



NOT FOR PUBLICATION

**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

GRAND VIEW FINANCIAL LLC,

Debtor.

Case No. 2:17-bk-20125-RK
Chapter 11

**MEMORANDUM DECISION ON MOTION OF
GEORGE GREGORY GAN AND DEBRA
GAN-MILLER FOR RELIEF FROM
AUTOMATIC STAY**

Date: November 7, 2017
Time: 11:00 a.m.
Courtroom: 1675

This bankruptcy case came on for hearing on November 7, 2017 before the undersigned United States Bankruptcy Judge on the motion of George Gregory Gan and Debra Gan-Miller for relief from the automatic stay. Ori Blumenfeld, of the Law Offices of Michael Jay Berger, appeared for movants. Todd M. Arnold, of the law firm of Levene, Neale, Bender, Yoo & Brill, LLP, appeared for Debtor Grand View Financial, LLC, in opposition to the motion. No other appearances were made.

Having considered the moving and opposing papers and the oral and written arguments of the parties, the court grants the motion for the reasons stated on the record and as stated in its tentative ruling on the motion, which was issued before the

1 hearing and posted on the court's website, as modified by the court during its oral ruling
2 at the hearing. (The court now places the original tentative ruling for the motion on the
3 case docket as part of this memorandum decision as set forth below in an attachment).


4 The court notes that as stated on the record at the hearing, the court adopted the
5 tentative ruling as its order, but was modifying the tentative ruling for its final ruling to
6 make it clear that the court is not making a ruling at this time on abstention of hearing
7 the issues in dispute between movants and debtor and its managing member, Steve
8 Rogers, now being litigated in state court for which stay relief is sought, that is, the
9 ruling is for stay relief only.

10 The court is entering a separate final order granting the motion concurrently
11 herewith based on this memorandum decision.

12 IT IS SO ORDERED.

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25 Date: November 13, 2017



Robert Kwan
United States Bankruptcy Judge

1 ATTACHMENT TO MEMORANDUM DECISION

2 TENTATIVE RULING

3 Revised tentative ruling as of 11/6/17. Although it is the normal practice of this court not
4 to issue a tentative ruling for a matter heard on shortened notice, the matter has been
5 fully briefed by movants and respondent debtor, and the court has some preliminary
6 thoughts on the matter.

7 Grant movant relief from stay pursuant to 11 U.S.C. 362(d)(1) to pursue non-bankruptcy
8 remedies based on the analysis of the factors set forth in *In re Tucson Estates, Inc.*, 912
9 F.2d 1162, 1166-1167 (9th Cir. 1990) (citation omitted) regarding permissive abstention
10 and related stay relief: (1) the effect or lack thereof on the efficient administration of the
11 estate if the court recommends abstention - abstention would have relatively minimal
12 effect on the effective administration of the estate since this matter involves only 1 of 42
13 properties listed by debtor as property of the estate - this factor favors abstention and
14 stay relief; (2) whether state law issues predominate over bankruptcy issues - it appears
15 that they do since the issues relate to the competency of the decedent trustor who
16 created and transferred the subject property to the trust which in turn transferred the
17 property to debtor - this factor favors abstention and stay relief; (3) the difficulty or
18 unsettled nature of applicable law - the issues relating to competency of decedent trust
19 involve intensely factual determinations under state law regarding mental competency
20 of the trustor - this factor favors abstention and stay relief; (4) the presence of a related
21 proceeding commenced in state court - this factor favors abstention and related stay
22 relief; (5) the jurisdictional basis, if any, other than 28 U.S.C. 1334 - the primary issue is
23 whether the subject property is an asset of the bankruptcy estate, which will be resolved
24 under state law, which is subject to this court's "related to" jurisdiction under 28 U.S.C.
25 1334, but could be decided in a core proceeding for declaratory relief whether the asset
26 is property of the estate - this factor is neutral; (6) degree of relatedness or remoteness
27 to the proceeding to the main bankruptcy case- the state court action to determine the
28 subject property is not property of the estate is somewhat related to the main
bankruptcy case - this factor disfavors abstention and stay relief; (7) the substance
rather than form of an asserted core proceeding - a proceeding to determine whether
the subject property is property of the bankruptcy estate or not relates to administration
of the bankruptcy estate, a core proceeding - this factor disfavors abstention and stay
relief; (8) the feasibility of severing state law claims from core bankruptcy matters to
allow judgments to be entered in state court with enforcement left to the bankruptcy
court - it seems feasible to sever and allow the state court to determine the issue of
trustor's competence which may well have an impact on the validity of the transfer to
debtor - this factor favors abstention and stay relief; (9) the burden of the bankruptcy
court's docket - it would be burdensome for the bankruptcy court to decide the issue of
trustor's competency needed to determine the validity of the transfer to debtor - this
factor favors abstention and stay relief; (10) likelihood that commencement of the
proceeding in bankruptcy court involves forum shopping - not present here - this factor
disfavors abstention and stay relief; (11) existence of a right to jury trial - not present
here - this factor disfavors abstention and stay relief; (12) presence in the proceeding of
nondebtor parties - this factor favors abstention.

