

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Sacramento, California

April 9, 2015 at 10:30 a.m.

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1. [14-29231](#)-E-11 MIZU JAPANESE SEAFOOD MOTION FOR COMPENSATION FOR KIT
RLC-15 BUFFET, INC. L. SUN, ACCOUNTANT(S)
Stephen M. Reynolds 3-11-15 [[151](#)]

Final Ruling: No appearance at the April 9, 2015 hearing is required.

The Debtor-in-Possession having filed a Withdrawal of the Motion to for First and Final Application For Fees by Accountant, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion was dismissed without prejudice, and the matter is removed from the calendar.**

2. [14-23348](#)-E-7 OMAR PINGOL MOTION TO AVOID LIEN OF GREEN
KFS-4 Karl-Fredric J. Seligman VALLEY LAKE COMMUNITY
ASSOCIATION, INC.
2-22-15 [[143](#)]

Final Ruling: No appearance at the April 9, 2015 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, creditors, parties requesting special notice, and Office of the United States Trustee on March 9, 2015. 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). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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.

April 9, 2015 at 10:30 a.m.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of Green Valley Lake Community Association, Inc., ("Creditor") against property of Omar Pingol ("Debtor") commonly known as 509 Lakesprings Court, Fairfield, California (the "Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$2408.00. An abstract of judgment was recorded with Solano County on September 24, 2012, which encumbers the Property.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$258,352.00 as of the date of the petition. The unavoidable consensual liens total \$562,584.70 as of the commencement of this case are stated on Debtor's Schedule D. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1.00 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 this 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(s) 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 Green Valley Lake Community Association, Inc., California Superior Court for Solano County Case No. FSC058327, recorded on September 24, 2012, Document No. 201200096488 with the Solano County Recorder, against the real property commonly known as 509 Lakesprings Court, Fairfield, 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. [11-36557-E-7](#) MARTHA RAMIREZ MOTION TO ABANDON
HCS-3 C. Anthony Hughes 3-5-15 [[264](#)]

Final Ruling: No appearance at the April 9, 2015 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, parties requesting special notice, and Office of the United States Trustee on March 5, 2015. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 for Motion to Abandon Property is granted.

After notice and hearing, the court may order the Trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Alan S. Fukushima ("Trustee") requests the court to authorize Trustee to abandon property commonly known as 1766 Jamie Drive, Yuba City, California (the "Property"). The Property is encumbered by the liens of HSBC Bank USA, national Association as Trustee for Wells Fargo Home Equity Asset-Backed Securities 2005-3 Trust, Home Equity Asset-Backed Certificates, Series 2005-3, securing claims of \$526,681.38. The Declaration of Alan S. Fukushima has been filed in support of the motion and testifies that the value of the Property is \$269,000.00.

The Trustee argues that abandonment is proper because the Property has no equity for the bankruptcy estate, it is not anticipated that the Property will increase in value, and foreclosure of the Property may result in tax consequences that may burden the estate.

The court finds that the Property secures claims which exceed the value of the Property, and are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate, and authorizes the Trustee to abandon the Property.

CHAMBERS ISSUED ORDER

The court shall issue an order (not 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 Motion to Abandon Property filed by the 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 to Compel Abandonment is granted and that the Property identified as:

1. 1766 Jamie Drive, Yuba City, California

is abandoned to Martha Ramirez by this order, with no further act of the Trustee required.

Tentative Ruling: The Motion to Use Cash Collateral was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, 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 offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

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, parties requesting special notice, and Office of the United States Trustee on March 26, 2015. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Use Cash Collateral 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. At the hearing -----.

The Motion to Use Cash Collateral is granted.

Kimberly Husted, the Chapter 7 Trustee, filed the instant Motion to Approve Use of Cash Collateral on March 26, 2015. Dckt. 236. The Trustee requests an order authorizing her use of cash collateral to pay expenses necessary to preserve the real property commonly known as 201 Rua Esperanza, Lincoln, California (the "Property") through April 30, 2015.

The Trustee states that following the failed sale of the Property to Randy Renfro, the Trustee is holding \$25,000.00 in forfeited deposit. The Trustee has no other funds. Joseph and Stacy Lackey ("Creditors"), who hold the first deed of trust, claim that the forfeited deposit is their cash collateral.

The Creditors and the Trustee entered into a stipulation that terminated the stay effective April 30, 2015. The court approved the stipulation on March 12, 2015. Dckt. 217. The stipulation also provided that through a subsequent motion or stipulation, the Creditors would agree to the Trustee's use of the forfeited deposit to the extent necessary to preserve the Property through April 30, 2015, including maintaining property insurance, water services, and utility services. Dckt. 211.

The Trustee states that after her appointment, she learned that the Property was deficient on property insurance payments. The Trustee promptly advanced \$1,296.00 out of pocket to cure the deficiency. Further, the Trustee also advanced \$605.00 to change the locks at the Property and \$1,765.00 to the City of Lincoln Utilities Department to cure a deficiency on the water bill and to reconnect the water service. The Trustee then advanced an additional \$653.00 to maintain the property insurance. In total, the Trustee has advanced a total of \$4,319.00.

