

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

August 11, 2009 at 9:32 A.M.

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1. [09-27902](#)-B-7 MARK/DIANE EPPLER HEARING - MOITON TO
CLH #1 SET ASIDE DISMISSAL OF
CHAPTER 7 CASE
7-14-09 [[23](#)]

CASE CLOSED 6-23-09
CASE DISMISSED 6-11-09

Tentative Ruling: None.

2. [06-25515](#)-B-7 MUHAMMAD JAVAID, VS. HEARING - MOTION FOR
DISCOVER BANK ORDER AVOIDING JUDICIAL LIEN
AND CLOSING OF CHAPTER 7
BANKRUPTCY CASE
7-14-09 [[26](#)]

DISCHARGED 3-27-09

Tentative Ruling: The court construes this motion as one filed under LBR 9014-1(f)(2) because the notice of hearing fails to advise potential respondents whether and when written opposition is required. Opposition may be presented at the hearing. However, in this instance, the court issues the following tentative ruling.

The motion is denied without prejudice.

Debtor has not shown that he is legally entitled to the relief that he seeks. Through this motion, debtor seeks to avoid a purported judicial lien in favor of Discover Card, issued in the official records of Sacramento County regarding real property located at 3651 Norwood Avenue, Apt. 3, Sacramento, California 95838 (the "Property"). However, debtor has neither specified the value of the Property or the unavoidable liens on the Property nor has he claimed an exemption as to the Property on Schedule C. (Dkt. 1 at 22). Therefore, debtor has not shown that the fixing of the purported judicial lien impairs an exemption as to the Property.

The court will issue a minute order.

3. [09-32824](#)-B-7 DUANE JERVIS HEARING - MOTION FOR
RELEASE OF GARNISHED WAGES
7-27-09 [[14](#)]

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.

4. [09-26740](#)-B-11 ROOF TOP METAL PRODUCTS, INC HEARING - MOTION TO
BWS #1 COMPEL ELECTION OF ASSUMPTION
OR REJECTION OF UNEXPIRED
LEASE
7-6-09 [[97](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Because of the number of matters on this morning's three related calendars (96 matters), the court issues the following abbreviated tentative ruling.

The motion is denied as moot. The subject lease on nonresidential real property located at 1495 Columbia Avenue, Building 5, Riverside, CA 92507 was deemed rejected as of 12:01 a.m. on August 8, 2009 by operation of 11 U.S.C. § 365(d)(4)(A).

Subject to 11 U.S.C. § 365(d)(4)(B), 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 nonresidential real property to the lessor if the trustee does not assume or reject the unexpired lease by the earlier of 120 days after the date of the order for relief or the date of the entry of an order confirming plan. 11 U.S.C. § 365(d)(4)(B). Debtor had until August 7, 2009 to assume or reject the subject lease on nonresidential real property located at 1495 Columbia Avenue, Building 5, Riverside, CA 92507. As debtor did not assume the lease, the lease was deemed rejected as of 12:01 a.m. on August 8, 2009.

The court will issue a minute order.

5. [08-25342](#)-B-11 DIAMOND CREEK PARTNERS, LTD HEARING - DEBTOR'S
HLC #23 MOTION FOR AUTHORIZATION TO
ENTER INTO FIFTH SUPPLEMENTAL
POST PETITION BORROWING
AGREEMENT WITH INSIDERS
7-21-09 [[523](#)]

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.

6. [08-29045](#)-B-11 ALEXANDRA SPIEGEL
RIH #1
- HEARING - MOTION
TO CONTINUE HEARING ON
CONFIRMATION OF PROPOSED PLAN
OF REORGANIZATION
7-28-09 [[244](#)]

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. [09-23852](#)-B-13J JOHN/GERALDINE WRIGHT
[09-2156](#) JDB #2
JOHN WRIGHT, ET AL, VS.
- AURORA LOAN SERVICES LLC, ET AL.
- HEARING - MOTION TO
DISMISS PLAINTIFFS' ADVERSARY
COMPLAINT FILED BY DEFENDANTS
AURORA LOAN SERVICES LLC AND
FEDERAL HOME LOAN MORTGAGE
CORPORATION
7-8-09 [[20](#)]

Tentative Ruling: None.

8. [09-27852](#)-B-7 EVERARDO/PATRICIA DIAZ
SF #3
- HEARING - MOTION FOR
AUTHORIZATION TO SELL ESTATE'S
INTEREST IN VEHICLES TO DEBTORS
7-6-09 [[20](#)]

Tentative Ruling: The failure of any party in interest to file written opposition as required by this local rule may be considered consent to the granting of the motion. See Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995); LBR 9014-1, Part II(a) and (c). Nevertheless, because other parties may be interested in purchasing the property, the court will issue a tentative ruling.

