notice. (ECF No. 62).

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23 District Real Estate #1, LLC, at 7:9-18, entered June 16, 2020 (ECF No. 133). Redemption  
24 Rights under Nevada law are provided by NRS 21.210. Under that statute, a judgment debtor  
25 generally may redeem property from a purchaser within one year of the sale by paying the  
26 purchaser the amount of the purchase price with an additional one percent per month, plus any  
27 assessments, taxes or lien payments made by the purchaser, as well as interest thereon.

28 <sup>8</sup> On March 28, 2020, Arts District filed two separate proofs of claim in the amount of  
\$160,000, representing that they are not amendments to a prior claim, but which also represent  
that they are replacing a previous claim as “overstated.”

<sup>9</sup> The Kunkle Dismissal Motion originally was noticed to be heard on March 11, 2020  
(ECF No. 48), but was continued to June 17, 2020.

1 On March 4, 2020, Kunkle filed an omnibus reply in support of the Kunkel Dismissal  
2 Motion that was accompanied by the Declaration of Rakesh Patel (“Patel Declaration”). (ECF  
3 Nos. 66 and 67).

4 On March 5, 2020, Guy Shani and Nitzan Shani as Trustees of Shani Investments, Inc.  
5 Defined Benefit Pension Plan & Trust (“Shani Trust”), timely filed a proof of claim in the  
6 amount of \$380,750, allegedly secured by a deed of trust against Parcel 002 (“Shani POC”).  
7 Shani Trust alleges that the value of Parcel 002 is \$1,327,000 and that the entire amount of its  
8 claim is secured. Attached as Exhibit “1” to the Shani POC is a copy of a Promissory Note  
9 Secured by Deed of Trust dated May 12, 2017 (“Note”), in the principal amount of \$300,000.  
10 The Note has a maturity date of May 12, 2019, and requires monthly interest payments of \$3,000  
11 commencing June 1, 2017. Attached as Exhibit “2” to the Shani POC is a copy of a Deed of  
12 Trust, Assignment of Leases and Rents, Security Agreement, and Fixture Filing with respect to  
13 Parcel 002 in favor of Shani Trust evidencing that it was recorded in Clark County on May 12,  
14 2017. Attached as Exhibit “3” to the Shani POC is a copy of a separate deed of trust securing the  
15 Note on an adjacent parcel of real property identified as APN 125-21-301-003 (“Parcel 003”).  
16 The latter deed of trust was recorded on April 12, 2018.

17 On March 6, 2020, Barness filed an objection to the Patel Declaration. (ECF No. 69).

18 On March 10, 2020, a motion for relief from stay (“Shani RAS Motion”) was filed on  
19 behalf of Shani Trust, accompanied by the Declaration of Guy Shani and a request for judicial  
20 notice. (ECF Nos. 74, 75, and 76). The Shani RAS Motion was noticed to be heard on April 15,  
21 2020. (ECF No. 77).

22 On March 11, 2020, a separate Declaration of George Smith (“Smith Declaration”) was  
23 filed in support of the Shani RAS Motion, and further amended on March 12, 2020. (ECF Nos.  
24 82 and 83). According to page 1 of the appraisal report attached to the Smith Declaration  
25 (“Smith Appraisal”), two adjacent parcels of land totaling approximately 6.93 net acres (i.e.,  
26 Parcel 002 and Parcel 003) were appraised as of February 26, 2020, at a total value of  
27 \$3,019,000. At page 27, the Smith Appraisal separately values Parcel 002 at \$1,327,000 and  
28 Parcel 003 at \$1,505,000.

1 On March 30, 2020, Rick Patel (“Patel”), filed an untimely proof of claim in a  
2 nonpriority unsecured amount of \$175,000, based on an alleged ownership interest in the Debtor  
3 (“Patel POC”).<sup>10</sup>

4 On March 30, 2020, Kunkle filed an untimely proof of claim in the amount of \$750,000,  
5 allegedly based on a deed recorded on November 14, 2018, with respect to unidentified real  
6 property (“Kunkle POC”).<sup>11</sup>

7 On April 3, 2020, the Trustee filed her opposition to the Shani RAS Motion and related  
8 documents. (ECF Nos. 87, 88, and 89).

9 On April 9, 2020, the Shani Trust filed its reply in support of the Shani RAS Motion.  
10 (ECF No. 93).

11 On April 14, 2020, the Trustee filed a supplement to her opposition to the Shani RAS  
12 Motion. (ECF No. 98).

13 On April 30, 2020, the Trustee filed a motion to approve a certain settlement agreement  
14 (“Settlement Motion”) reached with Arts District. (ECF No. 102).

