UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

January 25, 2016 at 10:00 a.m.

---

1. 16-20102-A-7 PAULINE NOWAK — MOTION FOR RELIEF FROM AUTOMATIC STAY O.S.T. 1-19-16 [11]
BN-1
CREDIT UNION OF SOUTHERN CA VS.

Tentative Ruling: The motion will be granted in part and denied in part.

The movant, Credit Union of Southern California, seeks relief from the automatic stay as to a real property in Yorba Linda, California under 11 U.S.C. § 362(d)(1) and (d)(4).

With respect to the debtor, the movant has proffered no evidence of value for the property. See 11 U.S.C. § 362(g) (imposing the burden of proof on the issue of equity on the moving creditor). And, the debtor has not listed an interest in the property in her schedules. As a result, the court cannot determine whether there is any equity in the property and whether the movant's interest in the property is adequately protected.

Nevertheless, the motion will be granted as to the debtor under section 362(d)(1) for cause because the property is not listed in the debtor's schedules, the movant's claim is also not listed in the debtor's schedules, and the movant was apprised of a transfer of partial interest in the property to the debtor from the original borrowers, Joe Chavoya and Mary Martinez, on the eve of foreclosure, January 11, 2016. Docket 17. This case was filed on January 8, 2016.

The debtor's Schedule A lists interest in a real property in Red Bluff, California. Schedule D does not list the movant's claim. It lists only Carrington Mortgage, Credit Acceptance and Wells Fargo Bank as secured creditors. Docket 1. Also, the movant received the grant deed granting the debtor interest in the property on January 11, 2016, only after this case was filed on January 8, 2016. Dockets 1 & 17.

The court will lift the automatic stay as to the estate under section 362(d)(1) as well, given that the schedules do not list an interest in the property, given the questionable transfer of the property to the debtor, and given that the property has been on the verge of foreclosure. Docket 17. The transfer of the property to the debtor is questionable as it purportedly took place on February 25, 2015, 11 months ago, but it was not revealed to the movant - by the borrowers and not the debtor - until the eve of foreclosure, January 11, 2016. Docket 17; Docket 12 at 3. Also, the movant obtained relief from automatic stay to conduct foreclosure of the property in the chapter 7 joint case of the borrowers on or about November 20, 2015. Docket 12 at 3.

Thus, the motion will be granted as to both the debtor and the estate pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial

foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.

Finally, the court will grant relief under section 362(d)(4), which prescribes:

"*On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . .*

"*with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-*

"*(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or*

"*(B) multiple bankruptcy filings affecting such real property.*"

The debtor was purportedly added on the title of the property in February 2015, approximately 11 months prior to the instant January 8, 2016 filing. On February 25, 2015, the original borrowers on the loan reflecting the movant's claim, Joe Chavoya and Mary Martinez, who obtained the loan in 2006, transferred the property to themselves and the debtor, as *tenants in common with a right of survivorship*. This case was filed on January 8, 2016. After this case was filed, on January 11 - the eve of a foreclosure sale, the borrowers informed the movant of the transfer to the debtor. And, only less than two months earlier, on November 20, 2015, the movant obtained relief from stay to conduct foreclosure of the property in the chapter 7 case of the borrowers. Docket 12 at 3; Docket 15.

From the totality of the foregoing, the court infers that the filing of this case was part of a scheme to delay, hinder, or defraud creditors, involving transfer of all or part ownership of the real property without the consent of the movant. Accordingly, the court will grant relief under section 362(d)(4).

2.	15-20034-A-11 ET-7	C & N LANDSCAPE MAINTENANCE, INC.	MOTION TO SELL O.S.T. 1-11-16 [123]

Tentative Ruling: The motion will be conditionally granted.

The debtor in possession requests authority to sell "as is" and "where is" for $130,000 plus sale costs the estate's interest in its personal property to Adam Schmid, who is the debtor's principal Charles Born's son in law, an insider.

The property includes inventory, machinery, furniture, fixtures, other equipment, vehicles (some subject to liens), leasehold improvements, transferable government licenses and permits, customer lists, fictitious business names, trade names and trademarks, logos, copyrights, patents, signs, advertising materials, telephone and fax numbers, web sites, URL names, email addresses, $40,000 to $60,000 in receivables, vendor lists, goodwill, non-competition and franchise agreements, distribution rights, employee lists and information, software and customer deposits.

