

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

March 29, 2017 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.	15-20714-D-7 RAC-1	THOMAS/DOLORES ESPINOZA	MOTION TO COMPEL ABANDONMENT 2-20-17 [16]
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Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the debtors' motion to compel the trustee to abandon property and the debtors have demonstrated the property to be abandoned is of inconsequential value to the estate. Accordingly, the motion will be granted and the property that is the subject of the motion will be deemed abandoned by minute order. No appearance is necessary.

2. 16-28018-D-7 TERRENCE/NANCIE HOFMANN AMENDED MOTION FOR RELIEF FROM
CSR-2 AUTOMATIC STAY
JSM ENTERPRISES, INC. VS. 2-21-17 [52]

Tentative ruling:

This is the motion of JSM Enterprises, Inc. for relief from stay to proceed with a State Court action that was filed and pending pre-petition. On March 14, 2017 counsel for the Chapter 7 trustee filed a certificate of service indicating service of the trustee's opposition (and supporting papers) to this motion for relief from stay. None of the documents referenced in the certificate of service have been filed with the court. As such, the court has not been able to review the opposition, nor does the court know whether the Movant has received the opposition. Accordingly, the court intends to continue this hearing to April 12, 2017 at 10:00 a.m. to allow the trustee to file his opposition and supporting papers with the court. The court will hear the matter.

3. 16-20027-D-7 TIFFANI CO CONTINUED MOTION TO EMPLOY
NOS-1 CHRISTOPHER D. HUGHES AS
ATTORNEY
2-9-17 [54]

4. 17-20731-D-11 CS360 TOWERS, LLC CONTINUED MOTION TO EMPLOY
TBG-1 STEPHAN M. BROWN AS ATTORNEY
2-15-17 [8]

This matter will not be called before 10:30 a.m.

Tentative ruling:

This is a continued hearing on the motion of the debtor to employ counsel. The motion is now moot because the debtor is no longer a debtor-in-possession as the court has now ordered the appointment of a chapter 11 trustee. As a result, the court intends to deny the motion as moot. The court will hear the matter.

5. 17-20038-D-11 LANE FAMILY LIMITED MOTION TO USE CASH COLLATERAL
MF-3 PARTNERSHIP NO. ONE 3-3-17 [77]

Final ruling:

This is the debtor's motion to compel the trustee to abandon the estate's interest in a 2014 Dodge Ram 3500 truck. The hearing has been continued twice; the parties have fully briefed the matter and had ample opportunity to supplement the record. However, the trustee has now filed a motion for authority to sell the truck, which she set for hearing on April 12, 2017 at 10:00 a.m. As the value of the truck is best determined by the price a willing and able buyer will pay for it, the hearing on this motion to compel abandonment will be continued to the same date and time. For the guidance of the parties, the court adds the following.

In support of the motion, the debtor filed her and her spouse's declarations, in which they testified they believe the truck would bring only \$23,000 "in a sale to any party, whether a private party, dealer, auction house, etc." Debtor's Decl., DN 79, at 1:26. The debtor's spouse testified he has been using the truck in his recycling business for two years and is familiar with its condition and manufacturer's options. He added that he purchased the truck new two years ago from a dealer for approximately \$43,000. The debtor also submitted an NADA report for a truck of the same type, which shows an average trade-in value of \$23,625 and a clean retail value of \$28,800. According to the trustee's sale motion, there is a lien against the truck in the amount of \$22,720. The debtor has claimed exemptions in the truck of \$8,000 under the tools of the trade exemption and \$4,000 under the wild-card exemption.

The trustee, on the other hand, submitted her own declaration in which she testified she had the truck appraised on January 23, 2017 by Kirk's Appraisal Service. She filed a copy of the appraisal report as an exhibit, which showed a value of \$38,679. The trustee testified, "Based on my assessment, which includes all previous investigations into the value of the Truck and the appraisal, I am informed and believe that the Truck has a value of approximately \$38,679.00." K. Husted Decl., DN 106, at 3:4-6. The trustee's appraisal report was not authenticated by a declaration of the appraiser, and was therefore hearsay and inadmissible. The trustee's own testimony was inadmissible as she did not demonstrate she has the knowledge or expertise to render an opinion of the truck's value. Thus, prior to the filing of the trustee's motion to sell the truck, the only admissible evidence as to the value of the truck was the debtor's and her spouse's testimony.