15 On May 4, 2020, an order was entered shortening time so that the Settlement Motion  
16 could be heard on May 27, 2020. (ECF No. 111).

17 On May 6, 2020, a joinder to the Settlement Motion was filed by Arts District. (ECF No.  
18 113).

19 On May 14, 2020, an opposition to the Settlement Motion was filed by Spring Valley  
20 (“Spring Valley Opposition”). (ECF No. 117).

21 On May 15, 2020, an opposition to the Settlement Motion was filed by Guy Shani and  
22 Nitzan Shani, as Trustees of Shani Investments, Inc. (“Shani Opposition”), along with a  
23 supplemental request for judicial notice and a declaration of Guy Shani. (ECF Nos. 118, 119,  
24 and 120).

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26 <sup>10</sup> The Patel POC is electronically signed by the individual claimant. Patel’s name,  
27 however, does not appear on the Equity Holders List attached to the Petition.

28 <sup>11</sup> The Kunkle POC is not executed by an authorized agent on behalf of the claimant as  
required by FRBP 3001(b).

1 On May 21, 2020, the Trustee filed a reply to the Spring Valley Opposition as well as the  
2 Shani Opposition. (ECF No. 122). On the same date, a joinder to the reply was filed by Arts  
3 District. (ECF No. 123).

4 On May 26, 2020, an interim order was entered on the Shani RAS Motion directing the  
5 Trustee and the Shani Trust to jointly submit a copy of a title report or equivalent documentary  
6 evidence establishing the Debtor's legal title to Parcel 002 ("Interim RAS Order"). (ECF No.  
7 126).

8 On June 10, 2020, the Trustee and Shani Trust filed status reports as required by the  
9 Interim RAS Order. (ECF Nos. 129 and 130).

10 On June 16, 2020, an order was entered denying approval of the Settlement Motion.  
11 (ECF No. 133). Approval of the Settlement Motion was denied by the court without prejudice to  
12 the Trustee seeking to sell the Redemption Rights and certain avoidance claims on a lien free  
13 basis.

14 On June 22, 2020, a final order was entered conditionally granting the Shani RAS Motion  
15 by allowing the Trustee until August 31, 2020, to commence appropriate avoidance actions or  
16 take other steps to administer the estate's interests in the subject property. (ECF No. 137).

17 On July 31, 2020, the Trustee filed a motion to approve a sale of the bankruptcy estate's  
18 Redemption Rights as well as certain designated avoidance actions ("Sale Motion"). (ECF No.  
19 142). The Sale Motion was set to be heard on August 19, 2020, pursuant to an order shortening  
20 time. (ECF No. 148).

21 On August 10, 2020, Arts District filed a joinder in support of the Sale Motion. (ECF  
22 No. 150).

23 On August 17, 2020, an order was entered approving a stipulation to withdraw the  
24 Kunkel Dismissal Motion. (ECF No. 154).

25 On August 19, 2020, Guy Shani and Nitzan Shani, Trustees of the Shani Investments Inc.  
26 Defined Benefit Pension Plan and Trust ("Plaintiffs") commenced the above-captioned adversary  
27 proceeding ("Adversary Proceeding") by filing an adversary complaint ("Complaint"). (AECF  
28 No. 1). Defendants named in the Complaint include the above-captioned Debtor, as well as the



1 following parties: Star One Properties; Spring Valley Development, LLC; Rakesh Patel; Reena  
2 Patel<sup>12</sup>; Donald J. Kunkle; Ingrid M. Kunkle; DI Kunkle Second Family Limited Partnership<sup>13</sup>;  
3 Arts District; Las Vegas Boulevard High Rise, LLC; Osso Blanca St. Las Vegas G.P.; Liberty  
4 Tower Condominiums, LLC; AKM Grading; and various fictitiously named entities.<sup>14</sup> The  
5 Complaint alleges that the Adversary Proceeding arises out of and is related to the Chapter 7  
6 case, that the bankruptcy court has subject matter jurisdiction under 28 U.S.C. §§ 157 and 1334,  
7 and that the Adversary Proceeding is a core proceeding under 28 U.S.C. § 157(b)(2)(K) seeking  
8 to determine the validity, extent or priority of liens. See Complaint at ¶¶ 1, 3, and 4.

