

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

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

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled 'Amended Civil Minute Order.'

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.
3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.
4. If no disposition is set forth below, the matter will be heard as scheduled.

1. 17-21700-D-12 PAUL SCHMIDT CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
3-15-17 [1]

Tentative ruling:

This is a continued session of the initial status conference in this chapter 12 case. The hearing was continued because the debtor had failed to comply with the Order to (1) File Status Report; and (2) Attend Status Conference filed March 17, 2017 (the "Scheduling Order"). At the initial hearing, the debtor's counsel indicated serious medical issues had prevented him from complying; the hearing was continued so the debtor could comply. The court began the discussion of the necessary steps for compliance by noting, "I did not see a certificate of service that the order was served nor did I see a status conference statement." Counsel, in turn, specifically requested "new dates to serve the order by and to file a status report." The court then specifically advised counsel that for him to comply, a status report would have to be filed and that the status report, the order setting status conference, and a notice of continued hearing would have to be served by April 19. When counsel appeared unclear on the express requirements, the court reiterated them, stating, "Three things must be served: (1) the initial order that set this status conference; (2) the actual status conference statement itself; and

(3) a notice of continued hearing of status conference." Counsel indicated he "had that straight."

Yet, although counsel filed and served a status report, a status conference statement, and a notice of continued status conference hearing, he did not serve the Scheduling Order itself, despite the fact that the Scheduling Order itself expressly requires it ("The debtor shall serve this order . . .) and the fact that that specific requirement was mentioned at least three times at the initial hearing. The Scheduling Order describes the matters the debtor is required to cover in his status report and informs creditors they may expect to see in the status report "sufficient information to understand the current status of the case, the debtor's anticipated plan of reorganization, and the types of contested matters and adversary proceedings that will likely be filed." The Scheduling Order also names the matters that may be considered at the status conference, including dismissal or the removal of the debtor as debtor-in-possession. The fact that these possibilities may be on the table at the status conference is a fact of which creditors are to be apprised by way of service of the Scheduling Order. Here, the debtor and his counsel have disregarded the requirement of service despite repeated and unequivocal notice that the Scheduling Order must be served. In light of this failure, at a minimum the court intends to continue the hearing and have the debtor's counsel serve the Scheduling Order along with a new notice of continued hearing. The court will also consider dismissal of the case or removal of the debtor as debtor-in-possession at the hearing.

The court will hear the matter.

2. 17-21101-D-7 EMILY WATKINS
BLG-1

MOTION TO REDEEM PERSONAL
PROPERTY AND/OR MOTION FOR
COMPENSATION BY THE LAW OFFICE
OF BANKRUPTCY LAW GROUP, PC
DEBTOR'S ATTORNEY(S)
3-24-17 [12]

Tentative ruling:

This is the debtor's motion to redeem her 2014 Nissan Pathfinder (the "vehicle") from the lien of Travis Credit Union (the "Credit Union") in exchange for a payment of \$15,003, which payment she proposes to finance through 722 Redemption Funding, Inc. ("Redemption Funding"). The Credit Union has filed opposition and the debtor has filed a reply. For the following reasons, the court intends to continue the hearing and require the debtor to make the vehicle available to the Credit Union to inspect and appraise it, per the Credit Union's request.

First, as to the nature of the relief requested. In the prayer to the motion, the debtor requests an order that the Credit Union accept from the debtor a lump-sum payment of \$15,003 and release its lien; in the event of an objection, the debtor asks the court to determine the value of the vehicle. The title of the motion, however - Motion for Authority to Redeem Personal Property and Approval of Associated Financing and Attorney Fees under 11 U.S.C. 722 - suggests additional relief is requested. The motion advises that the debtor will be borrowing the redemption funds plus \$600 for attorney's fees for her attorney's representation in obtaining an order on this motion from Redemption Funding. The debtor has provided no authority for the proposition, suggested by the title of her motion, that the court has the jurisdiction and the power to approve her post-petition borrowing or to approve an award of additional fees to her attorney, and the court will not grant such relief.