The trustee has now produced a buyer for the truck, who has offered \$28,000. A sale at that price would leave \$5,280 for the estate - less than the amounts of the debtor's claimed exemptions. The trustee has filed a motion for an extension of time to object to the debtor's exemptions of the truck; that motion is also on this calendar and will also be continued to the 10:00 a.m. calendar on April 12, 2017. The trustee suggests she may object to the exemptions because the debtor's spouse testified at a Bankruptcy Rule 2004 examination he did not use the truck in his business, which arguably would disqualify the truck for exemption as a tool of the 1 The trustee has also expressed concern that the debtor and her spouse delayed turning over documents concerning their refinance of the truck loan; she adds that the documents that were finally turned over "reflect that the value of the Truck is \$38,900." Trustee's Supp. Opp., DN 115, at 2:20.2

The offer the trustee has received for the truck is almost \$11,000 less than that value. With a purchase price of \$28,000, the trustee would net only \$5,280 after payment of the lien, assuming the debtor's claims of exemption were both disallowed. It is questionable as to whether that amount would even be sufficient to cover the administrative expenses associated with the sale of the truck, the abandonment motion, and the trustee's turnover motion, not to mention the objection to exemptions. Setting aside the possibility that both exemption claims would be allowed, and assuming only the wild-card exemption is allowed, at \$4,000, the balance remaining for the estate, \$1,280, would almost certainly be insufficient to cover even the trustee's fees.

Although the court is not called upon at this time to rule on an objection to exemptions, it is fair to say the value of the truck to the estate - and whether that value is consequential or not - does ultimately depend on the extent of the exemptions the debtor is likely to be allowed. As a general proposition, it is difficult for a trustee to deprive a debtor of his or her exemption claims, as California exemption laws, under which the debtor claims her exemptions, are to be liberally construed in favor of the debtor (Lieberman v. Hawkins (In re Lieberman), 245 F.3d 1090, 1092 (9th Cir. 2001) (citation omitted)), and particularly in light of recent developments in exemption law. See, e.g., Law v. Siegel, 134 S. Ct. 1188, 1196 (2014); Elliott v. Weil (In re Elliott), 523 B.R. 188, 193 (9th Cir. BAP 2014). The court recognizes that equitable estoppel is a remedy available to a trustee challenging exemptions under California law. See, e.g., In re Lua, 529 B.R. 766, 774-75 (Bankr. C.D. Cal. 2015). But the wild-card exemption is a given in practically every case, and in any event, the court sees nothing here that would tend to support a finding of equitable estoppel against the debtor as regards that exemption.³

Therefore, based on the present evidentiary record, unless the trustee has an offer for \$35,000 or more at the time of the continued hearing, the court will conclude the truck is of inconsequential value and benefit to the estate, and the motion will be granted.⁴ As indicated, the hearing will be continued to April 12, 2017, at 10:00 a.m. No appearance is necessary on March 29, 2017.

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- 1 Despite the trustee's characterization of the debtor's husband's testimony, the husband has testified in a declaration in support of this motion that he did use the truck in his business. The court makes no determinations on this issue at this time; it merely points out that there is some evidence to challenge the trustee's characterization of the Rule 2004 exam testimony. (No transcript has been provided.)
 - 2 The court has examined the documents, which were apparently utilized by a lender in making a refinance loan to the debtor's husband just a week before the debtor's bankruptcy filing. They consist of a summary page incorporating a value from an NADA printout dated June 9, 2016 which, in turn, listed several values, including the one trustee asserts, \$38,900, as the highest - the Clean Retail value. The court finds the documents are not significant evidence of the actual value of the truck; they are, at any rate, not sufficient to be dispositive on this motion.
 - 3 "To invoke equitable estoppel under California law, a party must show: (a) a representation or concealment of material facts; (b) made with knowledge, actual or virtual, of the facts; (c) to a party ignorant, actually and permissibly, of the truth; (d) with the intention, actual or virtual, that the

ignorant party act on it; and (e) that party was induced to act on it.'" Id., at 776.

4 Nothing in this ruling should be construed as condoning any delays that may have occurred in the turnover of the truck or the documents to the trustee.

