

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

March 14, 2018 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled 'Amended Civil Minute Order.'

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.
3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.
4. If no disposition is set forth below, the matter will be heard as scheduled.

1.	15-26503-D-7 RCB-1	NOLANDO/LYNNE BANEZ	MOTION TO AVOID LIEN OF CAITOL ONE BANK (USA) N.A. 2-1-18 [26]
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Final ruling:

This is the debtors' motion to avoid a judicial lien held by Capital One Bank (USA) N.A. The motion will be denied because the moving papers refer to the creditor by inconsistent names and because service was made on a different entity from the one that holds the judgment lien.

The moving papers refer to the creditor variously - as Capital One Bank (USA) N.A., as Capital One N.A., and as Capital One. Service was made by certified mail to the attention of an officer, at a street address in McLean, Virginia. The problem is two-fold. First, according to the FDIC, there are two different entities that are active FDIC-insured institutions - Capital One Bank (USA), National Association and Capital One, National Association. Because the moving papers refer to the creditor by both names, they fail to give proper notice. Further, the moving

parties served "Capital One Bank" at the address in McLean, Virginia listed by the FDIC as the address of Capital One, National Association, whereas according to the abstract of judgment, the lien is held by Capital One Bank (USA), N.A., which, according to the FDIC, is in Glen Allen, Virginia.

As a result of these service and notice defects, the motion will be denied by minute order. No appearance is necessary.

2. 15-26503-D-7 NOLANDO/LYNNE BANEZ MOTION TO AVOID LIEN OF
RCB-2 DISCOVER BANK
2-1-18 [31]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Discover Bank. The motion will be denied because the proof of service evidences service of the debtors' motion to avoid a judicial lien of Capital One Bank and the related documents, all described in the proof of service as pertaining to Capital One Bank, not Discover Bank.

As a result of this service defect, the motion will be denied by minute order. No appearance is necessary.

3. 14-25820-D-11 INTERNATIONAL CONTINUED MOTION TO SEVER
16-2090 MANUFACTURING GROUP, INC. PLAINTIFFS CLAIMS AGAINST
MCFARLAND V. CALIFORNIA BANK & DEFENDANTS CALIFORNIA BANK &
TRUST ET AL TRUST, AND BANK OF AMERICA,
DMC-13 N.A. FROM CLAIMS AGAINST
DEFENDANT JAMESTOWN S'KLALLAM
TRIBE
1-17-18 [257]

Tentative ruling:

On March 7, 2018, the plaintiff/moving party filed a request for this motion to be taken off calendar as it has reached a settlement with defendant, Jamestown S'Klallam Tribe. As this motion has been opposed by the Jamestown S'Klallam Tribe as well as the other defendant in this adversary proceeding, the plaintiff/moving party does not have the unilateral right to withdraw the motion. As such, the court simply intends to deny the motion by minute order.

4. 17-28420-D-7 JESSE/STACEY REED MOTION FOR RELIEF FROM
NLG-1 AUTOMATIC STAY
FIRST TECH FEDERAL CREDIT 2-13-18 [14]
UNION VS.

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant relief from stay. As the debtors' Statement of Intentions indicates they will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

5. 09-46625-D-7 VASCO/MICHELE DEMELLO MOTION TO SELL
DNL-11 2-13-18 [186]

6. 17-23626-D-7 PHYSICIANS SKIN AND MOTION FOR COMPENSATION FOR
DMW-3 WEIGHT CENTERS, INC. GABRIELSON & COMPANY,
ACCOUNTANT(S)
2-5-18 [42]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion by minute order. No appearance is necessary.

7. 16-25331-D-7 CAROL BENEDETTI MOTION FOR COMPENSATION FOR J.
JMH-1 MICHAEL HOPPER, CHAPTER 7
TRUSTEE(S)
2-14-18 [102]

8. 17-20731-D-11 CS360 TOWERS, LLC CONTINUED MOTION TO SELL FREE
DB-10 AND CLEAR OF LIENS
12-18-17 [279]

9. 17-20731-D-11 CS360 TOWERS, LLC
DB-9

CONTINUED MOTION TO USE CASH
COLLATERAL
12-6-17 [268]

10. 17-22145-D-7 ELIAKIM FRANK
DMW-2

MOTION FOR COMPENSATION FOR
GABRIELSON AND COMPANY,
ACCOUNTANT(S)
2-5-18 [38]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion by minute order. No appearance is necessary.

