

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

February 9, 2017, at 10:30 a.m.

1. **10-94405-E-7** **STEPHEN HURST** **MOTION TO AVOID LIEN OF**
JAD-2 **Jessica Dorn** **DISCOVER BANK**
 1-9-17 [24]

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—No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on January 9, 2017. By the court’s calculation, 31 days’ notice was provided. 28 days’ notice is required.

The Motion to Avoid Judicial Lien 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Discover Bank (“Creditor”) against property of Stephen Hurst (“Debtor”) commonly known as 12076 Combine Drive, Waterford, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$3,619.39. An abstract of judgment was recorded with Stanislaus County on October 7, 2010, that encumbers the Property.

Pursuant to the Debtor's Amended Schedule A, the subject real property has an approximate value of \$120,000.00 as of the date of the petition. The unavoidable consensual liens that total \$281,852.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of \$1.00 on Amended Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs the Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

Review of Amended Schedule A/B

On January 9, 2017, Debtor filed an Amended Schedule A/B. Dckt. 30. On it Debtor states under penalty of perjury with respect to the above property:

- A. The Property is a single family home;
- B. Only the Debtor has an interest in the Property;
- C. Debtor is the Fee Owner of the Property;
- D. The entire Property has a value of \$120,000.00; and
- E. The Debtor's interest in the Property has a value of \$120,000.00.

If the court accepts this as true, then Debtor is stating that no one else in the world has any interest in this Property. However, in the related case of Carol Juarez, Ms. Juarez states that she is the only owner of the property. No. 09-93844; Amended Schedule A/B filed January 9, 2017, Dckt. 24. Ms. Juarez states under penalty of perjury on Amended Schedule A/B:

- A. The Property is a single family home;
- B. Only the Ms. Juarez has an interest in the Property;
- C. Debtor is the Joint Tenant of the Property (which is inconsistent with stating above that only Ms. Juarez has an interest in the Property);
- D. The entire Property has a value of \$140,000.00; and
- E. The Debtor's interest in the Property has a value of \$70,000.00.

Both Debtor and Ms. Juarez are represented by the same attorney (who is new counsel in representing each of them in reopening the bankruptcy case and filing this Motion to Avoid Lien) in their respective bankruptcy cases. At the hearing, counsel for Debtor explained **XXXXXXXXXXXXXXXXXXXXXXXXXXXX**.

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the 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 judgment lien of Discover Bank, California Superior Court for Stanislaus County Case No. 643898, recorded on October 7, 2010, Document No. 2010-0090421-00, with the Stanislaus County Recorder, against the real property commonly known as 12076 Combine Drive, Waterford, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

2. [09-93844-E-7](#) CAROL JUAREZ
JAD-2 Jessica Dorn

MOTION TO AVOID LIEN OF CHASE
BANK USA, N.A.
1-9-17 [26]

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—No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on January 9, 2017. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Chase Bank USA, N.A. ("Creditor") against property of Carol Juarez ("Debtor") commonly known as 12076 Combine Drive, Waterford, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$51,811.68. An abstract of judgment was recorded with Stanislaus County on August 26, 2009, that encumbers the Property.

Pursuant to the Debtor's Amended Schedule A, the subject real property has an approximate value of \$140,000.00 as of the date of the petition. The unavoidable consensual liens that total \$270,000.00 as of the commencement of this case are stated on Debtor's Amended Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(5) in the amount of \$1.00 on Amended Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs the Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

Review of Amended Schedule A/B

On January 9, 2017, Debtor Juarez filed an Amended Schedule A/B. Dckt. 24. On it Debtor states under penalty of perjury with respect to the above property:

- A. The Property is a single family home;
- B. Only the Debtor Juarez has an interest in the Property;
- C. Debtor Juarez is the Joint Tenant of the Property (which is inconsistent with stating above that only Debtor Juarez has an interest in the Property);
- D. The entire Property has a value of \$140,000.00; and
- E. The Debtor Juarez's interest in the Property has a value of \$70,000.00.

If the court accepts this as true, then Debtor Juarez is stating that she has only a one-half interest in the Property. On Original Schedules A and D, Debtor Juarez states that:

- A. That the deed of trust recorded against the Property is for debt only of the joint co-owner of the Property, not Debtor Juarez. Schedule A, Dckt. 1 at 18.
- B. On Schedule D, Debtor Juarez states that she has no secured debt. Schedule D, Dckt. 1 at 23.

However, on Amended Schedule D, Debtor Juarez now states that she owes the \$270,000.00 debt to "EMC 'A'" that is secured by the Property. Dckt. 24 at 12. Further, that she is the only person who owes this debt. *Id.* (Debtor checking the "Debtor 1 only" box for who owes the debt and not the "At least one of the debtors and another" box.)