7. 16-25239-D-7 DIVINDER HUNDAL CONTINUED MOTION TO EMPLOY
NOS-1 CHRISTOPHER D. HUGHES AS
ATTORNEY
2-8-17 [98]

8. 16-25239-D-7 DIVINDER HUNDAL CONTINUED MOTION TO EXTEND TIME
NOS-3 2-15-17 [109]

Final ruling:

This is the trustee's motion for an extension of time to object to the debtor's claim of exemptions in a 2014 Dodge Ram 3500 truck. The outcome of the motion is likely to hinge on the court's ruling on the debtor's motion to compel abandonment of the truck, also on this calendar, which is being continued to April 12, 2017 at 10:00 a.m. Thus, this motion for an extension of time will be continued to the same date and time. No appearance is necessary on March 29, 2017.

9. 10-42050-D-7 VINCENT/MALANIE SINGH CONTINUED OBJECTION TO CLAIM OF
HLC-13 JAGDISHWAR SINGH, CLAIM NUMBER
13
10-31-16 [832]

10. 10-42050-D-7 VINCENT/MALANIE SINGH CONTINUED PRE-TRIAL CONFERENCE
12-2433 RE: AMENDED COMPLAINT
BURKART V. SINGH 5-28-13 [57]

11. 17-20258-D-7 AARON/PHELICIA MCGEE MOTION FOR RELIEF FROM
EMM-1 AUTOMATIC STAY
BANC OF CALIFORNIA, N.A. VS. 2-16-17 [10]

Final ruling:

This matter is resolved without oral argument. This is Banc of California, N.A.'s motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

12. 16-21659-D-7 TRONG NGUYEN CONTINUED MOTION TO ABANDON
CDH-3 11-30-16 [73]

13. 16-21659-D-7 TRONG NGUYEN MOTION TO COMPROMISE
NOS-3 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH WGT AND QUALITY
PROPERTIES
2-24-17 [108]

14. 13-33966-D-7 HOWARD HOLZER
DE-2

MOTION TO AVOID LIEN OF CAPITOL
ONE BANK, N.A.
2-15-17 [56]

Final ruling:

This is the debtor's motion to value collateral of Capital One Bank (the "Bank"). The motion will be denied because the moving party used a docket control number that has been used at least twice before in this case (and is the same docket control number as the one used for the motion that follows on this calendar). The moving party was expressly advised in the court's final ruling on his motions on the February 15, 2017 calendar that if he wished to file a new motion, he would need to include a new docket control number on the moving papers. The moving party's counsel is advised to review LBR 9014-1(c).

Further, the motion and supporting declaration both refer to an abstract of judgment in the amount of \$13,302.85; however, the abstract of judgment filed as an exhibit to the motion is in the amount of \$9,553.67.

For the reasons stated, the motion will be denied by minute order. No appearance is necessary.

15. 13-33966-D-7 HOWARD HOLZER
DE-2

MOTION TO AVOID LIEN OF CAPITOL
ONE BANK, N.A.
2-15-17 [61]

Final ruling:

This is the debtor's motion to value collateral of Capital One Bank (the "Bank"). The motion will be denied because the moving party used a docket control number that has been used at least twice before in this case (and is the same docket control number as the one used for the motion that precedes this one on this calendar). The moving party was expressly advised in the court's final ruling on his motions on the February 15, 2017 calendar that if he wished to file a new motion, he would need to include a new docket control number on the moving papers. The moving party's counsel is advised to review LBR 9014-1(c).

Further, this motion and the documents filed with it, DN 61 - 65, are identical to the ones filed at DNs 56 - 60, except for the exhibit filed with it, which is a different abstract of judgment from the one filed with the other motion, at DN 59. The court believes the debtor intended to file two different motions - one to avoid the lien of one of the abstracts and another to avoid the lien of the other abstract. However, the moving papers are completely insufficient to advise the potential respondent of that intention. If the debtor in fact intends to file two different motions, he must do so using different docket control numbers for the two motions (and different numbers from those that have been used before in this case). And the moving papers for each motion should accurately describe the abstract of judgment the debtor seeks to avoid in that particular motion.

For the reasons stated, the motion will be denied by minute order. No appearance is necessary.

16. 17-21266-D-11 HARD STONE CBO TRUST MOTION TO CONVERT CASE TO
UST-1 CHAPTER 7 OR MOTION TO DISMISS
CASE
3-2-17 [13]

17. 14-27267-D-7 SARAD/USHA CHAND MOTION FOR COMPENSATION BY THE
HSM-21 LAW OFFICE OF HEFNER, STARK &
MAROIS, LLP FOR HOWARD S.
NEVINS, TRUSTEE'S ATTORNEY(S)
3-1-17 [363]

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. Moving party is to submit an appropriate order. No appearance is necessary.