11. 14-25148-D-11 HENRY TOSTA
ABG-2

CONTINUED MOTION FOR
COMPENSATION FOR HOWARD BAILEY,
OTHER PROFESSIONAL(S)
1-3-18 [767]

Tentative ruling:

This is the second interim application of Howard Bailey, of Arch & Beam Global, LLC, the plan administrator in these consolidated cases (the "plan administrator"), for compensation (the "Application"). Debtor Henry J. Tosta, Jr. (the "debtor") filed opposition prior to the initial hearing. The plan administrator filed two declarations in response and creditor Fred Kelly Grant filed a declaration in response. At the initial hearing, the court considered the provisions of the debtors' confirmed joint plan of reorganization and the order granting the motion to enforce it, with respect to the compensation of professionals employed post-confirmation. The court noted the procedural discrepancy between those provisions and the motion and opposition mechanism employed here, but decided to construe the debtor's opposition as a motion for determination of the reasonableness of the requested fees. The court also noted that, in light of the plan documents, the debtor's opposition was too vague to permit the court to "reduce the amount of the fees," as the debtor requested.

Thus, by an order approved as to form by the debtors' counsel, the court authorized the plan administrator to pay without further court order the portions of any professional fees, including the plan administrator's fees, costs, or expenses, not disputed by the debtors. The order also required the debtors, if they wished to dispute the reasonableness of any of the fees, costs, or expenses requested in the Application, to file and serve no later than February 14, 2018 "a specific objection

that itemizes the fees, costs or expenses that the Debtors object to and the reasons therefor." Order, filed February 2, 2018, at 2:10-11. The debtors filed nothing further by February 14, 2018 and have filed nothing further since then regarding the Application. Nor have the parties filed a stipulation to take the Application off calendar.

Therefore, the court reiterates its conclusion at the initial hearing that debtor Henry J. Tosta, Jr.'s opposition is insufficient to cause the court to reduce the amount of the fees, costs, and expenses requested. Mr. Tosta stated only that (1) he does not know or understand why it took so many hours to analyze the creditor claims; (2) he is in his seventies and finds it difficult to read and comprehend 48 pages worth of billing details; and (3) he was to have received invoices from the plan administrator every two weeks but did not, leaving him not enough time to read and understand the billings and object to those he found inappropriate. These latter two complaints have been resolved by the court's continuance of the hearing and the additional time provided for the debtors to itemize the disputed amounts. The first complaint is vague in that it does not specify a particular amount objected to (the court assumes Mr. Tosta did not intend to object to the entire amount of the fees charged for analyzing the claims) and its substance has been effectively countered by the declarations filed in response. Accordingly, the motion will be granted.

The court will hear the matter.

12. 17-22056-D-11 JAMES MCCLERNON CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
3-29-17 [1]

Final ruling:

This case was dismissed on February 28, 2018. As a result the status conference is concluded and the matter is removed from calendar.

13. 16-25460-D-7 GABRIEL/CHRISTINA PAULL MOTION FOR COMPENSATION FOR
JES-2 JAMES E. SALVEN, ACCOUNTANT(S)
2-1-18 [76]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion by minute order. No appearance is necessary.

14. 15-26465-D-7 SCOTT POMEROY MOTION FOR COMPENSATION FOR
GJH-5 GREGORY J. HUGHES, TRUSTEES
ATTORNEY(S)
2-12-18 [107]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion by minute order. No appearance is necessary.

15. 16-27469-D-7 RACHEL KROLACK MOTION TO SELL
DMW-1 2-5-18 [15]

16. 16-27672-D-11 DAVID LIND MOTION FOR ADMINISTRATIVE
DNL-12 EXPENSES
2-14-18 [340]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant the motion for allowance and payment of administrative expenses to the Franchise Tax Board. Moving party is to submit an appropriate order. No appearance is necessary.

17. 18-20177-D-7 DAVID BENJAMIN MOTION FOR DETERMINATION THAT
DNL-2 PERSONAL PROPERTY IS OF
CONSEQUENTIAL VALUE AND BENEFIT
TO THE ESTATE
2-9-18 [27]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant the motion for determination that personal property of the estate is of consequential value and benefit to the estate as a result of the property being subject to the lien of the IRS. Moving party is to submit an appropriate order. No appearance is necessary.

