



Honorable Mike K. Nakagawa  
United States Bankruptcy Judge



Entered on Docket  
May 03, 2024

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA

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In re:

NINETY-FIVE/TWO-FIFTEEN CENTER,  
LLC,

Debtor.

Case No.: 19-15837-MKN  
Chapter 7

SHELLEY D. KROHN, TRUSTEE,

Plaintiff,

v.

MICHAEL BASH, et al.,

Defendants.

Adv. Proc. No.: 22-01153-mkn

Date: October 5, 2023  
Time: 9:30 a.m.

**ORDER ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND ON  
PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT REGARDING  
DEFENDANTS RAKESH AND REENA PATEL<sup>1</sup>**

On October 5, 2023, the court heard separate Motions for Summary Judgment brought by  
defendants Rakesh and Reena Patel ("Patels") and by plaintiff Shelley D. Krohn in the above-

<sup>1</sup> In this Order, all references to "ECF No." are to the number assigned to the documents  
filed in the above-captioned bankruptcy case as they appear on the docket maintained by the  
clerk of court. All references of "AECF No." are to the documents filed in the above-captioned  
adversary proceeding. All references to "Section" or "§§ 101-1532" are to the provisions of the  
Bankruptcy Code. All references to "Bankruptcy Rule" shall be to the Federal Rules of  
Bankruptcy Procedure. All references to "Civil Rule" shall be to the Federal Rules of Civil  
Procedure. All references to "FRE" are to the Federal Rules of Evidence.

captioned adversary proceeding. The appearances of counsel were noted on the record.<sup>2</sup> After arguments were presented, the matters were taken under submission.

### BACKGROUND

On September 11, 2019, a voluntary Chapter 7 petition was filed on behalf of Ninety-Five/Two-Fifteen Center, LLC (“Debtor”). The case was assigned for administration to Chapter 7 bankruptcy trustee Shelley D. Krohn (“Trustee Krohn”).

On November 11, 2022, Trustee Krohn filed a complaint commencing this adversary proceeding against multiple defendants, including the Patels (“Complaint”). (AECF No. 1). The focal point of the dispute begins with the rights arising from an "Ownership Agreement" dated May 25, 2018, a copy of which is attached to the Complaint. The prayer of the Complaint seeks a declaration that the defendants, including the Patels, do not have a lien, ownership, or secured interest in certain real property, nor the proceeds from the sale of the property. See Complaint at ¶¶ 12, 13, 14, 17, 20, 21, 22, 39, 40, 42, and 44.

On December 16, 2022, the Patels answered the Complaint. (AECF No. 6).

On December 27, 2022, a joint Discovery Plan was filed. (AECF No. 11).

On January 9, 2023, applications for entry of default were filed by Trustee Krohn against defendants Arts District Real Estate #1 LLC, Michael Bash, and Real Property Investment Management LLC. (AECF Nos. 12-14). On January 10, 2023, the court entered defaults against those defendants. (AECF Nos. 15-17). On January 24, 2023, motions for default judgment (“Default Motions”) were filed by Trustee Krohn against the same defendants, along with affidavits of Jeanette E. McPherson; all of the motions were noticed to be heard on March 1, 2023. (AECF Nos. 18-26). On March 3, 2023, orders granting the Default Motions were entered. (AECF Nos. 31-33). On March 9, 2023, Default Judgment was entered against the same defendants. (AECF Nos. 34-36).

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<sup>2</sup> At the hearing, counsel for the Patels presented argument in-person while counsel for the plaintiff presented argument telephonically.

On March 27, 2023, an order was entered approving a stipulation between Trustee Krohn and the Patels (AECF No. 41) granting an extension of time to June 5, 2023, for completion of discovery and to July 25, 2023, for filing dispositive motions. (AECF No. 42).

On July 25, 2023, the Patels filed a Motion for Summary Judgment (“Patel Summary Judgment Motion”), accompanied by thirteen (13) exhibits,<sup>3</sup> Exhibit “1” of which is a supporting

