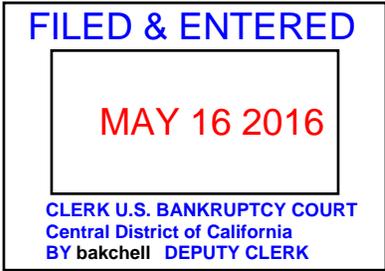


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NOT FOR PUBLICATION
UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION

In re:

LOS ARBOLES APTS. & TOWNHOMES
LLC,

Debtor.

Case No. 2:14-bk-31901-RK
Chapter 11

MEMORANDUM DECISION AND ORDER
DENYING DEBTOR’S MOTIONS TO
DETERMINE SECURED CREDITOR VFC
PARTNERS 29, LLC, IS NOT ENTITLED
TO COVER ATTORNEYS’ FEES AND
COSTS AND TO REOPEN CASE

The above-captioned bankruptcy case came on for hearing on May 4, 2016 before the undersigned United States Bankruptcy Judge on two motions filed by Debtor Los Arboles Apartments & Townhomes, LLC (“Debtor”): (1) “Emergency Motion to Determine that Secured Creditor VFC Partners 29, LLC, a Limited Liability Company, Is Not Entitled to Recover Any Attorney’s Fees and Costs and that Its Notice of Default and Election to Sell Under Deed of Trust and Notice of Sale as Containing a Calculation of the Indebtedness Based on Attorney’s Fees and Costs is Void and Cannot Be Enforced” (“Motion to Determine”), ECF 185; and (2) “Emergency Motion to Reopen Chapter 11 Bankruptcy Case for the Limited Purpose of Seeking a Determination that Secured Creditor VFC Partners 29, LLC, a Limited Liability Company, Is Not Entitled to Recover

1 Any Attorney's Fees and Costs and that Its Notice of Default and Election to Sell Under
2 Deed of Trust, as Containing a Calculation of the Indebtedness Based on Attorney's Fees
3 and Costs is Void and Cannot Be Enforced" ("Motion to Reopen"), ECF 184. Debtor was
4 represented by Philip D. Dapeer, of Philip D. Dapeer, A Law Corporation. Respondent
5 VFC Partners 29 LLC was represented by Jennifer W. Crastz, of the law firm of Hemar,
6 Rosso & Heald LLP.

7 Having granted Debtor's application to have these motions to be heard on
8 shortened notice, considered the moving and opposing papers and the oral arguments of
9 counsel and having issued a tentative ruling on the motions, the court rules as follows:

10 1. Regarding Debtor's Motion to Determine, the court denies the Motion to
11 Determine for lack of subject matter jurisdiction and based on permissive abstention.
12 Through the Motion to Determine, Debtor seeks a determination that VFC Partners 29,
13 LLC is not entitled to recover any attorneys' fees and costs pursuant to California Civil
14 Code § 1717, and that thus, the inclusion of an amount for attorneys' fees and costs in
15 VFC Partners 29, LLC's Notice of Default and election to Sell Under Deed of Trust and
16 Notice of Sale renders the notices void. "Jurisdiction, once attached, continues inherent
17 to the Court's authority to supervise the property of (the) debtor and of the estate until the
18 case is closed." 1 March, Ahart & Shapiro, *California Practice Guide: Bankruptcy*, ¶ 1:990
19 at 1-110 (2015), *citing inter alia*, *Matter of International Institute of The Americas, Inc.*, 63
20 B.R. 294, 299 (D. P.R. 1986). After dismissal, Debtor's bankruptcy case was closed on
21 November 25, 2015, the court did not specifically retain jurisdiction over any matters in its
22 order approving Debtor's stipulated dismissal, ECF 179, and there were no pending
23 matters before the court at the time the case was closed. In this court's view, the issues
24 presented in Debtor's Motion to Determine are entirely state law, non-core matters, which
25 are best left to the determination of the Superior Court of California, and assuming that
26 this court had subject matter jurisdiction, it should exercise its discretion to permissibly
27 abstain from hearing the matters. 28 U.S.C. § 1334(c)(1); *In re Tucson Estates, Inc.*, 912
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1 F.2d 1162, 1166-1170 (9th Cir. 1990). The court does not see a good reason why it
2 should consider the merits of the substantive motion, the Motion to Determine, since
3 there is no bankruptcy purpose for hearing that motion in a dismissed case as the basic
4 complaint of Debtor is over a contractual dispute arising out of its loan now held by
5 Respondent, a matter of state law in a two-party dispute, for which Debtor has state law
6 remedies in state court. *See, e.g.*, 1 Witkin, *Summary of California Law*, Contracts, § 853
7 (10th ed. 2016 online ed.)(listing various remedies for breach of contract, including
8 declaratory relief); 4 Witkin, *California Procedure*, Pleading, § 515 *et seq.* (4th ed. 2016
9 online ed.); *see also*, California Constitution, Article VI, § 4, *cited in*, 1 Edmon,
10 Rylaarsdam and Karnow, *California Practice Guide: Civil Procedure Before Trial*, ¶ 3.3
11 (online ed. 2015)(“Each [California] superior court has *general* subject matter jurisdiction,
12 meaning that it can adjudicate any and all cases brought before it [subject to certain
13 exceptions and limitations not applicable here.]”) (emphasis in original). Moreover, there
14 is no bankruptcy purpose for this court to determine the amount of attorneys’ fees and
15 costs claimed by Respondent under the parties’ state law contract pursuant to California
16 Civil Code § 1717, even if such claimed fees and costs were incurred during the
17 pendency of this bankruptcy case, since they were incurred for services of professionals
18 not employed by the bankruptcy estate, which fees and costs are not reviewable under
19 11 U.S.C. § 330, for example, and there is no good reason why this court should review
20 such fees and costs since the Superior Court of California has general subject matter
21 jurisdiction to interpret the parties’ contract and review the claimed attorneys’ fees and
22 costs based on that contract. In this court’s view, the parties are probably better served
23 going directly to the Superior Court to adjudicate this dispute within its general subject
24 matter jurisdiction if Debtor believes that time is of the essence to adjudicate the dispute
25 since the copy of the foreclosure sale attached as an exhibit to the moving papers
26 indicates that the sale is scheduled for May 6, 2016 at 1:00 p.m.

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