Excluded from the sale are the debtor principal Charles Born's personal truck vehicle, log splitter and "oldest white trailer." Docket 123 at 3.

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 sell property of the estate pursuant to section 363. Section 363(b) allows, then, a debtor-in-possession to sell property of the estate, other than in the ordinary course of business. The sale must be fair, equitable, and in the best interest of the estate. Mozer v. Goldman (In re Mozer), 302 B.R. 892, 897 (C.D. Cal. 2003). Sale of property outside the ordinary course of business requires the estate to show good faith and valid business justification for the sale. 240 N. Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996). Good faith "encompasses fair value, and further speaks to the integrity of the transaction." Id.

As the assets being sold are subject to an $85,054 lien held by the IRS on all property of the debtor and an $18,000 lien held by Ford Motor Credit Company against one of the debtor's vehicles, which liens the debtor proposes to pay off in full from the sale proceeds - yet the debtor is not asking for a free and clear lien sale approval, the court assumes that the liens will be paid off in full from escrow.

The court is satisfied with the debtor's efforts of marketing the business. The debtor had retained a broker, who marketed the business in the usual course such businesses are marketed, and the debtor had marketed itself within the local landscaping and nursery business community.

From the sale proceeds, the debtor will pay off two liens, an $85,054 lien held by the IRS on all property of the debtor and an $18,000 lien held by Ford Motor Credit Company against one of the debtor's vehicles. As a result, the debtor will net approximately $27,000 from the sale.

The motion will be granted and the sale will be approved subject to the following. At the January 25 hearing, the debtor shall:

(1) outline the terms of overbidding, as page 5 of the motion - where such terms are found - is missing (Docket 123 at 4);

(2) clarify what, if any, tax consequences will result from the sale; and

(3) explain why this case was not converted to chapter 7 earlier in 2015, as the debtor has admitted knowing for some months now that it does not have the

income to fund a plan of reorganization (Docket 109 at 2-3); liquidating assets in a chapter 11 proceeding is generally more costly than liquidation in a chapter 7.

3.	15-20034-A-11 UST-1	C & N LANDSCAPE MAINTENANCE, INC.	MOTION TO CONVERT OR TO DISMISS CASE 12-7-15 [96]

Tentative Ruling: The motion will be granted and the case will be dismissed, as provided in the ruling below.

The U.S. Trustee moves for dismissal or conversion to chapter 7, pursuant to 11 U.S.C. § 1112(b), arguing:

- under section 1112(b)(4)(A) substantial or continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation;

- under section 1121(e)(2) that the debtor is precluded from filing another chapter 11 plan, as the 300-day deadline expired on November 1, 2015.

The debtor opposes the motion, pointing out that it is selling its business. In the alternative, the debtor asks for continuance of the hearing on this motion, until the debtor consummates the sale.

11 U.S.C. § 1112(b)(1) provides that "on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."

Specific causes for conversion or dismissal are identified in 11 U.S.C. § 1112(b)(4)(A)-(P).

"'[C]ause' includes- (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A).

These instances of cause are not exhaustive, however. Pioneer Liquidating Corp. v. United States Trustee (In re Consolidated Pioneer Mortgage Entities), 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000). For instance, unreasonable delay that is prejudicial to creditors - which is not enumerated in section 1112(b)(4) - is also cause for purposes of section 1112(b)(1). Consolidated Pioneer at 375, 378; In re Colon Martinez, 472 B.R. 137, 144 (B.A.P. 1st Cir. 2012).

The debtor has admitted not having ongoing income to fund a chapter 11 plan. See Docket 109 at 2-3. And, the 300-day deadline of section 1121(e)(2) for filing another plan in this small business case (Docket 1 at 1) has passed. It expired on November 1, 2015. As such, cause for dismissal or conversion exists.

The case will be dismissed, given that the debtor's assets are being sold and the debtor expects to net only approximately $27,000 from the sale, while the IRS is holding a priority tax claim in the amount of approximately $66,568.05. Conversion to chapter 7 will not benefit general unsecured creditors.

