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3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 SACRAMENTO DIVISION
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8 In re:)
9 GARY STEGER,) Case No. 07-20027-B-13J
10) Docket Control No. JDL-1
Debtor(s).)
11) Date: March 13, 2007
12 _____) Time: 9:30 a.m.

13 On or after the calendar set forth above, the court issued
14 the following ruling. The official record of the ruling is
appended to the minutes of the hearing.

15 Because the ruling constitutes a "reasoned explanation" of
16 the court's decision under the E-Government Act of 2002 (the
"Act"), a copy of the ruling is hereby posted on the court's
17 Internet site, www.caeb.uscourts.gov, in a text-searchable
format, as required by the Act. However, this posting does not
18 constitute the official record, which is always the ruling
appended to the minutes of the hearing.

19 **DISPOSITION AFTER ORAL ARGUMENT**

20 This matter came on for final hearing on March 13, 2007, at 9:30
21 a.m. Appearances are noted on the record. The following constitutes
22 the court's findings of fact and conclusions of law, pursuant to
23 Federal Rule of Bankruptcy Procedure 7052.

24 As an initial matter, the court notes that in violation of
25 LBR 9014-1(d)(3), movant's notice of hearing is silent as to whether
26 or not written opposition to this objection to confirmation was
27 required. General Order 05-03 (as amended by G.O. 06-01), ¶ 3(c)
28 requires objections to confirmation be filed under LBR 9014-1(f)(2).

1 However, in this instance, the debtor has filed an extensive
2 opposition to the matter. The court will therefore address the merits
3 of the objection to confirmation.

4 Secured Creditor Downey Savings and Loan Association,
5 ("Creditor") states five objections to debtor's request for
6 confirmation of debtors' chapter 13 plan. Creditor also states one
7 objection to debtor's motion to value collateral. Creditor argues:
8 (1) an order granting Creditor relief from the automatic stay in
9 debtor's prior chapter 7 case is *res judicata* in this subsequent
10 chapter 13 bankruptcy; (2) The plan fails to provide for the full
11 amount of Creditor's arrears; (3) debtor's plan provides for interest
12 on Creditor's collateral at a rate different from the contract rate;
13 (4) the conduit payments provided in class 1 are incorrect; and (5)
14 the plan is not feasible given the errors cited above. The court will
15 address each objection.

16 (1) *Res Judicata*. This objection is overruled. Contrary to
17 the assertions made by Creditor in this objection, the order signed by
18 Judge Klein in bankruptcy case 06-23105 contains no language that
19 would give it prospective effect in subsequent cases. The language
20 referenced by Creditor was lined out and initialed by Judge Klein.
21 Counsel should review her obligations to this court under Federal Rule
22 of Bankruptcy Procedure 9011(b)(3). Furthermore, none of the
23 authority cited by Creditor is binding on this court, is unpersuasive,
24 and its continuing precedential value is questionable under the
25 Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. The
26 only case from this Circuit cited by Creditor is In re Huerta, 137
27 B.R. 356, 376 (Bankr. C.D. Cal. 1992). The court is not persuaded by
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1 Huerta because that decision ignores the plain language of 11 U.S.C. §
2 362(a). 11 U.S.C. § 105(a) is not a roving commission to "do equity."
3 It may only be exercised consistently with the authority given in the
4 Bankruptcy Code. In re Yadidi, 274 B.R. 843 (9th Cir. B.A.P. 2002).
5 Even were the court to follow Huerta, the decision does not favor
6 Creditor. The debtor has filed what is commonly referred to as a
7 "chapter 20." This subsequent chapter 13 is not filed solely to stop
8 Creditor's foreclosure sale. It is intended to rehabilitate those
9 debts which remain after receipt of debtor's chapter 7 discharge on
10 December 14, 2006.

11 Finally, the court notes that the cases cited by movant
12 appear to lack continuing validity in light of the changes to Section
13 362 by the Bankruptcy Abuse Prevention and Consumer Protection Act on
14 2005. Congress has now designated those circumstances where the
15 automatic stay will and will not apply in subsequent cases filed by a
16 debtor. See 11 U.S.C. § 362(c)(3) and (c)(4). Neither of those
17 subsections applies here where debtor's first case resulted in his
18 receipt of a chapter 7 discharge, and the case closed after entry of a
19 final decree. In addition, Congress has specified in 11 U.S.C. §
20 362(d)(4) those circumstances under which a bankruptcy court may issue
21 an order which, if the creditor follows specified procedures, may have
22 in rem effect. The order issued by Judge Klein does not qualify as
23 such an order and there is no evidence that Creditor complied with the
24 requirements of Section 362(d)(4).

25 Because Judge Klein's order lacks preclusive effect in this
26 case, Creditor's trustee's sale is void as a violation of the
27 automatic stay in this subsequent case. Schwartz v. United States (In
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1 re Schwartz), 954 F.2d 569 (9th Cir. 1992). Creditor's alleged lack of
2 knowledge of this bankruptcy case does not alter this fact, although
3 it might prevent a finding of willfulness necessary for the imposition
4 of sanctions.

