



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
November 16, 2020

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

\* \* \* \* \*

In re:	)	Case No.: 20-12895-MKN
	)	Chapter 7
GREGG WILLIAM CHAMBERS,	)	
	)	
Debtor.	)	Date: November 4, 2020
	)	Time: 2:30 p.m.
	)	

**ORDER REGARDING MOTION FOR ORDER COMPELLING ALEXIS L. BROWN,  
ESQ. TO TURNOVER BANKRUPTCY ESTATE PROPERTY  
PURSUANT TO 11 U.S.C. § 543<sup>1</sup>**

On November 4, 2020, the court heard the Motion for Order Compelling Alexis L. Brown, Esq. to Turnover Bankruptcy Estate Property Pursuant to 11 U.S.C. § 543, brought by Chapter 7 trustee Ryan A. Anderson. The appearances of counsel were noted on the record. After arguments were presented, the matter was taken under submission.

**BACKGROUND**

On June 17, 2020, Gregg William Chambers (“Debtor”) filed a voluntary Chapter 7 petition, along with his schedules of assets and liabilities (“Schedules”) and statement of financial affairs (“SOFA”). (ECF No. 1).<sup>2</sup> The case was assigned for administration to Ryan A.

<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 the provisions of the Bankruptcy Code, 11 U.S.C. §§ 101-1532.

<sup>2</sup> The docket indicates that the Debtor filed a previous Chapter 13 petition on February 20, 2020, denominated Case No. 20-10946-MKN. That proceeding was dismissed on May 12, 2020 because the Debtor failed to file his schedules of assets and liabilities as well as other information required under Section 521(a). Under Section 362(c)(3)(A), the automatic stay

1 Anderson as Chapter 7 bankruptcy trustee (“Trustee”).<sup>3</sup> A Notice of Chapter 7 Bankruptcy Case  
 2 (“Bankruptcy Notice”) was issued scheduling a meeting of creditors for July 22, 2020. (ECF No.  
 3 8). The Bankruptcy Notice also set a deadline of September 21, 2020, for creditors to object to  
 4 discharge and to dischargeability of debts. The meeting of creditors was continued on various  
 5 occasions, with the most recent continuance to November 16, 2020. (ECF No. 113).

6 On his Schedule “A/B,” Debtor attests under penalty of perjury that he “claims 50%  
 7 equitable title/not on title” to real property identified as 1201 West Lund Drive, Las Vegas,  
 8 Nevada 89102 (“1201 Property”). He also attests under penalty of perjury that he is “50%  
 9 Owner/Elizabeth Ramsey 50% Owner” of real property identified as 1207 West Lund Drive, Las  
 10 Vegas, Nevada 89102 (“1207 Property”). Debtor also attests under penalty of perjury that he has  
 11 a “main residence/keeping” identified as 3228 Robin Circle, Las Vegas, Nevada 89121 (“Robin  
 12 Circle Property”).<sup>4</sup> On his Schedule “A/B,” he also attests that his property includes “balance of  
 13 closing costs held in escrow” having a value of \$15,000 (“Escrow Closing Costs”), but he does  
 14 not list any claims against third parties or any contingent or unliquidated claims of any nature.

15 On his Schedule “C,” Debtor claims a Nevada homestead exemption in the Robin Circle  
 16 Property, but no exemption in the 1201 Property or 1207 Property, nor the Escrow Closing  
 17 Costs. On his creditor Schedule “E/F,” he lists Eugene Tumbarello (“Tumbarello”) as having an  
 18 unsecured claim in the amount of \$150,000 that is the subject of “District Court Case No. A-17-  
 19 763560-C.” On his Schedule “H,” Debtor lists Elizabeth Ramsey as a co-debtor with respect to

20 \_\_\_\_\_  
 21 arising in the current Chapter 7 proceeding was in effect for 30 days unless the Debtor obtained  
 22 an extension by filing and having a motion under Section 362(c)(3)(B) heard within 30 days.  
 23 There is no evidence in the record that such a motion was filed or granted. As a result, the  
 24 automatic stay in this Chapter 7 proceeding terminated on July 17, 2020. The termination  
 25 applies as to both the Debtor and the bankruptcy estate. See Reswick v. Reswick (In re  
Reswick), 446 B.R. 362, 373 (B.A.P. 9th Cir. 2011). But cf., In re Thu Thi Dao, 616 B.R. 103  
 (Bankr. E.D. Cal. 2020) (automatic stay terminates only as to the debtor).

26 <sup>3</sup> The Chapter 7 case initially was assigned to Chapter 7 panel trustee Troy S. Fox, but  
 27 subsequently was reassigned to the current Trustee.

28 <sup>4</sup> On his Chapter 7 petition, the Robin Circle Property is identified as his residence.

