UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

February 8, 2016 at 10:00 a.m.

1.	14-21184-A-7 14-2349 FUKUSHIMA V. SAHADEO ET AL	SIMON RAMSUBHAG	ORDER TO APPEAR FOR EXAMINATION (DAN SAHADEO) 12-9-15 [34]

Tentative Ruling: None. The respondent and judgment debtor, Dan Sahadeo, shall appear and be sworn in prior to the court's February 8, 2016 10:00 a.m. calendar.

2.	15-27601-A-11 UST-2	ELK GROVE COMMUNICATIONS TOWER, INC.	MOTION TO DISMISS CASE 10-1-15 [11]

Tentative Ruling: The motion will be denied.

The U.S. Trustee moves for dismissal, pursuant to 11 U.S.C. § 1112(b), pointing out that the debtor is not represented by counsel.

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).

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).

Another cause for conversion or dismissal under section 1112(b) is a corporate debtor's lack of counsel. Local District Rule 183(a), as incorporated by Local Bankruptcy Rule 1001-1(c), provides that "A corporation or other entity may appear only by an attorney."

The debtor, a corporation, filed this case on September 29, 2015 without the representation of an attorney licensed to practice law before this court. The bankruptcy petition was executed by the debtor's president, Donald Tenn, who is not an attorney licensed to practice law before this court. He is not listed

with the California State Bar as an attorney licensed to practice law in California. Nor is he admitted to practice before this court pro hac vice.

Nevertheless, the debtor retained an attorney on or about October 26, after this motion was filed. On October 26, the debtor filed a motion for extension of the stay. Docket 25. As such, the debtor is represented by an attorney now and the lack of legal representation is no longer a cause for conversion or dismissal. Accordingly, this motion will be denied.

3. 15-27601-A-11 ELK GROVE COMMUNICATIONS TOWER, INC. — STATUS CONFERENCE 9-29-15 [1]

Tentative Ruling: None.

4. 13-23517-A-7 15-2055 FUKUSHIMA V. SUTTER CENTRAL VALLEY HOSPITALS ET AL., — TRACY GATEWAY, L.L.C. HCS-6 — MOTION TO SET ASIDE ENTRY OF DEFAULT 9-22-15 [41]

Final Ruling: The parties have stipulated to continue the hearing on this motion to March 21, 2016 at 10:00 a.m. Dockets 70 & 71.

5. 15-29541-A-12 WW-3 VS. COMMERCIAL EQUIPMENT LEASE CORP., ET AL., — TIMOTHY WILSON — MOTION TO AVOID JUDICIAL LIEN 1-22-16 [27]

Final Ruling: The motion will be dismissed without prejudice for several reasons.

First, the notice of hearing does not state clearly whether and when written opposition to the motion is required. The notice of hearing states that "on or before 14 calendar days prior to the hearing date, you or your attorney must: attend the hearing which has been scheduled for: Date: November 30, 2015." Docket 28 at 2.

The hearing date for this motion is not November 30, 2015. It is February 8, 2016. Also, parties in interest are not required to do anything 14 days prior to the hearing date, as this motion was filed and noticed pursuant to Local Bankruptcy Rule 9014-1(f)(2), which prescribes that opposition to the motion may be made orally at the hearing.

Second, service of the motion does not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The debtor served the motion on Holt of California without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Docket 36.

The debtor served the motion on Pape Machinery, Inc. without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Docket 36.

Third, the motion was not served on Commercial Equipment Lease Corp. and Mariecella A. Fiscus. Docket 36. These parties are absent from the list of respondents in the proof of service.

Fourth, the motion was not served on the Wells Fargo Bank in accordance with Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed to an officer of the institution.

The proof of service accompanying the motion indicates that the notice was not addressed to an officer of the bank. It was addressed to someone named Yvonne Ramirez-Browning. Docket 36. Service was not by certified mail either. Id.

Fifth, while the debtor may have served the respondents' attorneys, unless the attorneys agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004). Counsel may have served creditors by serving their counsel in the debtor's prior bankruptcy cases. But, this does not absolve the debtor from satisfying the service requirements of Rule 7004(b)(3) and (h).

Sixth, the motion and supporting declaration contain contradictory information about the first mortgage holder on the debtor's residence (parcel one). In the motion, the mortgagor is identified as Umpqua Bank with a claim in excess of $1,300,000. In the declaration, however, the mortgagor is identified as Sonoma National Bank/Sterling with a claim in excess of $1,100,000. Docket 27 at 3-4; Docket 29 at 2.

Finally, while the motion refers to exhibits attached to the motion, the court has been unable to locate any exhibits in support of the motion.

6. 15-29541-A-12 TIMOTHY WILSON — MOTION TO AVOID JUDICIAL LIEN
WW-4
VS. SUSQUEHANNA COMMERCIAL FINANCE — 1-22-16 [32]

Final Ruling: The motion will be dismissed without prejudice for several reasons.

First, the notice of hearing is confusing in stating whether and when written opposition to the motion is required. The notice of hearing states that "if you want the Court to consider your views on the this [*sic*] matter, then you should attend the hearing which has been scheduled for: Date: November 30, 2015." Docket 33 at 2.

