

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

May 12, 2009 at 9:32 A.M.

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1. 09-25414-B-7 RICHARD JESSEN HEARING - MOTION
TJW #1 TO COMPEL TRUSTEE TO ABANDON
PROPERTY OF THE ESTATE, TO WIT
BUSINESS EQUIPMENT AND BUSINESS
KNOW AS PROGRESSIVE REAL ESTATE
4-2-09 [6]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

This matter is continued to the court's calendar on June 16, 2009 at 9:32 a.m.

This motion was initially set on the 9:30 a.m. calendar. The Clerk's office contacted movant asking movant to serve an amended notice of hearing continuing the matter to the 9:32 a.m. calendar. (Dkt. 14). Instead of serving an amended notice of hearing changing the May 12, 2009 hearing time from 9:30 a.m. to 9:32 a.m., movant served an amended notice of hearing continuing the matter from this calendar to the court's June 16, 2009, 9:32 a.m. calendar. (Dkt. 15).

The court will issue a minute order.

2. 08-36833-B-7 MAURICE/REGINA PUGH, VS. HEARING - MOTION
DBJ #1 TO AVOID LIEN
PLUMAS BANK 4-9-09 [20]

DISCHARGED 3-17-09

Disposition Without Oral Argument: The motion is continued to June 9, 2009 at 9:32 a.m. On or before May 12, 2009, the date of this hearing, the debtors shall serve the motion, its supporting papers, and notice of the continued hearing on Plumas Bank in the manner required by Fed. R. Bankr. P. 7004. The debtors shall also file the notice of the continued hearing with the court. Proof of service shall be filed within three court days thereafter. LBR 9014-1(e)(2). If the debtors fail to do any of the foregoing, the motion will be denied without prejudice.

The court will issue a minute order.

3. [09-20033](#)-B-7 KOW/NAI SAETEUN

CONT. HEARING - DEBTORS'
MOTION TO DISMISS CASE
3-14-09 [[31](#)]

CONT. FROM 4-28-09

Disposition Without Oral Argument: This matter continued from April 28, 2009 for service on all creditors listed on the master address list on or before April 28, 2009. Due to the size of this morning's three related calendars (110 matters), the court issues the following abbreviated ruling.

The motion is denied without prejudice.

Following the hearing on April 28, 2009, the court issued a minute order which directed the debtors to perform several tasks ("the Order"). (Dkt. 38). The debtors failed to comply with the court's directives in the Order. Accordingly, the motion is denied without prejudice for improper service.

The court will issue a minute order.

4. [09-22034](#)-B-7 WARREN/KATHLEEN MOYER
RWH #1

HEARING - MOTION FOR
ORDER COMPELLING TRUSTEE TO
ABANDON PROPERTY AND APPROVING
SALE OF PROPERTY BY DEBTORS
4-21-09 [[27](#)]

Tentative Ruling: The court construes this motion as having been filed under LBR 9014-1(f)(2) because the motion was filed only twenty-one days before the hearing. Opposition may be presented at the hearing. Nevertheless, in this instance and considering the size of this morning's three related calendars (110 matters), the court issues the following abbreviated tentative ruling. Any party may at the hearing request a more explanatory Disposition After Oral Argument.

The motion is granted in part and denied in part. Pursuant to 11 U.S.C. § 554(b), the real property located at 15039 Pammy Way, Grass Valley, California ("Property") is deemed abandoned by the estate. Debtors' request for approval of sale of the Property is denied. Except as so ordered, the motion is denied.

Through this motion, debtors seek to deem the Property abandoned pursuant to 11 U.S.C. § 554(b). Debtors further seek approval of sale of the Property pursuant to 11 U.S.C. § 363. Debtors have shown that they are legally entitled to only the former but not the latter form of relief.

As to the debtors' request to abandon the Property, debtors have alleged without dispute that value of the Property is \$450,000.00 and that the Property is encumbered by unavoidable liens totaling \$401,000.00. Considering that debtors have claimed an exemption in the Property in the amount of \$40,000.00 and have estimated costs of sale in excess of \$31,000.00, the debtors have shown that the Property is of

inconsequential value and benefit to the estate.

The debtors' request for approval of sale of the Property free and clear of any interest of the trustee and the estate is denied because only the trustee is authorized to utilize 11 U.S.C. § 363(b) and (f) with respect to sales of property of the estate.

