



2. [11-29307-E-7](#) SHAWN/KARA NELSON  
PLG-2 Brandon Johnston

MOTION TO AVOID LIEN OF NELLA  
OIL CO., LLC  
4-17-14 [[105](#)]

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 Debtors, Chapter 7 Trustee, respondent creditors, and Office of the United States Trustee on April 17, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Avoid a 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 respondent 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 Avoid a Judicial Lien is granted.** No appearance required.

A judgment was entered against the Debtor in favor of Nella Oil, Co., LLC for the sum of \$15,714.64. The abstract of judgment was recorded with Placer County on October 17, 2008. That lien attached to the Debtor's residential real property commonly known as 3613 Westchester Drive, Roseville, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$800,000.00 as of the date of the petition. The unavoidable consensual liens total \$1,008,852 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1,000 in Schedule C. 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 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.



unavoidable consensual liens total \$1,008,852 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1,000 in Schedule C. 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 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 Debtors 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 Capital One Small Business, Placer County Superior Court Case No. S CV 22830, recorded on October 17, 2008, Document No. 2008-0089054-00, with the Placer County Recorder, against the real property commonly known as That lien attached to the Debtor's residential real property commonly known as 3613 Westchester Drive, Roseville, California, is avoided 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.

4. [11-29307-E-7](#) SHAWN/KARA NELSON  
PLG-4 Brandon Johnston

MOTION TO AVOID LIEN OF  
STOHLMAN AND ROGERS, INC.  
4-17-14 [[115](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Chapter 7 Trustee, respondent creditors, and Office of the United States Trustee on April 17, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

**Tentative Ruling:** The Motion to Avoid a 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).

**The court's tentative decision is to grant the Motion to Avoid a Judicial Lien.** 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor seeks to avoid a judgment in favor of Stohlman and Rogers, Inc. for the sum of \$40,082.68. The abstract of judgment was recorded with Placer County on November 24, 2008. That lien attached to the Debtor's residential real property commonly known as 3613 Westchester Drive, Roseville, California.

#### **OPPOSITION**

Creditor Stohlman & Rodgers, Inc. dba Lakeview Petroleum Company ("Creditor") opposes the motion on the basis that Debtors are not entitled to avoid the judgment because the exemption asserted to be impaired by the lien is not valid and must be disregarded. Creditor states that pursuant to Federal Rule of Bankruptcy Procedure 1009(a), schedules must be amended before the case is closed. Creditor states that Debtor cannot, without the court finding valid cause, allow the amendment to Schedule C.

#### **REPLY**

Debtors filed a response, stating that the authority cited to by Creditor is not analogous to this case nor is it binding on this court. Debtors argue that they are entitled to amend their Schedule C, that Creditor is not prejudiced by this amendments and that Debtors have not acted in bad faith.

#### **DISCUSSION**

Federal Rule of Bankruptcy Procedure 1009(a) states

(a) General right to amend. A voluntary petition, list, schedule, or statement may be amended by the debtor as a matter of course at any time before the case is closed. The debtor shall give notice of the amendment to the trustee and to any entity affected thereby. On motion of a party in interest, after notice and a hearing, the court may order any voluntary petition, list, schedule, or statement to be amended and the clerk shall give notice of the amendment to entities designated by the court.

The Bankruptcy Appellate Panel for the Ninth Circuit determined that "[f]or the purposes of filing amendments, there is no difference between an open case and a reopened case, and [a debtor in a reopened case does] not need the court's permission to amend." *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 394 (B.A.P. 9th Cir. 2003). The BAP panel disagreed with the notion that a Debtor must show excusable neglect under Rule 9006 to amend an exemption schedule after the bankruptcy case has been closed. The court finds this argument persuasive.

This court allowed the case to be reopened by motion, noticed to all creditors in this case. See Order, Dckt. 104. Therefore, the case is now reopened and Federal Rule of Bankruptcy Procedure 1009(a) applies, allowing schedules to be amended before the case is again closed. Creditor's concerns do not warrant the imposition of a requirement for court approval that is not supported by the Bankruptcy Code or the Federal Rules of Bankruptcy Procedure.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$800,000.00 as of the date of the petition. The unavoidable consensual liens total \$1,008,852 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1,000 in Schedule C. 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 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 Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,



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 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 Debtors 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 Northern California Collection Service, Inc., Placer County Superior Court Case No. 34-2009-00041437, recorded on October 19, 2009, Document No. 2009-0089472-00, with the Placer County Recorder, against the real property commonly known as 3613 Westchester Drive, Roseville, California, is avoided 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.

6. [11-29307-E-7](#) SHAWN/KARA NELSON  
PLG-6 Brandon Johnston

MOTION TO AVOID LIEN OF  
CITIBANK (SOUTH DAKOTA), N.A.  
4-17-14 [[125](#)]

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 Debtors, Chapter 7 Trustee, respondent creditors, and Office of the United States Trustee on April 17, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Avoid a 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 respondent 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 Avoid a Judicial Lien is granted.** No appearance required.

