UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

January 20, 2015 at 10:00 a.m.

---

1. 12-41813-A-11 THOMAS/CARLA EATON — MOTION TO APPROVE COMPENSATION OF DEBTORS' ATTORNEY
CLH-7 — 12-22-14 [143]

Final Ruling: The motion will be denied without prejudice because it is not supported by any admissible evidence, such as a declaration or an affidavit to support the motion's factual assertions. The exhibits attached to the motion are inadmissible as they are not authenticated by a declaration. See, e.g., Fed. R. Evid. 802. This violates Local Bankruptcy Rule 9014-1(d)(6), which provides: "Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(e)."

The movant should also note that the court does not approve compensation for services rendered pre-petition. Any services rendered pre-petition, for which the movant has not been paid, are a pre-petition claim against the bankruptcy estate. Compensation for such services should have been arranged through the debtors' chapter 11 plan.

Among the other deficiencies of the motion, it does not adequately describe the services for which compensation is requested and it does not discuss the necessity of the services and the reasonableness of compensation, for each category of services provided by the movant. The motion does not even assign categories for the services rendered by the movant.

The movant is seeking payment of $30,125 in fees and costs of $1,448.19. Yet, she states that her services were limited to preparing a plan, disclosure statement, filing a valuation motion, and opposing the United States Trustee's motion to convert or appoint a trustee.

The court then cannot determine whether the requested compensation is reasonable and whether the services rendered were necessary.

2. 12-41813-A-11 THOMAS/CARLA EATON — MOTION TO CLOSE CASE
CLH-8 — 12-22-14 [146]

Tentative Ruling: The motion will be denied without prejudice.

The debtors are asking the court to close the case and, presumably, enter a final decree, given that the debtors are current on all their confirmed chapter 11 plan payments, and are continuing to administer the terms of the plan.

This motion will be denied because the court is denying without prejudice the compensation motion of the debtors' counsel and the court expects that she will be seeking to refile the compensation motion.

3.	13-34541-A-11 CAH-13	6056 SYCAMORE TERRACE L.L.C.	MOTION TO CONFIRM PLAN 5-28-14 [135]

Tentative Ruling: The motion will be denied without prejudice.

The hearing on this motion was continued from November 24, 2014. An amended ruling from November 24 follows below.

The debtor is seeking confirmation of its chapter 11 plan filed on May 28, 2014. Docket 135.

Creditor Faran Honardoost opposes confirmation, stating that she has rejected the plan and asking the court to help her protect her rights. The court, however, is not any party in interest's advocate. The court is entrusted only with making certain that the law is properly administered and obeyed by everyone. The court cannot serve as counsel or advocate for Ms. Honardoost.

Turning to the motion, it will be denied. First, Faran Honardoost has filed a proof of claim on November 7, 2014. Her proof of claim is in the amount of $552,000. POCs 7.

The claim of Ms. Honardoost was listed on Schedule D at $200,000 as noncontingent, liquidated and undisputed. She was then not required to file a proof of claim. Her claim is deemed allowed even without a formal proof of claim being filed. See 11 U.S.C. § 1111(a).

The plan does not provide for the new $552,000 proof of claim.

More, Ms. Honardoost cast a ballot rejecting the plan. Docket 233. The debtor's tabulation does not include her vote even though attached to the tabulation is Ms. Hondardoost's timely ballot. With her vote included in the tabulation, Class 6 has rejected the plan because those voting do not hold 66% of the dollar amount of the claims being voted. See 18 11 U.S.C. § 1126(c).

To the extent Ms. Hondardoost's ballot has not been counted because the debtor wishes to dispute her claim, the debtor should be prepared to explain at the continued hearing why it should not be precluded from objecting to the claim because it failed to identify her claim as disputed in the schedules and the motion to value her collateral.

To the extent the debtor is permitted to dispute Ms. Honardoost's claim, the debtor is advised that the dispute will not be resolved at the continued hearing on the confirmation of the plan. Local Bankruptcy Rule 3007-1 requires a minimum of 44 days' notice of a hearing on a claim objection if the objector wishes the hearing to be the final hearing. Therefore, any objection will not be resolved and the court may temporarily allow the claim for voting purposes. Fed. R. Bankr. P. 3018(a).