The court notes that counsel's apparent request that the debtor pay him additional attorney's fees appears to conflict with LBR 2017-1(a)(1), which states: "An attorney who is retained to represent a debtor in a bankruptcy case constitutes an appearance for all purposes in the case, including, without limitation, motions for relief from the automatic stay, motions to avoid liens, objections to claims, and reaffirmation agreements." Although the rule does not specifically refer to redemption motions, such motions are sufficiently akin to motions for relief from stay, objections to claims, and reaffirmation agreements that the court concludes the rule encompasses motions for redemption.

On the issue of value, the debtor submitted in support of the motion her own declaration stating her opinion that "the allowed secured claim of Travis Credit Union for purposes of redemption, is not more than \$15,003.00." Debtor's Decl., DN 14, at ¶ 2. In addition, the debtor submitted a document apparently prepared by Redemption Funding entitled Redemption vs. Reaffirmation Savings Analysis that lists a redemption value of \$15,003, a vehicle condition report purportedly signed by Kevin Connaughton of Collateral Valuation Service, LLC, of Cincinnati, Ohio stating the "Valuation Report" is "Based on Edmunds" and listing an "Appraisal Value" of \$15,003 after deductions for repairs, and a Loan Disclosure, Note and Security Agreement apparently prepared by Redemption Funding for a loan of \$15,513 with a contract rate of interest of 17.99% and an APR of 18.979%. All of these documents except the debtor's declaration are hearsay and inadmissible. Further, the debtor has failed to submit evidence as to the value of the vehicle under Bankruptcy Code § 506(b), which is the applicable valuation section.

The Credit Union, on the other hand, submitted a KBB Vehicle Valuation showing a retail value of \$25,548, a trade-in value of \$21,747, and a wholesale value of \$23,521. In reply, the debtor submitted her own declaration stating her vehicle is an SV and not a Platinum Edition and her attorney testifies he ran a VIN search and verified that the trim on her vehicle is SV and not Platinum Edition. (The Credit Union's KBB valuation refers to a Platinum Sport Utility vehicle.) Neither the debtor nor her attorney explains the effect this difference makes to the value of the vehicle. With her reply, the debtor also filed a declaration of Ken Connaughton, of Redemption Funding in Cincinnati, who testified Redemption Funding is "engaged in the practice of determining the retail value of automobiles," that he frequently determines such values, that "reconditioning is required for these used automobiles to reach full retail list price," and that through his position with Redemption Funding, he "ha[s] become an expert in evaluating the retail cost of repair of used automobiles." Connaughton Decl., at DN 28, at 1:23-28. Mr. Connaughton believes the value of the debtor's vehicle is \$16,603, and after deduction for repairs, \$15,003.

The debtor's declarations in reply to the Credit Union's opposition come too late. The court's local rules require a moving party to submit with his or her motion "evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. LBR 9014-1(d)(7). Here, the debtor chose to rely solely on her own opinion, with no evidence she is qualified to value motor vehicles, and a hearsay vehicle valuation. The Credit Union's KBB report is entitled to significantly more weight, and thus, the court intends to deny the motion. In the alternative, the court will consider continuing the hearing and requiring the debtor to submit the vehicle to the Credit Union for its inspection and valuation, as the Credit Union has requested.

The court will hear the matter.