In light of the pending sale of the debtor's assets, however, the court will delay dismissal by 30 days, providing the debtor with opportunity to close the sale before dismissal.

4.	15-28640-A-13	CHARLES/MARYLOU HODGE	MOTION TO
	15-2219	TRF-1	DISMISS ADVERSARY PROCEEDING
	HODGE ET AL V.	SETERUS, INC., ET AL.,	12-16-15 [6]

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 plaintiff 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.

Defendants Seterus, Inc. and Federal National Mortgage Association move for dismissal pursuant to Fed. R. Civ. P. 12(b)(6), as made applicable by Fed. R. Bankr. P. 7012(b), of the six causes of action asserted by the plaintiffs, Charles and Marylou Hodge, who are the debtors in the underlying chapter 13 case. The motion also raises issues pertaining to Fed. R. Civ. P. 9(b), as applied here via Fed. R. Bankr. P. 7009.

The plaintiffs have filed no response to the motion.

The plaintiffs filed the underlying chapter 13 bankruptcy petition on November 6, 2015. This adversary proceeding was filed on November 19, 2015, asserting six causes of action, including:

(1) a claim for violation or breach of Cal. Civ. Code § 2920 et seq., California's Homeowners Bill of Rights, seeking declaratory and injunctive relief, pertaining to the plaintiffs' inability to obtain a loan modification with the defendants;

(2) a claim for fraud and conspiracy to commit fraud;

(3) a claim for "declaratory judgment and injunctive relief;"

(4) a claim for negligence;

(5) a claim for unlawful business practices under Cal. Bus. & Prof. Code § 17200; and

(6) a claim for fraudulent business practices under Cal. Bus. & Prof. Code § 17200.

Docket 1.

The motion will be granted and the claims will be dismissed as the court does not have subject matter jurisdiction over the claims.

A federal court has the obligation to review sua sponte whether it has subject

matter jurisdiction under Article III's case-or-controversy requirement. Fed. R. Civ. P. 12(h)(3) (providing that "[i]f the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action"); Arbaugh v. Y&H Corp., 546 U.S. 500, 506 (2006); Florida Wildlife Fed'n, Inc. v. South Florida Water Mgmt. Dist., 647 F.3d 1296, 1302 (11th Cir. 2011); see also Corporate Mgmt. Advisors, Inc. v. Artjen Complexus, Inc., 561 F.3d 1294, 1296 (11th Cir. 2009) (citing 28 U.S.C. § 1447(c)).

"Federal courts are always 'under an independent obligation to examine their own jurisdiction,' . . . and a federal court may not entertain an action over which it has no jurisdiction." Hernandez v. Campbell, 204 F.3d 861, 865 (9th Cir. 2000)(citing FW/PBS, Inc. v. City of Dallas, 493 U.S. 215, 231 (1990) and Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee, 456 U.S. 694, 701 (1982)).

Bankruptcy jurisdiction extends to four types of title 11 matters, cases "under title 11," cases "arising under title 11," proceedings "arising in a case under title 11," and cases "related to a case under title 11." See Stoe v. Flaherty, 436 F.3d 209, 216 (3rd Cir. 2006).

The first three types of title 11 matters are termed as core proceedings by 28 U.S.C. § 157(b)(1), which provides that "[b]ankruptcy judges may hear and determine all cases under title 11 and all core proceedings arising under title 11, or arising in a case under title 11 . . . and may enter appropriate orders and judgments." Contra Stern v. Marshal, 131 S. Ct. 2594, 2608 (2011) (creating another category of core claims as to which the bankruptcy court cannot enter final judgment, treated as "cases related to a case under chapter 11"); see also Executive Benefits Ins. Agency v. Arkison (In re Bellingham Ins. Agency, Inc.), 134 S. Ct. 2165, 2172 (2014).

"Stern made clear that some claims labeled by Congress as 'core' may not be adjudicated by a bankruptcy court in the manner designated by § 157(b). Stern did not, however, address how the bankruptcy court should proceed under those circumstances. We turn to that question now."

Bellingham Insurance at 2172.

28 U.S.C. § 157(b)(2) states that "[c]ore proceedings include, but are not limited to– (A) matters concerning the administration of the estate . . . [and] (O) other proceedings affecting the liquidation of the assets of the estate or the adjustment of the debtor-creditor or the equity security holder relationship, except personal injury tort or wrongful death claims."

On the other hand, "related to a case under title 11" proceedings are noncore, meaning that the bankruptcy court may not enter final orders or judgments in them. See 28 U.S.C. § 157(c)(1); see also 28 U.S.C. § 157(b)(3). This court is authorized only to submit proposed findings of fact and conclusions of law to the district court. It may enter appropriate orders and judgments only with the consent of all parties to the proceeding. 28 U.S.C. § 157(c)(1). Given the subject motion, though, consent of the parties is highly unlikely in this case.

Cases "under title 11" are the only ones over which district courts have original and exclusive jurisdiction. As to cases "arising under," "arising in," or "related to title 11," district courts have original but nonexclusive jurisdiction, meaning that such cases may be initially brought in state court and then removed to federal court. See 28 U.S.C. § 1334(a) and (b).

A proceeding "arising under title 11" is one that "'invokes a substantive right provided by title 11.'" Gruntz v. County of Los Angeles (In re Gruntz), 202 F.3d 1074, 1081 (9th Cir. 2000) (quoting Wood v. Wood (In re Wood), 825 F.2d 90, 97 (5th Cir. 1987)). A proceeding "arising in a case under title 11" is one that "'by its nature, could arise *only* in the context of bankruptcy case.'" Id.

A proceeding is "related to a case under title 11" if its outcome could conceivably affect the administration of the estate. Lorence v. Does 1 through 50 (In re Diversified Contract Servs., Inc.), 167 B.R. 591, 595 (Bankr. N.D. Cal. 1994) (citing Fietz v. Great Western Savings (In Fietz), 852 F.2d 455, 457 (9th Cir. 1988)).

In this case, all claims are based on state law, meaning that they are not cases under title 11, do not invoke substantive rights provided by title 11, and are not proceedings that by their nature could arise only in the context of a bankruptcy case. The claims can and are regularly asserted in state court, independently of the filing or prosecution of a bankruptcy case.

Thus, the claims can be only related to a case under title 11, namely, the underlying chapter 13 case. The test for this jurisdiction is whether the outcome of the claims could conceivably affect the administration of the estate.

However, none of the claims are related to the underlying chapter 13 case, as that case was dismissed on January 13, 2016. Case No. 15-28640, Docket 66. There is no longer a bankruptcy estate the administration of which could be affected by the outcome of the claims.

Also, the court exercises its discretion and declines to retain jurisdiction under Carraher over the state law claims in this proceeding even after considering economy, convenience, fairness and comity under Carraher. See Carraher v. Morgan Elec., Inc. (In re Carraher), 971 F.2d 327, 328 (9th Cir. 1992) (holding that bankruptcy courts are not automatically divested of subject matter jurisdiction over related to cases when the underlying bankruptcy case has been dismissed). These factors do not favor retaining jurisdiction over the state law claims. This court is not equipped to adjudicate just any state law claims. And, it was never intended to adjudicate state law claims in the absence of a pending bankruptcy case. It would be grossly unfair to the court and the defendants and also prejudicial to the defendants to be forced to litigate here, when there is no longer a pending bankruptcy case and the plaintiffs chose not to prosecute their chapter 13 bankruptcy case. The underlying chapter 13 case was dismissed because the plaintiffs did not pay a filing fee installment. Case No. 15-28640, Docket 66.

Further, while the dismissal of the bankruptcy case may not have automatically stripped off this court of some subject matter jurisdiction over the subject claims, the only type of jurisdiction this court could have is supplemental jurisdiction under Carraher.

However, the concept of supplemental jurisdiction in bankruptcy is quite limited.

"*But the bankruptcy court's jurisdiction after dismissal is not unlimited. The bankruptcy court retains subject matter jurisdiction to interpret orders entered prior to dismissal and to dispose of ancillary matters such as an application for an award of attorney's fees. Id. at 46 (citing In re Franklin,*

802 F.2d 324, 326-27 (9th Cir.1986) and U.S.A. Motel Corp. v. Danning, 521 F.2d 117 (9th Cir.1975)). However, once a bankruptcy case has been dismissed, the bankruptcy court does not have jurisdiction to grant new relief independent of its prior rulings. Id. (citing In re Taylor, 884 F.2d 478, 481 (9th Cir.1989)).