9 Plaintiffs allege that each of the named defendants have or may assert an interest in  
10 Parcel 002 that is adverse to the interests of the Plaintiffs. Plaintiffs allege that they are the  
11 beneficiaries of a Deed of Trust, Assignment of Leases and Rents, Security Agreement, and  
12 Fixture Filing (“Shani Deed of Trust”) recorded against Parcel 002 on May 12, 2017. See  
13 Complaint at ¶ 25. They also allege that there were no other liens against Parcel 002 at the time  
14 the Shani Deed of Trust was recorded, see id. at ¶¶ 26 and 55, and that the obligation has not  
15 been paid. Id. at ¶ 27. Plaintiffs allege that the Shani Deed of Trust includes an incorrect legal  
16 description of Parcel 002, see id. at ¶¶ 29 and 56, but does include the correct Assessor’s Parcel  
17 Number. Id. at ¶¶ 30 and 59. They also allege that because the Shani Deed of Trust contains the  
18 correct Assessor’s Parcel Number and was properly recorded under the Plaintiffs’ name, all other  
19 parties had either actual, constructive, and/or inquiry notice of the Shani Deed of Trust. Id. at ¶  
20 58. Plaintiffs, therefore, allege three separate claims: (1) Quiet Title to Parcel 002 based on the  
21 Shani Deed of Trust recorded on May 12, 2017; (2) Reformation of the Shani Deed of Trust to  
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23 <sup>12</sup> Unless otherwise indicated, hereafter defendants Rakesh Patel and Reena Patel will be  
24 referenced as the “Patel Defendants.”

25 <sup>13</sup> Unless otherwise indicated, hereafter defendants Donald J. Kunkle, Ingrid M. Kunkle,  
26 and DI Kunkle Second Family Limited Partnership will be referenced as the “Kunkle  
27 Defendants.”

28 <sup>14</sup> The court is uncertain whether at the time the Adversary Proceeding was commenced  
there already was a pending action in another court where the claims between all of the parties  
were being adjudicated.

1 include the correct legal description; and (3) imposition of an Equitable Lien against Parcel 002  
2 in the event quiet title or reformation is not granted.

3 On August 20, 2020, an order was entered granting the Sale Motion (“Sale Order”). The  
4 Sale Order approves a Purchase Agreement for the Redemption Rights and certain avoidance  
5 claims to be acquired by Arts District for the total amount of \$251,000, with the full purchase  
6 price to be paid no later than December 31, 2021. (ECF No. 158).

7 On September 21, 2020, a copy of the Complaint and summons was served on Arts  
8 District. (AECF No. 21).

9 On September 23, 2020, a copy of the Complaint and summons was served on the Patels.  
10 (AECF Nos. 29 and 30).

11 On September 29, 2020, the Kunkle Defendants filed an answer to the Complaint.  
12 (AECF No. 34).

13 On October 28, 2020, defendant Spring Valley Development, LLC, filed an answer to the  
14 Complaint. (AECF No. 36).

15 On November 20, 2020, Plaintiffs filed an application for entry of default against the  
16 Patel Defendants along with a supporting declaration of their counsel (“Patel Defendants Default  
17 Application”). (AECF Nos. 40 and 41). On the same date, a certificate of service was filed  
18 attesting that the Patel Defendants Default Application was served by first class mail. (AECF  
19 No. 42).

20 On November 20, 2020, Plaintiffs filed an application for entry of default against Arts  
21 District along with a supporting declaration of their counsel (“Arts District Default  
22 Application”). (AECF Nos. 46 and 47). On the same date, a certificate of service was filed  
23 attesting that the Arts District Default Application was served by first class mail. (AECF No.  
24 48).

25 On November 23, 2020, default was entered on the Complaint against Arts District.  
26 (AECF No. 55).

27 On December 2, 2020, default was entered on the Complaint against the Patel  
28 Defendants. (AECF No. 78 and 80).

1 On December 2, 2020, default was entered on the Complaint against Arts District.  
2 (AECF No. 81).

3 On December 23, 2020, Arts District filed a Motion to Set Aside Default and Dismiss  
4 Case on Behalf of Arts District Real Estate #1, LLC (“Set Aside and Dismissal Motion”).  
5 (AECF No. 97). Attached to the Set Aside and Dismissal Motion is a copy of the Sale Order.  
6 The motion sought to set aside the default for failure to answer the Complaint, and also to  
7 dismiss the Complaint for failure to state a claim for relief apparently based on a lack of  
8 jurisdiction to consider a quiet title action.

9 On December 29, 2020, Arts District noticed its Set Aside and Dismissal Motion to be  
10 heard on February 3, 2021. (AECF No. 102).

