

PROGRAM SUMMARY 2-25-23

By: Gary R. Wallace-Program Summary Committee Chair

cdcbaa Holds Second Meeting and MCLE Program of 2023: "Administering Assets"

On February 25, 2023, the CDCBAA held its second members meeting and MCLE program of the year. The meeting and program were conducted as a live webinar via Zoom video. The program topic was: **Administering Assets.** Our distinguished panel included Wes Avery | Chapter 7 and Chapter 12 Trustee, Central District of California; Nancy Zamora | Chapter 7 Trustee, Central District of California; and Larry Simons | Chapter 7 Trustee, Central District of California. CDCBAA co-president and current board member Lucy Mavyan moderated. What follows are some of the highlights of the seminar.

The panel first addressed the concept of "meaningful distribution," which is found in the Department of Justice's US Trustees Handbook for Chapter 7 Trustees ("... the trustee must consider whether sufficient funds will be generated to make a meaningful distribution to unsecured creditors, including unsecured priority creditors, before administering a case as an asset case. 28 U.S.C. § 586.). This language has also been quoted in the case *In re KVN Corp*, 514 BR 1 (9th Cir. BAP 2014). The panel stated that, as a rule of thumb, 15%, before administrative claims, is generally considered meaningful. In this context, there is no distinction between priority and general unsecured creditors. However, trustees are precluded from administering assets solely for the benefit of secured creditors. Trustees are also required to exercise business judgment in determining whether and how best to monetize nonexempt assets. Thus, they will administer certain assets (obviously, the more liquid the better) that are located in other nations, but only when it makes economic sense for the estate to do so.

At or before section 341(a) meetings, the trustees will ask to see a non-filing spouse's tax return when a married couple has filed separately because California is a community property state, and sometimes a refund that is due the non-filing spouse may be available to the estate. The panel also discussed the debtors' duties to cooperate under section 521. Thus, in addition to tax returns, bank statements, mortgage statements when applicable, and proof of current insurance will be requested and must be produced.

The panel then discussed post-filing appreciation of estate property and noted that the Code states that post-filing appreciation belongs to the estate. See, e.g., *Viet Vu v. Kendall (In re Viet Vu)*, 245 B.R. 644 (2000) (under § 541(a)(6), post-petition appreciation is property of the estate without regard to whether there is equity in the property as of the petition date). This rule seems in conflict with California's recently enacted SB1099, which exempts any appreciation in the value of a homestead after the bankruptcy filing. There has been no case yet addressing this apparent conflict.

The trustees also discussed how they handle issues that arise when the debtor has legal title, but may not hold equitable title, to real property. On the issue of whether a debtor can receive credit for making mortgage payments and/or property taxes on real property of the estate, the panel pointed to *In re Forrest*, 611 BR 662 (CD Cal. 2019) and *In re Machevsky*, 637 B.R. 510 (CD Cal. 2021).

The panel discussed the importance of the rule requiring the proceeds of a homestead exemption under CCP section 704.730 to be reinvested in another homestead within six months. See, e.g., *In re Jacobson*, 676 F.3d 1193 (9th Cir. 2012) (California's homestead exemption law provides that the debtor's portion of the proceeds loses its exempt status if not reinvested in a new homestead within six months. CCP § 704.720(b)). If the debtor fails to reinvest the proceeds in another homestead, a turnover order will likely be sought and a section 727 action to revoke or prevent a discharge for dissipating estate funds may follow. The panel noted that, while the purchase of a single-family home will nearly always qualify as a reinvestment, it is possible for a long-term pre-paid residential lease to qualify as well.

The panel also addressed the related issue as to whether the proceeds of a homestead exemption should be immediately distributed to the debtor or whether the proceeds should be held by the trustee until either the six months lapses or the debtor closes on a new homestead. At least one judge in our District has issued orders mandating that homestead proceeds be delivered to the trustee and that the trustee only release them when presented in a timely manner with a fully executed purchase and sale agreement, escrow instructions, and other paperwork sufficient to demonstrate that (a) the debtor will be using the funds in the purchase of a new residence and (b) the receiving escrow company or title company is insured, bonded or nationally known for handling numerous transactions of this type. The failure to close such a new escrow within the six-month period will result in the proceeds becoming the non-exempt property of the estate.

The panel also discussed the administration of royalties or residuals from movies, oil and gas leases and the like, and noted that *Jess v. Carey (In re Jess)*, 169 F.3d 1204 (9th Cir. 1999) and *In re Lott*, 2018 Bankr. LEXIS 2126 (Bankr. D. Idaho 2018) are instructive in such matters. Thus, if – for example – a movie was filmed entirely pre-bankruptcy filing, then the residuals likely belong to the estate.

The panel also found time to touch on the issue of who owns certain prepetition tort claims in bankruptcy. The panel observed that, for legal malpractice claims that a debtor holds against prior counsel, *In re Glaser*, 816 Fed. Appx. 103 (9th Cir. 2020) states that the date when damages occur (and not, necessarily, when the malpractice occurs) is the determining factor.

The panel discussed other cases, issues and personal experiences as well, and all presenters provided a number of candid and useful practice pointers for counsel. The seminar was interactive: attendees were polled with a number of questions that gauged their level of experience in different matters, and the panel also answered chat questions from attendees as well. As usual, a very lengthy and detailed program outline containing summaries of the cases was provided to all registered participants.

The next CDCBAA members meeting and Zoom MCLE program will be held on March 18, 2023. The topic will be **“MEET THE BANKRUPTCY COURT CLERK'S OFFICE AND THE JUDGE'S CLERKS.”** Please note that the start time will be 10:00 a.m. We hope you will join us.



Gary R. Wallace
Law Office of Gary R. Wallace
10801 National Boulevard, Suite 100
Los Angeles, CA 90064
Email: garywallace@ymail.com
Office: (310) 571-3511