

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Bakersfield Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: FEBRUARY 3, 2016
CALENDAR: 10:00 A.M. CHAPTER 7 CASES

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.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

COURT'S 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 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 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.

1. [15-14703](#)-A-7 AUDILIA GALLARDO ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
12-21-15 [[17](#)]

Tentative Ruling

If fee is not paid in full or an order approving payment of fee in installments requested and entered by February 10, 2016, the case will be dismissed without further notice or hearing.

2. [12-11008](#)-A-7 RAFAEL ALONSO MOTION FOR SANCTIONS
HTK-9 12-18-15 [[455](#)]
RAFAEL ALONSO/MV
NICHOLAS ANIOTZBEHERE/Atty. for dbt.
RESPONSIVE PLEADING

No tentative ruling.

3. [15-14109](#)-A-7 BRUCE/BRENDA GORDON MOTION FOR RELIEF FROM
RK-1 AUTOMATIC STAY
WELLS FARGO BANK, NATIONAL 1-13-16 [[35](#)]
ASSOCIATION/MV
PATRICK KAVANAGH/Atty. for dbt.
RAFFI KHATCHADOURIAN/Atty. for mv.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted in part, denied in part as moot

Order: Civil minute order

Subject: 16225 Askin Drive, Pine Mountain Club, CA

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).

AS TO DEBTOR

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. The stay that protects the debtor terminates at the entry of discharge. 11 U.S.C. § 362(c)(2). In this case, discharge has been entered. As a result, the motion is moot as to the debtor.

AS TO ESTATE

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective

reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

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.

Wells Fargo Bank, National Association's motion for relief from the automatic stay 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 motion,

IT IS ORDERED that the motion is granted in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the trustee in the property described in the motion, commonly known as 16225 Askin Drive, Pine Mountain Club, CA. Relief from the automatic stay as to the interest of the debtor in such property is denied as moot given the entry of the discharge in this case. 11 U.S.C. § 362(c)(2)(C).

IT IS FURTHER ORDERED that the 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

4. [07-12925](#)-A-7 TIMOTHY/JOANNE KUBELKA
MRE-1
TIMOTHY KUBELKA/MV

CONTINUED MOTION FOR CONTEMPT
AND/OR MOTION TO DISMISS CIVIL
COLLECTION ACTION , MOTION FOR
SANCTIONS
11-18-15 [[74](#)]

STEVEN STANLEY/Atty. for dbt.
ORDER #91

Final Ruling

The matter is continued March 15, 2016, at 9:00 a.m. in Fresno. An order shall issue from chambers providing the parties with further guidance.

5. [15-14065](#)-A-7 TIMOTHY/CRYSTAL NEWLIN MOTION TO AVOID LIEN OF
WDO-1 CALIFORNIA SERVICE BUREAU, INC.
TIMOTHY NEWLIN/MV 12-30-15 [[23](#)]
WILLIAM OLCOTT/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: LBR 9014-1(f)(1); 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). 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).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

6. [15-14666](#)-A-7 ISRAEL/DIANA PENA
APN-1
WELLS FARGO BANK, N.A./MV
PATRICK KAVANAGH/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.
RESPONSIVE PLEADING

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-23-15 [[21](#)]

Tentative Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); written opposition filed by debtor

Disposition: Granted

Order: Civil minute order

Subject: 2010 Nissan Sentra

The motion seeks relief from stay as to a 2010 Nissan Sentra on two grounds: § 362(d)(1) and § 362(d)(2). The debtor's opposition only addresses the issue of whether the payments to the movant are current or being brought current. The debtor's opposition does not address the lack of equity. The vehicle is worth \$7,775. The outstanding secured debt against the vehicle is \$9,002.82 less the prepetition payments that the debtor states that he paid in the approximate amount of \$458.26, which results in an approximate balance of \$8544.56. Even using the lower number, the debtor still lacks any equity in the vehicle.

STAY RELIEF

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

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.

Wells Fargo Bank, N.A.'s motion for relief from the automatic stay 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 motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2010 Nissan Sentra, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

7. [15-14666](#)-A-7 ISRAEL/DIANA PENA MOTION FOR RELIEF FROM
KAZ-1 AUTOMATIC STAY
THE BANK OF NEW YORK MELLON/MV 12-15-15 [[13](#)]
PATRICK KAVANAGH/Atty. for dbt.
KRISTIN ZILBERSTEIN/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); written opposition filed by debtors

Disposition: Granted

Order: Civil minute order

Subject: 3435 Moss Street, Bakersfield, CA

OPPOSITION BY DEBTORS

The debtors oppose the motion on the ground that the notice does not comply with LBR 9014(d)(3). Specifically, the debtors point to the notice's incorrect address for the hearing.

