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7
8 **UNITED STATES BANKRUPTCY COURT**
9 **DISTRICT OF NEVADA**

10 In re:
11 AMERI-DREAM REALTY, LLC,
12 Debtor.

Case No. BK-S-15-10110-LED
Chapter 7

TRUSTEE’S EX PARTE APPLICATION
FOR AUTHORIZATION TO RECEIVE
AND TRANSFER CERTAIN FUNDS

Date of Hearing: N/A
Time of Hearing: N/A

Judge: Honorable Laurel E. Davis¹

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17 VICTORIA L. NELSON, the Chapter 7 Trustee in above-captioned bankruptcy case (the
18 “Trustee”), hereby files this *Ex Parte Application for Authorization to Receive and Transfer*
19 *Certain Funds* (the “Application”).

20 The Application is based upon the following memorandum of points and authorities, the
21 *Declaration of Victoria L. Nelson In Support of Ex Parte Application for Authorization to Receive*
22 *and Transfer Certain Funds* (the “Nelson Declaration”), and the *Declaration of Ryan J. Works,*
23 *Esq. In Support of Ex Parte Application for Authorization to Receive and Transfer Certain Funds*
24 (the “Works Declaration”), both of which are filed separately and concurrently with this Motion
25

26 ¹ Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11
27 U.S.C. §§ 101-1532, and to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The
28 Federal Rules of Civil Procedure will be referred to as “FRCP” and the Federal Rules of
Bankruptcy Procedure will be referred to as “FRBP.” The Local Rules of Practice for the United
States Bankruptcy Court for the District of Nevada shall be referred to as the “Local Rules.”

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1 pursuant to Rule 9014(c)(2) of the Local Rules of Bankruptcy Procedure for the United States
2 Bankruptcy Court for the District of Nevada (the “Local Rules”). Attached hereto and marked as
3 **Exhibit “1”** is a copy of the proposed Order granting the Application. The Application is also
4 based upon the pleadings and records on file herein.²

5 **MEMORANDUM OF POINTS AND AUTHORITIES**

6 **I. JURISDICTION AND VENUE**

7 1. The Court has jurisdiction over this Application and its subject matter under
8 among other authorities, 28 U.S.C. §§ 157 and 1334.

9 2. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A) because it is a matter
10 concerning the administration of the estate.

11 3. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

12 **II. FACTUAL BACKGROUND**

13 4. Prior to this bankruptcy, Ameri-Dream Realty, LLC (the “Debtor”) purchased a
14 Real Estate Errors & Omissions Policy with Greenwich Insurance Company numbered
15 PEG9145932-6 and effective 6/14/2013 through 6/14/2014 (the “Policy”) through XL
16 Professional Insurance, which provided coverage for any defense costs related to matters covered
17 under the Policy. *See* Works Declaration.

18 5. In or around May 20, 2014, the Nevada Real Estate Division (“NRED”) initiated
19 an investigation and opened up case against the Debtor’s principal, John Brown (“Brown”),
20 concerning unauthorized transfer of security deposits by one of the Debtor’s employees. *See* Case
21 Nos. RES14-05-81-1061 – *NRED v. Brown* and RES14-05-80-1060 – *Brown JR vs. Peladas-*
22 *Brown; see also* Works Declaration.

23 6. Shortly thereafter, the Debtor notified the insurer of the pending action brought by
24 NRED and sought confirmation that such insurer would pay for the cost of defense of Brown.
25 *See* Works Declaration.

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27 ² Trustee also requests that the Court take judicial notice of all pleadings filed in the above-
28 captioned bankruptcy case pursuant Rule of Evidence 201, incorporated by reference by FRBP
9017.

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1 7. On June 12, 2014, the insurer issued a letter to the law firm of McDonald Carano
2 Wilson (“MCW”) confirming that legal fees incurred by the Debtor in connection with the NRED
3 action would be paid by the insurer up to the limit of \$15,000.00. The insurer requested that all
4 legal invoices be forwarded to it for review and approval. *See Works Declaration.*

5 8. Thereafter, MCW defended Brown in the NRED action and such action was
6 resolved on or around October 2015. *See Works Declaration.*

7 9. MCW submitted its invoices to the insurer as instructed and sought payment for
8 the same; however, the insurance checks were issued to the Debtor as the named insured, as
9 “reimbursement” checks for the defense of Brown. True and correct copies of the three (3)
10 checks that were issued to the Debtor (the “XL Insurance Checks”) are attached to the Works
11 Declaration as **Exhibit “1”**.

12 10. The Debtor did not pay the MCW invoices, so there is no reimbursement to be
13 made to the estate on account of the defense of Brown; furthermore, the XL Insurance Checks are
14 not property of the estate. *See Works Declaration.*

15 11. Consequently, in order for MCW to get paid for the services it provided, the
16 Trustee respectfully requests that she be permitted to sign the XL Insurance Checks and transfer
17 the funds directly to MCW.

18 **III. RELIEF REQUESTED**

19 12. By this Application, the Trustee respectfully seeks an order from the Court, in the
20 form attached hereto, approving the relief requested herein, under, among other applicable law, 11
21 U.S.C. §§ 105(a)³ and 541.

22 13. The Trustee seeks authorization to negotiate the checks issued by XL Professional
23 Insurance to MCW for a total disbursement of \$3,320.50 to MCW for the work performed on
24 behalf of Brown.

25 14. Pursuant to 11 U.S.C. § 541 such funds are not property of the estate because the
26 Debtor has no legal or equitable interest in the insurance proceeds, which are directly related to

27 _____
28 ³ “The court may issue any order, process, or judgment that is necessary or appropriate to carry
out the provision so this title.”

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the invoices from MCW for work performed on behalf of Brown, and are instead held for the benefit of MCW.

15. Although the XL Insurance Checks are not property of the estate, MCW’s defense of Brown, as the “real estate broker” under NRS 645.030 provided a collateral benefit to the estate as the Debtor was the dual licensee as a Nevada limited liability company. Because the Debtor’s real estate broker’s license was dependent on Brown’s license, it too was the beneficiary in MCW’s resolution of the real estate matters that were paid for by XL Insurance.

16. The XL Insurance Checks at issue are *de minimus* and MCW does not expect any further checks from XL Insurance. In the event that this application is denied, MCW would likely assert the amounts as an administrative claim against the estate; therefore, the Court should grant the relief requested, authorizing the Trustee to negotiate the insurance checks for the benefit of MCW.

IV. CONCLUSION

WHEREFORE, the Trustee respectfully requests that the Court (i) enter an order substantially in the form of the proposed order attached as **Exhibit 1** hereto, (ii) and grant such relief as is appropriate.

Dated this 27th day of April, 2016.

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