3. 15-29103-D-7 ROCK RIDGE PROPERTIES, MOTION TO EMPLOY J. RUSSELL
DNL-1 INC. CUNNINGHAM AS ATTORNEY
4-10-17 [21]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to employ J. Russell Cunningham as attorney under a hybrid fee arrangement is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

4. 17-20906-D-7 CHRISTY PEBLER MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. 4-5-17 [15]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant relief from stay. As the debtor's Statement of Intentions indicates she will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

5. 14-26408-D-7 MARK GILROY MOTION FOR RELIEF FROM
AP-1 AUTOMATIC STAY
U.S. BANK, N.A. VS. 4-10-17 [111]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The debtor received his discharge on August 26, 2015 and, as a result, the stay is no longer in effect as to the debtor (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtor as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

6. 17-20908-D-7 JEREMIAH PEREZ TRUSTEE'S MOTION TO DISMISS FOR
FAILURE TO APPEAR AT SEC.
341(A) MEETING OF CREDITORS
3-23-17 [14]

Final ruling:

This is a hearing on the trustee's motion to dismiss this case for failure of the debtor to appear at the § 341 meeting on March 22, 2017. The docket reflects the debtor and his counsel both appeared at the continued meeting on April 12, 2017. The meeting was continued again, to April 26, 2017, when it was concluded and the trustee has issued a notice of filing of report of no distribution. The debtor's appearance at the April 12, 2017 meeting cured the defect that was the subject of the trustee's motion to dismiss. As a result, the trustee's motion will be denied as moot by minute order. No appearance is necessary.

Final ruling:

This is the debtors' motion to avoid a judicial lien held by Mercury Insurance Company ("Mercury"). The motion will be denied for the following reasons. First, the moving parties failed to serve Mercury in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served Mercury only through the attorneys who obtained its abstract of judgment. This was insufficient because service on a corporation must be to the attention of an officer, managing or general agent, or agent for service of process (Rule 7004(b)(3)), whereas there is no evidence the attorneys who obtained the abstract of judgment are authorized to receive service of process on behalf of Mercury in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(b)(3) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004).

Second, the debtors have not met the requirements for avoiding a judicial lien. "There are four basic elements of an avoidable lien under § 522(f)(1)(A): First, there must be an exemption to which the debtor would have been entitled under subsection (b) of this section. 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be ... a judicial lien. 11 U.S.C. § 522(f)(1)." Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992) (emphasis added) (internal quotation marks omitted). In this case, the debtors have not claimed any interest in the property as exempt.

Finally, in a number of respects, the moving papers do not comply with the court's local rules. The moving papers are all filed as a single document, rather than separately, as required by LBR 9004-1(a) and the court's Revised Guidelines for the Preparation of Documents, Form EDC 2-901. There is no separate notice of hearing, as required by LBR 9014-1(d)(3), and the proof of service is not filed separately, as required by LBR 9014-1(e)(3). The debtors have used a form used in the Central District of California; thus, the notice of motion and motion provide incorrect information about the deadline for filing opposition and, if the debtors intended to require the filing of written opposition in advance of the hearing, as the notice of motion and motion suggest, the notice of motion and motion do not state the consequences for failing to timely file and serve it, as required by LBR 9014-1(d)(4). Finally, the moving papers do not include a docket control number, as required by LBR 9014-1(c).

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

8. 14-25820-D-11 INTERNATIONAL CONTINUED MOTION TO COMPEL
15-2140 MANUFACTURING GROUP, INC. EBS-13-15-17 [40]
MCFARLAND V. YOUNGER, JR. ET
AL

9. 14-25820-D-11 INTERNATIONAL MOTION TO SEVER AND DISMISS
16-2082 MANUFACTURING GROUP, INC. BJ-1AND/OR MOTION TO BIFURCATE AND
MCFARLAND V. BATTLE CREEK STAY
STATE BANK 4-12-17 [102]

Final ruling:

This motion has been resolved by stipulated order entered May 4, 2017. As such, the matter is removed from calendar. No appearance is necessary.

10. 17-21642-D-7 KRISTIN AVARY MOTION FOR RELIEF FROM
TRM-1 AUTOMATIC STAY
AARON BEAL VS. 3-24-17 [12]

Final ruling:

This case was dismissed on April 3, 2017. As a result the motion will be denied by minute order as moot. No appearance is necessary.