Second, Mahboob Tehranian has filed a proof of claim on November 7, 2014. Her proof of claim is in the amount of $1,398,000. POCs 6.

The plan does not provide for this proof of claim.

Moreover, Ms. Tehranian was never listed as a creditor in this case; her claim is not listed in Schedules D, E or F or the master address list. Dockets 1, 3, 106, 107. She also did not receive notice of this bankruptcy proceeding, even though this case has been pending for nearly one year now, since November 14, 2013. The proof of service for the notice of chapter 11 bankruptcy case does not list her as having been served with that notice. Dockets 7 & 10. Additionally, the master address list was never amended to include her as a creditor. The March 24, 2014 amendment of the master address list does not list Ms. Tehranian as a creditor. Docket 106. Nor is she listed in the October 28, 2014 amendment to the master address list. Docket 249.

While the debtor filed an objection to Ms. Tehranian's proof of claim, that objection was overruled in large part. Dockets 276 & 278. The debtor's principal and Ms. Tehranian will be returning to state court to resolve their differences over all her claims against him, including the secured portion of her proof of claim. Pending resolution of the secured portion of the claim in state court, however, the claim should be provided for by the plan.

The motion will be denied.

4. 13-34541-A-11 6056 SYCAMORE TERRACE L.L.C. 14-2238
6056 SYCAMORE TERRACE, L.L.C. V. MEISSNER ET AL.,
CONTINUED STATUS CONFERENCE 8-14-14 [1]

Tentative Ruling: None.

5. 13-34541-A-11 6056 SYCAMORE TERRACE L.L.C. CAH-22 14-2238
6056 SYCAMORE TERRACE, L.L.C. V. MEISSNER ET AL.,
MOTION TO APPROVE COMPROMISE 12-22-14 [36]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The plaintiff and debtor in possession requests approval of a settlement agreement between the estate and Nicholas and Dana Meissner, resolving a breach of a lease agreement action against the Meissners. The Meissners had entered into a lease agreement with the debtor, for the term starting on June 15, 2013 and ending on June 30, 2015, for the debtor's sole real property in Pleasanton, California. The required monthly payment under the lease was $8,900, with a $250 late fee in the event payment was not made timely. The Meissners vacated the property in late October 2013, with the last lease payment made for August 2013. In filing the pending adversary proceeding, the debtor demanded $98,441 for unpaid back rent, lost prospective rent, maintenance expenses, late fees, expenses associated with the travel to maintain the property, unlawful detainer expenses, "real estate fees" relating to the releasing of the property, and

other legal expenses.

Under the terms of the compromise, the Meissners will pay $40,000 to the estate in full satisfaction of the debtor's claims against them.

11 U.S.C. § 1107(a) provides that a debtor-in-possession shall have all rights, powers, and shall perform all functions and duties, subject to certain exceptions, of a trustee, "[s]ubject to any limitations on [that] trustee." This includes the trustee's right to move for approval of a compromise or settlement. Hence, on a motion by a debtor-in-possession and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. The debtor is not certain about whether and to what extent it would be able to collect on a judgment against the Meissners. The debtor states that the Meissners' "finances are unknown." Additionally, continued litigation will result in substantial costs to the estate. Hence, given the uncertainty of collection and given the expected high costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted. The adversary proceeding may be closed no earlier than March 6, 2015.

6. 14-22480-A-7 TYRONE LEON-GUERRERO — CONTINUED STATUS CONFERENCE
14-2168 — 6-16-14 [1]
CASTRO ET AL V. LEON-GUERRERO

Tentative Ruling: None.

7. 14-22480-A-7 TYRONE LEON-GUERRERO — AMENDED MOTION FOR
14-2168 SNM-2 — SUMMARY JUDGMENT
CASTRO ET AL., V. LEON-GUERRERO — 1-5-15 [43]

Final Ruling: The motion will be dismissed without prejudice because it was set on less than 28 days' notice, in violation of Local Bankruptcy Rule 9014-1(f)(2)(A), which prohibits the use of the alternative 14-day procedure of Local Bankruptcy Rule 9014-1(f)(2) for motions "filed in connection with an adversary proceeding." The instant motion was brought under Local Bankruptcy Rule 19014-1(f)(2). It was filed and served on January 5, 2015, only 15 days prior to the January 20, 2015 hearing on the motion. Dockets 43 & 44.

Further, even in the absence of the above procedural deficiency, the evidence attached to the motion is inadmissible. The exhibit(s) attached to the amended motion (Docket 43) have not been authenticated by a declaration or affidavit. There is no declaration in support of the amended motion in the record and the

declaration (Docket 37) in support of the original second motion for summary judgment (Docket 35) does not authenticate the exhibit(s) attached to the amended motion. In any event, the declaration in support of the original second motion for summary judgment was filed on December 12, 2014, before the amended motion was filed on January 5, 2015.

Finally, the statement of undisputed facts refers to "undisputed facts" in the complaint and not the evidentiary record of the motion. However, the statements in the complaint are not evidence.

As the statement of undisputed facts does not reference the evidentiary record, the motion violates Local Bankruptcy Rule 7056-1(a), which requires the statement to "enumerate discretely each of the specific material facts relied upon in support of the motion and cite the particular portions of any pleading, affidavit, deposition, interrogatory answer, admission, or other document relied upon to establish that fact."

It also violates Local Bankruptcy Rule 9014-1(d)(6), which provides: "Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(e)."

8. 14-31890-A-11 SHAINA LISNAWATI — STATUS CONFERENCE 12-6-14 [1]

Tentative Ruling: None.

9. 14-31890-A-11 SHAINA LISNAWATI — MOTION TO EMPLOY 12-22-14 [16]
JHH-1

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtor requests authority to employ Judson Henry as bankruptcy counsel for the estate. His compensation will be based on an hourly fee arrangement. Mr. Henry will assist the debtor with the administration of the chapter 11 estate, including, without limitation, advising the debtor about rights and obligations; representing the debtor at the meeting of creditors, the IDI and at hearings; negotiating with creditors; assisting with the preparation and prosecution of motions, reports, statements, and chapter 11 plan, as necessary to the administration of the estate; and addressing post-confirmation issues. Mr. Henry's aggregate compensation for post-petition work will be capped at $19,000.

11 U.S.C. § 1107(a) provides that a debtor in possession shall have all rights, powers, and shall perform all functions and duties, subject to certain

exceptions, of a trustee, "[s]ubject to any limitations on [that] trustee." This includes the trustee's right to employ professional persons under 11 U.S.C. § 327(a). This section states that, subject to court approval, a trustee may employ professionals to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]." 11 U.S.C. § 327(a). 11 U.S.C. § 328(a) allows for such employment "on any reasonable terms and conditions . . . including . . . on a contingent fee basis."

The court concludes that the terms of employment and compensation are reasonable. The movant is a disinterested person within the meaning of 11 U.S.C. § 327(a) and does not hold an interest adverse to the estate. The employment will be approved.

10. 14-29194-A-11 CALIKOTA PROPERTIES, L.L.C. MOTION TO APPROVE DISCLOSURE STATEMENT
CAH-4 12-11-14 [46]

Final Ruling: The motion will be dismissed without prejudice because it violates Fed. R. Bankr. P. 2002(b), which requires "not less than 28 days' notice by mail of the time fixed (1) for filing objections and the hearing to consider approval of a disclosure statement or, under §1125(f), to make a final determination whether the plan provides adequate information so that a separate disclosure statement is not necessary."

Here, according to the notice of hearing, the deadline for filing written objections to the motion is on January 6, 2015, 14 days prior to the January 20 hearing on the motion. Docket 47 at 2. Yet, the motion papers were served and filed on December 11, 2014, giving parties in interest only 26 days notice of the time fixed for filing objections to the approval of the disclosure statement. Docket 48. The notice then is inadequate.