

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

February 7, 2017, at 10:00 a.m.

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| 1. <u>13-91315-E-7</u> APPLEGATE JOHNSTON, INC. | CONTINUED TRIAL RE: COMPLAINT |
| <u>15-9047</u> | FOR AVOIDANCE OF PREFERENTIAL |
| MCGRANAHAN V. INTEGRATED | TRANSFERS AND RECOVERY OF |
| COMMUNICATIONS SYSTEMS | AVOIDED TRANSFERS |
| | 7-13-15 [<u>1</u>] |

Continued to 11:00 a.m. on January 16, 2017, for issuance of ruling on the record.

No Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, Creditor, and Office of the United States Trustee on December 14, 2016. By the court's calculation, 41 days' notice was provided. 28 days' notice is required.

The Motion to Value Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion to Value Secured Claim of Bank of America, N.A. ("Creditor") is granted, and Creditor's secured claim is determined to have a value of \$XXXXXXXXXXXXX.

The Motion filed by Christine McKay ("Debtor") to value the secured claim of Bank of America, N.A. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2012 GMC Yukon ("Vehicle"). Debtor seeks to value the Vehicle at a replacement value of \$21,000.00 as of the petition filing date. As the owner, the Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on January 4, 2017. Dckt. 36. The Trustee notes that Creditor is provided for in Class 2B of the Plan, and Creditor has not filed a Proof of Claim. Debtor's Schedule A/B lists the Vehicle as having 38,754 miles, but Debtor's Declaration states that the Vehicle has 89,000 miles.

The Trustee found the Vehicle's VIN ending in 2734 on the Certificate of Title filed with Creditor's claim in Debtor's prior bankruptcy case. The Trustee used that VIN to identify the Vehicle as

a 2012 GMC Yukon XL 1500 Denali, with a value listed through Kelley Blue Book of between \$22,731.00 and \$26,096.00.

DEBTOR'S REPLY

Debtor filed a Reply on January 17, 2017. Dckt. 43. Debtor objects to the Trustee's statements about the Vehicle's value on the ground that the statements are based on a commercial publication and are not an actual appraisal of the Vehicle. Debtor asserts that her valuation of the Vehicle is based upon her own personal knowledge of the Vehicle, and she states that there is no material disputed fact in this matter because the Creditor has not opposed the Motion.

JANUARY 24, 2017 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on February 7, 2017 (specially set to the court's trial calendar). Dckt. 49. Debtor was ordered to file supplemental pleadings in opposition by February 3, 2017. Dckt. 51.

DISCUSSION

No further pleadings have been filed in this matter.

The lien on the Vehicle's title secures a purchase-money loan incurred on June 28, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately \$38,012.94. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of \$xxxxxx.00, the value of the collateral. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Federal Rule of Bankruptcy Procedure 3012 and 11 U.S.C. § 506(a) is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Valuation of Collateral filed by Christine McKay ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of Bank of America, N.A. ("Creditor") secured by an asset described as 2012 GMC Yukon ("Vehicle") is determined to be a secured claim in the amount of \$xxxxxx.00, and the balance of the claim is a general unsecured claim to be paid through the confirmed bankruptcy plan. The value of the Vehicle is \$xxxxxxxxxxx.00 and is encumbered by a lien securing a claim that exceeds the value of the asset.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), creditors, parties requesting special notice, and Office of the United States Trustee on February 1, 2017. By the court's calculation, 6 days' notice was provided. The court required 6 days' notice. Dckt. 202.

The Motion for Allowance of Administrative Expense was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). The Debtor, Creditors, the Trustee, 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 offer 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. At the hearing -----

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The Motion for Allowance of Administrative Expense is granted.

J. Michael Hopper, the Chapter 7 Trustee, requests authorization to pay the following 2016 administrative tax claims:

- A. \$18,887.00 to the United States, and
- B. \$13,030.00 to the State of California.

The Trustee reports that he is holding approximately \$~~xxxx.xx~~. The Trustee states that after the court approved the hiring of accountants for the Estate, the accountants reported the above tax liabilities for the 2016 tax year. The Trustee states that the tax amounts are due on February 15, 2017, and he alleges that they are reasonable and necessary expenses of the Estate.

DISCUSSION

Section 503(b)(1) of the Bankruptcy Code accords administrative expense status to “the actual, necessary costs and expenses of preserving the estate”

The Trustee having presented sufficient evidence of administrative expenses for 2016 tax liabilities, and having requested allowance of the expenses, the Motion is granted.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Allowance of Administrative Expense filed by Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, and the Trustee is authorized to pay 2016 administrative tax claims of \$18,887.00 to the United States and \$13,030.00 to the State of California.