Although the debtors are correct that the court address for the hearing is incorrect, the court will not deny the motion on this basis. Federal Rule of Civil Procedure 61 provides that "[a]t every stage of the proceeding, the court must disregard all errors and defects that do not affect any party's substantial rights." Fed. R. Civ. P. 61, *incorporated by* Fed. R. Bankr. P. 9005.

The incorrect notice does not affect the debtors' substantial rights as they are the ones who raise the issue about the inaccuracy. The debtors' attorney has had time to file an opposition as of January 20, 2016, which shows that he and the debtors received adequate notice of the hearing. Further, the court infers that the debtors and their attorney knew of the correct court address at least as of January 20, 2016. No party's substantial rights could be affected by the error. The court will thus disregard it.

STAY RELIEF

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

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.

The Bank of New York Mellon, as Trustee for CIT Mortgage Loan Trust 2007-1, through Caliber Home Loans, Inc., has filed a motion for relief from the automatic stay. 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 motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 3435 Moss Street, Bakersfield, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

8. [15-14666](#)-A-7 ISRAEL/DIANA PENA MOTION FOR RELIEF FROM
VVF-1 AUTOMATIC STAY
FIRST CREDIT FINANCE/MV 1-7-16 [[27](#)]
PATRICK KAVANAGH/Atty. for dbt.
VINCENT FROUNJIAN/Atty. for mv.
STIPULATION

Final Ruling

The parties have resolved the matter by stipulation. The matter will be dropped from calendar as moot.

9. [15-13969](#)-A-7 EDWARD/HELENA AGUIRRE MOTION TO AVOID LIEN OF
PK-1 SPRINGLEAF FINANCIAL SERVICES,
EDWARD AGUIRRE/MV INC.
12-9-15 [[13](#)]
PATRICK KAVANAGH/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such

lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of--(i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The movant has shown that the security interest to be avoided is a nonpossessory, nonpurchase money security interest. However, the movant has not complied with the limitations for avoidance of nonpossessory, non-purchase-money security interests found in § 522(f)(4). This paragraph (4) of subsection (f) of § 522 provides in pertinent part:

(A) "Subject to subparagraph (B), *for purposes of paragraph (1)(B)*, the term 'household goods' means--

- (i) clothing;
- (ii) furniture;
- (iii) appliances;
- (iv) 1 radio;
- (v) 1 television;
- (vi) 1 VCR;
- (vii) linens;
- (viii) china;
- (ix) crockery;
- (x) kitchenware;
- (xi) educational materials and educational equipment primarily for the use of minor dependent children of the debtor;
- (xii) medical equipment and supplies;
- (xiii) furniture exclusively for the use of minor children, or elderly or disabled dependents of the debtor;
- (xiv) personal effects (including the toys and hobby equipment of minor dependent children and wedding rings) of the debtor and the dependents of the debtor; and
- (xv) 1 personal computer and related equipment.

(B) The term "household goods" does not include--

- (i) works of art (unless by or of the debtor, or any relative of the debtor);
- (ii) *electronic entertainment equipment with a fair market value of more than \$650 in the aggregate (except 1 television, 1 radio, and 1 VCR)*;
- (iii) items acquired as antiques with a fair market value of more than \$650¹ in the aggregate;
- (iv) jewelry with a fair market value of more than \$650¹ in the aggregate (except wedding rings); and
- (v) a computer (except as otherwise provided for in this section), motor vehicle (including a tractor or lawn tractor), boat, or a motorized recreational device, conveyance, vehicle, watercraft, or aircraft.

11 U.S.C.A. § 522 (West) (emphasis added) (footnote omitted).

The statutory limitations for avoiding non-possessory, non-PMSIs in household goods have been exceeded by this motion. First, the motion includes 3 televisions though the limitation is only 1 television. Second, the motion includes entertainment equipment with a value exceeding \$650. *Id.* § 522(f)(4)(B)(ii). The motion appears proper to the extent it seeks to avoid the lien on the desktop computer, unless that computer is used as entertainment equipment. Because lien avoidance as to 1 television would be permitted, the court will deny the motion without prejudice to allow the movant to re-file it consistent with § 522(f)(4).