The Trustee anticipates the following additional expenses necessary for the preservation of the Property through April 30, 2015:

Property Insurance	\$653.00
Utility Service	\$2,200.00
Water Service	\$300.00
Property Maintenance (e.g. gardener)	\$150.00
TOTAL	\$3,303.00

The Trustee states that she has entered into a stipulation with the Creditor where, to the extent that the forfeited deposit is cash collateral of the Creditor, the Creditors consent to the Trustee's use of the deposit monies to pay the \$3,303.00 and any other related payments necessary to preserve the Property through April 30, 2015 in an amount not to exceed \$1,500.00. The Creditors also consent to the Trustee's surcharge of the deposit for the monies advanced by the Trustee pursuant to 11 U.S.C. § 506(c)

11 U.S.C. § 363 provides the following in relevant part:

(b)(1) The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate, except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless--

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease--

(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law. . .

(c)(1) If the business of the debtor is authorized to be operated under section 721, 1108, 1203, 1204, or 1304 of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

(2) The trustee may not use, sell, or lease cash collateral under paragraph (1) of this subsection unless--

(A) each entity that has an interest in such cash collateral consents; or

(B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

The Trustee states that the Creditors have consented to the Trustee's use of the deposit monies. Furthermore, the Trustee states that the purpose of using the cash collateral deposit is to pay the expenses necessary to preserve the Property and to maximize the Property's marketability pending the April 30, 2015 relief from stay date. The Creditors are the only entities that have asserted an interest in the deposit money.

With good cause shown, the court authorizes the Trustee to use the cash collateral to maintain the Property, pending the April 30, 2015 relief from stay date. The Trustee is only seeking authorization for the prospective expenses through April 30, 2015, as listed in the above table, with the additional authorization to use up to \$1,500.00 for related expenses. Given the unique circumstances surrounding the Property and the numerous attempts to sell the Property, the court finds that it is necessary and beneficial to allow the Trustee to use cash collateral to maintain the Property so it will be as marketable as possible.

Therefore, the Trustee is authorized to use case collateral to pay the \$3,303.00 in payments for property insurance, utility service, water service, and property maintenance through April 30, 2015. Furthermore, the court authorizes the Trustee to use up to an additional \$1,500.00 to pay other related expenses through April 30, 2015.

The Trustee is further authorized to surcharge the cash collateral pursuant to 11 U.S.C. § 506(c) in the amount of \$4,319.00 in Initial Payments which were advanced by the Trustee.

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 Motion for Use of Cash Collateral filed by 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 Motion is granted and the Debtor Corina Garcia is authorized to use the \$3,303.00 of the forfeited deposit to pay necessary expenses for the Property as follows:

Property Insurance	\$653.00
Utility Service	\$2,200.00
Water Service	\$300.00
Property Maintenance (e.g. gardener)	\$150.00
TOTAL	\$3,303.00

IT IS FURTHER ORDERED that the Trustee is authorized to use up to \$1,500.00 in additional funds from the forfeited deposit money through April 30, 2015 for related expenses to the upkeep of the Property.

IT IS FURTHER ORDERED that the Trustee is authorized to surcharge the cash collateral pursuant to 11 U.S.C. § 506(c) in the amount of \$4,319.00 in Initial Payments (\$1,296.00 for to cure defaults in insurance payments, \$605.00 to change locks, \$1,765.00 for water service, and \$653.00 to maintain property insurance which were advanced by the Trustee) in this case.

5. [15-21393-E-11](#) RICKIE WALKER
UST-2 Pro Se

MOTION TO DESIGNATE CASE A
SMALL BUSINESS CASE
3-10-15 [[23](#)]

Final Ruling: No appearance at the April 9, 2015 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*), creditors, parties requesting special notice, and Office of the United States Trustee on March 10, 2015. By the court's calculation, 30 days' notice was provided. 28 days notice is required.

The Motion to Designate Case a Small Business Case has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). 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 Designate Case a Small Business Case is granted.

Tracy Hope Davis, the United States Trustee, ("UST") filed the instant Motion to Designate Case a Small Business Case on March 10, 2015. Dckt. 23.

On February 24, 2015, Rickie Walker ("Debtor") filed the instant bankruptcy case. The Debtor-in-Possession did not check the "small business" box in the petition and the Debtor-in-Possession's Chapter 11 Preliminary Status Report stated "Debtor is not a small business Debtor as defined by the two part test under 11 U.S.C. §§ 101(51C) and 101(51D)..." Dckt. 22.

The UST, however, argues that the Debtor-in-Possession is, in fact, a small business debtor because:

1. Debtor-in-Possession's primary source of income is from his janitorial business. Dckt. 22.
2. Debtor-in-Possession has used "DBA Rick's Janitorial" in an other name in the last eight years per his voluntary petition.
3. Debtor-in-Possession's occupation is "self employed" and his employer is "Rick's Janitorial" at Debtor-in-Possession's address per Schedule I.