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<sup>3</sup> Exhibit “2” is a copy of a deed of trust conveying to Ninety-Five/Two-Fifteen Center, LLC (“Debtor”) an undivided interest of 65.18%, John C. Thomson, an undivided interest of 23.5%, and to David A. Rifkind and Helen R. Rifkind, an undivided interest of 11.32%, as tenants in common, APN: 125-21-301-003 recorded on November 12, 2004; Exhibit “3” is the Assessor’s Copy of the Grant, Bargain, Sale Deed – “Re-recording 20041112-3918 to correct the Grantee and Grantee Status” recorded on April 16, 2018; Exhibit “4” is an Operating Agreement of Ninety-Five/Two-Fifteen Center, LLC, page 1 of which indicates that it is effective September 2006 but page 4 of which indicates it is entered on October 31, 2011; Exhibit “5” is a copy of a Grant, Bargain, Sale Deed conveying subject property to “Ribit, LLC, a Nevada limited liability company” and to “the heirs and assigns of such Grantee forever...all of Grantors 23.5% interest” recorded on October 19, 2006; Exhibit “6” is an agreement between Jerome and Margaret Gross (Sellers) and Rakesh Patel (Purchaser) dated and signed December 15, 2015, indicating the purchase of 21 units or 2.1% ownership in Debtor in the amount of \$32,000. Attached to the agreement is a copy of a check made out to the Sellers on December 16, 2015, in the amount of \$3,000 as an earnest money deposit towards the purchase of the 21 units; Exhibit “7” includes three (3) purchase agreements. One agreement is between Micha Real Estate Development LLC (Sellers) and Rakesh Patel [ONLY] (Purchaser) dated and signed on December 17, 2015, indicating the purchase of 56.5 units, or 5.65% ownership in Debtor, in the amount of \$82,500. The other is between Micha Real Estate Development LLC (Sellers), Rakesh Patel, and Reena Patel (Purchasers), dated December 17, 2015, and signed on January 4, 2016, indicating the purchase of 56.5 units, or 5.65% ownership in Debtor, in the amount of \$82,500. The third agreement is between Micha Real Estate Development LLC (Sellers), Rakesh Patel, and Reena Patel (Purchasers) dated and signed on January 22, 2016, indicating the purchase of 40 units, or 4.0% ownership in Debtor, in the amount of \$60,000. Also included in Exhibit 7 are copies of two checks from the Patels made out to the Sellers on December 17, 2015, one in the amount of \$15,000 and the other in the amount of \$30,000 as an earnest money deposit towards the purchases of the 40 and 56.5 units; Exhibit “8” is copy of an “Affidavit (Death of Joint Tenant [David Ari Rifkind])” recorded on April 12, 2018; Exhibit “9” is a copy of a “Grant, Bargain, Sale Deed, also recorded on April 12, 2018; Exhibit “10” is a copy of an “Ownership Agreement” dated May 25, 2018, by and among Ninety-Five/Two-Fifteen Center, LLC, Ninety-Five/Two Fifteen Center Part II, LLC, Michael Bash, in his capacity as the member of Micha Real Estate Development LLC, and as manager of the LLCs, and Rakesh Patel and Reena Patel, recorded on July 3, 2018; Exhibit “11” is a copy of four pages from the deposition transcript of Rakesh Patel that was taken on May 22, 2023 (“Rakesh Depo Transcript”); Exhibit “12” is a copy of one page from the deposition transcript of Shelley Krohn; and Exhibit “13” is a copy of a Grant, Bargain, Sale Deed recorded on June 18, 2021. Hereafter, Exhibit “10” will be referenced in this Order as the “July 2018 Ownership Agreement.”

1 Declaration of Rakesh Patel (“First Rakesh Declaration”). (AECF No. 50). Patels’ Summary  
 2 Judgment Motion was noticed to be heard on September 21, 2023. (AECF No. 58).

3 On July 25, 2023, Trustee Krohn filed a Motion for Summary Judgment With Regard to  
 4 Rakesh and Reena Patel (“Krohn Summary Judgment Motion”), along with a supporting  
 5 declaration of Shelley D. Krohn (“First Krohn Declaration”), a statement of undisputed facts  
 6 (“First Krohn SUF”) in support thereof, and a request for judicial notice (“RJN”).<sup>4</sup> (AECF Nos.  
 7 51-54). Krohn’s Summary Judgment Motion also was noticed to be heard on September 21,  
 8 2023. (AECF No. 55).

9 On August 10, 2023, the Patels filed their statement of undisputed facts (“Patels SUF”) in  
 10 support of their summary judgment motion, along with a supporting declaration of Rakesh Patel  
 11 (“Second Rakesh Declaration”). (AECF Nos. 60 and 61).

12 On August 11, 2023, a stipulated order was entered rescheduling the hearing on both  
 13 summary judgment motions to October 5, 2023, extending the parties’ response deadline to  
 14 September 1, 2023, and replies to September 15, 2023. (AECF No. 63).

15 On September 1, 2023, the Patels filed opposition (“Patel Opposition”) to the Krohn  
 16 Summary Judgment, along with a separate Declaration of Rakesh Patel (“Third Rakesh  
 17 Declaration”), and a response to the First Krohn SUF. (AECF Nos. 66-68).