18. 15-25380-D-7 ELIZABETH MEZA MOTION FOR COMPENSATION BY THE
BHS-3 LAW OFFICE OF BARRY H. SPITZER
TRUSTEES ATTORNEY(S)
2-13-18 [79]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion and allow fees and costs in the amount of \$15,380.62. Moving party is to submit an appropriate order. No appearance is necessary.

19. 17-28181-D-7 OMAR PELAEZ MOTION FOR RELIEF FROM
EAT-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. 2-2-18 [36]

20. 10-26088-D-7 SEAM SATH MOTION TO AVOID LIEN OF CHASE
TJW-3 BANK USA N.A.
2-15-18 [27]

21. 17-20689-D-11 MONUMENT SECURITY, INC. MOTION FOR COMPENSATION BY THE
ET-17 LAW OFFICE OF EASON AND
TAMBORNINI, ALC FOR MATTHEW R.
EASON, DEBTOR'S ATTORNEY(S)
2-7-18 [219]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

26. 12-33359-D-7 ROBERT MILLER AND DARCY MOTION TO AVOID LIEN OF
MAC-2 JANSEN DISCOVER BANK
2-23-18 [45]

27. 18-20865-D-7 KYLE/ALLISON CHANNING MOTION FOR RELIEF FROM
SW-1 AUTOMATIC STAY
ALLY BANK VS. 2-27-18 [12]

Final ruling:

The matter is resolved without oral argument. This motion was noticed under LBR 9014-1(f)(2). However, the debtors' Statement of Intentions indicates they intend to surrender the collateral and the trustee has filed a Report of No Assets. Accordingly, the court finds a hearing is not necessary and will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

28. 16-27672-D-11 DAVID LIND MOTION TO STAY ORDER PENDING
 APPEAL
 2-21-18 [344]

Tentative ruling:

This is the debtor's motion for a stay pending appeal from this court's order filed December 21, 2017 approving the sale of certain real property of the estate (the "Order"). The trustee has filed opposition and secured creditor the Dobbins Family Trust has joined in the opposition. For the following reasons, the motion will be denied.

In determining whether to stay an order, the factors the court is to consider are: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." Leiva-Perez v. Holder, 640 F.3d 962, 964 (9th Cir. 2011), quoting Nken v. Holder, 556 U.S. 418, 425-26 (2009). The court is to apply these factors using a sliding scale or general balancing approach. Leiva-Perez, 640 F.3d at 966. Thus, "a stronger showing of one element may offset a weaker showing of another." Id. 964. The burden of proof is on the moving party. In re Irwin, 338 B.R. 839, 843 (E.D. Cal. 2006). The debtor here has failed to make a sufficient showing as to any of the four factors.

The Order authorized the trustee to sell the property for \$2,440,000, which, in the debtor's view, was too low a price. Thus, he seeks to stay the sale "to further establish the value of the property and a renegotiation of the sale price" Debtor's Motion, DN 344 ("Mot."), at 1:24-25. The debtor's argument is essentially limited to the first of the four factors, with a bare mention of the possible loss by the estate of approximately \$700,000 in value if the sale goes forward.

The appellate court will review the Order for abuse of discretion. In re Lahijani, 325 B.R. 282, 287 (9th Cir. BAP 2005). This is a two-step process. First, the appellate court will "determine de novo whether the trial court identified the correct legal rule to apply to the relief requested." United States v. Hinkson, 585 F.3d 1247, 1261-62 (9th Cir. 2009). Second, if the appellate court determines the trial court identified the correct legal rule, the appellate court will determine whether "the trial court's application of the correct legal standard was illogical, implausible, or without support in inferences that may be drawn from the facts in the record." Id. at 1262 (internal numbering and quotation marks omitted).

The debtor does not contend this court utilized an incorrect legal standard. The trustee cited the correct standard in the sale motion; namely, that the sale must have been supported by a valid business justification and have been proposed in good faith. See Trustee's Sale Motion, DN 264, at 5:20-21, citing In re 240 North Brand Partners, 200 B.R. 653, 659 (9th Cir. BAP 1996). The trustee testified in support of the sale motion he had a valid business justification for the sale, an opinion he supported with considerable detail. The sale motion was noticed pursuant to LBR 9014-1(f)(2) - parties opposing it had only to appear at the hearing. The notice alerted interested parties to the right to overbid at the hearing, but as the trustee points out, neither the parties the debtor now claims had made higher offers nor anyone else appeared at the hearing to overbid.

