UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	LA CV18-08785 JAK (USBC: 1:04-bk-14960-MB / USBAP: CC-18-01263)	Date	July 2, 2019
Title	In re: Kathie E. Suissa and Elvis D. Suissa Diane C. Weil v. Kathie E. Suissa		

Present: The Honorable	JOHN A. KRONSTADT, UNITED STATES DISTRICT JUDGE

Andrea Keifer	Not Reported
Deputy Clerk	Court Reporter / Recorder
Attorneys Present for Plaintiffs:	Attorneys Present for Defendants:
Not Present	Not Present

Proceedings: **(IN CHAMBERS) ORDER RE APPEAL FROM THE ORDER OF THE UNITED STATES BANKRUPTCY COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA GRANTING MOTION FOR RELIEF FROM THE AUTOMATIC STAY UNDER 11 U.S.C. § 362 (DKT. 1)**

I. Introduction

On July 22, 2004, Kathie Suissa ("Appellee" or "Kathie") and her then-husband, Elvis Suissa ("Elvis"), filed a voluntary joint petition for relief under Chapter 7 of the Bankruptcy Code (the "Petition"). Appellant's Excerpts of Record (Dkts. 14, 14-1 ("EOR")) at 1-3, 387.[1] Although Kathie and Elvis identified their residence as 4429 Canoga Avenue in Woodland Hills, California (the "Canoga Property") on the Petition, they did not disclose any interest in the Canoga Property on the related bankruptcy schedules. *Id.* at 1, 6-37. On November 1, 2004, Kathie and Elvis received a bankruptcy discharge. *Id.* at 389. Their bankruptcy proceeding was closed on November 16, 2004. *Id.* at 390.

On April 12, 2018, Elvis filed a motion to reopen the bankruptcy action "to amend the bankruptcy schedules to list an omitted asset," *i.e.*, the Canoga Property. *Id.* at 38-42, 390. On April 18, 2018, an Order issued that reopened the case. *Id.* at 43-44, 390. Diane C. Weil ("Appellant" or "Trustee") was then appointed as the Chapter 7 Trustee. *Id.* at 390.

On July 6, 2018, Kathie filed a motion for relief from automatic stay, or, in the alternative, an order declaring that no stay is in effect ("Motion"). *Id.* at 45-222, 391. The Trustee filed an opposition, and Kathie filed a reply. *Id.* at 223-365, 392-93. On August 15, 2018, a hearing was held on the Motion, and it was granted. *Id.* at 366-78, 393-94. The decision of the bankruptcy court was stated in writing on September 14, 2018. *Id.* at 379-80, 394.

On September 26, 2018, the Trustee filed a notice of appeal from the order of the bankruptcy court. Dkt. 1.[2] Appellant and Appellee each filed an opening brief on the appeal. Dkts. 13, 15. Appellant filed a reply

[1] Citations to the EOR use the internal page reference, rather than the docket page stamp, to enable sequential and clear pagination. All other citations to the docket use the docket page stamp.
[2] Appellee elected to have the appeal heard by this Court, rather than by the Bankruptcy Appellate Panel. Dkt. 5.

brief. Dkt. 16. The matter was then taken under submission. Dkt. 12.

For the reasons stated in this Order, the decision of the bankruptcy court is **AFFIRMED**.

II. Background

A. The Canoga Property and the State Court Action

The Canoga Property was purchased in 2002. EOR at 189. The grant deed listed the new legal titleholders as Oscar Massare and Emilia Massare, who are the parents of Kathie. *Id.* Kathie and Elvis resided at the Canoga Property from 2002 to 2016. *Id.* at 86, 184. Emilia Massare died in 2003, leaving Oscar Massare (hereafter, "Massare") as the sole holder of legal title to the Canoga Property. *Id.* at 184.

On July 12, 2004, Massare established a trust ("Massare Trust"), to which he transferred title to the Canoga Property. *Id.* at 191-219. Massare was named as the settlor, trustee and beneficiary of the trust for his lifetime. *Id.* The terms of the Massare Trust permitted the trustee to make payments from the net income and principal of the trust estate, "for the health, care, support and maintenance of the Settlor" during his lifetime. *Id.* at 210. It named Kathie as successor trustee, and Elvis as the secondary successor trustee. *Id.* at 212-13. The Massare Trust further provided that, upon the death of Massare: "The Trustee shall distribute [free of trust] the Settlor's house to the Settlor's daughter, KATHIE E. SUISSA, if she is then living, and if not then to the then living issue of KATHIE E. SUISSA." *Id.* at 210-11. Massare died on January 11, 2018. *Id.* at 187, 221-22.

In 2016, Kathie filed an action seeking to terminate her marriage with Elvis. *Id.* at 86, 186. The disputes between Kathie and Elvis in those marital proceedings include ownership of the Canoga Property. *Id.* In 2017, Elvis resumed residence at the Canoga Property. *Id.* at 186. Also in 2017, Elvis brought an action against Kathie and Massare in the Los Angeles Superior Court, *Elvis Suissa v. Kathie Suissa, et. al.*, LASC Case No. BC664735 ("State Court Action"). *Id.* at 79-83. In it, Elvis presented five claims that concerned the Canoga Property: (i) breach of fiduciary duty; (ii) quiet title; (iii) declaratory relief; (iv) partition of real property; and (v) quantum meruit. *Id.* at 85. Elvis alleged that he and Kathie were given the Canoga Property as a gift and that the Massare Trust held only "naked legal title" to the Canoga Property. *Id.* at 86-87. Elvis further alleged that he had spent a substantial amount of money in making improvements to the Canoga Property and acquired an equitable interest in the Canoga Property through those actions. *Id.* at 90.

On March 16, 2018, Kathie and Massare filed a motion for judgment on the pleadings in the State Court Action. *Id.* at 131-40. They argued that Elvis lacked standing to assert his claims and also was judicially estopped from doing so, because he had not listed any equitable interest in the Canoga Property on his bankruptcy schedules and received a discharge. *Id.* The next month, Elvis filed his motion to re-open the bankruptcy action. It was re-opened shortly thereafter. *Id.* at 38-44. On May 10, 2018, a notice of stay of proceedings was filed in the State Court Action, which referred to the re-opening of the bankruptcy action. *Id.* at 174-80. That filing prompted the motion for relief from stay in this action, and this appeal.

B. The Decision of the Bankruptcy Court

1. Oral Ruling

The bankruptcy court made an oral ruling at the hearing on the motion for relief from stay. *See* EOR at 366-78 (transcript of hearing). The court stated:

> And so having looked at this case and keeping that [the court did not want to "wade into" the divorce of Kathie and Elvis] in mind, the court is going to rule as follows. One, as it relates to the Trustee's argument with regards to judicial estoppel and otherwise,[3] that is an equitable doctrine and given the significant passage of time here the court finds that argument not persuasive.
>
> Secondly, and in large part based upon the article by Judge Ahart[4] which the court has read, the court is going to find and conclude that as it relates to the debtor's interest it was, in fact, a contingent interest in *inter vivos* trust with a spendthrift provision such that the allegations of an interest by the Trustee, at least at this part -- or at least in this point in the case, fail.
>
> And so what the court is going to do is in light of the [*Menk*][5] case, in fact, there is no stay in place as a result of the reopening of this case, the parties are free to go on and litigate before the state court. And if, in fact, as a result of some state court determination the state court judge determines that at the time of the bankruptcy there was some sort of equitable interest in the home or otherwise, then you can come back to the court and you can sort through how that may or may not impact the bankruptcy case, all right?

Id. at 377-78.

2. Written Ruling

As noted, the bankruptcy court also issued a written ruling following the hearing. EOR at 379-80. That order stated that "[t]he Motion is granted under 11 U.S.C. § 362(d)(1)," *i.e.*, the provision that permits a court to grant relief from the automatic stay "for cause." *Id.* at 379. It stated that "[a]s to [Kathie], . . . the stay of 11 U.S.C. § 362(a) is: Terminated." *Id.* at 380. It stated that the "Nonbankruptcy Action" affected by the order was the State Court Action, *i.e.*, the action entitled *Elvis Suissa v. Kathie Suissa, et. al.*, LASC Case No. BC664735. *Id.* at 379.

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[3] The Trustee had argued that "[t]he Debtors' joint failure to schedule the Canoga Property or their respective interests in the Canoga Property on their bankruptcy schedules and statements is grounds for the Court to equitably estop either debtor from attempting to now exercise control over the Canoga Property." EOR at 238-40.

[4] Alan M. Ahart, *The Rights of the Bankruptcy Estate in or Against the Debtor's Interest in a California Trust*, 34 Cal. Bankr. J. 227, 231-32 (2018).

[5] This is an apparent reference to *In re Menk*, 241 B.R. 896 (B.A.P. 9th Cir. 1999).

The order then stated, under a category labeled "Other":

> The Court finds that no stay was re-imposed upon the reopening of the bankruptcy case and that Kathie Suissa's beneficial interest in the property located at 4429 Canoga Avenue, Woodland Hills, CA 91364 (the "Canoga Property") was a contingent beneficial interest in an *inter vivos* trust with spendthrift trust provisions at the time of the Debtors' bankruptcy filing and thus was not and is not property of the bankruptcy estate. If the LASC determines that either of the Debtors held an equitable or other interest in the Canoga Property at the time of the Debtors' bankruptcy filing, the parties may return to this Court to determine such a finding affects this bankruptcy estate.

Id. at 380.

III. Issues Noticed for Appeal

Appellant has presented the following issues in this appeal:

First, Appellant contends that "the bankruptcy court committed reversible error in granting relief from the automatic stay to movant regarding the pending nonbankruptcy action styled, *Elvis D. Suissa v. Kathie E. Suissa, et al*., LASC Case No. BC664735." Dkt. 13 at 7.

Second, Appellant argues that "the bankruptcy court committed reversible error in finding that no stay was reimposed upon the re-opening of the Debtors' bankruptcy case." *Id.*

Third, Appellant argues that "the bankruptcy court committed reversible error in finding that the Canoga Property and Kathie Suissa's beneficial interest in the Canoga Property are not property of the bankruptcy estate." *Id.* at 8.

Fourth, Appellant asserts that "the bankruptcy court committed reversible error in determining that: 'If the LASC determines that either of the Debtors held an equitable or other interest in the Canoga Property at the time of the Debtors' bankruptcy filing, the parties may return to this Court to determine such a finding affects this bankruptcy case.'" *Id.*

Finally, Appellant contends "the bankruptcy court committed reversible error in finding 'that Kathie Suissa's beneficial interest in the [Canoga Property] was a contingent beneficial interest in an *inter vivos* trust with spendthrift trust provisions at the time of the Debtors' bankruptcy filing.'" *Id.* at 9.

IV. Analysis

A. Legal Standards

The conclusions of law of a bankruptcy court are reviewed *de novo*, and its findings of fact are reviewed for clear error. *Blausey v. U.S. Trustee*, 552 F.3d 1124, 1132 (9th Cir. 2009) (citing *In re Salazar*, 430 F.3d 992, 994 (9th Cir. 2005)). The clear error standard is "significantly deferential, requiring a definite

and firm conviction that a mistake has been committed before reversal is warranted." *United States v. Bourseau*, 531 F.3d 1159, 1164 (9th Cir. 2008) (internal quotation marks omitted). "The district court may affirm [a bankruptcy court order] on any ground supported by the record, even if it differs from the ground relied upon by the bankruptcy court." *Thrifty Oil Co. v. Bank of Am., Nat'l Trust and Sav. Ass'n*, 322 F.3d 1039, 1046 (9th Cir. 2003); *In re DeMasi*, 227 B.R. 586, 587 (D. R.I. 1998) ("[T]he Court is not bound to remain within the confines of the Bankruptcy Court's reasoning for its decision but is free to affirm the decision below on any grounds supported by the record.").

B. Application

1. Whether the Bankruptcy Court Committed Reversible Error in Finding that No Stay Was Reimposed upon the Re-Opening of the Debtors' Bankruptcy Case

a) The Court Did Not Err in Finding that an Automatic Stay Was Not Reimposed When the Chapter 7 Bankruptcy Case Was Re-Opened

"Central to the bankruptcy 'case' as to which exclusive Article I federal jurisdiction lies is the automatic stay imposed by 11 U.S.C. § 362(a)." *In re Gruntz*, 202 F.3d 1074, 1081 (9th Cir. 2000). "The automatic stay is self-executing, effective upon the filing of the bankruptcy petition." *Id.* It "sweeps broadly, enjoining the commencement or continuation of any judicial, administrative, or other proceedings against the debtor, enforcement of prior judgments, perfection of liens, and 'any act to collect, assess or recover a claim against the debtor that arose before the commencement of the case.'" *Id.* at 1081-82.

"A bankruptcy case is closed after the estate is fully administered . . . ." *In re Menk*, 241 B.R. 896, 911 (B.A.P. 9th Cir. 1999). The effect of closing a bankruptcy case will vary depending on whether the debtor listed a given asset on the bankruptcy schedules prior to discharge:

> Property that was scheduled under 11 U.S.C. § 521(1)—including both "property of the estate" and "property of the debtor as of the filing of the case"—and that is not otherwise administered during the case is abandoned to the debtor and deemed administered at the time of closing. 11 U.S.C. § 554(c).
>
> Property of the estate that was not so scheduled and that is not administered retains its status as "property of the estate" after closing. 11 U.S.C. § 554(d).

Id. "The automatic stay terminates upon closing except with respect to property that retains its status as 'property of the estate' after closing." *Id.* (citing 11 U.S.C. § 362(c)).

"[T]he reopening of a closed bankruptcy case is a ministerial act that functions primarily to enable the file to be managed by the clerk as an active matter and that, by itself, lacks independent legal significance and determines nothing with respect to the merits of the case." *Id.* at 913. "[T]o the extent that the automatic stay expired in conjunction with closing, it does not automatically spring back into effect. If protection is warranted after a case is reopened, then an injunction would need to be imposed." *Id.* at 914.

Several bankruptcy courts have agreed "that reopening a Chapter 7 bankruptcy case does not reimpose the automatic stay, because only the filing of a petition imposes an automatic stay." *In re Brumfiel*, 514 B.R. 637, 643 (Bankr. D. Colo. 2014) (citing *In re Burke*, 198 B.R. 412 (Bankr. S.D. Ga. 1996); *In re Trevino*, 78 B.R. 29 (Bankr. M.D. Pa. 1987)). "Nothing in the language of § 350 indicates that reopening [a Chapter 7 bankruptcy case] causes a reimposition of the automatic stay"; Appellant has cited no authority to that effect; and the Court has found no case so holding. *Id.* Moreover, although a bankruptcy court can determine that a new injunction is warranted upon the re-opening of a bankruptcy case, Elvis did not make such a request and the bankruptcy court did not issue such an order.

Accordingly, the bankruptcy court did not err in determining that the automatic stay that terminated upon closing of the case in 2004 was not "re-imposed" when the case was re-opened.

b) The Court Did Not Err in Determining that There Was Insufficient Evidence to Demonstrate the Canoga Property Was an Unadministered, Omitted Asset

The automatic stay does not terminate upon closing as to property of the estate that was omitted from the debtor's bankruptcy schedules and not administered. *In re Menk*, 241 B.R. at 911. Therefore, if the property at issue was an omitted asset and not abandoned to the debtors, then the automatic stay would remain in effect as to that post-closing property of the estate. Accordingly, some preliminary determination of whether the Canoga Property constituted post-closing property of the estate was necessary in order to address whether it remained subject to a stay. *Accord In re Pettit*, 217 F.3d 1072, 1077-80 (9th Cir. 2000) (examining whether an asset was property of the estate for the purpose of determining whether it was subject to the automatic stay, and thus whether there was a corresponding violation of the automatic stay); *In re Artimm, S.r.L.*, 335 B.R. 149, 162-63 (Bankr. C.D. Cal. 2005) (reviewing a provision of the Bankruptcy Code authorizing turnover to a foreign court "property of such estate, or the proceeds of such property," and finding that "the terms 'property of such estate' and 'proceeds of such property' presuppose an antecedent determination of property interests as a condition to the turnover of property," and therefore making "a preliminary determination as to the debtor's property interest").

(1) Kathie's Asserted Interest in the Canoga Property

Appellee contends that she had an expectancy interest in the Canoga Property through the Massare Trust at the time she and Elvis filed for bankruptcy. She also contends that the nature of that interest places it outside the scope of the bankruptcy estate. Dkt. 15 at 17. Appellant and Appellee dispute whether, assuming Kathie had such an interest in the Canoga Property at the time of filing, she was required to disclose that interest on the bankruptcy schedules. The bankruptcy court determined that this asserted interest would be characterized properly as a "contingent beneficial interest in an *inter vivos* trust with spendthrift trust provisions" and therefore was not post-closing property of the bankruptcy estate. Accordingly, an automatic stay would not be in effect as to that property after the bankruptcy case was closed in 2004. There was no error in this determination.

Section 541 of the Bankruptcy Code establishes the property that is included within the bankruptcy

estate. The estate is comprised of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 541(a)(1). "[T]he term 'property' has been construed most generously and an interest is not outside its reach because it is novel or contingent or because enjoyment must be postponed." *Segal v. Rochelle*, 382 U.S. 375, 379 (1966). "[T]he courts have consistently said that options or contingent interests are property of the bankruptcy estate under section 541." *In re Bialac*, 712 F.2d 426, 431 (9th Cir. 1983).

"[N]othing in section 541 requires that the debtor's interest be immediately capable of being liquidated into cash in order to constitute property of the estate. Instead, section 541(c)(1) provides that a debtor's interests become property of the estate even in circumstances in which the interest cannot be liquidated and transferred by the debtor." *Nichols v. Birdsell*, 491 F.3d 987, 990 (9th Cir. 2007) (internal citation removed). In addition, if a debtor acquires or becomes entitled to acquire any interest in property "that would have been property of the estate if such interest had been an interest of the debtor on the date of the filing of the petition, and that the debtor acquires or becomes entitled to acquire within 180 days . . . by bequest, devise, or inheritance," that property becomes property of the bankruptcy estate. 11 U.S.C § 541(a)(5)(A).

Notwithstanding the foregoing, "a restriction on the transfer of a beneficial interest of the debtor in a trust that is enforceable under applicable non-bankruptcy law" is also enforceable in bankruptcy. 11 U.S.C. § 541(c)(2). This provision has been read to "exclude[] from the property of the bankruptcy estate interests in trusts that are protected under a spendthrift clause that is enforceable under applicable state law." *In re Pipkins*, No. BR 13-30087DM, 2014 WL 2756552, at *6 (Bankr. N.D. Cal. June 16, 2014).

"There is no Ninth Circuit authority determining whether an interest in a revocable inter vivos trust constitutes estate property." *In re Schmitt*, 215 B.R. 417, 421 (B.A.P. 9th Cir. 1997). However, several decisions provide guidance as to the appropriate treatment of such interests. In *Schmitt*, the court determined that state law governs whether the debtor's interest in a revocable trust was a "property interest," that, under bankruptcy law, should have been listed on the debtor's bankruptcy schedules. *Id.*; *see also In re Pettit*, 217 F.3d 1072, 1078 (9th Cir. 2000) ("[B]ankruptcy courts must look to state law to determine whether and to what extent the debtor has any legal or equitable interests in property as of the commencement of the case."). *Schmitt* held "that in [California] an interest in a revocable trust is not a property right," and for that reason "the Debtor did not have a property interest in the revocable Trust at the time she filed the bankruptcy petition." 215 B.R. at 422. The court found it "highly significant" that the trust was revocable, distinguishing the case from prior authority concerning the nature of an interest in an irrevocable inter vivos trust. *Id.* at 421 (distinguishing *In re Neuton*, 922 F.2d 1379 (9th Cir.1990)); *see also Empire Properties v. County of Los Angeles,* 44 Cal. App. 4th 781, 787 (1996) ("[T]he nature of a beneficiary's interest differs materially depending on whether the trust is revocable or irrevocable."). Moreover, because the settlor of the trust died more than 180 days after the petition was filed,[6] the trust property did not "come into the estate" when the trust became irrevocable upon the settlor's death. *Id.* at 422, 422 n.2.

[6] *Schmitt* stated, in the alternative, that section 541(a)(5)(A) was inapplicable altogether because it "does not concern inter vivos trusts." 215 B.R. at 422 n.2. However, that is immaterial for the purpose of this Order, because Massare died more than 180 days after the Petition was filed. Regardless of whether section 541(a)(5)(A) applies, the provision would not affect the status of Kathie's asserted interest.

A bankruptcy court in this district reached a similar conclusion when it held that a debtor's contingent interest in a revocable inter vivos spendthrift trust, which she held on the bankruptcy filing date, was not part of the bankruptcy estate. *In re Spencer*, 306 B.R. 328, 332 (Bankr. C.D. Cal. 2004). *Spencer* determined that the debtor "under state law, had no property interest in the Trust assets at the time she filed bankruptcy," and therefore her interest did not fall within the meaning of "property" in section 541(a)(1). *Id.* The court noted that "at the time of the Petition, the Trust was fully revocable by the Trustor and neither Debtor's creditors nor transferees had any right to rely upon the Trust for the satisfaction of their claims." *Id.* (quotation marks, brackets and citation removed). It added that, "because the spendthrift clause was still valid on the date of the Petition, the Trust would have been excluded from the bankruptcy estate under section 541(c)(2)." *Id.* Thus, because the trust assets were held in a revocable inter vivos spendthrift trust at the time of filing, any interest of the debtor in the trust assets was not property of the bankruptcy estate. *Id.* In reaching this conclusion, the court "f[ou]nd[] the *Schmitt* distinction between revocable and irrevocable trusts an important consideration in determining that a beneficial contingent interest does not exist on the date of the petition." *Id.* at 332 n.6.