This conflicts not only with Debtor Juarez's prior Schedules stated under penalty of perjury, but with Debtor Stephen Hurst who also states under penalty of perjury that he owns the Property in his bankruptcy case. No. 10-94405. On his Amended Schedule A/B filed January 9, 2017, (No. 10-94405, Dckt. 30) Debtor Hurst states under penalty of perjury:

- A. The Property is a single family home;
- B. Only the Debtor has an interest in the Property;
- C. Debtor is the Fee Owner of the Property;

- D. The entire Property has a value of \$120,000.00; and
- E. The Debtor's interest in the Property has a value of \$120,000.00.

On Amended Schedule D, Debtor Hurst states under penalty of perjury that only he is obligated to pay the debt to "EMC 'A.'" *Id.*, Dckt. 30 at 12.

Both Debtor Juarez and Debtor Hurst are represented by the same attorney (who is new counsel in representing each of them in reopening the bankruptcy case and filing this Motion to Avoid Lien) in their respective bankruptcy cases. At the hearing, counsel for Debtor explained ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the 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 judgment lien of Chase Bank USA, N.A., California Superior Court for Stanislaus County Case No. 631990, recorded on August 26, 2009, Document No. 2009-0084200-00, with the Stanislaus County Recorder, against the real property commonly known as 12076 Combine Drive, Waterford, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

3. [16-90905-E-7](#) **DAVID JOHNSON AND AMY** **MOTION TO AVOID LIEN OF ROTH**
CJY-1 **CERNY** **RECOVERY ASSOCIATES, INC.**
 Christian Younger **1-9-17 [22]**

Final Ruling: No appearance at the February 9, 2017 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, and Office of the United States Trustee on January 9, 2017. By the court’s calculation, 31 days’ notice was provided. 28 days’ notice is required.

The Motion to Avoid Judicial Lien 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Roth Recovery Associates, Inc. (“Creditor”) against property of David Johnson and Amy Cerny (“Debtor”) commonly known as 2025 Baluchi Way, Oakdale, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$5,452.74. An abstract of judgment was recorded with Stanislaus County on May 31, 2016, that encumbers the Property.

Pursuant to the Debtor’s Schedule A, the subject real property has an approximate value of \$365,000.00 as of the date of the petition. The unavoidable consensual liens that total \$251,852.19 as of the commencement of this case are stated on Debtor’s Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$160,375.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs the Debtor’s exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

An Order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the 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 judgment lien of Roth Recovery Associates, Inc., California Superior Court for Stanislaus County Case No. 678484, recorded on May 31, 2016, Document No. 2016-0039664-00, with the Stanislaus County Recorder, against the real property commonly known as 2025 Baluchi Way, Oakdale, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

4. [16-90913-E-7](#) BEATRICE FLORES
MDM-1 Pro Se

**MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR**
1-3-17 [27]

Final Ruling: No appearance at the February 9, 2017 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Trustee’s Attorney, and Office of the United States Trustee on January 3, 2017. By the court’s calculation, 37 days’ notice was provided. 28 days’ notice is required.

The Motion to Extend Deadline has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The Debtor (*pro se*) has not filed opposition. If the *pro se* Debtor appears at the hearing, the court shall consider the arguments presented and determine if further proceedings for this Motion are appropriate.

The Motion to Extend Deadline is granted.

Michael McGranahan, the Chapter 7 Trustee (“Trustee”), filed the instant Ex Parte Motion to Extend Time to File Objection to Discharge on January 3, 2017. Dckt. 27.

The Trustee states that Beatrice Flores (“Debtor”) has failed to cooperate with the Trustee according to 11 U.S.C. § 521(a)(3). The Trustee alleges that he requested turnover of certain assets and information, to which Debtor failed to comply.

The Trustee states that the deadline for filing a complaint objecting to discharge is January 3, 2017.

The Motion requests that the deadline to object to the Debtor’s discharge be extended to April 3, 2017, to allow the Trustee time to investigate Debtor’s assets, consult with counsel, and determine whether a complaint objecting to Debtor’s discharge is warranted.

The court may, on motion and after a noticed hearing, extend the time for objecting to the entry of discharge for cause. Fed. R. Bankr. P. 4004(b)(1). The court may extend this deadline, so long as the request for the extension of time was filed prior to the expiration of the deadline. Fed. R. Bankr. P. 4004(b)(1).

The instant Motion was filed on January 3, 2017, the day of the deadline to object to the discharge of the Debtor.

The court finds that in the interest of the Trustee to complete investigation, namely continuing to gather all necessary financial information from the Debtor, including information from third parties, is sufficient cause to justify an extension of the deadline. Therefore, the Motion is granted, and the deadline for the Trustee to object to Debtor's discharge is extended to April 3, 2017.