Pursuant to 11 U.S.C. § 363(b)(1), the motion is granted to the extent set forth herein. The trustee is authorized to sell the estate's interest in certain personal property, consisting of a 1999 Toyota Tacoma, a 2006 Nissan Sentra, a 2007 Suzuki GSX-R600 Motorcycle, a 1966 Ford Mustang, a 1968 Pontiac Firebird, a 2004 Volkswagen Jetta, the body shell from a 1962 Volkswagen Jetta, and a Cadillac El Dorado (the "Property") in an "as-is" and "where-is" condition, and subject to any and all lien and interests that may exist, to debtors for \$6,000.00, payable on the terms set forth in the motion. The proceeds of the sale shall be administered for the benefit of the estate. Except as so ordered, the motion is denied.

The trustee alleges without dispute that, to his knowledge, there are no liens or encumbrances on the Property. The trustee seeks to sell the estate's non-exempt interests in the Property, subject to any and all lien and interests that may exist, to debtors for \$6,000.00.

The trustee has made no request for a finding of good faith under 11 U.S.C. § 363(m), and the court makes no such finding.

Counsel for the trustee shall submit an order that conforms to the court's ruling.

9. [09-26064](#)-B-7 DIANE HOUSE HEARING - MOTION
SF #3 TO EXTEND DEADLINE TO OBJECT
TO DEBTOR'S EXEMPTIONS
7-9-09 [[43](#)]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(1). Because of the number of matters on this morning's three related calendars (96 matters), the court issues the following abbreviated tentative ruling.

The motion is granted. The deadline to file an objection to exemption is extended to and including September 7, 2009.

Fed. R. Bankr. P. 4003(b) provides that "[t]he court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension." Fed. R. Bankr. P. 4003(b). Movant filed the instant motion on July 9, 2009. Pursuant to Fed. R. Bankr. P. 4003(b)(1), the deadline to file an objection to the list of property claimed as exempt is "30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later." The debtor filed an amendment to her Schedule C on June 9, 2009 (Dkt. 25, pp. 9-10). The trustee's allegations of discrepancies in the debtor's schedules constitute "cause" for the purposes of Fed. R. Bankr. P. 4003(b).

The court will issue a minute order.

10. [04-21865](#)-B-7 JOE/BRENDA EITZEN HEARING - TRUSTEE'S
MPD #4 MOTION FOR ORDER AUTHORIZING
ADMINISTRATIVE EXPENSE
PAYMENT OF \$3,078.68
TO DUDLEY'S EXCAVATING
7-13-09 [[60](#)]

DISCHARGED 10-19-04

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (96 matters), the court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. The chapter 7 trustee is authorized to pay Dudley's Excavating ("Dudley") the sum of \$3,078.68 as a chapter 7 administrative expense claim. Except as so ordered, the motion is denied.

The court finds that the inspection and pumping of four septic tanks on real property located on Highway 99 in Los Molinos, California (the

"Property Work") by Dudley constitute actual, necessary expenses of preserving the chapter 7 estate pursuant to 11 U.S.C. § 503(b)(1)(A). As set forth in the trustee's motion, the trustee utilized Dudley to perform the Property Work, which the trustee was required to perform pursuant to a court approved sales contract.

The court will issue a minute order.

11. [04-21865](#)-B-7 JOE/BRENDA EITZEN
MPD #5

HEARING - VERIFIED
MOTION FOR APPROVAL OF
ATTORNEY FEES (\$5,404.51 FEES;
\$3,786.48 COSTS) FOR MICHAEL
P. DACQUISTO AS ATTORNEY FOR
THE BANKRUPTCY ESTATE, FIRST
AND FINAL REQUEST
7-13-09 [[65](#)]

DISCHARGED 10-19-04

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(1). In this instance and because of the size of this morning's three related calendars (96 matters), the court issues the following abbreviated tentative ruling.

The motion is granted to the extent set forth herein. The order approving applicant's employment (Dkt. 18) will be amended to state an effective date of April 1, 2004. The application is approved on a final basis for a total of \$5,404.51 in fees and \$3,786.48 in costs, payable as a chapter 7 administrative expense. Except as so ordered, the motion is denied without prejudice.

This court authorized the employment of Michael P. Dacquisto ("Applicant") for the chapter 7 trustee on April 19, 2004 (Dkt. 18). The employment order does not state that the employment was effective as of an earlier date. This department does not approve compensation for work prior to the effective date of a professional's employment. DeRonde v. Shirley (In re Shirley), 134 B.R. 930, 943-944 (B.A.P. 9th Cir. 1992). However, the court construes the present application as requesting an effective date in the order approving applicant's employment retroactive to April 1, 2004. The request for that effective date is granted. Due to the administrative requirements for obtaining court approval of professional employment, this department allows in an order approving a professional's employment an effective date that is not more than thirty (30) days prior to the filing date of the employment application without a detailed showing of compliance with the requirements of In re THC Financial Corp, 837 F.2d 389 (9th Cir. 1988) (extraordinary or exceptional circumstances to justify retroactive employment). Here, April 1, 2004 is four days prior to the filing date of the employment application. However, a recurrence of this fact pattern may show sufficient inattention to employment matters to lead, with or without opposition, to a different result under the "satisfactory explanation" prong of the THC Financial Corp. standard.