These cases are consistent with California law on revocable inter vivos trusts. Thus, "[p]roperty transferred into a revocable inter vivos trust is considered the property of the settlor for the settlor's lifetime. Accordingly, the beneficiaries' interest in that property is merely potential and can evaporate in a moment at the whim of the settlor." *Estate of Giraldin*, 55 Cal. 4th 1058, 1065-66 (2012) (quotation marks, brackets and citation removed); *see also Carolina Cas. Ins. Co. v. L.M. Ross Law Grp., LLP,* 184 Cal. App. 4th 196, 208 (2010) ("[F]or most purposes '[t]here is no distinction in California law between property owned by the revocable trust and property owned by the settlor of such a revocable trust during the lifetime of the settlor.' 'Under California law, a revocable inter vivos trust is recognized as simply "a probate avoidance device . . . ."'"); *Arluk Med. Ctr. Indus. Grp., Inc. v. Dobler*, 116 Cal. App. 4th 1324, 1331-32 (2004) ("[A] settlor with the power to revoke a living trust effectively retains full ownership and control over any property transferred to that trust."). When the settlor has a revocable trust and can "modify it to exclude all the beneficiaries . . . only the settlor has any beneficial interest in the trust." *In re Schmitt*, 215 B.R. 417, 422 (B.A.P. 9th Cir. 1997) (citing *Heifetz v. Bank of Am. Nat. Tr. & Sav. Ass'n*, 147 Cal. App. 2d 776, 784 (1957); *see also Title Ins. & Tr. Co. v. McGraw*, 7 2 Cal. App. 2d 390, 400 (1945) (would-be beneficiaries of a revocable trust have "no present interest in the property and would not have any interest therein until the death of the trust trustor").[7]

[7] Bankruptcy Judge Ahart reached the same conclusion in recent article, which the bankruptcy court found persuasive:

> [Applying California law,] if the beneficiary of a revocable trust--who is *not* the settlor--files a chapter 7 bankruptcy case, the beneficiary's interest in the trust does *not* become property of the estate. For example, where the debtor's parents established a trust that remained revocable on the date the debtor filed chapter 7 bankruptcy, the debtor's interest in the trust was not property of the bankruptcy estate.

Alan M. Ahart, *The Rights of the Bankruptcy Estate in or Against the Debtor's Interest in a California Trust*, 34 Cal. Bankr. J. 227, 231-32 (2018) (footnotes omitted).

The Massare Trust was a revocable *inter vivos* trust, and it did not become irrevocable until the death of Massare. EOR at 195-96 ("During the life of the Settlor, this Trust is subject to Amendment or alteration upon the Settlor's consent and is revocable in whole and in part upon the Settlor's consent. . . . Property withdrawn from the Trust Estate shall revert to the Settlor as if the Trust had not been created."). Massare died in 2018, which was 14 years after the bankruptcy case closed. *Id.* at 220-22, 390. Therefore, the trust remained revocable at the time the bankruptcy petition was filed, at the time the debtors received a discharge, at the time the case was closed and for more than a decade thereafter. Only Massare had a protectable, beneficial interest in the trust property until the trust became irrevocable upon his death. Thus, any interest of Kathie in the Massare Trust at the time of her bankruptcy filing in 2004 would not be a "property interest" subject to inclusion in the bankruptcy estate.

Appellant's contrary position is not persuasive. Appellant argues that Appellee's characterization of her interest in the trust as an "expectancy" lacks force, and that the scope of the estate is sufficiently broad to encompass any interest Kathie held in the Canoga Property through the Massare Trust at the time of the bankruptcy filing. Dkt. 13 at 17. Appellant asserts that "[a]n unvested contingent interest in property held by a debtor is property of the bankruptcy estate, if the unvested contingent interest exists as of the petition date." *Id.* Appellant relies on *In re Neuton*, 922 F.2d 1379, 1382 (1990), to support this position. *Id.* Although contingent interests are not *per se* exempted from the bankruptcy estate, Appellant does not address the "highly significant" difference between this case and *Neuton*: the trust considered in *Neuton* was irrevocable, whereas the Massare Trust was revocable at all relevant times. *In re Schmitt*, 215 B.R. at 421. As discussed above, "the nature of a beneficiary's interest differs materially depending on whether the trust is revocable or irrevocable." *Empire Properties*, 44 Cal. App. 4th at 787. The revocability of the Massare Trust makes Kathie's interest in it distinct from the cognizable contingent interest evaluated in *Neuton*.

The Massare Trust also contained a spendthrift provision. As noted, section 541(c)(2) "excludes from the property of the bankruptcy estate interests in trusts that are protected under a spendthrift clause that is enforceable under applicable state law." *In re Pipkins*, 2014 WL 2756552, at *6. "California law recognizes the validity of spendthrift trusts." *In re Moses*, 167 F.3d 470, 473 (9th Cir. 1999); Cal. Prob. Code §§ 15300 *et seq*. The spendthrift provision in the Massare Trust states: "No interest in the principal or income of any trust shall be anticipated, assigned or encumbered or subject to any creditor's claim or to legal process prior to its actual receipt by the beneficiary." EOR at 207. The spendthrift provision in the Massare Trust was valid under California law as to beneficiaries other than Massare, and no argument has been presented to the contrary. *See* Cal. Prob. Code § 15301(a).[8]

However, Appellant contends that Kathie is not a "beneficiary" under the Massare Trust and that the terms of the trust that apply to her and the Canoga Property "are testamentary in nature." Dkt. 13 at 19-21. Thus, Appellant argues that the spendthrift provision, which protects only a "beneficiary," does not apply to Kathie. *Id.* Appellant also argues that "[u]nder the terms of the Massare Trust, upon Massare's death, Kathie is to receive the Canoga Property outright and 'free of trust.'" *Id.* at 21 (citing EOR at

[8] Because Massare is also the settlor of the trust, the restriction is not valid against his transferees or creditors. Cal. Prob. Code § 15304(a). However, because Massare is not the debtor, the validity of the spendthrift provision as to his potential creditors is without significance.