1 secured creditors having interests in the 1201 Property and 1207 Property.<sup>5</sup> On his income  
2 Schedule “I,” Debtor attests that he is self-employed as a “handyman/house flipper.”

3 On his SOFA, Debtor attests that he previously resided at 1263 Dean Court, Henderson,  
4 Nevada 89014 (“Dean Property”) from August 2017 to March 2018. He also attests in his SOFA  
5 that the Dean Property was sold in January 2020 to Bobby L. Vess for a purchase price of  
6 \$212,000, with \$40,000 being held in escrow (“Dean Sale Proceeds”). On his SOFA, Debtor  
7 also attests that he had gross income of \$72,000 during the 2019 calendar year, as well as  
8 \$34,000 in the following calendar year up to the June 17, 2020 petition date.<sup>6</sup> Debtor also attests  
9 that within one year prior to filing his voluntary Chapter 7 petition, he was a named plaintiff or  
10 defendant in four separate civil matters before justice, district, and the Supreme Court in the state  
11 of Nevada (“State Court”). Three of those matters involve a judgment obtained against the  
12 Debtor in favor of Tumbarello and Shamrock Painting, Inc. (“Judgment Creditors”).

13 On his SOFA, Debtor does not list an interpleader proceeding that he commenced in  
14 State Court entitled Chambers v. River Mountain Mobile Estates, et al., denominated Case No.  
15 A-20-810935-C (“Interpleader Action”). By its very nature, an interpleader action seeks to  
16 absolve a neutral stakeholder from liability from competing claims asserted by third parties to  
17 funds held by the stakeholder. The complaint was filed on Debtor’s behalf by attorney Alexis  
18 Brown of Brown Law Chtd. (“Brown Firm”). On June 16, 2020, i.e., the day before the  
19 bankruptcy petition was filed, the State Court entered an order in the Interpleader Action  
20 directing Driggs Title Agency, Inc. (“Driggs”) to release a total of \$28,229.98 from the Dean  
21 Sale Proceeds to attorney Alexis Brown, to be held in her trust account. The order provides that

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22  
23 <sup>5</sup> Apparently, the co-debtor commenced a separate Chapter 13 proceeding denominated  
Case No. 20-11877-MKN on April 7, 2020, which was dismissed on July 21, 2020.

24  
25 <sup>6</sup> During the Debtor’s prior Chapter 13 proceeding, his post-petition earnings were  
property of the Chapter 13 estate pursuant to Section 1306(a)(1). During the instant Chapter 7  
26 case, however, Debtor’s post-petition earnings are not property of the Chapter 7 estate pursuant  
to Section 541(a)(6). Because the automatic stay in this Chapter 7 proceeding terminated after  
27 30 days, see note 2, supra, neither the Debtor nor his post-petition earnings are protected by the  
automatic stay. Additionally, because a Chapter 7 discharge has not been entered in this  
28 proceeding at this time, the discharge injunction arising under Section 524(a)(2) does not apply  
with respect to the Debtor’s personal liability for pre-bankruptcy debts.

1 the funds shall be “maintained in such trust account of Alexis Brown Law, Chtd. pending further  
2 order of the Court regarding entitlement to and distribution of the Funds.”

3 On August 28, 2020, an order was entered approving a settlement between the Trustee  
4 and the Judgment Creditors regarding various matters including, inter alia, the exercise of certain  
5 redemption rights concerning the 1201 Property and 1207 Property and a motion to dismiss the  
6 Chapter 7 case that had been filed by the Judgment Creditors. (ECF No. 63).

7 On September 17, 2020, the Trustee filed the instant motion under Section 543 directing  
8 the Brown Firm to turn over the funds retained in the escrow account (“Brown Turnover  
9 Motion”). (ECF No. 71). The motion is accompanied by the Chapter 7 trustee’s declaration.  
10 (ECF No. 72). On the same date, the Trustee commenced Adversary Proceeding No. 20-01117-  
11 MKN against River Mountain Mobile Estates Owners’ Association, as well as Adversary  
12 Proceeding No. 20-01119-MKN against the Judgment Creditors. In both adversary proceedings,  
13 the Trustee asserts that certain liens obtained by the defendants are subject to avoidance under  
14 Section 544(a).

15 On September 21, 2020, the Judgment Creditors filed an adversary complaint against the  
16 Debtor objecting to a discharge of debt based on Sections 523(a)(2, 4, and 6) (“523 Complaint”).  
17 (AECF No. 1).<sup>7</sup> An initial scheduling conference in that matter was set for January 28, 2021.

18 On October 6, 2020, Debtor’s counsel filed a motion seeking to withdraw from further  
19 representation of the Debtor in the bankruptcy case as well as in the adversary proceeding filed  
20 by the Judgment Creditors (“Attorney Withdrawal Motion”). (ECF No. 95).