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 Ex Parte Motion to Extend Time to File Objection to Discharge filed by the 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 deadline for the Chapter 7 Trustee to object to Debtor's discharge is extended to April 3, 2017.

5. [16-90824-E-7](#) **ALVARO/ARMINDA ROCHA** **MOTION FOR DENIAL OF DISCHARGE**
UST-1 **Brian Haddix** **1-3-17 [24]**

Final Ruling: No appearance at the February 9, 2017 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, and parties requesting special notice on January 3, 2017. By the court's calculation, 37 days' notice was provided. 28 days' notice is required.

The Objection to Discharge has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4004(a). 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Objection to Discharge is sustained.

Tracy Hope Davis, the United States Trustee (“Objector”), filed the instant Objection to Debtor’s Discharge on January 3, 2017. Dckt. 24.

The Objector argues that Alvaro Rocha and Arminda Rocha (“Debtor”) are not entitled to a discharge in the instant bankruptcy case because the Debtor previously received a discharge in a Chapter 7 case in the Northern District of California.

The Debtor filed a Chapter 7 bankruptcy case on May 28, 2010. Northern District of California Case No. 10-32005. The Debtor received a discharge on September 8, 2010. Northern District of California Case No. 10-32005, Dckt. 11.

The instant case was filed under Chapter 7 on September 8, 2016.

11 U.S.C. § 727(a)(8) provides that a court shall not grant a discharge if a debtor has received a discharge “under this section, under section 1141 of this title, or under section 14, 371, or 476 of the Bankruptcy Act, in a case commenced within 8 years before the filing of the petition.” 11 U.S.C. § 727(a)(8).

Here, the Debtor received a discharge under 11 U.S.C. § 727 on September 8, 2010, which is less than eight years preceding the date of the filing of the instant case. Northern District of California Case No. 10-32005, Dckt. 11. Therefore, pursuant to 11 U.S.C. § 727(a)(8), the Debtor is not eligible for a discharge in the instant case.

Therefore, the Objection is sustained. Upon successful completion of the instant case (Case No. 16-90824), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

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 Objection to Discharge filed by Tracy Hope Davis, the United States 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 Objection to Discharge is sustained.

IT IS ORDERED that, upon successful completion of the instant case, Case No. 16-90824, the case shall be closed without the entry of a discharge.

6. [08-92168-E-7](#) **CARL/MYRTLE MAHLER**
CLH-1 **Charles Hastings**

**AMENDED MOTION TO AVOID LIEN
OF AHERN RENTALS INC.
1-18-17 [51]**

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)(2) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on January 18, 2017. By the court’s calculation, 22 days’ notice was provided. 14 days’ notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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, -----.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Ahern Rentals, Inc. (“Creditor”) against property of co-debtor Myrtle Mahler (now known as Myrtle Hudson) (“Debtor-Myrtle”) commonly known as 516 Gelding Court, Oakdale, California (“Property”). FN.1.

FN.1. Schedules A & D and the Abstracts of Judgment list “Gelding” Court, not “Golding” Court as stated in Debtor’s Motion. *See* Dckts. 1 & 54. Using the Google Maps program, it does not appear that there is a “Golding” Court in Oakdale, California. The court addresses the name issue as a clerical error in the Motion.

Debtor-Myrtle states the following grounds with particularity (Federal Rule of Bankruptcy Procedure 9013) upon which the requested relief is based:

- A. Debtor-Myrtle filed the bankruptcy petition on October 9, 2008.

- B. Debtor-Myrtle and the co-Debtor were the owners of the Property.
- C. The Property was listed on the Schedules and Claimed as exempt. *See* Schedule C, Dckt. 1 at 23; Debtor-Myrtle and co-Debtor listing a \$100.00 exemption pursuant to Cal. C.C.P. § 703.140(b)(1).
- D. Creditor has two judicial liens recorded against the Property.
 - 1. The first judicial lien was recorded on January 22, 2008, with the Stanislaus County Recorders Office, Doc. No. 2008-0005944-00.
 - 2. The second judicial lien was recorded on January 23, 2008, with the Stanislaus County Recorders Office, Doc. No. 2008-0006955-00.
- E. A copy of the abstract of judgment for the first judicial lien is filed as Exhibit A in support of the Motion (Dckt. 54).
- F. A copy of the abstract of judgment for the second judicial lien is filed as Exhibit B in support of the Motion (Dckt. 54).
 - 1. A review of Exhibits A and B (Dckt. 54) discloses:
 - a. Both are identified as relating to the judgment entered in California Superior Court for the County of Stanislaus Case No. 616858.
 - b. The judgment debtors in both abstracts of judgment are identified as:
 - (1) Carl Wilhelm Mahler dba CM Stocking; and
 - (2) Katie Mahler aka Myrtle Kathryn Mahler dba CM Stocking.
 - c. The total amount of the judgment on both abstracts of judgment is stated to be \$8,670.92.
 - d. The date when the judgment that is the subject of each abstract is stated to have been entered is December 17, 2007.
- G. The value of the Property is less than the senior encumbrances and Debtor-Myrtle's homestead exemption.
- H. Debtor-Myrtle seeks to have the judicial lien avoided pursuant to 11 U.S.C. § 522(f).

