

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge
2500 Tulare Street, Fifth Floor
Department A, Courtroom 11
Fresno, California

THURSDAY

JANUARY 22, 2015

PRE-HEARING DISPOSITIONS

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

MATTERS RESOLVED BEFORE HEARING

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter to be dropped from calendar notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860.

ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

9:00 a.m.

1. [11-61110](#)-A-13 ROBERTO/MARGARITA
THA-1 GONZALEZ
ROBERTO GONZALEZ/MV

MOTION TO AVOID LIEN OF
INTERINSURANCE EXCHANGE OF THE
AUTOMOBILE CLUB
1-7-15 [[31](#)]

THOMAS ARMSTRONG/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

LEGAL STANDARDS

If a debtor who co-owns a fractional interest in property moves to avoid the judicial lien on the property under § 522(f), then the court applies a common sense approach that varies somewhat from a strict mechanical application of the formula under § 522(f)(2)(A). "Under this approach, one nets out consensual liens against the entire fee in co-owned property before determining the value of a debtor's fractional interest and excludes those liens from the calculation of 'all other liens on the property' under § 522(f)(2)(A)(ii)." *All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 90 (B.A.P. 9th Cir. 2007).

ANALYSIS

In this case, the responding party holds a judicial lien on the moving party's real property for which an exemption has been claimed. The moving party co-owns the real property with non-debtor parties and holds a fractional one-third interest in the property. Thus, the court will net out consensual liens against the value of the entire fee interest before determining the value of the fractional co-ownership interest that the moving party would have in the absence of liens.

The jointly owned value of the entire fee interest in the property equals \$373,290. To calculate the value of the moving party's fractional interest in the property in the absence of liens, the court first deducts consensual lien debt of \$279,242.20 from the jointly owned value of the entire fee interest in the property, which yields a net co-owned equity of \$94,047.80. Multiplying this net co-owned equity by one-third shows that the value of the moving party's fractional interest in the absence of liens is \$31,349.27.

Adding together the judicial lien (\$11,295.80), plus all other liens (\$0.00) excluding the consensual liens already deducted from the property's value, plus the exemption amount (\$175,000) equals a sum of \$186,295.80. Subtracting from this sum the value of the moving party's fractional interest in the property in the absence of liens

equals \$154,946.53.

The responding party's judicial lien may be avoided in its entirety because the judicial lien, all other liens except consensual liens, and the exemption amount together exceed the value of the moving party's fractional interest in the property by an amount greater than or equal to the debt secured by the responding party's lien.

2. [11-61110](#)-A-13 ROBERTO/MARGARITA
THA-2 GONZALEZ
ROBERTO GONZALEZ/MV

MOTION TO AVOID LIEN OF
GUADALUPE MORALES AND EDMUNDO
AGUILAR
1-7-15 [[35](#)]

THOMAS ARMSTRONG/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

LEGAL STANDARDS

If a debtor who co-owns a fractional interest in property moves to avoid the judicial lien on the property under § 522(f), then the court applies a common sense approach that varies somewhat from a strict mechanical application of the formula under § 522(f)(2)(A). "Under this approach, one nets out consensual liens against the entire fee in co-owned property before determining the value of a debtor's fractional interest and excludes those liens from the calculation of 'all other liens on the property' under § 522(f)(2)(A)(ii)." *All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 90 (B.A.P. 9th Cir. 2007).

ANALYSIS

In this case, the responding party holds a judicial lien on the moving party's real property for which an exemption has been claimed. The moving party co-owns the real property with non-debtor parties and holds a fractional one-third interest in the property. Thus, the court will net out consensual liens against the value of the entire fee interest before determining the value of the fractional co-ownership interest that the moving party would have in the absence of liens.

The jointly owned value of the entire fee interest in the property equals \$373,290. To calculate the value of the moving party's fractional interest in the property in the absence of liens, the court first deducts consensual lien debt of \$279,242.20 from the jointly owned value of the entire fee interest in the property, which yields a net co-owned equity of \$94,047.80. Multiplying this net co-owned

Adding together the judicial lien (\$21,456), plus all other liens (\$0.00) excluding the consensual liens already deducted from the property's value, plus the exemption amount (\$175,000) equals a sum of \$196,456. Subtracting from this sum the value of the moving party's fractional interest in the property in the absence of liens equals \$165,106.73.

3. [11-63012](#)-A-13 LAWRENCE/MARY STRAMBI MOTION TO MODIFY PLAN
JDW-7 12-17-14 [[96](#)]
LAWRENCE STRAMBI/MV
JOEL WINTER/Atty. for dbt.
RESPONSIVE PLEADING

Order: Pending

Without the benefit of a reply, the court cannot determine whether the grounds for the trustee's opposition are disputed or undisputed. As a result, the court does not consider the matter to be ripe for a decision in advance of the hearing.

If such grounds are disputed, the moving party shall appear at the hearing. The court may either (1) rule on the merits and resolve any disputed issues appropriate for resolution at the initial hearing, or (2) treat the initial hearing as a status conference and schedule an evidentiary hearing to resolve disputed, material factual issues or schedule a further hearing after additional briefing on any disputed legal issues.

4. [14-13418](#)-A-13 ROBERT/LUCERO BISHOP
MHM-3
OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
12-18-14 [[43](#)]

SUSAN HEMB/Atty. for dbt.

No tentative ruling.

5. [13-12828](#)-A-13 MARTIN CERDA AND MONICA
DRJ-2 GARZA
MOTION TO MODIFY PLAN
12-11-14 [[42](#)]
MARTIN CERDA/MV

DAVID JENKINS/Atty. for dbt.

Final Ruling

Motion: Confirm Modified Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by Chapter 13 trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve modification of the plan.

6. [14-14933](#)-A-13 RAMON MARTINEZ
OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
12-17-14 [[25](#)]

SCOTT LYONS/Atty. for dbt.

Final Ruling

An amended plan filed January 14, 2015, the objection is denied as moot.

7. [14-15245](#)-A-13 MICHAEL CASE

OBJECTION TO CONFIRMATION OF
PLAN BY LAURIE D. BLACK

LAURIE BLACK/MV
12-23-14 [[23](#)]
HENRY NUNEZ/Atty. for dbt.
RICHARD HARRIS/Atty. for mv.

No tentative ruling.

8. [10-62253](#)-A-13 DAVID/KRISTEN BETTENCOURT
MAZ-5

MOTION TO MODIFY PLAN
11-24-14 [[76](#)]

DAVID BETTENCOURT/MV
MARK ZIMMERMAN/Atty. for dbt.
RESPONSIVE PLEADING
WITHDRAWN,

Final Ruling

Motion: Confirm Modified Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by Chapter 13 trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve modification of the plan.

9. [14-14570](#)-A-13 DAVID PENA
MHM-1

OBJECTION TO CONFIRMATION OF
PLAN BY TRUSTEE MICHAEL H.
MEYER
12-17-14 [[25](#)]

SCOTT LYONS/Atty. for dbt.

No tentative ruling.

10. [10-13172](#)-A-13 LUIS/ADRIANA SOLIS
PLF-4

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FEAR LAW GROUP,
P.C. FOR PETER L. FEAR, DEBTORS
ATTORNEY(S)
12-23-14 [[72](#)]

PETER FEAR/Atty. for dbt.
RESPONSIVE PLEADING

Tentative Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

Notice: LBR 9014-1(f)(1); written response filed by trustee

Disposition: Approved

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Fear Law Group, P.C.'s application for allowance of final compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$2,028.00 and reimbursement of expenses in the amount of \$391.47. The aggregate allowed amount equals \$2,419.47.

The court previously approved fees of \$3,500.00 that were paid in accordance with LBR 2016-1(c) in connection with plan confirmation, and the amount of \$1,275.00 has been paid to date by the trustee through the plan. According to the trustee, the plan will fund an additional \$1,360.00 of compensation and expenses. As of the date of the application, the applicant held a retainer in the amount of \$0.00.

The amount of \$2,635.00 (\$1,275 already paid + \$1,360.00 of the amounts requested by the present application) shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid outside of the plan after discharge.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the distribution priorities of the confirmed plan.

11. [11-12876](#)-A-13 DAVID/JANIS HUERTA MOTION TO MODIFY PLAN
GMA-1 12-11-14 [[36](#)]
DAVID HUERTA/MV
GEOFFREY ADALIAN/Atty. for dbt.

Final Ruling

Motion: Confirm Modified Chapter 13 Plan

Notice: LBR 3015-1(d)(2), 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by Chapter 13 trustee, approved by debtor's counsel

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 3015-1(d)(2), 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Chapter 13 plan confirmation is governed by 11 U.S.C. §§ 1322, 1323, 1325, 1329 and by Federal Rules of Bankruptcy Procedure 2002(a)(5) and 3015(g) and Local Bankruptcy Rule 3015-1. The debtor bears the burden of proof as to each element. *In re Barnes*, 32 F.3d 405, 407 (9th Cir. 1994). The court finds that the debtor has sustained that burden, and the court will approve modification of the plan.

12. [14-14086](#)-A-13 JAMES/SARAH SIDOTI OBJECTION TO CONFIRMATION OF
MHM-3 PLAN BY TRUSTEE MICHAEL H.
MEYER
12-18-14 [[54](#)]
VARDUHI PETROSYAN/Atty. for dbt.

Final Ruling

The case dismissed at a hearing held January 14, 2015, this matter is denied as moot.

13. [11-17897](#)-A-13 PAUL/JENNIFER LAZIO
PLF-3

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FEAR LAW GROUP,
P.C. FOR PETER L. FEAR, DEBTORS
ATTORNEY(S)
12-19-14 [[82](#)]

PETER FEAR/Atty. for dbt.

Final Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Approved

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a debtor's attorney in a Chapter 13 case and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1), (4)(B). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on an interim basis. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Fear Law Group, P.C.'s application for allowance of interim compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on an interim basis. The court allows interim compensation in the amount of \$6,715.50 and reimbursement of expenses in the amount of \$152.83. The aggregate allowed amount equals \$6,868.33. As of the date of the application, the applicant held a retainer in the amount of \$0.00. The amount of \$6,868.33 shall be allowed as an administrative expense to be paid through the plan, and the remainder of the allowed amounts, if any, shall be paid from the retainer held by the applicant. The applicant is authorized to draw on any retainer held.

IT IS FURTHER ORDERED that the fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

IT IS FURTHER ORDERED that the trustee is authorized to pay the fees allowed by this order from the available funds of the plan in a manner consistent with the distribution priorities of the confirmed plan.

10:30 a.m.

1. [09-16160](#)-A-13 JUAN HURTADO
[11-1102](#)
JONES V. HURTADO
SCOTT BURTON/Atty. for pl.

CONTINUED TRIAL RE: AMENDED
COMPLAINT
6-16-14 [[203](#)]