18 On September 1, 2023, Trustee Krohn filed her opposition (“Krohn Opposition”) as well  
 19 as an amended opposition to the Patels’ Summary Judgment Motion, along with another  
 20 statement of undisputed facts (“Second Krohn SUF”),<sup>5</sup> and a response to the Patels SUF. (AECF  
 21 Nos. 70-73).

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22  
 23 <sup>4</sup> The RJN, under FRE 201, simply requests that the court take judicial notice of the  
 24 documents filed in the Debtor’s Chapter 7 proceeding as well as the documents filed in the  
 instant adversary proceeding. No objection to the request was made.

25 <sup>5</sup> The Second Krohn SUF consists of 211 pages that includes a complete copy of the  
 26 transcript of a deposition taken on May 22, 2023, of defendant Rakesh Patel. That transcript  
 27 includes various Bate-stamped documents for which the defendant was examined under oath.  
 28 One of those documents stamped PATELDEPO\_0072, appearing at ECF No. 71 page 185 of  
 211, is entitled “Ownership Confirmation Agreement,” bearing the signatures of Rakesh Patel  
 and “Seller/Manager: Michael Bash of Berkley Enterprises aka Micha Real Estate Development  
 LLC.”

On September 15, 2023, the Patels filed a reply (“Patel Reply”) in support of their Summary Judgment Motion. (AECF No. 75).

On September 15, 2023, Trustee Krohn filed her reply to the Patel Opposition (“Krohn Reply”). (AECF No. 77).

### SUMMARY JUDGMENT STANDARDS

A motion for summary judgment is governed by Civil Rule 56 which is applicable in this adversary proceeding under Bankruptcy Rule 7056. See Silva v. Smith’s Pac. Shrimp, Inc. (In re Silva), 190 B.R. 889, 891 (B.A.P. 9th Cir. 1995). Summary judgment may be granted only if “the movant shows that there is no genuine dispute as to any material fact and that the movant is entitled to judgment as a matter of law.” FED. R. CIV. P. 56(a). For summary judgment purposes “[m]aterial facts are those that may affect the outcome of the case.” Farmer v. Las Vegas Metro. Police Dep’t, 423 F.Supp.3d 1008, 1013 (D. Nev. 2019), citing Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1985). Findings of fact may not be entered because summary judgment may only be granted where there are no disputed issues of fact. See Animal Legal Def. Fund v. U.S. Food & Drug Admin., 836 F.3d 987, 989-90 (9th Cir. 2016).

A genuine issue of material fact exists when “the evidence is such that a reasonable jury could return a verdict for the nonmoving party.” Id. The moving party’s evidence is judged by the same standard of proof applicable at trial. See Celotex Corp. v. Catrett, 477 U.S. 316, 323 (1986); see also Southern Calif. Gas Co. v. City of Santa Ana, 336 F.3d 885, 888 (9th Cir. 2003). The burden of proof is on the party seeking the summary judgment, but the inferences are viewed in favor of the opposing party. See Eastman Kodak Co. v. Image Technical Services, Inc., 504 U.S. 451, 456 (1992); see also Miller v. Glenn Miller Prods., Inc., 454 F.3d 975, 987 (9th Cir. 2006). Determinations of intent or credibility generally are ill-suited for disposition by summary judgment. See Fogel Legware, etc. v. Wills (In re Wills), 243 B.R. 58, 65 (B.A.P. 9th Cir. 1999). Once the moving party demonstrates the absence of disputed material facts, the responding party must provide admissible evidence raising a genuine dispute. The responding party cannot rely solely on conclusory allegations unsupported by factual data. See Farmer v. Las Vegas Metro. Police Dep’t, 423 F.Supp.3d at 1014 (“the nonmoving party cannot avoid

summary judgment by relying solely on conclusory allegations that are unsupported by factual data [ . . . ] Instead, the opposition must go beyond the assertions and allegations of the pleadings and set forth specific facts by producing competent evidence that shows a genuine issue for trial.”) (external citations omitted).

### DISCUSSION

The court has reviewed the exhibits offered in connection with both motions for summary judgment, none of which are the subject of objections as to admissibility. Based on that review as well as consideration of the written and oral arguments of counsel, the court concludes that summary judgment is not appropriate.

As chronicled above, both Trustee Krohn and the Patels filed separate statements purporting to identify “undisputed” facts material to the outcome of their respective summary judgment motions. Both Trustee Krohn and the Patels also asserted that some aspects of their opponents’ assertions of material facts actually are disputed. As previously mentioned, however, the focus of the dispute is the rights asserted by the defendants, including the Patels, arising from the July 2018 Ownership Agreement.

