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SARKIS INVESTMENTS COMPANY, LLC

FILED & ENTERED

SEP 11 2015

CLERK U.S. BANKRUPTCY COURT
Central District of California
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CHANGES MADE BY COURT
ORDER NOT FOR PUBLICATION

UNITED STATES BANKRUPTCY COURT

CENTRAL DISTRICT OF CALIFORNIA

LOS ANGELES DIVISION

In re
SARKIS INVESTMENTS COMPANY, LLC,
Debtor and Debtor in Possession.

Case No.: 2:13-bk-29180-RK

Chapter 11

**ORDER DENYING WITHOUT
PREJUDICE MOTION TO APPROVE
COMPROMISE BETWEEN THE
DEBTOR AND TRI-WEST
MECHANICAL, INC.**

[Related Docket Entries 348 & 349]

[No Hearing Required Pursuant to Local
Bankruptcy Rule 9013-1(o)]

The Court having considered the Motion pursuant to Rule 9019 of the Federal Rules of Bankruptcy Procedure approving the compromise of controversies between the Debtor and Debtor in Possession, Sarkis Investments Company, LLC (the "Debtor"), on the one hand, and Tri-West Mechanical, Inc. ("Tri-West"), on the other hand (the "Motion") [Docket No. 348] filed by the Debtor in the above-captioned case (the "Bankruptcy Case"),

IT IS HEREBY ORDERED as follows:

1. The Motion is denied without prejudice.

2. Despite the lack of opposition to the Motion, the Debtor-in-Possession has not met its burden of showing by a preponderance of the evidence that the compromise is reasonable, fair and equitable, and in the best interests of creditors pursuant to Rule 9019. *See In re A & C Properties*, 784 F.2d 1377, 1381-1382 (9th Cir. 1986). Tri-West filed a proof of claim, Claim No. 8, on January 2, 2014 in the amount of \$156,255.61. Tri-West stated on the proof of claim that the basis of its claim was a judgment entered against Debtor by the San Bernardino Superior Court and attached a copy of the amended judgment filed on July 21, 2010 and a computation of the claim for the principal sum of the judgment of \$120,000.00 and interest on the judgment of \$36,255.61. Tri-West did not assert on the proof of claim that its claim was secured because it did not fill out the information requested on the proof of claim form pertaining to a secured claim. Nor did Tri-West attach a copy of a recorded abstract of its judgment recorded with the county where the subject real property is situated, San Bernardino County, in order to show that it had a perfected real property judgment lien pursuant to California Code of Civil Procedure § 697.310(a), which provides as follows: “Except as otherwise provided by statute, a judgment lien on real property is created under this section by recording an abstract of a money judgment with the county recorder.” California Code of Civil Procedure § 697.340(a) provides in pertinent part: “. . . A judgment lien on real property attaches to all interests in real property in the county where the lien is created (whether present or future, vested or contingent, legal or equitable) that are subject to enforcement of the money judgment against the judgment debtor” A leading treatise on enforcement of California judgments and debts has observed regarding the creation of judgment liens in this state: “A judgment lien on real property is created under a money judgment by *recording* an abstract of the judgment (or, in appropriate cases, a certified copy of the judgment or a 42 USC §652(a)(11) interstate lien form . . .) in the office of the county recorder of the county where the real property is located” 2 Ahart, *California Practice Guide: Enforcing Judgments and Debts*, at ¶ 6:173 at 6B-8 (2015) (emphasis in original), *citing inter alia*, *California Code of Civil Procedure*, § 697.310(a), *Dang v. Smith*, 190 Cal.App.4th 646, 651 (2010) and *In re Cass*, 476 B.R. 602, 614 (Bankr. C.D. Cal. 2012), *aff’d*, 2013 WL 1459272 (9th Cir. BAP 2013) (unpublished opinion), *aff’d*, 606 Fed. Appx. 318 (9th Cir. 2015)

(unpublished opinion). This treatise further observed: “Mere entry of judgment does *not* create a real property lien in California.” 2 Ahart, *California Practice Guide: Enforcing Judgments and Debts*, at ¶ 6:173 at 6B-8 (emphasis in original), *citing*, *Aldasoro v. Kennerson*, 915 F. Supp. 188, 190-191 (S.D. Cal. 1995) and *Behniwal v. Mix*, 147 Cal.App.4th 621, 635-636 (2007). The proposed compromise is not shown to be a compromise benefitting the creditors of the estate, but appears to be a windfall for the single creditor, Tri-West. This is because the compromise would not only allow Tri-West’s claim in the full amount of the proof of claim, but would treat as secured the principal amount of the claim of \$120,000, plus \$10,000 in interest, with immediate payment to Tri-West of this substantial portion of its claim from the proceeds of sale of the subject real property, and would further allow the balance of the claim of \$26,255.61 as general unsecured claim. This is a windfall for Tri-West and unfair, unequitable and unfair to other creditors because there is nothing in the moving papers or in its proof of claim showing that Tri-West has a secured claim based on a real property judgment lien on the subject real property perfected under California Code of Civil Procedure § 697.310(a). As it stands now, based on the present record before the court, Tri-West’s proof of claim is for a general unsecured claim of \$156,255.61, which is entitled to a pro rata distribution with other general unsecured claims when one is made in this Chapter 11 reorganization bankruptcy case. The copy of the amended judgment in Tri-West’s favor attached to its proof of claim is not evidence of a secured claim against Debtor based on a real property judgment lien because as noted earlier, mere entry of judgment does not create a judgment lien in California. If Debtor does not dispute Tri-West’s claim, it can simply decide not to interpose any objection to the claim. If Debtor disputes Tri-West’s claim, there is no reason to give Tri-West unjustified preferential treatment over other general unsecured claims based on this record.

3. The denial of the motion is without prejudice because Debtor and Tri-West could file an amended motion for approval of compromise upon a proper evidentiary showing that Tri-West does have a secured claim based on Tri-West’s state court judgment through perfection of a real property judgment lien pursuant to California Code of Civil Procedure § 697.310(a) by a recorded abstract of judgment with the San Bernardino County Recorder, or through other legal authority

1 demonstrating perfection of a judgment lien or other secured interest as to the subject real
2 property.

3 **IT IS SO ORDERED.**

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BAKER & HOSTETLER LLP
ATTORNEYS AT LAW
LOS ANGELES

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Date: September 11, 2015



Robert Kwan
United States Bankruptcy Judge