The court will issue a minute order.

5. [08-35540](#)-B-11 REGENT HOTEL, LLC SC #4 HEARING - MOTION FOR ORDER PROHIBITING THE DEBTOR'S USE OF CASH COLLATERAL, REQUIRING SEQUESTRATION OF CASH COLLATERAL, REQUIRING AN ACCOUNTING REGARDING CASH COLLATERAL, ET AL. 4-13-09 [[281](#)]
- WITHDRAWN BY M.P.

Disposition Without Oral Argument: This matter was withdrawn by the moving party on April 24, 2009 and is removed from the calendar.

6. [09-20357](#)-B-7 BRENT LAWRENCE GJH #2 HEARING - MOTION TO APPROVE SALE OF STOCK FREE AND CLEAR OF LIEN AND PAYMENT OF SECURED CREDITOR 4-22-09 [[58](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

7. [07-21846](#)-B-7 DANA ANDREWS [07-2119](#) HAW #2 HEARING - DEBTOR'S MOTION TO JOIN OR INTERVENE IN ADVERSARY ACTION 4-18-09 [[94](#)]
DANA ANDREWS, VS.
ANDREWS FAMILY, ET AL.

DISCHARGED 4-7-08

Disposition Without Oral Argument: Oral argument will not assist the court in resolving this matter.

The motion is denied without prejudice.

The motion is procedurally defective. First, movant used an improper procedure to notice this motion. Use of the reduced notice procedure of LBR 9014-1(f)(2) "shall not be used for a motion filed in connection with an adversary proceeding." LBR 9014-1(f)(2)(i). Here, movant filed the motion only twenty-four days prior to the hearing on this matter, in derogation of LBR 9014-1(f)(1). Second, the motion improperly advises

9. [06-24971](#)-B-7 BRUCE SEYMOUR HEARING - OBJECTION
HSM #17 BY CHAPTER 7 TRUSTEE TO CLAIM
NO. 64 OF ERNEST S. FERGUSON
3-19-09 [[463](#)]

RESCHEDULED TO 6-9-09 @ 9:32AM

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

This matter is continued to June 9, 2009 at 9:32 a.m. pursuant to the trustee's amended notice of hearing.

The court will issue a minute order.

10. [06-24971](#)-B-7 BRUCE SEYMOUR HEARING - MOTION
HSM #18 FOR APPROVAL OF SALE OF ASSETS
OF THE ESTATE, INCLUDING
COMPROMISES OF CONTROVERSIES
AND RELATED AGREEMENT
4-17-09 [[469](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

11. [08-32476](#)-B-11 SHASTA APARTMENTS, LLC HEARING - MOTION
UST #1 OF THE UNITED STATES TRUSTEE
FOR CONVERSION TO CHAPTER 7 OR
DISMISSAL OF CHAPTER 11 CASE
4-6-09 [[55](#)]

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this calendar (110 matters), the court issues the following abbreviated ruling.

The motion is granted and the case is dismissed.

Pursuant to 11 U.S.C. §§ 1112(b)(4)(A), (4)(F), and (4)(K), the court finds that the United States Trustee has established cause for conversion or dismissal and that debtor has not established that the case should not be dismissed or converted despite the existence of cause. The court further finds that dismissal is in the best interests of creditors and the estate for the reasons stated by the United States Trustee.

Counsel for the United States Trustee shall submit an order consistent with the foregoing ruling.

12. [08-33476](#)-B-11 FINS MARKET, INC.
SMR #2

CONT. HEARING - MOTION
TO ALLOW ASSUMPTION OF NON-
RESIDENTIAL REAL PROPERTY LEASE
2-17-09 [[81](#)]

CONT. FROM 4-28-09,3-17-09

Tentative Ruling: The motion assume a non-residential real property lease for the property located at 8680 Sierra College Boulevard, Suite 195, Roseville, CA 95661 is denied as moot pursuant to 11 U.S.C. § 365(d) (4) (i).

According to 11 U.S.C. § 365(d) (4), "an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that non-residential real property to the lessor, if the trustee does not assume or reject the lease by the earlier of (i) the date that 120 days after the date of the order for relief; or (ii) the date of the entry of an order confirming plan." Here, the case was filed on September 22, 2008. The debtor had until Tuesday, January 20, 2009 to assume the lease. Because the debtor failed to do so, the lease is deemed rejected.