11 On January 20, 2021, Plaintiffs filed an opposition to the Set Aside and Dismissal  
12 Motion, supported by a declaration of Guy Shani and a request for judicial notice. (AECF Nos.  
13 105, 106, and 107).

14 On February 22, 2021, an order was entered denying the Set Aside and Dismissal  
15 Motion. (AECF No. 113).

16 On March 9, 2021, the Patel Defendants filed a Motion to Set Aside Defaults and noticed  
17 it for hearing on April 14, 2021. (AECF Nos. 119 and 120).

18 On June 17, 2021, an order was entered granting the Patel Defendants’ Motion to Set  
19 Aside Defaults conditioned on the payment of attorney’s fees to the Plaintiffs. (AECF No. 131).

20 On July 1, 2021, the Patel Defendants filed an answer to the Complaint which included a  
21 counterclaim. (AECF No. 139). The answer specifically admits the allegations of paragraphs 1,  
22 3, and 4 of the Complaint.

23 On July 2, 2021, the Patel Defendants amended their answer and counterclaim. (AECF  
24 No. 141). The amended answer specifically admits the allegations of paragraphs 1, 3, and 4 of  
25 the Complaint.

26 On July 6, 2021, an order was entered regarding the Patel Defendants’ Motion to Set  
27 Aside Defaults. (AECF No. 142).

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1 On September 15, 2021, the Patel Defendants filed another amended answer that does not  
2 include a counterclaim.<sup>15</sup> (AECF No. 146). The amended answer specifically admits the  
3 allegations of paragraphs 1, 3, and 4 of the Complaint.

4 On September 22, 2021, the Patel Defendants filed a further amended answer that does  
5 not include a counterclaim. (AECF No. 150). The amended answer specifically admits the  
6 allegations of paragraphs 1, 3, and 4 of the Complaint.

7 On October 7, 2021, Plaintiffs filed a notice of subpoena duces tecum issued to the  
8 Custodian of Records of the Clark County Recorder's Office, along with a certificate of service  
9 showing service to all attorneys of record. (AECF Nos. 159 and 160).

10 On January 19, 2022, the Trustee filed a report of receipt of \$251,000.00 as a result of the  
11 Purchase Agreement approved by the Sale Order. (ECF No. 173).

12 On April 20, 2022, Plaintiffs filed a motion seeking partial summary judgment against  
13 the Kunkle defendants, as well as against the Patel Defendants ("Partial MSJ"). (AECF No.  
14 175). The motion is supported by a Statement of Undisputed Facts, and the declarations of Guy  
15 Shani and J. Bushnell Nielsen. (AECF Nos. 176, 177, and 178). The motion was noticed to be  
16 heard on June 2, 2022. (AECF No. 179).<sup>16</sup> Opposition to the Partial MSJ was required to be  
17 filed by no later than May 19, 2022, under LR 9014(d)(3).

18 On April 20, 2022, the Plaintiffs' Application for Default Judgment by the Court  
19 Pursuant to Fed.R.Civ.P. 55(b)(2) Against Defendants Ninety-Five/Two-Fifteen Center Part II,  
20 LLC, Star One Properties, Arts District Real Estate #1, LLC, and AKM Grading ("Default  
21 Judgment Application") was filed along with the supporting declarations of Guy Shani and J.  
22 Bushnell Nielsen. (AECF Nos. 181-183). Attached to the Default Judgment Application are 10  
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24 <sup>15</sup> A response to the counterclaim had never been filed by the Plaintiffs at the time of this  
25 amended answer, so it may be that the Patels were attempting to amend their answer "as a matter  
26 of course" to withdraw the counterclaim under FRCP 15(a)(1). It appears that the parties have  
27 treated the amendment as an effective withdrawal of the counterclaim because there is no  
28 response to the counterclaim that appears on the docket.

<sup>16</sup> On May 16, 2022, the court ordered that the Partial MSJ be heard on June 15, 2022,  
instead of June 2, 2022.

1 documents marked as exhibits. The Default Judgment Application was noticed to be heard on  
2 June 1, 2022. (AECF No. 184).

3 On May 3, 2022, the Patels filed the instant motion to dismiss the adversary proceeding  
4 for lack of jurisdiction pursuant to FRCP 12(b)(1) (“12(b)(1) Motion”). (AECF No. 188). That  
5 motion was noticed to be heard on June 15, 2022. (AECF No. 189).