Applicant now seeks compensation for the period of April 1, 2004 through July 12, 2009 in the amount of \$5,404.51 in fees and \$3,786.48 in costs. As set forth in the attorney's application, the allowed fees and costs are reasonable compensation for actual, necessary and beneficial

services. 11 U.S.C. § 330(a)(1).

The court will issue an order approving the application. Counsel for the trustee shall submit an amended order (which shall be titled "Amended Order Authorizing Employment of Michael P. Dacquisto as Counsel to Chapter 7 Trustee") stating an effective date for applicant's employment of April 1, 2004.

12. [07-24767](#)-B-7 LUXURY AUTO IMPORTS OF HEARING - MOTION
[09-2361](#) SACRAMENTO, INC. MAS #1 TO STRIKE ANSWER
BRASHER'S SACRAMENTO AUTO 7-9-09 [8]
AUCTION, INC., VS.
AUTO TRADE CENTER, INC.

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(1). In this instance and because of the size of this morning's three related calendars (96 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. Defendant Auto Trade Center, Inc.'s ("Defendant") answer, filed on July 7, 2009 in pro se, is stricken. Plaintiff Brasher's Sacramento Auto Auction, Inc.'s ("Plaintiff") request for an order directing the entry of Defendant's default is denied. Except as so ordered, the motion is denied.

The adversary complaint in this matter was filed on June 22, 2009. On July 7, 2009, Defendant, a corporation, filed an answer (Dkt. 7) ("July 7 Answer") that is signed by "K. Raymond" only. Corporations and other artificial entities can appear in federal court only through licensed attorneys; a corporation cannot appear through an officer or manager. Rowland v. California Men's Colony, 506 U.S. 194 (1993); United States v. High Country Broadcasting Co. Inc., 3 F.3d 1244 (9th Cir. 1996); Local Bankruptcy Rule 1001-1(c) incorporating Local District Rule 83-183(a). There is no indication in the July 7 Answer that "K. Raymond" is an attorney who is licensed to practice in California or in any other court. The July 7 Answer neither refers to K. Raymond as an attorney nor specifies a bar number for him. Because the July 7 Answer was improperly filed by a non-attorney, the July 7 Answer is stricken.

On July 22, 2009, Defendant filed a second answer signed by Robert Erkel, Esq. as counsel. (Dkt. 22). The July 22, 2009 answer was filed before default was entered against Defendant. The entry of default, not the expiration of the time to answer, terminates a defendant's right to appear and defend.

The court will issue a minute order.

13. [08-33168](#)-B-7 RODERICK BRIMHALL
MFB #3

HEARING - TRUSTEE'S
VERIFIED MOTION TO APPROVE
PROPOSED SETTLEMENT OF WRONGFUL
TERMINATION CLAIMS AND THE
COMPENSATION OF THE LAW FIRM
OF RUKIN, HYLAND, DORIA AND
TINDALL, LLP AS SPECIAL COUNSEL
7-22-09 [[36](#)]

DISCHARGED 12-29-08

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.

14. [06-24971](#)-B-7 BRUCE SEYMOUR
HSM #19

CONT. HEARING - OBJECTION
TO CLAIM NO. 40 OF
FIRDOS S. SHEIKH, M.D.
5-11-09 [[477](#)]

CONT. FROM 7-14-09,6-30-09

Disposition Without Oral Argument: This matter was withdrawn by the moving party on August 5, 2009 and is removed from the calendar.

15. [09-28072](#)-B-7 GLORIA DELANEY
JSO #1

HEARING - MOTION
TO COMPEL CHAPTER 7 TRUSTEE
TO ABANDON BUSINESS
7-13-09 [[64](#)]

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this morning's three related calendars (96 matters), the court issues the following abbreviated ruling.

Pursuant to 11 U.S.C. § 554(b), the motion is granted, and the business entity known as Gloria Delaney dba Delaney Homes ("Business") is deemed abandoned by the estate. Except as so ordered, the motion is denied.

The debtor has shown that the Business is of inconsequential value and benefit to the estate.

The court will issue a minute order.

16. [08-33892](#)-B-7 XUAN LE
MFB #3

HEARING - MOTION
OF THE CHAPTER 7 TRUSTEE FOR
EXTENSION OF DEADLINES
7-6-09 [[90](#)]

Disposition Without Oral Argument: This motion is unopposed. Due to the size of this calendar (96 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 October 5, 2009.

The chapter 7 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 and to effect turnover of the aforementioned funds. The court finds that the foregoing constitutes cause for an enlargement of time.

The court will issue a minute order.

17.	09-25698 -B-7	TAMARA STRATTON	HEARING - MOTION TO
	09-2239	SW #1	DISMISS FOR FAILURE TO STATE
		TAMARA STRATTON, VS.	A CLAIM UPON WHICH RELIEF
			CAN BE GRANTED
		CITI RESIDENTIAL LENDING, ET AL.	7-13-09 [13]

Tentative Ruling: None.