UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

April 16, 2018 at 10:00 a.m.

1.	17-26125-A-11	FIRST CAPITAL RETAIL, L.L.C.	STATUS CONFERENCE 9-14-17 [1]

Tentative Ruling: None.

2.	17-26125-A-11 GL-1	FIRST CAPITAL RETAIL, L.L.C.	MOTION FOR RELIEF FROM AUTOMATIC STAY
	5060 MONTCLAIR PLAZA LANE OWNER, L.L.C. VS.		10-17-17 [62]

Tentative Ruling: The motion will be dismissed without prejudice.

The parties were working on resurrecting the lease of the subject property as of and in connection with the April 2, 2018 hearing on the debtor's motion to sell substantially all its assets. As such and given the granting of the motion to sell, this motion should be moot. Accordingly, it will be dismissed without prejudice.

3.	17-26125-A-11 GEL-20	FIRST CAPITAL RETAIL, L.L.C.	MOTION TO APPROVE GENERAL RELEASE BETWEEN THE DEBTOR AND BYLINE BANK 4-10-18 [383] O.S.T.

Tentative Ruling: The motion will be dismissed as moot.

The debtor is seeking the court to approve a general release under Cal. Civ. Code § 1542 of all known and unknown claims the debtor may have against Byline Bank, as part of its settlement of the bank's claims against the estate and the sale of the bank's collateral by the debtor.

The court will not grant this motion because it has already adjudicated and approved the settlement between the parties. Docket 376. The "order granting stipulation and settlement agreement between the debtor and Byline Bank" specifically provides that:

"*The Debtor shall provide ByLine with a section 1542 general release of all known and unknown claims, in a form acceptable to Byline, which is effective at closing of the Sale, and shall be binding on the Debtor and its successors, including any subsequently appointed Chapter 11 or Chapter 7 trustee.*"

Docket 376 at 4.

There is no need to grant this relief. It has already been granted.

4. 13-34541-A-11 GEL-1 — 6056 SYCAMORE TERRACE L.L.C. — MOTION FOR FINAL DECREE AND ORDER CLOSING CASE 3-16-18 [379]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the U.S. Trustee, and any other party 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 as consent to the granting of the motion. 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 Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtor is asking the court to enter final decree and close the case, contending that the plan was confirmed, that payments under the confirmed plan are being made, that all post-confirmation reports have been filed, and that there are no pending motions or adversary proceedings.

11 U.S.C. § 350(a) provides that "[a]fter an estate is fully administered and the court has discharged the trustee, the court shall close the case." Similarly, Fed. R. Bankr. P. 3022 provides that "*[a]fter an estate is fully administered in a chapter 11 reorganization case, the court, on its own motion or on motion of a party in interest, shall enter a final decree closing the case.*"

In the chapter 11 context, courts have defined full administration as substantial consummation. In re Wade, 991 F.2d 402, 406 n.2 (7th Cir. 1993) (citing In re BankEast Corp., 132 B.R. 665, 668 n.3 (Bankr. D.N.H. 1991)). Substantial consummation is defined by section 1101(2) as "*(A) transfer of all or substantially all of the property proposed by the plan to be transferred; (B) assumption by the debtor or by the successor to the debtor under the plan of the business or of the management of all or substantially all of the property dealt with by the plan; and (C) commencement of distribution under the plan.*"

This court confirmed the debtor's chapter 11 plan on February 8, 2016. Docket 372. The confirmation order is final. Property has revested in the debtor pursuant to the terms of the plan. Docket 372 at 22. The debtor has commenced payments to creditors and has sold his real property in Pleasanton, California, as prescribed by the terms of the plan. The debtor is current on plan payments and quarterly fees, and there are no unresolved proceedings pending before this court. The debtor does not have to transfer property under the terms of the plan.

Given the foregoing, substantial consummation has been achieved. Accordingly, the motion will be granted.

5. 11-44274-A-11 UST-1 — GEOFFREY/MARIVIE FABIE — MOTION TO CONVERT OR TO DISMISS CASE 3-13-18 [393]

Tentative Ruling: The motion will be denied.

The United States Trustee moves for conversion to chapter 7 because the debtors are delinquent in filing their post-confirmation quarterly operating reports.