6 On May 12, 2022, the Patel Defendants filed a limited opposition to the Partial MSJ.  
7 (AECF No. 197). The opposition is based on the 12(b)(1) Motion, i.e., that partial summary  
8 judgment cannot be granted because the Adversary Proceeding must be dismissed for lack of  
9 jurisdiction.

10 On May 17, 2022, Plaintiffs filed an opposition to the 12(b)(1) Motion supported by the  
11 Declaration of Guy Shani. (AECF Nos. 202 and 203).

12 On May 18, 2022, defendant Arts District filed its Opposition to Application for Default  
13 Judgment and Countermotion to Set Aside Entry of Default (“Default Relief Countermotion”),  
14 along with a supporting Declaration of Robert Ford. (AECF Nos. 206 and 207).

15 On May 19, 2022, the deadline to file opposition to the Partial MSJ expired with no  
16 opposition having been filed by the Kunkle Defendants.

17 On May 25, 2022, Plaintiffs filed a reply in support of its Default Judgment Application  
18 and opposition to the Default Relief Countermotion, along with the supporting declarations of  
19 Guy Shani and Andrew J. Glendon. (AECF Nos. 217-219).

20 On June 8, 2022, the Patels filed their reply in support of the 12(b)(1) Motion. (AECF  
21 No. 221).

22 On June 8, 2022, Plaintiffs filed their reply in support of the Partial MSJ. (AECF No.  
23 223).

## 24 **DISCUSSION**

25 In this adversary proceeding, the Arts District previously asserted that the court lost  
26 subject matter jurisdiction over the instant Adversary Proceeding by authorizing the Trustee to  
27 sell the Redemption Rights and certain avoidance claims. Those arguments were asserted in  
28 connection with the Set Aside Motion brought by Arts District and were rejected by the court.

1 The Patels make the same argument in their instant 12(b)(1) Motion and the court reaches the  
2 same conclusion for at least three reasons.

3 First, in each of the answers and amended answers filed by the Patels, they admitted the  
4 allegations of paragraphs 1, 3, and 4 of the Complaint. Included in those admissions was that the  
5 court does have subject matter jurisdiction over the Adversary Proceeding.

6 Second, FRCP 12(b) specifically allows defenses, including a lack of subject matter  
7 jurisdiction, to be raised by motion, but it “must be made before pleading if a responsive  
8 pleading is allowed.” An answer to a complaint is a responsive pleading. See Fed.R.Civ.P.  
9 7(a)(2). By filing their multiple answers and amended answers, the Patels are barred from  
10 asserting their current defense through their 12(b)(1) Motion.

11 Third, at the time Plaintiffs commenced the instant Adversary Proceeding, the  
12 Redemption Rights were property of the Chapter 7 estate as well as the avoidance claims. At the  
13 time the instant Adversary Proceeding was commenced, adverse claims existed between the  
14 Plaintiffs and the Patels concerning the rights, if any, existing under the Shani Deed of Trust.  
15 Those disputes existed before the bankruptcy case was commenced on behalf of the Debtor and  
16 remained at issue during the bankruptcy proceeding. The disputes do not arise under the  
17 Bankruptcy Code, but do arise in a case that is brought under the Bankruptcy Code. See 28  
18 U.S.C. § 1334(b). Moreover, the claims for relief are sufficiently related to the instant Chapter 7  
19 proceeding inasmuch as they are core matters that impact the Trustee’s further administration of  
20 the case, see 28 U.S.C. § 157(b)(2)(A), including the distribution to allowed claims against the  
21 estate, see 28 U.S.C. § 157(b)(2)(B), and the claims seek a determination of the validity, extent  
22 and priority of liens. See 28 U.S.C. § 157(b)(2)(K). In other words, the court had subject matter  
23 jurisdiction over these core matters at the time the Adversary Proceeding was commenced and  
24 continues to have subject matter jurisdiction over the claims alleged in the Complaint.

25 For these reasons,<sup>17</sup> the court concludes that dismissal of the Adversary Proceeding under  
26 FRCP 12(b)(1) is unwarranted.

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27 <sup>17</sup> Of course, the first two reasons are sufficient to deny the instant motion, but the court  
28 otherwise concludes that subject matter jurisdiction over the Adversary Proceeding exists.

1           **IT IS THEREFORE ORDERED** that the Motion to Dismiss for Lack of Subject Matter  
2 Jurisdiction FRCP 12(b)(1), brought by defendants Rakesh Patel and Reena Patel, Adversary  
3 Docket No. 188, be, and the same hereby is, **DENIED**.

4  
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