11. 17-20557-D-7 KENT/MELANIE PEARSON MOTION FOR RELIEF FROM
AP-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. 4-6-17 [18]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. As such the court will grant relief from stay. As the debtors' Statement of Intentions indicates they will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

12. 16-22658-D-7 KIRK MATTIUZZI MOTION TO COMPROMISE
SCB-2 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH MATTIUZZI FAMILY
TRUST AND MATTIUZZI CORPORATION
4-12-17 [20]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to approve compromise of controversy, and the trustee has demonstrated the compromise is in the best interest of the creditors and the estate. Specifically, the motion demonstrates that when the compromise is put up against the factors enumerated in In re Woodson, 839 F.2d 610 (9th Cir. 1988), the likelihood of success on the merits, the complexity of the litigation, the difficulty in collectability, and the paramount interests of creditors, the compromise should be approved. Accordingly, the motion is granted and the compromise approved. The moving party is to submit an appropriate order. No appearance is necessary.

13. 17-21958-D-7 HERVE PASTRE ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-10-17 [11]

Final ruling:

The deficiency has been corrected. As a result the court will issue a minute order discharging the order to show cause and the case will remain open. No appearance is necessary.

14. 17-21465-D-11 BELINDA SMITH CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
3-7-17 [1]

15. 17-21465-D-11 BELINDA SMITH MOTION TO DISMISS CASE AND/OR
UST-1 MOTION TO IMPOSE A ONE-YEAR BAR
AGAINST THE FILING OF A NEW
CASE
4-11-17 [27]

16. 16-27672-D-11 DAVID LIND

CONTINUED STATUS CONFERENCE RE:
CHAPTER 12 VOLUNTARY PETITION
11-18-16 [1]

17. 17-22275-D-7 CALIFORNIA GOLF
DNL-1 PROPERTIES, LLC DBA RIVER

MOTION TO EMPLOY J. RUSSELL
CUNNINGHAM AS ATTORNEY(S)
4-12-17 [6]

18. 17-20279-D-7 NATALIE VALDEZ
KAZ-1
U.S. BANK, N.A. VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-10-17 [29]

Final ruling:

This case was dismissed on April 17, 2017. As a result the motion will be denied by minute order as moot. No appearance is necessary.

19. 17-20083-D-7 PAUL THOMAS
UST-1

MOTION TO EXTEND DEADLINE TO
FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
4-7-17 [29]

Tentative ruling:

This is the United States Trustee's motion to extend the deadline for filing an objection to the debtor's discharge. No opposition has been filed; however, the court has an initial concern. The motion refers to LBR 9014-1(f)(1) and states that if you want the court to consider your views on the motion, then on or before April 26, 2017, you or your attorney must file a written response or opposition and mail or deliver a copy to the United States Trustee. The notice does not state that the failure to file timely written opposition may result in the motion being resolved without oral argument and the striking of untimely written opposition, as required by LBR 9014-1(d)(4), and does not include any similar cautionary language. Because the debtor in this case is pro se and because of the length of the extension sought, the court will entertain opposition, if any, at the hearing. The court notes also that the proof of service is not signed under oath, as required by 28 U.S.C. § 1746. The moving party shall file an amended proof of service.

The court will hear the matter.

20. 17-20984-D-7 DAVID/JENNIFER VON SAVOYE MOTION FOR RELIEF FROM
EGS-1 AUTOMATIC STAY
BAYVIEW LOAN SERVICING, LLC 4-12-17 [24]
VS.

Final ruling:

The hearing on this motion is continued by stipulation of the parties to June 7, 2017 at 10:00 a.m. No appearance is necessary on May 10, 2017.

21. 17-21986-D-7 CHRISTOPHER ROBBINS MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
3-27-17 [5]

Final ruling:

The debtor paid the filing fee in full on April 17, 2017. As such, the motion will be denied by minute order as moot. No appearance is necessary.