210-11).

Appellee responds that this as a "curious argument," and asserts that Kathie is clearly a beneficiary under the Massare Trust. Dkt. 15 at 21-22 (citing EOR at 210-11). Appellee contends that the "free of trust" language "is standard language in trusts to describe a party's rights after receiving a distribution from the trust," and provides no support for the proposition that Kathie was not a trust beneficiary. Appellee also argues that Kathie would not hold title to the Canoga Property free of trust until the death of Massare, which did not occur for more than a decade after the bankruptcy case closed. Therefore, Appellee contends that "the spendthrift provision was still operating to protect the asset" at all relevant times. *Id.* at 22-23.

Appellant's argument that Kathie was not a trust "beneficiary" has little force. As a matter of common usage, the term "beneficiary" refers to a person who is to receive a distribution from the trust pursuant to its terms, assuming the trust is not revoked. The Massare Trust provided that the trustee would distribute the Canoga Property, which was a trust asset, to Kathie upon the death of Massare. EOR at 210-11. Thus, she falls within the standard usage of the term "beneficiary." Moreover, "[i]nter vivos trusts are considered to be non-testamentary even though the terms of the trust may provide for the transfer of the trust's assets to its beneficiaries upon the last settlor's death." *In re Cook,* No. ADV/SA-07-01143-ES, 2008 WL 8444785, at *4 (B.A.P. 9th Cir. Nov. 3, 2008). "'Where an interest in the trust property is created in a beneficiary other than the settlor, the disposition is not testamentary' merely because the interest of the beneficiary does not take effect before the death of the settlor or because the settlor reserves the power to revoke or modify the trust." *Id.* (quoting Restatement (Second) of Trusts § 57 (1959)). "California courts . . . recognize the distinction between inter vivos and testamentary trusts," with the latter category referring to trusts created after the death of the settlor by the terms of a will. *Id.* Courts have made clear that "under California law distributions from an inter vivos trust do not constitute testamentary dispositions." *Id.* (citations omitted).

For these reasons, the spendthrift provision of the Massare Trust applied to Kathie. It was effective as to Kathie until the Canoga Property became due to her, more than a decade after the bankruptcy case was closed. Thus, in addition to the revocable status of the Massare Trust, its spendthrift provision presents an additional basis on which Kathie's interest in the Canoga Property would not constitute post-closing property of the estate. Finally, even if section 541(a)(5)(A) applied to inter vivos trusts, that provision would not warrant a different outcome. The Massare Trust did not become irrevocable, and the spendthrift provision did not lose its force, until 2018. That was well after the 180-day period for inclusion of an asset acquired post-petition in the bankruptcy estate.

For these reasons, the bankruptcy court did not err in determining preliminarily that Kathie's interest in the Canoga Property did not appear to be an unadministered, omitted asset of the bankruptcy estate. This preliminary determination laid the foundation for the court's finding that the automatic stay was not in place post-closing. *See In re Menk*, 241 B.R. at 911 ("The automatic stay terminates upon closing except with respect to property that retains its status as 'property of the estate' after closing.").

(2) Elvis's Asserted Interest in the Canoga Property

Elvis also asserts that he has an interest in the Canoga Property, which serves as the basis for his claims in the State Court Action. *See* EOR at 85-96, 254-55. Elvis contends that he has an equitable interest in the Canoga Property because the Canoga Property was actually a gift from Massare to Kathie and Elvis, and Elvis spent approximately $300,000 improving the Canoga Property. *Id.* Because the basis for such interests dates back to the time of the bankruptcy, if substantiated, they likely would be deemed part of the bankruptcy estate.

Appellant presented certain evidence as to this interest to the bankruptcy court. This included a declaration of the Trustee to which to two exhibits were attached: (i) a copy of the declaration Elvis Suissa submitted in the State Court Action, including its supporting exhibits; and (ii) a copy of the declaration of trust for the Massare Trust. *Id.* at 242-349. Appellant also submitted a request for judicial notice of "[t]he lawsuit filed in the Los Angeles Superior Court styled *Elvis Suissa v. Kathie Suissa*, case number BC664735, and in particular *the Opposition to Oscar Massare's Motion for Order Requiring Elvis Suissa to Pay Rent Pending Judgment* filed by the plaintiff/cross-defendant therein, Elvis Suissa on May 1, 2018." *In re Suissa*, No. 1:04-bk-14960-MB, Dkt. 55 (Bankr. C.D. Cal. Aug. 1, 2018).