As to the application of that standard to the facts of this sale, the debtor's argument is based entirely on disputed issues of fact, as to which he did not present admissible evidence, or indeed, any evidence or even argument, at or prior to the hearing on the sale motion, which he did not attend.^{1 2} For example, he claims the trustee's broker did not diligently advertise the property, did not place "for sale" signs where they would have been the most effective, was not informative about the bidding procedures, and advocated for preferential clients. The debtor charges the trustee with failing to timely respond to offers and failing to provide information to agents and potential buyers. These allegations are based primarily on hearsay and are conclusory. They do not demonstrate that the court's decision to approve the \$2,440,000 offer was illogical, implausible, or without support in inferences that may be drawn from the facts in the record.

The debtor asserts that he had a sale of the property ready to close on February 1, 2017 for \$3,160,000, but that "[d]ue to the ineffective representation of [his] legal counsel the case was not dismissed[;] it was converted to Chapter 11 and a trustee was later appointed." Mot. at 2:2-3. He fails to mention (1) the complications arising from his earlier agreement, apparently not disclosed to his buyer, to transfer 7.44 acres of the property to a third party, the Dobbins Family Trust, and (2) the buyer's dissatisfaction with the debtor's failure to close the sale earlier. The buyer's principal testified on January 27, 2017 that the debtor had failed to close the escrow at the end of October 2016, pursuant to the buyer's demand (Panella Decl., filed Jan. 27, 2017, DN 52, ¶ 12) and that the debtor had told him he did not intend to sell the property if he had to transfer the 7.44 acres to the Dobbins Trust. ¶ 13.

In short, the court concludes a higher sales price could not have been achieved had the sale at \$2,440,000 had not been approved. Thus, the debtor has not made a showing that he has a substantial case for relief on the merits of the appeal. As the debtor has offered no argument as to the remaining three factors the court is to consider, the court will not address them except to say that it adopts the trustee's analysis of those factors and especially his position that further delay in selling the property would be likely to substantially prejudice creditors. For the reasons stated, the motion will be denied. The court will hear the matter.

- 1 The debtor did appear at the hearing on the trustee's earlier motion to sell a different real property and offer arguments similar to those he makes here.
- 2 The court notes that the debtor's failure to oppose the motion or appear at the hearing is the subject of the trustee's motion in the Bankruptcy Appellate Panel to dismiss the appeal for lack of standing.

29. 17-22275-D-7 CALIFORNIA GOLF MOTION FOR ADMINISTRATIVE
DNL-7 PROPERTIES, LLC DBA RIVER EXPENSES
2-26-18 [97]

30. 17-23376-D-7 MAUREEN RUTTY MOTION FOR COMPENSATION BY THE
HSM-4 LAW OFFICE OF HEFNER, STARK &
NEVINS, TRUSTEES ATTORNEY(S)
2-21-18 [40]

31. 17-27481-D-7 CHAD FREEMAN MOTION TO EXTEND TIME TO FILE A
RTD-2 MOTION TO DISMISS CASE UNDER
SEC. 707(B)
2-20-18 [37]

Final ruling:

The motion has been withdrawn prior to any opposition being filed. As such, the minutes will reflect that the motion has been withdrawn by the moving party. Matter removed from calendar.

32. 17-27481-D-7 CHAD FREEMAN MOTION TO EXTEND DEADLINE TO
RTD-3 FILE A COMPLAINT OBJECTING TO
DISCHARGEABILITY OF A DEBT
2-20-18 [41]

Final ruling:

The motion has been withdrawn prior to any opposition being filed. As such, the minutes will reflect that the motion has been withdrawn by the moving party. Matter removed from calendar.

33. 17-20689-D-11 MONUMENT SECURITY, INC. MOTION TO ENTER INTO INSURANCE
ET-19 PREMIUM FINANCE AGREEMENT WITH
IPFS CORPORATION OF CALIFORNIA
2-28-18 [243]

34. 15-27697-D-7 ROMEO/SONIA GAPASIN MOTION FOR ENTRY OF JUDGMENT
SSA-5 RE: MOTION TO APPROVE
SETTLEMENT OF CLAIMS AND
COMPROMISE MOTION BETWEEN
TRUSTEE AND SONIA'S CARE HOME,
INC.
2-21-18 [72]