. . .

"*The circumstances here are distinguishable. The Court is not being asked to interpret its own order, or to approve an application for attorney's fees. In the Tentative Decision, the Court framed the key issue as whether there is any property of the estate to surcharge, once the case has been dismissed. Upon dismissal of a bankruptcy case, property of the estate is revested in the entity in which such property was vested immediately before the commencement of the case. § 349(b)(3). The relief requested by Debtor in the Surcharge Motions requires this Court to exercise jurisdiction over property in which both the estate and the Bank had an interest—specifically, the $100,000 collected in relation to the Castro litigation, and the collected accounts receivable. Upon dismissal, the Court was divested of jurisdiction over those funds. Property that is no longer property of the estate may not be surcharged. See In re Skuna River Lumber, LLC, 564 F.3d 353, 355 (5th Cir.2009); In re Maine Pride Salmon, Inc., 180 B.R. 337, 342 (Bankr.D.Me.1995).*"

In re Valley Process Systems, Inc., Case No. 13-51936-ASW, WL 3635367 at *1-2 (Bankr. N.D. Cal. July 23, 2014).

As in Valley Process, when this court dismissed the underlying bankruptcy case, all assets of that bankruptcy estate were revested back with the plaintiffs. 11 U.S.C. § 349(b)(3) prescribes that "Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—

. . .

(3) revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title."

One of the assets that revested back with the plaintiffs, when the bankruptcy case was dismissed, was the subject claims against the defendants in this adversary proceeding. As a result, the dismissal of the bankruptcy case divested this court of jurisdiction to adjudicate the claims.

Such claims are based solely on state law and seek damages for violation of such state law. Docket 1 at 15-16. In other words, adjudicating the claims in this adversary proceeding is not merely ancillary to the administration of the chapter 13 bankruptcy case. Adjudicating the claims would require the granting of new relief, separate and independent from any rulings or orders in the bankruptcy case, prior to dismissal. The granting of relief under the claims would not be ancillary to the plaintiffs' now dismissed bankruptcy case. It would not require the interpretation, implementation or revisiting of orders entered by the court in the bankruptcy case.

The orders entered by the court in the underlying bankruptcy case before its dismissal include: an order granting the plaintiffs' request for payment of the filing fee in installments (Case No. 15-28640, Docket 7), an order denying imposition of the automatic stay (Case No. 15-28640, Docket 21), an order discharging an order to show cause for failure to pay filing fee installments (Case No. 15-28640, Docket 57), and an order dismissing the case (Case No. 15-28640, Docket 66).

None of the above orders have relevance to the adjudication of the claims in this adversary proceeding. The claims here call for the award of new relief, independent from what transpired in the bankruptcy case prior to dismissal. As such, this court did not have the type of supplemental jurisdiction contemplated by Carraher.

Finally, on one hand, the administration of the underlying bankruptcy case involves the adjustment of the debtor-creditor relationship, implicating public rights which this court has jurisdiction to adjudicate. "From the beginning, the 'core' of federal bankruptcy proceedings has been 'the restructuring of debtor-creditor relations.' Northern Pipeline, supra, at 71, 102 S.Ct. 2858." Stern v. Marshall, 131 S.Ct. 2594, 2628 (2011).

On the other hand, the plaintiffs' claims here are seeking this court to adjudicate state law claims that are asserting private rights against the defendants. "Several previous decisions have contrasted cases within the reach of the public rights exception—those arising 'between the Government and persons subject to its authority in connection with the performance of the constitutional functions of the executive or legislative departments'—and those that are instead matters 'of private right, that is, of the liability of one individual to another under the law as defined.' Crowell v. Benson, 285 U.S. 22, 50, 51, 52 S.Ct. 285, 76 L.Ed. 598."