Appellee presented certain responsive evidence, including two declarations and supporting exhibits. EOR at 73-222. Appellee also objected to the request for judicial notice, to the extent it "ask[s] the Court to take notice of the truth of the statements contained in that Elvis Declaration, and the truth of the testimony that the documents attached are true and correct copies of what the declarant represents they are." *Id.* at 359-61. Appellee asserted that "[i]t is not appropriate to take notice of the facts stated in such declaration, which are highly contested and very much in dispute." *Id.* at 360. Appellee also filed evidentiary objections to the declaration of the Trustee, arguing that the Trustee had no personal knowledge of most of the statements made her declaration. *Id.* at 362-65. Appellee argued that the Trustee "is merely repeating the allegations stated by Elvis, which is hearsay," and not admissible *Id.* at 363.

The bankruptcy court did not present specific findings on this issue. However, the record reflects that the bankruptcy court did not find persuasive the arguments and evidence presented by Appellant. Moreover, the objections of Appellee had merit. Under Fed. R. Evid. 201, a court may take judicial notice of undisputed matters of public record, including documents on file in state and federal courts. *Lee v. City of Los Angeles,* 250 F.3d 668, 689-90 (9th Cir. 2001). Although judicial notice is appropriate as to the fact of filing of such documents, it is not as to the truth "of *disputed* facts stated in public records." *Id.* at 690. Thus, to the extent that Appellant sought judicial notice of disputed facts in the filings of the State Court Action, including the declaration of Elvis, judicial notice was not appropriate. As to the evidentiary objections, most of the Trustee's declaration constituted inadmissible hearsay. Thus, little to no admissible evidence was presented to substantiate any equitable interest of Elvis in the Canoga Property.

The position of the bankruptcy court would be justified even taking into account the contents of the state court filings and the hearsay statements within the Trustee's declaration. The declaration of Kathie and the plain terms of the Massare Trust each controverts Elvis's first proffered basis for an equitable interest

in the Canoga Property. EOR at 183-87, 210-11. The declaration of Kathie and the employment and income information listed on the bankruptcy schedules also rebut the second proffered basis for such an interest. *Id.* at 22, 183-87. Therefore, there was no error by the bankruptcy court in determining preliminarily, in light of the evidence presented, that neither of the proffered factual premises for an equitable interest was credible.

For these reasons, the bankruptcy court did not err in determining that the asserted equitable interest in the Canoga Property had not been substantiated, and that no sufficient basis had been shown to consider the Canoga Property an unadministered, omitted asset of the bankruptcy estate.

* * *

The court preliminarily evaluated the respective claims to the Canoga Property for the purpose of determining whether a stay was in place. This was necessary because, although the automatic stay generally terminates upon closing of the bankruptcy case, it does not terminate as to an unadministered, omitted asset of the bankruptcy estate. The court determined the Canoga Property had not been shown to be property of the estate -- "at least in this point in the case" -- and therefore that a stay was not in place. EOR at 377. This decision was not error.

2. Whether the Bankruptcy Court Erred in Granting Relief from the Automatic Stay to Movant Regarding the Pending Nonbankruptcy Action Styled, *Elvis D. Suissa v. Kathie E. Suissa, et al*., LASC Case No. BC664735

"A proceeding to determine eligibility for relief from a stay only determines whether a creditor should be released from the stay in order to argue the merits in a separate proceeding." *In re Griffin*, 719 F.3d 1126, 1128 (9th Cir. 2013). "Given the limited nature of the relief obtained through this proceeding and because final adjudication of the parties' rights and liabilities is yet to occur, a party seeking stay relief need only establish that it has a colorable claim to the property at issue."[9] *Id.* Relief from stay may be granted "for cause," and "a desire to permit a state action to proceed in a state tribunal has been recognized as a proper cause to grant relief from the automatic stay." *In re Calsol, Inc*., 419 F. App'x 753, 754 (9th Cir. 2011) (citing *In re Castlerock Props.*, 781 F.2d 159, 163 (9th Cir.1986)); 11 U.S.C. § 362(d).

Relief from stay hearings are "summary" in nature. *In re Johnson*, 756 F.2d 738, 740 (9th Cir. 1985). "[S]tay litigation is not the proper vehicle for determination of the nature and extent of [parties'] rights." *In re Ellis*, 60 B.R. 432, 436 (B.A.P. 9th Cir. 1985). Thus, relief from stay hearings "should not involve an adjudication of the merits of claims, defenses, or counterclaims." *In re Luz Int'l, Ltd*., 219 B.R. 837, 842 (B.A.P. 9th Cir. 1998); *see also id* (evaluating the legislative history of § 362 and finding that "[t]he hearing is not, nor was it intended to be, the forum in which to determine the merits of the claims presented in support of relief from the automatic stay."). Courts have found that it is error for a bankruptcy court to make a final adjudication of the merits in the context of a motion for relief from stay. *E.g.*, *In re Robbins*,

[9] "A colorable claim is one 'that is legitimate and that may reasonably be asserted, given the facts presented and the current law (or a reasonable and logical extension or modification of the current law).'" *In re Budd*, No. BAP CC-11-1015-MKKID, 2011 WL 4485190, at *3 n.4 (B.A.P. 9th Cir. July 12, 2011) (quoting Black's Law Dictionary (9th ed. 2009)).

310 B.R. 626, 631 (B.A.P. 9th Cir. 2004); *In re Luz Int'l, Ltd.,* 219 B.R. at 843.

As noted, Appellee sought, and the bankruptcy court granted, two alternate forms of relief: (i) a declaration that no stay was in place; and (ii) relief from stay. Although those rulings might appear somewhat inconsistent, they arose from unique circumstances. The court should not make a final determination on the merits at a relief from stay hearing, but whether the stay was in place post-closing is tied to the merits. Therefore, the court looked to the merits on a preliminary basis to determine that no stay was in place, and then acted on that assessment by granting relief from stay to account for the uncertainty inherent in such a preliminary review.

The decision to grant relief from stay appears to have been premised on the determination as to the nature of Kathie's interest in the Canoga Property; *i.e.*, Kathie had a strong claim to the Canoga Property, the nature of her interest and any competing equitable interest of Elvis at the time of the bankruptcy filing were created under state law, and an action to adjudicate those interests was pending in state court and ready for resolution there. That Kathie's claim to the Canoga Property is, at minimum, "colorable," is discussed above.

The bankruptcy court stated that it was appropriate for the State Court Action to proceed and have the state court adjudicate whether Kathie and/or Elvis had an equitable interest in the Canoga Property at the time they filed the Petition. State law, not federal law, would provide the basis for such a determination. Therefore, the State Court Action was the appropriate forum for that adjudication. *In re Pettit*, 217 F.3d 1072, 1078 (9th Cir. 2000) ("Although the question whether an interest claimed by the debtor is 'property of the estate' is a federal question to be decided by federal law, bankruptcy courts must look to state law to determine whether and to what extent the debtor has any legal or equitable interests in property as of the commencement of the case."). The court instructed that the parties could then present the state court's determination to the bankruptcy court to examine its effects on the bankruptcy case.

For the foregoing reasons, it was not error for the bankruptcy court to grant relief from stay and permit the State Court Action to proceed.[10]

3. Remaining Issues

The three other issues on appeal each presumes that the bankruptcy court made final determinations as to the merits of the parties' underlying claims. At the hearing and in its written ruling, the bankruptcy court did not clearly state the scope of its decision. However, the context and content show that the bankruptcy court did not see its decision as an adjudication of the merits, but as making the preliminary determinations necessary to the resolution of the pending stay-related questions. For example, the court stated in its ruling that the Canoga Property had not been shown to be property of the estate "at least in this point in the case." EOR at 377. Further, the court's invitation to the parties to have the state court

[10] Appellant also contends that the bankruptcy court exceeded its authority as to the relief from stay by adjudicating the merits of the parties' claims. This contention is discussed in the next section.

adjudicate whether "either of the Debtors held and equitable or other interest in the Canoga Property at the time of the Debtors' bankruptcy filing" is inconsistent with Appellant's framing of the bankruptcy court's decision as a final determination on the merits. *See id.* at 380. Accordingly, the decision of the bankruptcy court is not properly deemed as a final determination on the respective interests of Elvis, Kathie and the bankruptcy estate in the Canoga Property.[11]

* * *

The bankruptcy court was presented with a motion for relief from the automatic stay, or, in the alternative, a declaration that no stay was in place. The motion presented unique circumstances. A bankruptcy court should not grant "relief" from stay if no such stay existed, and no stay exists as to property that does not constitute post-closing property of the estate. However, relief from stay hearings are summary in nature and are not to result in a final adjudication of the merits of the claims. Therefore, in line with both Appellant's and Appellee's interpretation of the decision of the bankruptcy court, the court decided that no automatic stay was in place, and that, in the alternative, relief from any automatic stay was warranted.

The court determined, based on the arguments and preliminary evidence presented, that Kathie had a strong claim to the Canoga Property. It found that the Canoga Property had not been shown to be property of the estate – "at least in this point in the case." EOR at 377. It also decided that the State Court Action was the superior forum for determining whether Kathie and/or Elvis had an equitable interest in the Canoga Property at the time of filing of their bankruptcy petition -- a determination that would be based on state law. *See In re Pettit*, 217 F.3d 1072, 1078 (9th Cir. 2000) ("Although the question whether an interest claimed by the debtor is 'property of the estate' is a federal question to be decided by federal law, bankruptcy courts must look to state law to determine whether and to what extent the debtor has any legal or equitable interests in property as of the commencement of the case.").

Under these circumstances, the bankruptcy court determined that a stay was not in place, because the Canoga Property had not been shown to be post-closing property of the estate. However, because the bankruptcy court did not, and could not, finally determine whether the Canoga Property was property of the estate, it also granted relief from stay. These linked rulings did not constitute error.

V. Conclusion

For the reasons stated in this Order, the decision of the bankruptcy court is **AFFIRMED**, and the State

[11] Notwithstanding the foregoing determination, to the extent the decision of the bankruptcy court can be construed as a final determination on whether the Canoga Property is property of the bankruptcy estate, such a determination would not be appropriate on a motion for relief from stay. *See, e.g., In re Johnson*, 756 F.2d 738, 740 (9th Cir. 1985); *In re Robbins*, 310 B.R. 626, 631 (B.A.P. 9th Cir. 2004); *In re Luz Int'l, Ltd.*, 219 B.R. 837, 842 (B.A.P. 9th Cir. 1998); *In re Ellis*, 60 B.R. 432, 436 (B.A.P. 9th Cir. 1985).

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No.	LA CV18-08785 JAK (USBC: 1:04-bk-14960-MB / USBAP: CC-18-01263)	Date	July 2, 2019
Title	In re: Kathie E. Suissa and Elvis D. Suissa Diane C. Weil v. Kathie E. Suissa		

Court Action may proceed. The decision of the bankruptcy court was not a final determination as to the respective interests of Elvis, Kathie and the bankruptcy estate in the Canoga Property.[12]

IT IS SO ORDERED.

cc: Martin R. Barash, United States Bankruptcy Judge

Initials of Preparer ak

[12] However, to any extent the decision of the bankruptcy court could be deemed a final determination on whether the Canoga Property is property of the bankruptcy estate, it is **VACATED**.