18. 11-46172-D-12 VIRENDA/SUMAN MISHRA MOTION FOR ENTRY OF DISCHARGE
PGM-9 2-27-17 [161]

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 for entry of Chapter 12 discharge pursuant to 11 U.S.C. §1228 is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

19. 14-26078-D-7 LUISITA SONGCO MOTION FOR COMPENSATION BY THE
ADJ-4 LAW OFFICE OF FORES-MACKO, INC.
FOR ANTHONY D. JOHNSTON,
TRUSTEE'S ATTORNEY(S)
2-22-17 [117]

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.

20. 15-29890-D-7 GRAIL SEMICONDUCTOR
MF-2

MOTION TO SUBSTITUTE ATTORNEY
2-21-17 [575]

21. 15-29890-D-7 GRAIL SEMICONDUCTOR
MPD-1
MITCHELL NEWDELMAN VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ORDER THE AUTOMATIC STAY
DOES NOT APPLY
3-1-17 [579]

Tentative ruling:

This is the motion of Mitchell J. Newdelman, Frank Holze, and Willis Higgins (the "Movants") for relief from stay, or in the alternative for an order stating that the automatic stay does not apply, pertaining to certain litigation that is pending in the Cook County Court for the State of Illinois (the "Cook County Litigation"). In the Cook County Litigation the Movants assert a breach of contract claim against the lawfirm of Niro, Haller & Niro (the "Niro Firm"). The Niro Firm has filed opposition to the motion and the Chapter 7 Trustee has filed a statement of non-opposition.

The breach of contract claim that the Movants assert against the Niro Lawfirm stems from an agreement the parties entered into regarding certain litigation that has been referred to in this case as the "Mitsubishi Litigation." Although the Chapter 7 trustee has filed a statement of non-opposition to the motion, at the hearing the court will inquire as to whether the Trustee or the estate assert any interest in the subject matter of the Cook County Litigation. The court will hear the matter.

22. 15-29890-D-7 GRAIL SEMICONDUCTOR
16-2088 DNL-6
CARELLO V. STERN ET AL

CONTINUED MOTION FOR CONTEMPT
1-18-17 [180]

23. 15-29890-D-7 GRAIL SEMICONDUCTOR MOTION FOR SUMMARY JUDGMENT
16-2088 DNL-9 2-24-17 [266]
CARELLO V. STERN ET AL

Tentative ruling:

The court will use this hearing as a status conference. The court will hear the matter.

24. 15-29890-D-7 GRAIL SEMICONDUCTOR MOTION TO SUBSTITUTE ATTORNEY
16-2088 MF-3 2-21-17 [254]
CARELLO V. STERN ET AL

25. 14-25816-D-7 DEEPAL WANNAKUWATTE MOTION FOR AUTHORITY TO
DNL-66 CONTINUE TO DISBURSE FUNDS
3-8-17 [1128]

26. 16-28018-D-7 TERRENCE/NANCIE HOFMANN CONTINUED MOTION FOR ORDER
BLL-3 AUTHORIZING TRUSTEE TO COLLECT
RENTS AND PAY EXPENSES ON
RENTAL PROPERTY
2-15-17 [42]

27. 17-20731-D-11 CS360 TOWERS, LLC ORDER TO SHOW CAUSE - FAILURE
17-2025 TO PAY FEES
CS360 TOWERS, LLC V. SAHADEO 3-13-17 [9]
ET AL

This matter will not be called before 10:30 a.m.

28. 17-20731-D-11 CS360 TOWERS, LLC CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
2-3-17 [1]

This matter will not be called before 10:30 a.m.

29. 17-20731-D-11 CS360 TOWERS, LLC MOTION TO APPOINT TRUSTEE
UST-1 3-13-17 [32]

This matter will not be called before 10:30 a.m.

30. 17-20731-D-11 CS360 TOWERS, LLC CONTINUED MOTION TO USE CASH
TBG-2 COLLATERAL
2-15-17 [12]

This matter will not be called before 10:30 a.m.

31. 10-50658-D-7 ABRAHAN/NORMA RAMOS
RLC-7

MOTION TO AVOID LIEN OF
JONATHAN NEIL AND ASSOCIATES
3-6-17 [56]

32. 10-50658-D-7 ABRAHAN/NORMA RAMOS
RLC-8

MOTION TO AVOID LIEN OF DAL
TILE SSC WEST
3-6-17 [60]

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Dal Tile SSC West, Inc. ("Dal Tile"). The motion will be denied for the following reasons: (1) the abstract of judgment referred to in the request for judicial notice is not attached; (2) the first two pages of the proof of service purport to evidence service of the motions and related documents for DC Nos. RLC-6 and RLC-7, whereas this motion is DC No. RLC-8; and (3) the service list attached to the proof of service shows service (a) on the attorneys who apparently obtained Dal Tile's abstract of judgment; (b) to the attention of an "Officer Managing or General Agent or Agent for Service of Process," c/o CT Corporation System, with no address - no street address, no city, state, or zip code; and (c) to the attention of an "Officer Managing or General Agent or Agent for Service of Process, Dal-Tile SSC West Inc.," at a street address with no city, state, or zip code. The second and third methods were insufficient for obvious reasons. The first method was insufficient because there is no evidence those attorneys are authorized to receive service of process on behalf of Dal Tile in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(b)(3) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004).

For the reasons stated, the motion will be denied by minute order. No appearance is necessary.

33. 16-21659-D-7 TRONG NGUYEN
NOS-1

CONTINUED MOTION TO EMPLOY
CHRISTOPHER D. HUGHES AS
ATTORNEY
2-8-17 [99]

34. 17-21266-D-11 HARD STONE CBO TRUST CONTINUED ORDER TO SHOW CAUSE
3-2-17 [10]
35. 16-27672-D-11 DAVID LIND MOTION BY G. MICHAEL WILLIAMS
GMW-3 TO WITHDRAW AS ATTORNEY
3-10-17 [101]
36. 17-20689-D-11 MONUMENT SECURITY, INC. MOTION TO USE CASH COLLATERAL
ET-7 3-14-17 [69]

Tentative ruling:

This is the debtor's second motion for authority to use cash collateral of Citibank and the Internal Revenue Service. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, the court has the following preliminary concerns.

The court previously approved the debtor's use of cash collateral for particular items in the debtor's budget for February, March, and April 2017, by interim order filed February 10, 2017. The interim order expired by its terms on March 1, 2017, and although the motion was granted on a final basis at a hearing held March 1, 2017, the debtor was to submit a final order on the motion, but has failed to do so. The debtor will need to submit a final order on the first motion.

Second, the motion does not state the time period the debtor is seeking the use of cash collateral and the budget attached to the supporting declaration in support of this second motion is only for February, March, and April 2017, the same period covered by the first motion. Third, because this motion is virtually identical to the one filed February 2, 2017, it includes exactly the same figures for the debtor's accounts receivable, fees earned, amounts in the debtor's checking and payroll accounts, and total liquid assets, whereas the court assumes that those figures have changed since February 2. In fact, the debtor's monthly operating report for February 2017 reflects changes in all of those categories. Further, the monthly operating report includes far fewer expense categories than shown on the

February, March, and April budget, and the projections in the February budget differ dramatically from the figures shown on the operating report. For example, the net income was projected in the February budget at \$11,680, whereas the operating report shows \$443,176. The debtor has offered no explanation of any of these discrepancies.

Fourth, the debtor will need to explain certain apparent inconsistencies in the monthly operating report. These include Schedule H - Funds Held at End of Month, which shows a balance of \$657 in the debtor's checking account and negative balances in its tax, accounts payable, and payroll accounts, whereas the Statement of Cash Receipts and Disbursements shows cash and cash equivalents totaling \$443,176 at the end of the month. Further, the latter figure is strikingly different from the amount of cash and cash equivalents as of the end of the month, as shown on the Balance Sheet, \$130,986. The court also notes that Schedule A to the Balance Sheet, which shows post-petition accounts payable of \$1,764,504. This is the same amount as the accounts payable on the Balance Sheet; thus, it appears to include both pre- and post-petition payables, whereas Schedule A is intended to present a picture of the debtor's post-petition accounts payable only. Further, Schedule A shows past-due post-petition debt of \$1,089,736, which is not explained.

The court is inclined to continue the hearing to allow the debtor to identify the period the motion is to cover and to submit a budget for any period beyond the end of the last cash collateral period and to address the other issues outlined above. The court will hear the matter.