UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

April 4, 2016 at 10:00 a.m.

1.	15-27601-A-11	ELK GROVE COMMUNICATIONS TOWER, INC.	MOTION TO APPROVE DISCLOSURE STATEMENT 1-27-16 [62]

Tentative Ruling: The debtor is asking for the court to approve its disclosure statement filed on January 27, 2016.

The motion will be denied for the following reasons:

(1) The disclosure statement does not have a table of contents.

(2) The disclosure statement does not define the plan's "Effective Date." Even though the plan defines "Effective Date," the definition does not take into account the eventuality of an appeal of the order confirming the plan.

(3) The disclosure statement contains many typos, grammatical mistakes and unintelligible statements that should be corrected. For instance, the disclosure statement's "means for implementation of the plan" section refers to a hydraulic skid winch, a 1996 Harley Davidson motorcycle and cell tower installation materials as "reasonable and necessary expenses." Docket 62 at 11. This makes no sense. The enumerated items are assets and not expenses.

(4) The disclosure statement gives little to no details about how the debtor plans to fund the plan. While it states that the debtor will liquidate assets and lease its real property, there are no details about how and when the debtor's assets will be liquidated, or how, when and to whom the debtor is planning to lease the real property. Docket 62 at 11.

(5) The disclosure statement says nothing about how much cash on hand, if any, the debtor possesses. As a result, the court cannot tell whether the debtor has the funds to start making plan payments.

(6) The disclosure statement does not identify a claim objection deadline.

(7) The disclosure statement does not include a discussion of the history of the debtor's prior bankruptcy filings.

(8) While the plan refers to class 3 claims, the disclosure statement identifies no such claims.

(9) The disclosure statement does not explain why the class 1 claim of the Sacramento County Tax Collector will be receiving no interest. See 11 U.S.C. § 511(a) & Cal. Rev. & Tax. Code § 4103(a).

(10) The classification and treatment of each claim should be detailed in the

disclosure statement as it has been detailed in the plan.

(11) The disclosure statement should incorporate the debtor's entire chapter 11 plan, not leaving parties in interest reviewing the disclosure statement to speculate about the terms of the plan.

Future amendments of the disclosure statement should be filed along with a red/black-lined version.

2. 15-26214-A-7 SHARON WILSON — MOTION FOR SANCTIONS
15-2225 GMW-1
WILSON V. WILSON — 3-21-16 [23]

Tentative Ruling: The motion will be dismissed.

First, the motion violates Local Bankruptcy Rule 9014-1(f)(2)(A) because it was brought pursuant to the court's shortened notice procedure, which is inapplicable to motions filed in connection with an adversary proceeding. Local Bankruptcy Rule 9014-1(f)(2)(A). The motion has been brought on only 14 days' notice. Docket 28.

Second, stay violation motions must be brought in the main case and not in an adversary proceeding. The automatic stay is an injunction that is effective in the main bankruptcy case and not in an adversary proceeding. See 11 U.S.C. § 362(a) (referring to "a petition filed under section 301, 302, or 303 of this title"). This motion has been brought in an adversary proceeding.

Finally, when a creditor makes a motion for violation of the automatic stay, the chapter 7 trustee must be noticed with the motion, as 11 U.S.C. § 362(a) protects only the estate and the debtor. An individual creditor's right to stay violation sanctions, if any, is derived on the estate's right to such sanctions.

3. 15-29421-A-12 JERRY WATKINS — MOTION TO VALUE COLLATERAL
CA-1
VS. OCWEN LOAN SERVICING, L.L.C. — 3-21-16 [26]

Tentative Ruling: The hearing on the motion will be continued.

The debtor seeks to value his real property in Newcastle, California, stripping down the only secured claim of Ocwen for $1,606,308.11 to $800,000.

U.S. Bank, the apparent real party in interest holding the claim secured by the property, opposes the motion, seeking a continuance in order to obtain its own appraisal of the property. The bank also seeks recovery of its post-petition and pre-confirmation escrow advances on the property, and challenges the proposed 4.25% interest rate on its claim and the proposed semi-annual frequency of payment.

The hearing on the motion will be continued in order for the bank to obtain its own appraisal of the property.

The latter part of the bank's opposition relates to plan confirmation and it is irrelevant to the subject valuation motion.

4. 15-29421-A-12 JERRY WATKINS
CA-4

MOTION TO CONFIRM CHAPTER 12 PLAN
2-29-16 [19]

Tentative Ruling: The motion will be denied.

The debtor is seeking confirmation of his chapter 12 plan filed on February 29, 2016.

The motion will be denied for the following reasons.

(1) The motion lacks a liquidation analysis. Docket 19.

(2) There is no evidence with the motion supporting the contention that the debtor meets the liquidation test.

(3) The motion lacks an analysis of whether the debtor is able to make the required plan payments. Docket 19. While the motion attaches approximately 18 pages of exhibits pertaining to the debtor's income, the motion makes no effort to explain the exhibits and analyze the data in the exhibits, to establish that the debtor is able to make required plan payments.

(4) The debtor has not yet obtained an order stripping down the secured claim of U.S. Bank.