22. 12-25787-D-7 GARY BACHELOR MOTION TO AVOID LIEN OF
RWH-2 AMERICAN EXPRESS CENTURION BANK
3-31-17 [24]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

23. 12-25787-D-7 GARY BACHELOR MOTION TO AVOID LIEN OF KELKRIS
RWH-3 ASSOCIATES, INC.
3-31-17 [29]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

24. 15-29890-D-7 GRAIL SEMICONDUCTOR
DNL-18

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF TANNER DE WITT
SOLICITORS FOR IAN DE WITT,
SPECIAL COUNSEL
3-30-17 [612]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion and moving party is to submit an appropriate order. No appearance is necessary.

25. 15-29890-D-7 GRAIL SEMICONDUCTOR
16-2088 DNL-11
CARELLO V. STERN ET AL

MOTION TO DISMISS FRANK BAUDER
4-12-17 [317]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to dismiss Frank Bauder as a defendant in Adversary Proceeding No. 16-2088 is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

26. 13-24810-D-7 SANDRA DAVIS
TAW-2

MOTION TO AVOID LIEN OF UNIFUND
CCR PARTNERS
4-24-17 [24]

Tentative ruling:

This is the debtor's motion to avoid a judicial lien held by Unifund CCR Partners ("Unifund"). The motion will be denied because the moving party failed to serve Unifund in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served Unifund (1) at a street address with no attention line; and (2) through the attorneys who obtained Unifund's abstract of judgment. The first method was insufficient because service on a corporation must be to the attention of an officer, managing or general agent, or agent for service of process (Rule 7004(b)(3)) whereas here, there was no attention line. The second method was insufficient because a corporation must be served to the attention of an officer, managing or general agent, or agent for service of process, whereas there is no evidence the attorneys who obtained the abstract are authorized to receive service of process on behalf of Unifund in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(b)(3) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004).

As a result of this service defect, the motion will be denied. In the alternative, the court will continue the hearing to allow the moving party to correct the service defect. The court will hear the matter.

27. 12-30015-D-7 RYAN/SHERYL ELLISON MOTION TO AVOID LIEN OF MERCURY
INSURANCE COMPANY
4-17-17 [33]

Final ruling:

This motion, filed by the debtors on April 17, 2017 at DN 33, is a duplicate of the motion filed by the debtors on April 14, 2017, at DN 29. As such, it will be removed from calendar.

28. 17-21465-D-11 BELINDA SMITH ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-14-17 [36]

29. 15-29890-D-7 GRAIL SEMICONDUCTOR MOTION TO EMPLOY JESS LOPEZ AS
DNL-19 SPECIAL COUNSEL
4-21-17 [659]

Tentative ruling:

This is the trustee's motion to employ special counsel to pursue rights of the estate in the Philippines. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, the court has a preliminary concern.

In his supporting declaration, Jess Lopez, a member of the law firm proposed to be employed, states that a partner in the firm, whom he does not name, "serves as the Corporate Secretary of two corporations in which Kevin Belmonte serves as a director." Lopez Decl., DN 662, at 2:21-22. Although Mr. Lopez then purports to declare that the firm "does not represent or hold any interest adverse to the Debtors or to the estate with respect to its proposed involvement in pursuing the estate's rights in the Philippines," and that the firm and its members are disinterested persons, these are conclusions the court is to draw, not the proposed counsel. The information provided is far too vague to permit the court to draw the necessary conclusions.

The motion refers to Juan Kevin Belmonte and Rose Anne Belmonte as being transferees of some portion of the \$2.75 million originally transferred to Donald Stern and Billion Hope International in October of 2015. So far as the court recalls, this is the first time the Belmonte names have come up, in either this parent case or either of the trustee's adversary proceedings. The court does not know of any allegations with respect to the Belmontes - it does not know the extent of their alleged involvement or the amounts alleged to have been received by them or from whom. Although the court might assume so, the court does not know whether the Kevin Belmonte referred to by Mr. Lopez is the same individual as the Juan Kevin Belmonte referred to in the motion. The court does not know the role, if any,