Once a lease has been rejected by operation of law under section 365(d) (4), the lease is no longer property of the estate nor does the debtor have an interest in it. See In re Damianopoulos, 93 B.R. 3, 6 (Bankr. N.D.N.Y. 1988). Because an unexpired lease may only be assumed if it is property of the estate, a rejected lease cannot thereafter be assumed. See In re Arizona Appetito's Stores, Inc., 893 F.2d 216, 218 (9th Cir. 1990). As of January 20, 2009, debtor was no longer able to assume this lease.

Nothing in this ruling prevents the debtor from seeking authority under 11 U.S.C. § 364 and F.R.Bankr.P. 4001(c) to incur debt by entering into a new lease according to the agreement with the landlord.

The court will issue a minute order.

13. [98-34077](#)-B-13J JERRY PRATER
[09-2137](#)
JERRY PRATER, VS

HEARING - MOTION
TO DISMISS ADVERSARY COMPLAINT
3-30-09 [[7](#)]

HOMEQ SERVICING
CORPORATION
DISCHARGED 2-25-03

Tentative Ruling: None.

14. [08-29382](#)-B-7 TRACY/DANIELLE WILLIAMS
[09-2079](#)
UNITES STATES TRUSTEE, VS.

HEARING - AMENDED
PLAINTIFF'S MOTION FOR
DEFAULT JUDGMENT
4-6-09 [[18](#)]

DANIELLE WILLIAMS

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this calendar (110 matters), the court issues the following abbreviated ruling.

The motion is granted.

Plaintiff has in her complaint sufficiently pled her cause of action for revocation of the debtor/defendant's discharge pursuant to 11 U.S.C. Section 727(a)(8). "Averments in a pleading to which a responsive pleading is required, other than those as to the amount of damage, are admitted when not denied in the responsive pleading." F.R.Bankr.P. 7008(a), incorporating F.R.Civ.P. 8(d); Geddes v. United Financial Group, 559 F.2d 557, 560 (9th Cir.1977). Therefore, it is established for purposes of this adversary proceeding that, on February 14, 2003, the debtor/defendant commenced case no. 03-21680-A-13 (the "First Case") under chapter 13 of the Bankruptcy Code. Subsequently, on August 4, 2003, the First Case was converted to one under chapter 7. The debtor/defendant received her discharge in the First Case on November 25, 2003 (Dkt. 56). Less than eight years after the filing of the First Case, the debtor/defendant filed the current bankruptcy case, case no. 08-29382-B-7 (the "Second Case"), in this court on July 11, 2008. Pursuant to Section 727(a)(8), the debtor/defendant is not entitled to a discharge in the Second Case.

Plaintiff has also alleged without dispute, and supported with a declaration, the facts that the complaint was properly served, that the debtor/defendant is not an infant or incompetent person and that the debtor/defendant is not in active military service.

The court will issue a minute order granting the motion. The plaintiff shall submit a separate form of judgment denying the debtor/defendant's discharge in the Second Case.

15. [08-33892](#)-B-7 XUAN LE
MFB #2

HEARING - MOTION
OF THE CHAPTER 7 TRUSTEE
FOR EXTENSION OF DEADLINES
4-1-09 [[76](#)]

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this calendar (110 matters), the court issues the following abbreviated ruling.

In the absence of any opposition, the motion is granted. The deadline for the chapter 7 trustee to file an objection to the debtor's discharge under 11 U.S.C. is extended to July 6, 2009.

The chapter 7 trustee ("Trustee") requests an extension of the deadline to file an objection to the debtor's discharge under 11 U.S.C. § 727.

When a request for an enlargement of time to file a complaint to objecting to discharge is made before the time has expired, as it was here, the court may enlarge time for cause shown. Fed. R. Bankr. P. 4004(b). Here the Trustee alleges without dispute that the debtor has failed to turnover post-petition rents pertaining to real property located at 1332 Lick Avenue, San Jose, California pursuant to the Trustee's request. The Trustee further alleges without dispute that he needs additional time to investigate debtor's financial affairs. The court finds that the foregoing constitutes cause for an enlargement of time.

The court will issue a minute order.