Stern v. Marshall, 131 S.Ct. 2594, 2598 (2011); see also N. Pipeline Const. Co. v. Marathon Pipe Line Co., 458 U.S. 50, 71 (1982)(distinguishing "the restructuring of debtor-creditor relations, which is at the core of the federal bankruptcy power, ... from the adjudication of state-created private rights"); Stern at 2612-13 (citing Atlas Roofing Co. v. Occupational Safety and Health Review Comm'n, 430 U.S. 442, 458 (1977) for the proposition that the public rights "[e]xception extends to cases 'where the Government is involved in its sovereign capacity under ... [a] statute creating enforceable public rights,' while '*[w]holly private tort, contract, and property cases*, as well as a vast range of other cases ... are not at all implicated'").

Such claims have nothing to do with the interpretation, implementation or revisiting of orders entered by the court in the bankruptcy case, have nothing to do with the adjustment of the debtor-creditor relationship under the Bankruptcy Code, and have nothing to do with the court's exercise of jurisdiction in the bankruptcy case. The claims are seeking the adjudication of what amounts to private rights between the plaintiffs and the defendants - rights based on tort, contract and California statutory principles. Given the private rights implicated by the plaintiffs' claims and the absence of a pending bankruptcy case, this court does not have the constitutional authority to adjudicate them.

Hence, along with the equitable considerations of Carraher and 28 U.S.C. § 1452(b), this court adds the constitutional authority considerations of Stern in dismissing the claims.

5. 15-28640-A-13 CHARLES/MARYLOU HODGE — STATUS CONFERENCE
15-2219 — 11-19-15 [1]
HODGE ET AL V. SETERUS, INC. ET AL

Final Ruling: Given the dismissal of the case, the conference is concluded.

6. 13-34541-A-11 CAH-25 — 6056 SYCAMORE TERRACE L.L.C. — MOTION TO CONFIRM PLAN 9-22-15 [325]

Tentative Ruling: The motion will be denied.

The debtor in possession is asking the court to confirm its amended plan of reorganization filed on September 22, 2015. Docket 325.

Although OneWest Bank has dismissed its plan confirmation objection (Docket 363), the court still cannot confirm the plan because it violates the absolute priority rule, which mandates that a junior class of creditors - such as the debtor's principal Hossein Bozorgzad, who is retaining his interest in the debtor (Docket 325 at 12) - may not receive or retain any property on account of its claims unless the claims of a *dissenting* senior class are satisfied in full. 11 U.S.C. § 1129(b)(2)(B)(ii).

A review of the tabulation ballots filed by the debtor reveals that the general unsecured class of creditors, class 8, has voted to reject the plan. Docket 325 at 11. Only two creditors from that class have voted, Krystyna Trzepla voted her $2,500 general unsecured claim to accept the plan and OneWest Bank voted its $260,202.10 general unsecured claim to reject the plan. Docket 352 at 8-9.

As a result, the general unsecured class of creditors have not accepted the plan. Only one of the five class 8 creditors (OneWest, Krystyna Trzepla, Mountain Counties Plumbing, Franchise Tax Board, Mahboob Tehranian) have voted to accept the plan - Krystyna Trzepla. And, Krystyna Trzepla's $2,500 claim is hardly a dent in the approximately total $1,392,626.81 of total general unsecured claims. See 11 U.S.C. § 1126(c) (defining class acceptance as the plan having been accepted by creditors that hold at least two-thirds in amount and more than one-half in number of the allowed claims of such class).

Moreover, class 8 has voted to reject, in light of OneWest's rejection ballot. Class 8 then is a dissenting class under the plan, whose creditors are not being paid in full. The plan estimates only a 2% dividend to class 8 creditors. Docket 325 at 11.

On the other hand, Hossein Bozorgzad is retaining his junior to class 8 equity interest in the debtor. This is impermissible because it violates the absolute priority rule of 11 U.S.C. § 1129(b)(2)(B).

Lastly, the court is not clear why the plan lists Mahboob Tehranian's $1,106,000 general unsecured claim as a contingent claim (Docket 325 at 11-12), when the court overruled the debtor's objection to her claim and, in stripping off the claim, made it clear that she has a general unsecured claim against the estate. Dockets 276 & 295.

7. 13-34541-A-11 CAH-26 VS. ONEWEST BANK, N.A. — 6056 SYCAMORE TERRACE L.L.C. — MOTION TO VALUE COLLATERAL 1-11-16 [357]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the respondent creditor, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the

hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The debtor moves for an order valuing the rental real property 6056 Sycamore Terrace Pleasanton, California at $2,480,000 in an effort to strip off OneWest Bank's second approximately $260,202.10 mortgage on the property and treat it as a wholly unsecured claim. The property is not the debtor's residence.