21 On October 7, 2020, Debtor filed an amended Schedule “A/B” that included the Dean  
22 Sale Proceeds in the amount of \$44,000. (ECF No. 100). He also checked a box representing  
23 that he has claims against third parties, but does not identify what those claims are, and does not  
24 mentioned the Interpleader Action.<sup>8</sup> Debtor also included an amended Schedule “C” that claims  
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26 <sup>7</sup> All references to “AECF No.” are to the documents filed in this adversary proceeding.

27 <sup>8</sup> Debtor’s failure to schedule the Interpleader Action might prevent him from later  
28 asserting that the Trustee abandoned the action under Section 554(c). See Stevens v. Whitmore  
(In re Stevens), 617 B.R. 328, 333-34 (B.A.P. 9th Cir. 2020).

1 the Dean Sale Proceeds as exempt under Nev.Rev.Stat. 21.090(1)(g), but did not claim an  
2 exemption of any interest in the Interpleader Action. Debtor’s amendment disclosed that the  
3 Dean Sale Proceeds are “held by Driggs Title and Alexis Brown.”

4 On October 20, 2020, an order was entered approving a stipulation between the Debtor,  
5 the Trustee and the Office of the United States Trustee, extending the deadline to January 5,  
6 2021, for objections to be filed to the Debtor’s discharge under Section 727(a). (ECF No. 115).

7 On October 20, 2020, Debtor filed an answer to the 523 Complaint. (AECF No. 7).

8 On October 21, 2020, the Brown Firm filed an opposition to the Brown Turnover Motion  
9 (“Brown Opposition”). (ECF No. 117).

10 On October 23, 2020, an order was entered granting the Attorney Withdrawal Motion.  
11 (ECF No. 119).

12 On October 28, 2020, the Trustee filed a reply in support of the Brown Turnover Motion.  
13 (ECF No. 122).

#### 14 DISCUSSION

15 Section 101(11) defines the meaning of a “custodian” for purposes of bankruptcy cases.  
16 A custodian means one of the following: “(A) receiver or trustee of any property of the debtor,  
17 appointed in a case or proceeding not under this title; (B) assignee under a general assignment  
18 for the benefit of the debtor’s creditors; or (C) trustee, receiver, or agent under applicable law, or  
19 under contract, that is appointed or authorized to take charge of property of the debtor for the  
20 purpose of enforcing a lien against such property, or for purpose of general administration of  
21 such property for the benefit of the debtor’s creditors.” 11 U.S.C. §101(11)(A, B, and C)  
22 (emphasis added).

23 Section 543(a) prohibits a custodian from making any disbursement from or taking any  
24 action in the administration of property of the debtor or property of the bankruptcy estate in  
25 possession, custody or control of the custodian except as necessary to preserve such property. 11  
26 U.S.C. §543(a). Section 543(b) requires a custodian to deliver such property to the bankruptcy  
27 trustee that is in the custodian’s possession or control, and to provide an accounting of the  
28 property held. 11 U.S.C. §543(b)(1 and 2). Section 543(d) permits the bankruptcy court to

1 excuse compliance if the interests of creditors and if the debtor is not insolvent, equity security  
2 holders, would be better served, or, requires the bankruptcy court to excuse compliance if the  
3 custodian is an assignee for the benefit of creditors under state law. 11 U.S.C. §543(d)(1 and 2).

4 In this proceeding, the Brown Firm disputes that it is a custodian within the meaning of  
5 Section 101(11). At the same time, however, it represents in writing and at the hearing on the  
6 instant motion, that it was ordered by the State Court to hold the Dean Sale Proceeds in its trust  
7 account. Because the Brown Firm was expressly ordered to hold the subject funds in trust, it is a  
8 trustee appointed in a non-bankruptcy proceeding under Section 101(11)(A) with respect to the  
9 Dean Sale Proceeds. The prohibitions and obligations under Section 543 therefore apply. Thus,  
10 the Brown Firm is prohibited from making disbursements or taking action with respect to the  
11 Dean Sale Proceeds, and is required to deliver such funds to the Trustee and account for the  
12 Dean Sale Proceeds.

13 The Brown Firm suggests, however, that it should be excused from compliance with  
14 Section 543(b). Even though the Brown Firm has not substituted into the Chapter 7 proceeding  
15 on behalf of the Debtor, it appears to be advocating on the Debtor's behalf.<sup>9</sup> The firm's  
16 suggestions are misguided.

17 Although the Dean Sale Proceeds were not initially listed on the Debtor's property  
18 Schedule "A/B," the amendment filed under penalty of perjury on October 7, 2020, now lists the  
19 Debtor's interest. As a result of the Debtor's judicial admission, his legal or equitable interest in  
20 the Dean Sale Proceeds, if any, is property of the bankruptcy estate under Section 541(a)(1). As  
21 a further result, the Trustee is required to collect the Dean Sale Proceeds as property of the estate  
22 under Section 704(a)(1).