Motion filed January 18, 2017, Dckt. 51.

It appears that the judgment creditor has two abstracts of judgments issued and recorded for one judgment in the amount of \$8,670.92.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$260,000.00 as of the date of the petition. The unavoidable consensual liens that total \$470,000.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$100.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial liens. Therefore, the fixing of the judicial liens impair the Debtor's exemption of the real property, and their fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Liens pursuant to 11 U.S.C. § 522(f) filed by the 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 judgment lien of Ahern Rentals, Inc., California Superior Court for Stanislaus County Case No. 616858, recorded on January 22, 2008, Document No. 2008-0005944-00, with the Stanislaus County Recorder, against the real property commonly known as 516 Gelding Court, Oakdale, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1) as to the interests of Myrtle Katie Hudson, fka Myrtle K. Mahler, subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

IT IS ORDERED that the judgment lien of Ahern Rentals, Inc., California Superior Court for Stanislaus County Case No. 616858, recorded on January 23, 2008, Document No. 2008-0006955-00, with the Stanislaus County Recorder, against the real property commonly known as 516 Gelding Court, Oakdale, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1) as to the interests of Myrtle Katie Hudson, fka Myrtle K. Mahler, subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

7. [08-92168-E-7](#) **CARL/MYRTLE MAHLER**
CLH-2 **Charles Hastings**

**AMENDED MOTION TO AVOID LIEN
OF COAST CRANE COMPANY
1-18-17 [56]**

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)(2) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on January 18, 2017. By the court’s calculation, 22 days’ notice was provided. 14 days’ notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). 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, -----.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Coast Crane Company (“Creditor”) against property of co-debtor Myrtle Mahler (now known as Myrtle Hudson) (“Debtor-Myrtle”) commonly known as 516 Gelding Court, Oakdale, California (“Property”). FN.1.

FN.1. Schedules A & D and the Abstracts of Judgment list “Gelding” Court, not “Golding” Court as stated in Debtor’s Motion. *See* Dckts. 1 & 54. Using the Google Maps program, it does not appear that there is a “Golding” Court in Oakdale, California. The court addresses the name issue as a clerical error in the Motion.

The Motion states the following grounds with particularity (Federal Rule of Bankruptcy Procedure 9013) upon which the relief is based:

- A. Debtor-Myrtle filed the bankruptcy petition on October 9, 2008.

- B. Debtor-Myrtle and the co-Debtor were the owners of the Property.
- C. The Property was listed on the Schedules and Claimed as exempt. *See* Schedule C, Dckt. 1 at 23; Debtor-Myrtle and co-Debtor listing a \$100.00 exemption pursuant to Cal. C.C.P. § 703.140(b)(1).
- D. Creditor has a judicial lien recorded against the Property. The judicial lien was recorded on April 10, 2008 with the Stanislaus County Recorders Office, Doc. No. 2008-0037025-00.
- E. A copy of the abstract of judgment is filed as Exhibit A in support of the Motion (Dckt. 47).
- F. The value of the Property is less than the senior encumbrances and Debtor-Myrtle's homestead exemption.
- G. Debtor-Myrtle seeks to have the judicial lien avoided pursuant to 11 U.S.C. § 522(f).

Motion filed January 17, 2017, Dckt. 44.

On January 18, 2017, Debtor-Myrtle filed a second motion seeking to avoid a judicial lien. Dckt. 56 ("Second Motion"). This Second Motion uses the same docket control number as the Motion filed on January 17, 2017. The Second Motion states it is an amended motion. It appears this was filed to correct a calendaring error on the original motion (an amended motion was not required, only a notice of correct hearing date).

The judgment was entered against Debtor in favor of Creditor in the amount of \$11,093.11.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$260,000.00 as of the date of the petition. The unavoidable consensual liens that total \$470,000.00 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 703.140(b)(1) in the amount of \$100.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs the Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the 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 judgment lien of Coast Crane Company, California Superior Court for Stanislaus County Case No. 619583, recorded on April 10, 2008, Document No. 2008-0037025-00, with the Stanislaus County Recorder, against the real property commonly known as 516 Gelding Court, Oakdale, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1) as to the interests of Myrtle Katie Hudson, fka Myrtle K. Mahler, subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.