11 U.S.C. § 1123(b)(5) permits a chapter 11 debtor to modify the rights of secured claim holders, other than claims secured only by the debtor's principal residence.

Pursuant to 11 U.S.C. § 506(a)(1), a secured claim is secured only to the extent of the creditor's interest in the estate's interest in the collateral. 11 U.S.C. § 506(a)(1) provides that:

"An allowed claim of a creditor secured by a lien on property in which the estate has an interest ... is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property ... and is an unsecured claim to the extent that the value of such creditor's interest ... is less than the amount of such allowed claim."

"[The value of the collateral] shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest."

The debtor contends that the property has an updated value of $2,480,000, in accordance with an appraisal submitted by OneWest. Dockets 348 & 350.

The property is subject to:

- a first mortgage in favor of JPMorgan Chase Bank for approximately $2,507,946.05 (Dockets 354 & 359),

- a second mortgage in favor of OneWest Bank for approximately $260,202.10, and

- a mortgage in favor of Mohboob Bozorgzad for approximately $1,106,000 (POC 6-1; see also Docket 276 (overruling the debtors objection to the secured portion of Mohboob Bozorgzads proof of claim)).

The property is not the debtor's residence. The anti-modification provision of 11 U.S.C. § 1123(b)(5) then does not apply. OneWest's second priority claim against the property is wholly unsecured within the meaning of 11 U.S.C. § 506(a)(1) because the estate has no equity in the property, after the deduction of JPMorgan Chase Bank's first mortgage. Hence, OneWest's second mortgage will be stripped off, making it an unsecured claim. The motion will be granted only in connection with plan confirmation.

Valuations pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are contested matters and do not require the filing of an adversary proceeding. It

is only when such a motion or objection is joined with a request to determine the extent, validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed. R. Bankr. P. 7001(2). Therefore, by granting this motion the court is only determining the value of the respondent's collateral. The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's lien will remain of record until the plan is completed. See 11 U.S.C. § 349(b). Once the plan is completed, if the respondent will not reconvey/cancel its lien, the court then will entertain an adversary proceeding.

8. 12-35955-A-13 MARY DENTON
12-2700 RK-2
COUNTY OF YUBA V. DENTON

MOTION TO
APPROVE COMPENSATION OF
DEFENDANT'S ATTORNEY
12-23-15 [33]

Final Ruling: The hearing on this motion has been continued to March 21, 2016 at 10:00 by stipulation of the parties. Dockets 44 & 45.

9. 14-21184-A-7 SIMON RAMSUBHAG
14-2349
FUKUSHIMA V. SAHADEO ET AL.,

ORDER TO
APPEAR FOR EXAMINATION
(RAY SAHADEO)
11-13-15 [32]

Tentative Ruling: None. The respondent and judgment debtor shall appear and be sworn in prior to the court's January 25, 2016 10:00 a.m. calendar.

10. 15-24485-A-12 TIMOTHY/JILL PEDROZO
JPJ-1

MOTION TO
DISMISS CASE
12-23-15 [24]

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 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 and the case will be dismissed.

The chapter 12 trustee moves for dismissal because the debtor has failed to prosecute this case. The trustee cites 11 U.S.C. § 1208(c)(1), which provides that "on request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter for cause, including - (1) unreasonable delay, or gross mismanagement, by the debtor that is prejudicial to creditors."

This case was filed on June 1, 2015 and the debtor filed a chapter 12 plan on August 31, 2015. Docket 16. But, the court denied confirmation of the plan on October 5, 2015. Dockets 21 & 23.

Approximately four months have passed since the denial of plan confirmation and the debtor has not filed another plan. The debtor has not responded to this motion either. This amounts to unreasonable delay in the prosecution of the

case that is prejudicial to creditors. It is cause for dismissal. The motion will be granted and the case will be dismissed.

11.	15-29600-A-11	ANTIGUA CANTINA & GRILL, INC.	STATUS CONFERENCE 12-14-15 [1]

Tentative Ruling: None. Appearances required.