11 U.S.C. § 1112(b)(1) provides that "on request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate, 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, if the movant establishes cause." For purposes of this subsection, cause includes: (1) failure timely to provide information or attend meetings reasonably requested by the United States trustee. 11 U.S.C. § 1112(b)(4)(H).

11 U.S.C. § 1106(a)(7) requires that a trustee or debtor in possession, "after confirmation of a plan, file such reports as are necessary or as the court orders." 11 U.S.C. 1106(a)(7). Post-confirmation reports are necessary to apprise parties as to the status of plan payments and as to the disbursements from which the quarterly fees described in 28 U.S.C. § 1930(a)(6) is to be calculated. Federal Bankruptcy Rule 2015(a)(5) further provides: "in a chapter 11 reorganization case, on or before the last day of the month after each calendar quarter during which there is a duty to pay fees under 28 U.S.C. §1930(a)(6), file and transmit to the United States trustee a statement of any disbursements made during that quarter and of any fees payable under 28 U.S.C. §1930(a)(6) for that quarter."

If conversion or dismissal is not in the best interests of creditors and the estate, if the debtor establishes that there is a reasonable excuse for the conduct asserted as justification for conversion or dismissal, and if the debtor can correct its conduct within a reasonable period, the court has the discretion to allow the chapter 11 case to proceed. 11 U.S.C. § 1112(b)(2)(B).

The U.S. Trustee contends that cause to convert or dismiss the case because the debtors have failed to file any post-confirmation quarterly reports since December 2015.

The debtors contend that their failure to file the reports was unintentional and due to unusual circumstances. The debtors anticipated filing their final decree before April 2015. However, after confirmation, the debtors were still working on a resolution of an adversary matter before this court, Adv. No. 13-02069. In late 2015, before the debtors moved to close their chapter 11 case, the debtors began receiving calls from lenders claiming that mortgage payments were deficient notwithstanding that they were in accordance with chapter 11 plan. The debtors decided to keep their chapter 11 case open in the event that bankruptcy court intervention was necessary to resolve this dispute.

The debtors agree to promptly file all delinquent reports. The debtors are current on their plan payments and trustee's fees.

The court agrees that the debtors' failure to file post-confirmation operating reports was due to 'unusual circumstances.' See 11 U.S.C. § 1112(b)(2)(B). A dispute concerning the amount of a mortgage payment and accounting for payments escalated to foreclosure and state-court litigation. Also, as soon as the debtors learned of their oversight, they promptly prepared and filed all delinquent operating reports as one merged document on April 8, 2018. Docket 399. Finally, liquidation in a chapter 7 proceeding is not necessary or in the best interest of creditors and the estate given the debtors are current on plan payments and are presently involved in litigation with creditors which may result in the need to cure mortgage arrears within the chapter 11 framework. Accordingly, the motion will be denied. The debtors shall file their requests for a discharge and closure of the case within 14 days of the hearing.

6. 10-35475-A-11 ANDREA TASH
SJS-2

MOTION FOR
ENTRY OF DISCHARGE
3-6-18 [349]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, and any other party 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 as consent to the granting of the motion. 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 Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtor asks the court to enter a discharge pursuant to 11 U.S.C. § 1141(d)(5), which provides that:

"*In a case in which the debtor is an individual—*

"*(A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan;*

"*(B) at any time after the confirmation of the plan, and after notice and a hearing, the court may grant a discharge to the debtor who has not completed payments under the plan if —*

"*(I) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 on such date; and*

"*(ii) modification of the plan under section 1127 is not practicable; and*

"*(C) unless after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge, the court finds that there is no reasonable cause to believe that —*

"*(I) section 522(q)(1) may be applicable to the debtor; and*

"*(ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).*"

This case was filed on June 11, 2010. The order confirming the debtor's chapter 11 plan was entered on November 7, 2012.

All payments under the plan have been completed. And, the debtor has produced evidence indicating that 11 U.S.C. § 522(q)(1) is not applicable. There is no pending proceeding where the debtor may be found guilty of a felony demonstrating that the filing of this case was an abuse of the Bankruptcy Code (section 522(q)(1)(A)) or the debtor may be found liable for a debt of the kind

specified in section 522(q)(1)(B). Docket 351. Accordingly, discharge will be entered pursuant to section 1141(d)(5)(A). The motion will be granted.

Therefore, no earlier than 10 days after the hearing on this motion, the clerk shall enter the debtor's discharge. See 11 U.S.C. § 1141(d)(5)(C).