(5) The motion contains no discussion on good faith, with respect to both the filing of the case and proposal of the plan. This is vital given that this is the debtor's fourth bankruptcy case since March 31, 2009. Each of the debtor's prior bankruptcy cases were dismissed.

5. 15-20034-A-11 C & N LANDSCAPE MAINTENANCE, INC.
ET-9

MOTION TO AMEND
3-14-16 [143]

Tentative Ruling: The motion will be denied.

The debtor is asking the court to amend its January 28, 2016 order approving the sale of all the debtor's assets and approve the sale free and clear of liens. It has come to the debtor's attention that the liens encumbering the debtor's assets are approximately $284,899, much more than the sale proceeds of approximately $132,293.78.

The updated liens identified in the motion include:

- a $144,637.04 lien in favor of the IRS,

- a $18,650.82 lien in favor of Ford Motor Credit Company,

- a $91,400.83 lien in favor of the JPMorgan Chase Bank, and

- a $30,210.03 lien in favor of the California Employment and Development Department.

The motion will be denied as the debtor makes no effort discuss the legal standard for the amending of an order, much less 11 U.S.C. § 363(f), which sets the standard for the approval of sales free and clear of liens and interests.

Further, under 11 U.S.C. §§ 363(f) and 1107, the debtor in possession may sell property of the estate free and clear of liens only if: 1) applicable nonbankruptcy law permits sale of such property free and clear of such liens; 2) the entity holding the lien consents; 3) the proposed purchase price exceeds the aggregate value of the liens encumbering the property; 4) the lien is in bona fide dispute; or 5) the entity could be compelled to accept a money satisfaction of the lien.

The motion does not identify any of the grounds in section 363(f) as warranting approval of the sale free and clear of the liens. The aggregate value of the liens, approximately $284,899, obviously exceeds the sale proceeds, $132,293.78.

Only Ford Motor Credit Company has responded to the motion, agreeing to a sale free and clear of its lien. The remaining creditors have not agreed to a section 363(f) sale. The court has no evidence that the liens are in bona fide dispute. The motion also offers no other basis for approval of a section 363(f) sale. Accordingly, it will be denied.

6. 15-20034-A-11 UST-1 — C & N LANDSCAPE MAINTENANCE, INC. — MOTION TO CONVERT OR TO DISMISS CASE 12-7-15 [96]

Tentative Ruling: The motion will be granted and the case will be converted to chapter 7.

The hearing on this motion was continued from January 25, 2016, in order to allow the debtor to close escrow on a sale of all its assets. An amended ruling from January 25 follows.

The U.S. Trustee moves for dismissal or conversion to chapter 7, pursuant to 11 U.S.C. § 1112(b), arguing:

- under section 1112(b)(4)(A) substantial or continuing loss to or diminution of the estate and absence of a reasonable likelihood of rehabilitation;

- under section 1121(e)(2) that the debtor is precluded from filing another chapter 11 plan, as the 300-day deadline expired on November 1, 2015.

The debtor opposes the motion, pointing out that it is selling its business. In the alternative, the debtor asks for continuance of the hearing on this motion, until the debtor consummates the sale.

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).

"'[C]ause' includes- (A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation." 11 U.S.C. § 1112(b)(4)(A).

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).

The debtor has admitted not having ongoing income to fund a chapter 11 plan. See Docket 109 at 2-3. And, the 300-day deadline of section 1121(e)(2) for filing another plan in this small business case (Docket 1 at 1) has passed. It expired on November 1, 2015. As such, cause for dismissal or conversion exists.

The case will be converted to chapter 7, as the debtor has been unsuccessful at closing escrow on a sale of all the debtor's assets, approved by the court on January 28, 2016. See Docket 143. Conversion will provide a chapter 7 trustee with an opportunity to sell the debtor's assets for the benefit of the creditors and the estate.

7.	15-29136-A-12 NCK-1	P&M SAMRA LAND INVESTMENTS L.L.C.	MOTION TO CONFIRM CHAPTER 12 PLAN 2-29-16 [31]

Tentative Ruling: The motion will be denied as moot.

The debtor seeks confirmation of its chapter 12 plan filed on February 23, 2016. Docket 27.

After an onslaught of opposition, however, the debtor filed an amended chapter 12 plan on March 24, 2016. Docket 72. Given the amended plan, this motion is moot.

8.	16-20749-A-7 DJR-1	SUSAN HINTON	MOTION TO VACATE DISMISSAL OF CASE 3-10-16 [15]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, it is removed from calendar for resolution without oral argument.

The motion will be conditionally granted.

The hearing on this motion was continued from March 21, 2016 in order for the movant to supplement the record. The movant has filed a supplemental declaration in support of the motion. Docket 25. An amended ruling from March 21 follows.

The debtor is asking the court to vacate its February 29, 2016 order dismissing this case. The debtor filed this case on February 10, 2016, but she did not file her bankruptcy schedules, statements and attorney's disclosure statement. As a result, the court issued a notice of incomplete filing on the petition date, telling the debtor to file the missing documents by February 24, 2016. Docket 3.