The hearing date for this motion is not November 30, 2015. It is February 8, 2016.

Second, the motion was not served on Susquehanna Commercial Finance, Inc. Docket 35. It was served on "Susquehanna Commercial Finance c/o Ferns Adams [A]ssociates." Docket 35. Thus, service of the motion does not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

Third, while the debtor may have served the respondent's attorneys, unless the

attorneys agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004). Counsel may have served creditors by serving their counsel in the debtor's prior bankruptcy cases. But, this does not absolve the debtor from satisfying the service requirements of Rule 7004(b)(3) and (h).

Fourth, the motion and supporting declaration contain contradictory information about the first mortgage holder on the debtor's residence (parcel one). In the motion, the mortgagor is identified as Umpqua Bank with a claim in excess of $1,300,000. In the declaration, however, the mortgagor is identified as Sonoma National Bank/Sterling with a claim in excess of $1,100,000. Docket 32 at 3; Docket 34 at 2.

Finally, while the motion refers to exhibits attached to the motion, the court has been unable to locate any exhibits in support of the motion.

7.	15-29541-A-12 TIMOTHY WILSON WW-5 VS. SHIRLEY SITNER	MOTION TO VALUE COLLATERAL 1-25-16 [37]

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 creditors, 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 requests an order valuing parcel two of a real property in Pioneer, California, in an effort to strip off Shirley Sittner's claim secured by a third deed of trust on parcel two. The claim is not secured by the other parcel of the property, where the debtor's residence is located. The debtor conducts various farming operations on parcel two.

11 U.S.C. § 1222(b)(2) allows a chapter 12 debtor to modify the rights of secured claim holders. Unlike chapters 11 and 13 of the Bankruptcy Code, chapter 12 does not contain an anti-modification provision. This means that a chapter 12 debtor may strip down claims secured by his principal residence.

Pursuant to 11 U.S.C. § 506(a)(1), a secured claim is a secured claim 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."

A debtor's opinion of value is evidence of value and it may be conclusive in the absence of contrary evidence. Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165, 1173 (9th Cir. 2004).

The debtor contends that the property has a value of $220,000. Docket 39 at 2; Docket 1, Schedule A.

The property is subject to the following unavoidable claims, totaling $435,344.06:

- a $144.06 claim held by Amador County,

- a first mortgage in favor of Randy and Janet Wright and Jack Faradon for $215,825,

- a second mortgage in favor of George and Sylvia Niu for $130,000, and

- a third mortgage in favor of Shirley Sittner for $89,375.

Docket 1, Schedule D.

Shirley Sittner's third deed claim 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 Amador County's claim, the Wrights and Mr. Faradon's claim, and the Nius' claim. Shirley Sittner's third deed claim 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. 15-29541-A-12 TIMOTHY WILSON — MOTION TO VALUE COLLATERAL
WW-6
VS. GEORGE/SYLVIA NIU — 1-25-16 [40]

Final Ruling: The motion will be denied without prejudice because it contains contradictory figures for the claims secured by the real property parcel (parcel two of a real property in Pioneer, California) the debtor is seeking to value. For instance, in the motion, the debtor states that "[t]he debt owing to Niu is $44,073," whereas in the supporting declaration the debt owing to the Nius is asserted to be $130,000. Docket 40 at 3; Docket 42 at 3. Also, the debt owed on the first mortgage against the property is identified as in excess of $220,000, whereas in Schedule D, that debt is listed as $215,825. Docket 42 at 3; Docket 1, Schedule D.

Further, the motion was not served on George and Sylvia Niu in accordance with Fed. R. Bankr. P. 7004(b)(1), which requires service "[u]pon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession."

The motion was served on George and Sylvia Niu c/o Home Loan Services Corp. Docket 43. But, the court determine the relationship between George and Sylvia Niu and Home Loan Services Corp. Also, even assuming Home Loan Services Corp. is the Nius' agent for the servicing of their loan, Rule 7004(b)(1) does not have a servicing agent exception to the service requirements for individuals. The court then is not convinced that service complies with Rule 7004(b)(1).

9. 14-31890-A-11 SHAINA LISNAWATI — MOTION TO APPROVE COMPENSATION OF DEBTOR'S ATTORNEY
JHH-11 — 1-18-16 [239]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor's counsel, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, 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's counsel, Judson Henry, has filed a second interim motion for approval of compensation. The requested compensation consists of $7,000 in fees and $0.00 in expenses. This motion covers the period from May 1, 2015 through January 15, 2016. The court approved the movant's employment as the chapter 11 debtor's attorney on February 11, 2015. In performing services, the movant charged an hourly rate of $250.

The movant's fees are capped at $19,000. The movant has not reached the cap yet. In connection with the movant's first interim motion for compensation, the court awarded the movant $7,000 in fees.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

The movant's services included, without limitation: (1) responding to a stay relief motion, (2) communicating with the debtor about various substantive and administration issues, (3) analyzing various reorganization formulation approaches and discussing them with the debtor (4) assisting the debtor with the preparation of operating reports, (5) preparing plan and disclosure statement, and (6) preparing and filing a compensation motion.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate.