

**UNITED STATES BANKRUPTCY COURT**

Eastern District of California

Honorable Michael S. McManus

Bankruptcy Judge

Sacramento, California

**May 10, 2017 at 10:00 a.m.**

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No written opposition has been filed to the following motions set for argument on this calendar:

**1, 5, 6**

When Judge McManus convenes court, he will ask whether anyone wishes to oppose this motion. If you wish to oppose the motion, tell Judge McManus there is opposition. Please do not identify yourself or explain the nature of your opposition. If there is opposition, the motion will remain on calendar and Judge McManus will hear from you when he calls the motion for argument.

If there is no opposition, the moving party should inform Judge McManus if it declines to accept the tentative ruling. Do not make your appearance or explain why you do not accept the ruling. If you do not accept the ruling, Judge McManus will hear from you when he calls the motion for argument.

If no one indicates they oppose the motion and if the moving party does not reject the tentative ruling, that ruling will become the final ruling. The motion will not be called for argument and the parties are free to leave (unless they have other matters on the calendar).

**MOTIONS ARE ARRANGED ON THIS CALENDAR IN TWO SEPARATE SECTIONS. A CASE MAY HAVE A MOTION IN EITHER OR BOTH SECTIONS. THE FIRST SECTION INCLUDES ALL MOTIONS THAT WILL BE RESOLVED WITH A HEARING. A TENTATIVE RULING IS GIVEN FOR EACH MOTION. THE SECOND SECTION INCLUDES ALL MOTIONS THAT HAVE BEEN RESOLVED BY THE COURT WITHOUT A HEARING. A FINAL RULING IS GIVEN FOR EACH MOTION. WITHIN EACH SECTION, CASES ARE ORGANIZED BY THE LAST TWO DIGITS OF THE CASE NUMBER.**

**ITEMS WITH TENTATIVE RULINGS: IF A CALENDAR ITEM HAS BEEN SET FOR HEARING BY THE COURT PURSUANT TO AN ORDER TO SHOW CAUSE OR AN ORDER SHORTENING TIME, OR BY A PARTY PURSUANT TO LOCAL BANKRUPTCY RULE 3007-1(c)(1) OR LOCAL BANKRUPTCY RULE 9014-1(f)(1), AND IF ALL PARTIES AGREE WITH THE TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS AND CONCLUSIONS.**

**IF A MOTION OR AN OBJECTION IS SET FOR HEARING BY A PARTY PURSUANT TO LOCAL BANKRUPTCY RULE 3007-1(c)(2) OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED**

May 10, 2017 at 10:00 a.m.

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**TO DEVELOP THE WRITTEN RECORD FURTHER.**

**IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON JUNE 5, 2017 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY MAY 23, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY MAY 30, 2016. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.**

**ITEMS WITH FINAL RULINGS: THERE WILL BE NO HEARING ON THE ITEMS WITH FINAL RULINGS. INSTEAD, EACH OF THESE ITEMS HAS BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING ALSO WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.**

**ORDERS: UNLESS THE COURT ANNOUNCES THAT IT WILL PREPARE AN ORDER, THE PREVAILING PARTY SHALL LODGE A PROPOSED ORDER WITHIN 14 DAYS OF THE HEARING.**

**MATTERS FOR ARGUMENT**

1. 17-22707-A-7 MONTEZ WILLIAMS MOTION FOR  
KDS-12 RELIEF FROM AUTOMATIC STAY  
TAH 2015-1 BORROWER, LLC VS. 4-26-17 [10]

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant, TAH 2015-1 Borrower, L.L.C., seeks relief from the automatic stay as to real property in Suisun City, California.

The movant is the owner of the property and the debtor leased it from the movant. The debtor defaulted under the lease agreement in January 2017. The movant served the debtor with a three-day notice to pay or quit on February 24, 2017. After expiration of the notice, the movant filed an unlawful detainer action against the debtor on March 3, 2017. The state court entered a judgment for possession at trial on April 11. The debtor filed this bankruptcy case on April 24, 2017.

This is a liquidation proceeding and the debtor has no ownership interest in the property as the movant is the legal owner of it. And, even though the debtor is a tenant at the property, he has defaulted under the lease agreement by failing to pay the rent due from January 2017 onward. Also, the debtor's tenancy interest in the property terminated upon expiration of the three-day notice served on them pre-petition. See In re Windmill Farms, Inc., 841 F.2d 1467, 1470 (9th Cir. 1988); In re Smith, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989).

The court also notes that the debtor has not completed and filed with the court Form 101A (Initial Statement About an Eviction Judgment Against You), even though he checked "Yes" under question 11 of the petition, asking "Do you rent your residence?" Docket 1 at 3.

And, although the debtor has completed Form 101B (Statement About Payment of an Eviction Judgment Against You) – which requires that Form 101A be completed prior to its completion – the debtor has not checked either of the two boxes indicating that:

- under applicable nonbankruptcy law the debtor can stay in the property by paying the movant the entire delinquent amount; and / or
- the debtor has paid the movant the entire amount owed as stated in the judgment for possession.

Docket 1 at 23.

The foregoing is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to exercise its state law remedies in accordance with the orders and judgments of the state court in the unlawful detainer action.

No monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property to the extent permitted by the state court. No other relief will be awarded.

No fees and costs will be awarded because the movant is not an over-secured creditor. See 11 U.S.C. § 506.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.

2. 17-20316-A-7 MATTHEW BAKER MOTION TO  
HLG-1 AVOID JUDICIAL LIEN  
VS. PERSOLVE, L.L.C. 4-3-17 [19]

**Tentative Ruling:** The motion will be denied.

The debtor is seeking the avoidance of a judicial lien held by Persolve, L.L.C. on a real property in Sacramento, California, based on 11 U.S.C. § 522(f)(1).

The subject real property had an approximate value of \$258,075 as of the petition date. Dockets 21 & 22 Ex. A. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$75,000 in Schedule C. Dockets 1, 21, 22 Ex. D.

The motion will be denied. The court has no evidence that the lien is based on a judgment entered against the debtor. The abstract of judgment in the record reflects only one defendant – Lisa Baker – and she is not the debtor. Docket 22, Ex. C. Given this, there is no basis to recognize, much less avoid, a judicial lien against the debtor's interest in the property.

Further, although the motion refers to an unavoidable voluntary lien against the property in the amount of \$230,570, there is no evidence of such a lien in the record. Neither the supporting declaration, nor the attached Amended Schedule D identifies such a lien. Dockets 11, 21, 22 Ex. B. The declaration merely states that there is a voluntary lien, but it does not identify the amount of the lien or the person holding the lien. Docket 21. The debtor's Amended Schedule D identifies only three judicial liens against the property. There is no voluntary lien listed in the Amended Schedule D. Without the voluntary lien, the property has plenty of equity to satisfy the lien. The motion will be denied.

3. 17-20316-A-7 MATTHEW BAKER MOTION TO  
HLG-3 AVOID JUDICIAL LIEN  
VS. UNIFUND CCR, L.L.C. 4-3-17 [24]

**Tentative Ruling:** The motion will be denied.

The debtor is seeking the avoidance of a judicial lien held by Unifund CCR, L.L.C., on a real property in Sacramento, California, based on 11 U.S.C. § 522(f)(1).

The subject real property had an approximate value of \$258,075 as of the petition date. Dockets 26 & 27 Ex. A. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$75,000 in Schedule C. Dockets 1, 26, 27 Ex. D.

The motion will be denied. The court has no evidence that the lien is based on a judgment entered against the debtor. The abstract of judgment in the record reflects only one defendant – Lisa Baker – and she is not the debtor. Docket 27, Ex. C. Given this, there is no basis to recognize, much less avoid, a judicial lien against the debtor's interest in the property.

Further, although the motion refers to an unavoidable voluntary lien against the property in the amount of \$230,570, there is no evidence of such a lien in the record. Neither the supporting declaration, nor the attached Amended Schedule D identifies such a lien. Dockets 11, 26, 27 Ex. B. The declaration merely states that there is a voluntary lien, but it does not identify the amount of the lien or the person holding the lien. Docket 26. The debtor's Amended Schedule D identifies only three judicial liens against the property. There is no voluntary lien listed in the Amended Schedule D. Without the voluntary lien, the property has plenty of equity to satisfy the lien. The motion will be denied.

4. 17-21936-A-7 SHAWN ATKINSON MOTION FOR  
RELIEF FROM AUTOMATIC STAY  
YARMOHAMMAD SAFI VS. 4-4-17 [18]

**Tentative Ruling:** The motion will be denied in part and dismissed in part.

The movant, Yarmohammad Safi, seeks relief from the automatic stay as to real property in Manteca, California.

The debtor opposes the motion, contending that she is current on her lease payments to the movant and that the movant is bound to a three-year lease agreement, expiring in October 2018.

The motion will be dismissed as to the estate because the motion has not been served on the trustee. Docket 18 at 3.

As to the debtor, the analysis is different. The movant is the legal owner of the property and the debtor leased it from the movant. The movant seeks relief from stay to proceed with an unlawful detainer action against the debtor. The movant states that he wants to sell the property.

However, the motion does not say that the debtor is delinquent under the lease agreement. According to the debtor, she is current on rental payments to the movant. Moreover, the property is subject to a three-year lease agreement between the debtor and the movant. As such, the court finds no cause for the lifting of the stay. The motion will be denied as to the debtor.

5. 12-38663-A-7 RAJINDER/RUPINDER GILL MOTION TO  
RWH-2 AVOID JUDICIAL LIEN  
VS. CITIBANK (SOUTH DAKOTA) N.A. 3-20-17 [24]

**Tentative Ruling:** The motion will be granted.

The court continued the hearing on this motion from April 24, in order for the 30-day exemption objection period to lapse, prior to adjudication of the

motion. The debtor amended Schedule C on March 17, 2017, adding an exemption in the subject property, but she did not serve the Amended Schedule C on the creditors and the trustee until April 6. Docket 29.

A judgment was entered against debtor Rupinder Gill in favor of Citibank for the sum of \$5,562.36 on October 31, 2011. The abstract of judgment was recorded with Sacramento County on February 8, 2012. That lien attached to the debtor's residential real property in Antelope, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$184,504 as of the petition date. Dockets 26 & 27. The unavoidable liens totaled \$263,10.55 on that same date, consisting of a mortgage in favor of Coldwell Banker for \$210,411.82 and a mortgage in favor of COO Mortgage for \$52,695.73. Dockets 1, 21, 26, 27. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1.00 in Amended Schedule C. Dockets 21, 26, 27.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. 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 will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

6. 10-46689-A-7 JULIUS/MARLYRUS JACKSON MOTION TO  
TJW-2 AVOID JUDICIAL LIEN  
VS. CITIBANK SOUTH DAKOTA N.A. 4-24-17 [30]

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the respondent creditor 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 offer 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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

A judgment was entered against debtor Julius Jackson in favor of Citibank for the sum of \$6,014.88 on January 5, 2010. The abstract of judgment was recorded with Solano County on February 18, 2010. That lien attached to the debtor's residential real property in Vacaville, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$190,000 as of the petition date. Dockets 32 & 33. The unavoidable liens totaled \$290,000 on that same date, consisting of a single mortgage in favor of Provident Funding. Dockets 32 & 33. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$100 in Schedule C. Dockets 1, 32, 33.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. 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 will be avoided subject to 11 U.S.C. § 349(b) (1) (B).

**Final Rulings Begin Here**

7. 17-20316-A-7 MATTHEW BAKER MOTION TO  
HLG-2 AVOID JUDICIAL LIEN  
VS. TARGET NATIONAL BANK 4-3-17 [14]

**Final Ruling:** The motion will be dismissed without prejudice because it was not served on the respondent creditor, Target National Bank, in accordance with Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed solely to an officer of the institution.

The proof of service accompanying the motion indicates that the notice was not addressed solely to an officer of the creditor. It was addressed to "James Meyer, Vice President or Officer, managing or general agent for process of service." Docket 18. This does not satisfy Rule 7004(h).

Rule 7004(h) requires service solely to the attention of an officer. Nothing in the rule or its legislative history suggests that Congress intended the term "officer" to include anything other than officer of the respondent creditor. Hamlett v. Amsouth Bank (In re Hamlett), 322 F.3d 342, 345-46 (4th Cir. 2003) (examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor, such as "registered agent").

The debtor should also note that the court has no evidence that the subject lien is based on a judgment entered against the debtor. The abstract of judgment in the record reflects only one defendant – Lisa Baker – and she is not the debtor. Docket 17, Ex. C. Given this, there is no basis to recognize, much less avoid, a judicial lien against the debtor's interest in the property.

Further, although the motion refers to an unavoidable voluntary lien against the property in the amount of \$230,570, there is no evidence of such a lien in the record. Neither the supporting declaration, nor the attached Amended Schedule D identifies such a lien. Dockets 11, 16, 17 Ex. B. The declaration merely states that there is a voluntary lien, but it does not identify the amount of the lien or the person holding the lien. Docket 16. The debtor's Amended Schedule D identifies only three judicial liens against the property. There is no voluntary lien listed in the Amended Schedule D. Without the voluntary lien, the property has plenty of equity to satisfy the lien.

8. 14-24017-A-7 KENNETH/JOANN ASBURY MOTION TO  
BHS-4 APPROVE COMPENSATION OF TRUSTEE'S  
ATTORNEY  
4-7-17 [67]

**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 trustee, 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 (9<sup>th</sup> 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 (9<sup>th</sup> Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral



upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

The property has a value of \$328,240 and it is encumbered by claims totaling approximately \$311,520.53. The movant's deed is in first priority position and secures a claim of approximately \$269,882.53.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9<sup>th</sup> Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed \$750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of \$750.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will not be waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

10. 10-49228-A-7 MARIO/NITZE JAIMEZ MOTION TO  
DNL-6 APPROVE COMPENSATION OF TRUSTEE'S  
ATTORNEY  
4-12-17 [108]

**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 trustee, 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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.

Desmond, Nolan, Livaich & Cunningham, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of \$15,119.50 in fees and \$194.87 in expenses, for a total of \$15,314.37. This motion covers the period from December 1, 2014 through April 11, 2017. The court approved the movant's employment as the trustee's attorney on December 31, 2014. In performing its services, the movant charged hourly rates of \$175, \$195, \$200, \$275, \$325, \$400, \$425.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation: (1) assisting the estate with analyzing estate assets, including labor claims held by the estate against a former employer of one debtor, (2) negotiating with the debtors their exemption in the labor claims, (3) preparing stipulation with the debtors about the estate's prosecution of the labor claims and their exemption, (4) preparing and prosecuting motion for approval of the stipulation, (5) assisting the trustee to retain and negotiate with the attorney who had been prosecuting the labor claims, (6) assisting with the review of the settlement of the labor claims, (7) preparing and prosecuting a motion to approve the labor claim settlement, (8) advising the trustee about the general administration of the estate, and (9) preparing and filing employment and compensation motions.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved.

11. 10-49228-A-7 MARIO/NITZE JAIMEZ MOTION FOR  
DNL-7 ADMINISTRATIVE EXPENSES  
4-12-17 [104]

**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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 trustee requests allowance of payments of post-petition estate income tax liability for the 2016-17 tax year as follows: \$15,000 to the IRS and \$3,500 to

the California Franchise Tax Board.

11 U.S.C. § 503(b)(1)(B) provides that "After notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including-

(1) . . . (B) any tax-- (i) incurred by the estate, whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both, except a tax of a kind specified in section 507(a)(8) of this title."

This case was filed on November 4, 2010. The tax liability in question was incurred in 2016 and 2017. As the tax was incurred post-petition, the court will allow its payment as an administrative expense claim under section 503(b)(1)(B). The motion will be granted.

12. 17-21629-A-7 VERONICA HRUBY MOTION FOR  
JCW-1 RELIEF FROM AUTOMATIC STAY  
NATIONSTAR MORTGAGE, L.L.C. VS.3-29-17 [10]

**Final Ruling:** This 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 debtor and the trustee, 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 movant, Nationstar Mortgage, seeks relief from the automatic stay as to a real property in Gladstone, Missouri. The property has a value of \$111,500 and it is encumbered by claims totaling approximately \$113,158. The movant's deed is the only encumbrance against the property.

The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on April 19, 2017. And, the debtor has filed a non-opposition.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will not be waived.

13. 17-20337-A-7 TOBY CRIGLER MOTION TO  
MKJ-1 AVOID JUDICIAL LIEN  
VS. PERSOLVE, L.L.C. 4-1-17 [17]

**Final Ruling:** The motion will be dismissed without prejudice because service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The debtor served the motion on Persolve, L.L.C. without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Docket 21.

14. 17-20838-A-7 GERALD MCALLISTER MOTION FOR  
EMM-1 RELIEF FROM AUTOMATIC STAY  
WILMINGTON SAVINGS FUND SOCIETY, F.S.B. VS. 4-3-17 [11]

**Final Ruling:** This 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 debtor and the trustee, 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 movant, Wilmington Savings Fund Society, FSB, seeks both retroactive and prospective relief from the automatic stay as to real property in Foresthill, California.

The movant is the legal owner of the property. The movant purchased the property at a pre-petition foreclosure sale in December 2016. The movant served on the debtor a notice to quit on January 22, 2017. On January 30, the movant filed an unlawful detainer complaint in state court.

The debtor filed this case on February 10, but he did not notify the movant of the bankruptcy filing until March 14.

As the movant served the complaint on the debtor on or about March 7, it is seeking retroactive relief from stay with respect to the service.

In determining whether to grant retroactive relief from stay, the court must engage in a case-by-case analysis and balance the equities between the parties. Some of the factors courts have considered are whether the creditor knew of the bankruptcy filing, whether the debtor was involved in unreasonable or inequitable conduct, whether prejudice would result to the creditor, and whether the court could have granted relief from the automatic stay had the creditor applied in time. Nat'l Env'tl. Water Corp. v. City of Riverside (In re Nat'l Env'tl. Water Corp.), 129 F.3d 1052, 1055 (9<sup>th</sup> Cir. 1997).

The Bankruptcy Appellate Panel approved additional factors for consideration in In re Fjeldsted, 293 B.R. 12 (9th Cir. B.A.P. 2003). The Fjeldsted factors are employed to further examine the debtor's and creditor's good faith, the prejudice to the parties, and the judicial or practical efficacy of annulling the stay.

This is a liquidation proceeding and the debtor has no interest in the property as the movant purchased it pre-petition. This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) in order to permit the movant to proceed with its unlawful detainer action against the debtor in state court. The parties are to return to state court in order to determine who is entitled to possession of the property.

If the movant prevails, no monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property if such is permitted by the state court.

The court will grant retroactive relief from stay as of March 7, 2017, on or about when the unlawful detainer complaint was served on the debtor, given that the movant did not become aware of the bankruptcy filing until March 14. If the movant had applied as of March 7, the court would have granted relief from stay, given the pre-petition foreclosure sale. Also, unless the court grants retroactive stay relief, the movant would be prejudiced by having once again to serve the unlawful detainer complaint.

No fees and costs are awarded because the movant is not an over-secured creditor. See 11 U.S.C. § 506.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived.

15. 16-28152-A-7 DAVID/CINDY WILSON MOTION FOR  
DWE-1 RELIEF FROM AUTOMATIC STAY  
WELLS FARGO BANK, N.A. VS. 4-10-17 [17]

**Final Ruling:** This 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 debtor and the trustee, 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 (9<sup>th</sup> 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 (9<sup>th</sup> 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 in part and dismissed as moot in part.

The movant, Wells Fargo Bank, seeks relief from the automatic stay as to a real property in Mountain House, California.

Given the entry of the debtor's discharge on April 19, 2017, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The property has a value of

\$470,000 and it is encumbered by claims totaling approximately \$529,348. The movant's deed is in first priority position and secures a claim of approximately \$413,965.

The court concludes that there is no equity in the property and the trustee cannot administer it for the benefit of creditors. The court also notes that the trustee filed a report of no distribution on February 7, 2017.

Thus, the motion will be granted as to the estate pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

The loan documentation contains an attorney's fee provision and the movant is an over-secured creditor. The motion demands payment of fees and costs. The court concludes that a similarly situated creditor would have filed this motion. Under these circumstances, the movant is entitled to recover reasonable fees and costs incurred in connection with prosecuting this motion. See 11 U.S.C. § 506(b). See also Kord Enterprises II v. California Commerce Bank (In re Kord Enterprises II), 139 F.3d 684, 689 (9<sup>th</sup> Cir. 1998).

Therefore, the movant shall file and serve a separate motion seeking an award of fees and costs. The motion for fees and costs must be filed and served no later than 14 days after the conclusion of the hearing on the underlying motion. If not filed and served within this deadline, or if the movant does not intend to seek fees and costs, the court denies all fees and costs. The order granting the underlying motion shall provide that fees and costs are denied. If denied, the movant and its agents are barred in all events from recovering any fees and costs incurred in connection with the prosecution of the motion.

If a motion for fees and costs is filed, it shall be set for hearing pursuant to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). It shall be served on the debtor, the debtor's attorney, the trustee, and the United States Trustee. Any motion shall be supported by a declaration explaining the work performed in connection with the motion, the name of the person performing the services and a brief description of that person's relevant professional background, the amount of time billed for the work, the rate charged, and the costs incurred. If fees or costs are being shared, split, or otherwise paid to any person who is not a member, partner, or regular associate of counsel of record for the movant, the declaration shall identify those person(s) and disclose the terms of the arrangement with them.

Alternatively, if the debtor will stipulate to an award of fees and costs not to exceed \$750, the court will award such amount. The stipulation of the debtor may be indicated by the debtor's signature, or the debtor's attorney's signature, on the order granting the motion and providing for an award of \$750.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will not be waived. That

period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

16. 16-28175-A-7 DANNY FEWELL MOTION TO  
TBK-2 AVOID JUDICIAL LIEN  
VS. BENEFICIAL FINANCIAL, INC. 3-30-17 [39]

**Final Ruling:** The motion will be dismissed without prejudice because service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "Upon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant."

The debtor served the motion on Beneficial Financial, Inc. without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Docket 46.

17. 16-28175-A-7 DANNY FEWELL MOTION TO  
TBK-3 AVOID JUDICIAL LIEN  
VS. CAPITAL ONE BANK (USA), N.A. 3-30-17 [42]

**Final Ruling:** The motion will be dismissed without prejudice because the respondent creditor, Capital One Bank, has not been served with the motion.

While the debtor served Capital One Bank's attorney, Hunt & Henriques, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

The court reminds the debtor that service on banks must comply with Fed. R. Bankr. P. 7004(h).

18. 17-22491-A-7 BETHANY BLACK MOTION FOR  
KDS-7 RELIEF FROM AUTOMATIC STAY  
ANTELOPE RIDGE, LLC VS. 4-20-17 [16]

**Final Ruling:** The motion will be dismissed as moot, as the case was dismissed on May 2, 2017, automatically dissolving the bankruptcy stay. See 11 U.S.C. § 362(c)(2)(B). And, the motion does not request retroactive or in rem relief from stay.