The debtor contends that she tried filing the missing documents at about 6:00 p.m. on February 23, 2016, only to find out later that the documents were never

filed with the court. The debtor asserts that there was a problem with the server of her counsel's computer, making "it impossible for Debtor's counsel to go to the Court's eFile page or to log on to PACER to determine if the missing documents were timely filed . . . [and] also ceas[ing] emails to the droy@roylawaplc.com email address which the Clerk of the Court had as the email address for noticing of events in this case." Docket 15 at 2.

In her supplemental declaration, the debtor also reveals that her missing petition documents were filed by an attorney who is no longer with the debtor's counsel of record. As the attorney who filed the missing documents left the debtor's counsel's office suddenly, the debtor's counsel of record was required to step in and take over the e-filing work in the office. The debtor's counsel of record also recently changed its Internet domain name. These office changes caused a delay in the debtor's counsel discovering the computer server problem and realizing that the missing petition documents had not been filed. Docket 25.

Fed. R. Civ. P. 60(b), as made applicable here by Fed. R. Bankr. P. 9024, allows the court to set aside or reconsider an order or a judgment for:

"(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or (6) any other reason that justifies relief."

"A motion under Rule 60(b) must be made within a reasonable time—and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding." Fed. R. Civ. P. 60(c).

"Relief under Rule 60(b) is discretionary and is warranted only in exceptional circumstances."

Van Skiver v. United States, 952 F.2d 1241, 1243 (10th Cir. 1991), cert. denied, 506 U.S. 828 (1992).

The motion has been filed timely. It was filed on March 10, 2016, only 10 days after dismissal of the case.

The debtor admits that there was a neglect on her part in filing the missing documents. She contends that the neglect should be excused, however, given exigent circumstances in her counsel's office.

"Because Congress has provided no other guideposts for determining what sorts of neglect will be considered 'excusable,' we conclude that the determination is at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include . . . [1) the danger of prejudice to the [opposing party]; 2) the length of delay caused by the neglect and its effect on the proceedings; 3) the reason for the neglect, including whether it was within the reasonable control of the moving party; and 4) whether the moving party acted in good faith]." Pioneer Investment Services Co. v. Brunswick Associates Limited Partnership, 507 U.S. 380, 395 (1993).

The length of delay caused by the neglect has been short, only approximately

one month. The case was dismissed on February 29. The debtor has explained the reason for her failure to file the documents timely.

The debtor had attempted to file the documents and was under the misapprehension that the documents had been filed. Due to departure of the attorney who attempted to file the documents on February 23 and due to a malfunction of a computer server, the debtor's counsel of record did not discover that the documents had not been filed until it was too late already.

There was no bad faith on the part of the debtor in not filing the missing documents timely. The debtor has acted in good faith. The missing petition documents were eventually filed on March 10, 2016, with the signatures on those documents dated February 23. Docket 14. The foregoing amounts to excusable neglect under Rule 60(b), warranting the setting aside of the February 29 dismissal order.

However, in order to prevent prejudice to the creditors, the trustee and the U.S. Trustee – given that this case was filed approximately 50 days ago, the court will grant the motion only subject to extensions of the deadlines for filing section 523 and 727 complaints and section 707(b) dismissal motions.

The court will extend the deadlines for filing section 523 and 727 complaints and section 707(b) dismissal motions to 60 days beyond the initial meeting of creditors date, which is to be reset by the chapter 7 trustee. See Fed. R. Bankr. P. 4007(c), 4004(a), 1017(e)(1).

In addition, within three days of the trustee resetting the initial meeting of creditors, the debtor shall serve all creditors, the trustee and the United States Trustee with a notice of the new date for the initial meeting of creditors. The debtor shall inform all creditors, the trustee and the United States Trustee of the new section 523, 727 and 707(b) deadlines in the same notice. The debtor shall file a proof of service of the foregoing within three days of service. The motion will be granted on the conditions outlined in this ruling.

9. 14-21184-A-7 SIMON RAMSUBHAG — ORDER TO APPEAR FOR EXAMINATION (RAY SAHADEO) 11-13-15 [32]
14-2349
FUKUSHIMA V. SAHADEO ET AL

Tentative Ruling: None. The respondent shall appear prior to the start of the 10:00 a.m. calendar to be sworn in for the examination.

10. 14-21184-A-7 SIMON RAMSUBHAG — ORDER TO SHOW CAUSE 1-29-16 [38]
14-2349
FUKUSHIMA V. SAHADEO ET AL

Tentative Ruling: The court issued this order to show cause because Ray Sahadeo did not produce documents or appear for an examination on January 25, 2016. The examination was continued to February 22, 2016 at 10:00 a.m. and then to March 7, 2016 at 10:00 a.m.

At the March 7 hearing, the court will consider assessing sanctions against Ray Sahadeo if it determines that Ray Sahadeo willfully failed to obey the court's November 13, 2015 order to appear at the January 25, 2016 examination.

If Ray Sahadeo fails to appear on March 7, the court also will consider

sanctions to compel attendance at an examination and production of records, including authorizing the apprehension of Ray Sahadeo by the U.S. Marshall to compel such attendance and production.