

SIGNED.

Dated: September 11, 2012



James M. Marlar

James M. Marlar, Chief Bankruptcy Judge

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7 **UNITED STATES BANKRUPTCY COURT**
8 **DISTRICT OF ARIZONA**

9 In re:

10 CAROLE A. FILBY,

11
12 Debtor.

Chapter 13

No. 0:11-bk-34063-JMM

MEMORANDUM DECISION

13 This case is related to the Assyrian Babylon, LLC chapter 11 case (0:11-bk-34059-
14 JMM), but is not consolidated with it or its progress.

15 Assyrian Babylon is a chapter 11 reorganization, and it has filed a plan to reorganize
16 with the court.

17 Ms. Filby, on the other hand, has filed a consumer Chapter 13 case, known colloquially
18 as a "wage earners plan." A chapter 13 trustee has been appointed to administer her case. That
19 person is Russell Brown.

20 Ms. Filby filed a chapter 13 plan on December 29, 2011 (ECF No. 17). To date, her
21 individual plan has not been confirmed. A review of the plan shows it to be routine in nature,
22 and reflects, on its face, no connection with the Assyrian Babylon reorganization. The plan
23 mentions nothing about Assyrian Babylon or any collateral secured to any party.

24 The first hint of a connection appears in the Debtor's Schedule B (ECF No. 12) at item
25 13, where she shows ownership of 100% of the stock of Assyrian Babylon, with an "unknown"
26 value." She also shows a receivable due her, by Assyrian Babylon, of \$15,123.22.

27 The next clue is that Ms. Filby also lists Majid Jajo as a secured creditor, holding a
28 disputed claim of \$280,000.

1 Her last significant connection is as the "owner" of Assyrian Babylon, where she expects
2 regular income of \$2,500 per month, which monies will be used, in part, to fund her chapter 13
3 plan.

4 So, if Assyrian Babylon survives its bankruptcy case, so may Ms. Filby's case survive.
5 Currently, though, it is unknown how she is supporting herself since the Assyrian Babylon bar
6 is not operating and her Schedule J shows she needs \$1,919.48 to survive each month. But, to
7 date, the chapter 13 trustee has not filed a motion to dismiss. So, things are in flux for Ms.
8 Filby's chapter 13.

9 This brings us to the matter of stay relief, filed by creditor Majid Jajo (ECF No. 39).
10 The first problem is procedural--the court must have some indication by the chapter 13 trustee,
11 as a party in interest, as to his view of the motion. Thus, until the trustee comments on the
12 motion and is given an opportunity to respond or default, this court cannot grant any relief to
13 Mr. Jajo.¹

14 So, for now, all other issues are moot.

15 An order will be entered which denies Mr. Jajo's stay relief motion, without prejudice.

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17 DATED AND SIGNED ABOVE.

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19 COPIES to be sent by the Bankruptcy Noticing
20 Center ("BNC") to the following:

21 Attorney for Debtor
22 Ronald W. Meyer, Attorney for Majid Jajo
23 Trustee
24 Office of the U.S. Trustee
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28 ¹ In some fashion, the same issue affects Ms. Filby's action against Mr. Jajo, Adversary
No. 12-ap-658. The parties must be careful in using the bankruptcy court's limited jurisdiction
to advance state law claims which may have little or no bearing on how a bankruptcy case is to
proceed. Stern v. Marshall, 131 S. Ct. 2594 (2011). The trustee may wish to weigh in on this
point.