23 Debtor's claim to an exemption of the Dean Sale Proceeds now appears in his amended  
24 Schedule "C" that also was filed under penalty of perjury on October 7, 2020. In bankruptcy  
25 proceedings, unless a party in interest objects, property claimed as exempt by a debtor "is

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26  
27 <sup>9</sup> If the Debtor asserts any affirmative claims for relief in the Interpleader Action, those  
28 claims arose before the Chapter 7 was filed and are property of the bankruptcy estate. See Sierra  
Switchboard Co. v. Westinghouse Electric Corp., 789 F.2d 705, 707 (9th Cir. 1986) (petition  
emotional distress claim is a legal interest constituting property of estate).

1 exempt.” 11 U.S.C. §521(l). Under Bankruptcy Rule 4003, parties in interest must object to a  
2 claim of exemption no later than 30 days after the meeting of creditors is concluded.  
3 Fed.R.Bankr.P. 4003(b)(1). As previously mentioned, the meeting of creditors in this case has  
4 not been concluded and was continued to November 16, 2020. As a result, the 30-day objection  
5 deadline has not started, and the Dean Sale Proceeds remain property of the Chapter 7 estate. As  
6 a further result, the Trustee is required to collect the Dean Sale Proceeds.

7 The Brown Opposition to the instant motion asserts that the subject funds are exempt  
8 under Nevada law and that the Debtor needs the money for his living expenses. The Brown Firm  
9 acknowledges that \$28,229.98 was received from Driggs on or about June 30, 2020. The Brown  
10 Firm suggests that the Trustee has failed to prove that the turnover required by Section 543(b) is  
11 in the best interests of creditors. This is not the Trustee’s burden.

12 Debtor’s claim of exemption in the Dean Sale Proceeds was never asserted until October  
13 7, 2020, and control of that property of the estate remains in the Trustee until the exemption is  
14 allowed. See, e.g., Mwangi v. Wells Fargo Bank, N.A. (In re Mwangi), 764 F3d 1168, 1176 (9th  
15 Cir. 2014) (Chapter 7 debtors had no right to possess or control deposit funds claimed as exempt  
16 under Nev.Rev.Stat. 21.090(1)(g) until after expiration of the objection deadline under  
17 Bankruptcy Rule 4003(b)(1)). The Trustee’s statutory obligation to collect the Dean Sale  
18 Proceeds does not require him to prove that turnover is in the best interest of creditors. As a  
19 fiduciary, the Trustee is required to protect the interests of all creditors of the bankruptcy estate  
20 and collection of estate assets is an essential responsibility. The applicability of the exception to  
21 a custodian’s turnover obligation under Section 543(d) must be demonstrated by the party  
22 seeking relief, not the bankruptcy trustee. In this instance, the Brown Firm is a custodian  
23 appointed by the State Court, but does not have fiduciary responsibilities of a bankruptcy trustee  
24 to all creditors of the Debtor.

25 Under these circumstances, the court concludes that the Dean Sale Proceeds held by the  
26 Brown Firm must be turned over to the Trustee pursuant to Section 543(b). The Dean Sale  
27 Proceeds shall be held by the Trustee, subject to the disposition of any claim of exemption by the  
28 Debtor. The Trustee will be required to provide notice of the entry of this order with the State

1 Court in connection with the Interpleader Action and all other pending proceedings as  
2 appropriate.

3 **IT IS THEREFORE ORDERED** that the Motion for Order Compelling Alexis L.  
4 Brown, Esq. to Turnover Bankruptcy Estate Property Pursuant to 11 U.S.C. § 543, Docket No.  
5 71, be, and the same hereby is, **GRANTED**.

6 **IT IS FURTHER ORDERED** that Alexis L. Brown, Esq., and Alexis Brown Law  
7 Chtd., must account for the Dean Sale Proceeds and must remit the funds held, to Ryan A.  
8 Anderson, Chapter 7 trustee, **no later than November 27, 2020**.

9 **IT IS FURTHER ORDERED** that the Chapter 7 trustee shall file a notice of entry of the  
10 instant order in the civil action entitled Chambers v. River Mountain Mobile Estates Owners’  
11 Association, etc., et al., Case No. A-20-810935-C, pending in the Eighth Judicial District Court,  
12 Clark County, Nevada, as well as in all other civil actions involving the Debtor pending at the  
13 commencement of the instant Chapter 7 proceeding.

14  
15 Copies sent via CM/ECF ELECTRONIC FILING

16 Copies sent via BNC to:  
17 GREGG WILLIAM CHAMBERS  
18 3228 ROBIN CIRCLE  
LAS VEGAS, NV 89121

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