5 (2) Amount of Arrears. The objection is overruled.
6 Creditor's argument exhibits an ignorance of the form plan which is
7 used in this District. The plan filed by debtor states in Section
8 3.04:

9 The proof of claim, not this plan or the schedules, shall
10 determine the amount and classification of a claim. If a
11 claim is provided for by this plan and a proof of claim
12 is filed, dividends shall be paid based upon the proof of
13 claim unless the granting of a valuation or a lien
14 avoidance motion, or the sustaining of a claim objection,
15 affects the amount or classification of the claim.

16 Debtors' plan, Dkt. No. 6, § 3.04. This provision, or one similar to
17 it, has existed in every form plan used in this District since at
18 least 1997. Creditor has filed a claim in this case, Claim 3 on the
19 court's Claims Register. By operation of Section 3.04, the debtor's
20 plan does provide for the full amount of movant's arrears claim.

21 (3) Interest. The objection is overruled as set forth
22 below. Creditor's allegation that it is entitled to interest at the
23 default rate in the note is frivolous. Creditor has failed to cite,
24 let alone apply, the seminal case on this issue, Till et ux. v. SCS
25 Credit Corp., 541 U.S. 465, 124 S.Ct. 1951, 1955-56, 158 L.Ed.2d 787
26 (2004). The authorities cited by Creditor all pre-date Till, and are
27 therefore no longer good law. Creditor is not entitled to its
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1 contract rate, let alone the default rate, for repayment of its
2 arrears in the chapter 13 plan. Till directs this court to conduct a
3 present value calculation as of the effective date of the plan by
4 starting with the risk free rate and adjusting upward by an
5 appropriate risk factor. The form plan provides that the plan is
6 "effective from the date it is confirmed." The court takes judicial
7 notice pursuant to Federal Rule of Evidence 201 that the current prime
8 rate is 8.25%. See
9 http://www.federalreserve.gov/releases/h15/data/Daily/H15_PRIME_NA.txt
10 . Till places the burden of establishing factors justifying upward
11 adjustment of the interest rate from the national prime rate on the
12 creditor, not the debtor. Creditor has not made the necessary showing
13 here. The court therefore finds that the appropriate interest rate on
14 Creditor's class 1 claim is 8.25%. The objection is overruled;
15 provided, however, that debtor shall provide for Creditor's claim at
16 8.25% interest in the order confirming the plan as debtor agreed to do
17 at the hearing on this matter.

18 (4) Monthly Payment. The objection is overruled. Debtor
19 does not dispute that the plan fails to list the correct monthly
20 payment. The court does note that the plan provides for situations
21 such as this by automatically adjusting the conduit payment and plan
22 payment to account for changes in monthly payment under the terms of a
23 pre-filing contract. See General Order 05-03 (as amended by G.O. 06-
24 01), ¶ 5(c). Creditor's allegation that debtor is attempting to "fix"
25 the payment owing to Creditor is without merit.

26 (5) Feasibility. The objection is overruled as set forth
27 below. The debtor's plan, filed on January 3, 2007, is confirmed with
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1 the following additional provisions included in the order confirming
2 the plan: (1) Plan payments shall be in the amount of \$3,170.00; (2)
3 the current conduit payment, subject to change under the terms of the
4 note, is \$1,990.78; (3) the monthly dividend owing to Creditor in
5 Class 1 is \$628.

6 In the absence of any additional opposition, and subject to
7 inclusion of the provisions enumerated in paragraphs 3 and 5 above in
8 the order confirming the plan, the court finds that the plan filed on
9 January 3, 2007, complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c),
10 and 1325(a).

11 Motions to Value Collateral. Debtor has pending before the
12 court two motions to value collateral. Neither is directed at
13 Creditor. Therefore, creditor's objection to the motion to value the
14 collateral of Wells Fargo is overruled for lack of standing. Even
15 were the court to find Creditor had standing to object to that motion,
16 the evidence submitted by Creditor is unpersuasive. The drive-by
17 appraisal is dated September 22, 2006; three and one half months pre-
18 petition. The debtor has expressed an opinion of the value of this
19 particular property, as he can do under Federal Rule of Evidence 701
20 and the case law interpreting that Rule, and his opinion is based on
21 knowledge of the condition of this particular property.

22 The motion to value the collateral of Wells Fargo pursuant
23 to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. Wells
24 Fargo's collateral, real property located at 782 Clipper Way,
25 Sacramento CA 95831, had a value of \$420,000.00 on the date of the
26 petition. The entirety of that value is secured by Downey Savings and
27 Loan's lien. Thus, \$0.00 of Wells Fargo's claim is an allowed secured
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1 claim and the balance of its claim is an allowed unsecured claim.

2 The motion to value the collateral of American General
3 Finance is addressed elsewhere on this calendar in reference to
4 American General's objection to confirmation.

5 Counsel for the debtor shall submit an order using EDC form
6 3-081-03 (Rev. 7/1/03) that conforms to the court's ruling and which
7 has been approved by the trustee. The order shall include a specific
8 reference to the filing date of the amended plan.

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