Trustee Krohn does not dispute that she has no personal knowledge of the formation of that agreement nor the intentions and understanding of the parties to the agreement. There is no evidence or indication that the July 2018 Ownership Agreement was drafted through the services of legal counsel. Defendant Rakesh asserts that the July 2018 Ownership Agreement conferred an ownership interest in the subject real property. He attests that he, along with his wife, had invested in the Debtor in December 2015, see First Rakesh Declaration at ¶ 5 and Second Rakesh Declaration at ¶¶ 4 and 5, and Third Rakesh Declaration at ¶¶ 2 and 3, but attempted to change their membership interest in the Debtor to an ownership interest in real property held by the Debtor. See First Rakesh Declaration at ¶ 5 and Second Rakesh Declaration at ¶ 6. Defendant Rakesh attests that the conversion of his membership interest in the Debtor to an ownership interest in the subject real property was documented through the July 2018 Ownership Agreement, based on discussions that were held only with Michael Bash. See First Rakesh Declaration at ¶ 7 and Second Rakesh Declaration at ¶ 7. He attests that he and his wife received

1 Schedule K-1 tax documents in 2016 and 2017, see Third Rakesh Declaration at ¶ 4, which were  
 2 not received in 2018 due to a conversion from a membership interest in the Debtor to a direct,  
 3 fractional ownership interest in the real property. Id. at ¶ 5.

4 Because Trustee Krohn has no personal knowledge of the formation and intentions  
 5 surrounding the July 2018 Ownership Agreement, she has focused on the credibility of the  
 6 Patels' characterization of the events, in particular the prior deposition testimony of defendant  
 7 Rakesh. Most, if not all, of the Second Krohn SUF is based on gaps in that testimony that were  
 8 not revealed in the four pages of the Rakesh Depo Transcript submitted by the Patels. See  
 9 discussion at 3 n.3, supra. One of those gaps appear in connection with a deposition exhibit  
 10 stamped as PATELDEPO\_0072, appearing at ECF No. 71, page 185 of 211. That exhibit is  
 11 entitled "Ownership Confirmation Agreement," bearing the signatures of Rakesh Patel and  
 12 "Seller/Manager: Michael Bash of Berkley Enterprises aka Micha Real Estate Development  
 13 LLC." See discussion at 4 n.5. The document is not dated, but Defendant Rakesh testified that it  
 14 may have been created from 2015 to 2016, before the July 2018 Ownership Agreement was  
 15 created and recorded. See Rakesh Deposition Transcript at 73:3 to 75:10. At the time of his  
 16 May 22, 2023, deposition, Defendant Rakesh apparently did not know when the earlier document  
 17 was created to confirm an agreement that was never recorded until perhaps years later. Other  
 18 gaps in the deposition testimony are highlighted by Trustee Krohn. See Second Krohn SUF at ¶¶  
 19 1, 4, 5, 6, 9, and 10. These and other discrepancies may be easily and perhaps credibly  
 20 explained, but Trustee Krohn has offered sufficient evidence to create a genuine issue of material  
 21 fact going to the validity of the July 2018 Ownership Agreement.<sup>6</sup>

22 Because summary judgment is unsuited to resolving disputes over witness credibility and  
 23 intent in favor of any litigant, neither Trustee Krohn nor the Patels have met their burden.

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26 <sup>6</sup> The July 2018 Ownership Agreement allegedly was designed to confirm or characterize  
 27 transactions that already took place. All of the signatures on the document are notarized, but  
 28 none of the signatories attest to its content. Because the document is not a contemporaneous  
 record of the actual transactions, it is ambiguous at best with respect to the circumstances of the  
 prior transactions.

1 Given that the June 5, 2023, discovery deadline is well past, both sides in this litigation  
2 should be able to agree on the witnesses who will be called to testify at trial in-person, and to  
3 identify all exhibits that will be offered into evidence. Given the competing SUFs filed in  
4 connection with the summary judgment motions, counsel should be able to offer stipulated facts  
5 to narrow the testimony required.

6 **IT IS THEREFORE ORDERED** that Defendants' Motion for Summary Judgment,  
7 Adversary Docket No. 50, be, and the same hereby is, **DENIED**.

8 **IT IS FURTHER ORDERED** that Plaintiff's Motion for Summary Judgment with  
9 Regard to Rakesh and Reena Patel, Adversary Docket No. 51, be, and the same hereby is,  
10 **DENIED**.

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12  
13 Copies sent via CM/ECF ELECTRONIC FILING

14 Copies sent via BNC to:

15 NINETY-FIVE/TWO-FIFTEEN CENTER, LLC  
16 ATTN: OFFICER OR MANAGING AGENT  
17 5100 W. CHARLESTON  
LAS VEGAS, NV 89146

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