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4. Debtor-in-Possession has \$3,800.00 of janitorial business tools and supplies and has a \$13,000.00 van per Schedule B.
5. Debtor-in-Possession lists a single real property on Schedule A which Debtor-in-Possession identifies as his personal residence in his Status Report (i.e. he is not in the business of owning or operating real property); and
6. Debtor-in-Possession's debts total \$2,261,194.00 as follows:

Creditor	Schedule	Amount
Specialize Loan Servicing, LLP	Schedule D	\$186,000.00
Specialized Loan Servicing, LLC	Schedule E	\$1,704,706.00 FN.1.
Realty Mortgage Corp.	Schedule E	\$52,000.00
Wachovia Dealer Services	Schedule E	\$28,600.00
Fresno Collections	Schedule E	\$39,888.00
Specialized Loan Servicing, LLC	Schedule F	\$250,000.00 FN.2.

 FN.1. The UST notes that this amount and loan are duplicated on Schedule F and, therefore, the UST does not include it both in her calculation of total debts.

FN.2. The UST notes that the Debtor-in-Possession states this debt as being previously discharged.

 DISCUSSION

11 U.S.C. § 101 provides, in relevant part:

(51C) The term "small business case" means a case filed under chapter 11 of this title in which the debtor is a small business debtor.

(51D) The term "small business debtor"--

(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning or operating real property or activities incidental thereto) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the filing of the petition or the date of the order for relief in an amount not more than \$2,490,9251 (excluding debts owed

to 1 or more affiliates or insiders) for a case in which the United States trustee has not appointed under section 1102(a)(1) a committee of unsecured creditors or where the court has determined that the committee of unsecured creditors is not sufficiently active and representative to provide effective oversight of the debtor; and

(B) does not include any member of a group of affiliated debtors that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than \$2,490,925 (excluding debt owed to 1 or more affiliates or insiders).

Fed. R. Bankr. P. 1020 provides for the rules governing the designation of a small business debtor and the parties who may object to the designation made by a debtor. In relevant part, Fed. R. Bankr. P. 1020 states:

(a) Small business debtor designation

In a voluntary chapter 11 case, the debtor shall state in the petition whether the debtor is a small business debtor. In an involuntary chapter 11 case, the debtor shall file within 14 days after entry of the order for relief a statement as to whether the debtor is a small business debtor. Except as provided in subdivision (c), the status of the case as a small business case shall be in accordance with the debtor's statement under this subdivision, unless and until the court enters an order finding that the debtor's statement is incorrect.

(b) Objecting to designation

Except as provided in subdivision (c), the United States trustee or a party in interest may file an objection to the debtor's statement under subdivision (a) no later than 30 days after the conclusion of the meeting of creditors held under § 341(a) of the Code, or within 30 days after any amendment to the statement, whichever is later.

Here, the UST has filed her objection to the Debtor-in-Possession's designation timely, in light of the fact that the first Meeting of Creditors has yet to take place. Furthermore, no committee of unsecured creditors has been appointed.

A review of the petition shows that the Debtor-in-Possession filed amended schedules on March 26, 2015. Dckt. 29 and 31. The amended schedules show that the Debtor-in-Possession owes the following debts:

Creditor	Schedule	Disputed?	Amount
Specialized Loan Servicing, LLC	Schedule D	Yes	\$1,076,000.00

Specialized Loan Servicing, LLC	Schedule D	Yes	\$253,000.00
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The Debtor-in-Possession has removed the other creditors that were listed on the Debtor-in-Possession's original schedules. The Debtor-in-Possession offers no explanation for the removal of creditors. However, for purposes of this Motion, the aggregate noncontingent, liquidated secured and unsecured claims is \$1,329,000.00, which is less than the statutory limit of \$2,490,925.00 pursuant to 11 U.S.C. § 101(51D).

While the court notes that the claims listed on Schedule D are marked as disputed, for purposes of determining whether a debtor is a small business debtor, the existence of a dispute does not effect the claims consideration under 11 U.S.C. § 101(51D).

As stated by the UST, the Debtor-in-Possession is self-employed and runs Rick's Janitorial, as stated in Debtor-in-Possession's Schedule I and Statement of Financial Affairs. Dckt. 29.

It appears that, in light of the Debtor-in-Possession running and operating his own janitorial business, his aggregate noncontingent, liquidated secured and unsecured claims being under the statutory limit for a small business debtor, and there being no committee of unsecured creditors formed, that the Debtor-in-Possession is a small business debtor. The Debtor-in-Possession has not filed any opposition to the instant Motion.

Therefore, in light of the foregoing, the Motion is granted and the Debtor-in-Possession is determined to be a small business debtor and the case is a small business case, subject to the requirements of 11 U.S.C. § 1116.

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 Motion to Designate Case a Small Business Case filed by Debtor(s) 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 Debtor-in-Possession is determined to be a small business debtor, pursuant to 11 U.S.C. § 101(51D) and the case to be a small business case, pursuant to 11 U.S.C. § 101(51C).