1 The court does not rely on the so-called Curtis factors relied upon in *In re Plumberex*
2 *Specialty Products, Inc.*, 311 B.R. 551 (Bankr. C.D. Cal. 2004) because the Tucson
3 Estates factors of the Ninth Circuit are controlling authority in this situation. Therefore,
the court rejects debtor's arguments based on the Curtis factors.

4 The court rejects debtor's argument that granting stay relief would be issuing an
5 advisory opinion in that there is no live controversy with respect to debtor. The court's
6 role in deciding a stay relief motion is to determine whether a creditor should be
7 released from the stay in order to argue the merits in a separate proceeding, and in that
8 regard, the party seeking stay relief need only establish that it has a colorable claim to
9 the property at issue. *In re Griffin*, 719 F.3d 1126, 1128 (9th Cir. 2013) (citations
10 omitted). There is a live controversy here in that movants dispute that the transfer to
11 debtor was valid and seek a determination of the validity of the transfer in state court
12 and named debtor's managing member as a respondent in that action. Technically
13 speaking, debtor is right that it is not a named respondent in the state court action, but
14 this seems to the court to be a matter of defective pleading by movants since the
15 transfer was to debtor, not its managing member. Since debtor is a separate legal
16 entity as a LLC, it should have been named as the respondent rather than the managing
17 member. The court would grant relief from stay to allow movants to correct this
18 deficiency by amending their pleadings in state court.

19 The court determines that the primary issue of whether the transfer of the subject
20 property to debtor was validity is dependent on a factual determination of the
21 competency of the decedent trustor, which is a matter of state law which the probate
22 court is in a much better position to decide than this court since the events relating to
23 the transfer and the witnesses are located in the county where the state court sits and
24 the issue is integral to the pending state court probate proceedings, which issue
25 probably falls within the probate exception to federal court jurisdiction relating to
26 probating or annulling a will, administering a decedent's estate and/or assuming in rem
27 jurisdiction over property that is in the custody of the probate court. See *Marshall v.*
28 *Marshall*, 547 U.S. 293, 311-312 (2006); see also, *Three Keys Ltd. v. SR Utility Holding*
Co., 540 F.3d 220, 227(3rd Cir. 2008). In looking at the various Tucson Estates factors,
the court believes that the factual determination of the trustor's competency and
capacity to transfer the subject property may be, and should be, decided by the state
court.

Deny movants' requests for extraordinary relief in paragraphs 6 and 7 for lack of legal
authority and/or evidentiary support. *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal.
2009).

Appearances are required on 11/7/17, but counsel may appear by telephone.

END OF TENTATIVE RULING