A judgment was entered against the Debtor in favor of Citibank (South Dakota) N.A. for the sum of \$23,853.09. The abstract of judgment was recorded with Placer County on June 25, 2010. That lien attached to the Debtor's residential real property commonly known as 3613 Westchester Drive, Roseville, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$800,000.00 as of the date of the petition. The unavoidable consensual liens total \$1,008,852 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1,000 in Schedule C. 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 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:



The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$800,000.00 as of the date of the petition. The unavoidable consensual liens total \$1,008,852 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1,000 in Schedule C. 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 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 Debtors 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 Citibank (South Dakota) N.A., Placer County Superior Court Case No. MCV 40633, recorded on December 22, 2010, Document No. 2010-0106949, with the Placer County Recorder, against the real property commonly known as 3613 Westchester Drive, Roseville, California, is avoided 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.

8. [11-29307-E-7](#) SHAWN/KARA NELSON MOTION TO AVOID LIEN OF CAPITAL  
PLG-8 Brandon Johnston ONE BANK (USA), N.A.  
4-17-14 [[135](#)]

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 Debtors, Chapter 7 Trustee, respondent creditors, and Office of the United States Trustee on April 17, 2014. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Avoid a 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 respondent 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 Avoid a Judicial Lien is granted.** No appearance required.

A judgment was entered against the Debtor in favor of Capital One Bank (USA) N.A. for the sum of \$6,526.61. The abstract of judgment was recorded with Placer County on April 11, 2011. That lien attached to the Debtor's residential real property commonly known as 3613 Westchester Drive, Roseville, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$800,000.00 as of the date of the petition. The unavoidable consensual liens total \$1,008,852 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1,000 in Schedule C. 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 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.



Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of \$1,000 in Schedule C. 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 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 Debtors 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 Building Prod., dba Gold Star Insulation, Placer County Superior Court Case No. MCV-31436, recorded on November 16, 2011, Document No. 2011-0091809-00, with the Placer County Recorder, against the real property commonly known as 3613 Westchester Drive, Roseville, California, is avoided 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.

10. [09-41353-E-7](#) LORETTA MCCAIN  
PGM-1 Peter Macaluso

MOTION FOR CONTEMPT AND/OR  
MOTION FOR ORDER TO SHOW CAUSE  
3-24-14 [[57](#)]

Local Rule 9014-1(f)(1) Motion - Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, respondent creditors, all creditors and Office of the United States Trustee on March 24, 2014. By the court's calculation, 52 days' notice was provided. 28 days' notice is required.

The moving party is reminded that the Local Rules require the use of a new Docket Control Number with each motion. Local Bankr. R. 9014-1(c). Here, the moving party reused a Docket Control Number. This is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

**Tentative Ruling:** The Motion for Contempt 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).

**The court's tentative decision is to deny the Motion to Have Creditor Held in Contempt For Violating Discharge Injunction.** 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtor Loretta Rose McCain ("Debtor") moves for an order to show cause concerning the violation of discharge under 11 U.S.C. § 1328 against the Crosswoods Homeowners Association ("Creditor"). Debtor seeks declaratory and injunctive relief as to (1) whether Debtor should be held harmless for the pre-petition liability arising from the "Small Claims Judgment" which Debtor asserts is based on a combination of both pre- and post-petition Homeowners Association assessments and late fees; (2) whether Creditor is in violation of 11 U.S.C. § 1328 by seeking a claim for the pre-petition claims, that arose before the conversion of the chapter 7; and (3) and/or violation of the discharge of Debtor and the foreclosure being conducted for engaging in bad faith conduct that abused the judicial process. FN.1.

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FN.1. Debtor does not provide the court with a points and authorities in support of the present Motion. Rather, some citations and quotations are woven into the Motion, creating a "Mothorities." However, these appear to be limited to the authority for the court exercising its contempt power when there is a violation of a court order. The fundamental authority of the exercise of the contempt power of the court for the violation of a discharge

injunction is not cited - *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 507 (9th Cir. 2002).

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Though Debtor asserts that Creditor is in violation of 11 U.S.C. § 1328 "by seeking a claim for the pre-petition claims, that arose before the conversion of the chapter 7, and/or discharge of Debtor...", the Debtor does not provide any authority as to why the discharge provisions of Chapter 13 would apply in this Chapter 7 case. There is no discharge in the Chapter 13 case until (1) after completion of all payments required under the Chapter 13 Plan or (2) the court determines that the discharge should be granted notwithstanding the failure to complete all payments if the failure to complete the was due to circumstances for which the debtor should not be justifiably accountable and the Chapter 7 liquidation test is satisfied (the hardship discharge). 11 U.S.C. § 1328(a) and (b).

No discharge was entered in the Chapter 13 case. The Debtor did not complete the Chapter 13 Plan and the court did not order a hardship discharge.

Debtor alleges that after the instant bankruptcy case was filed, confirmed, converted to chapter 7, discharged, and then the property sold at foreclosure, Creditor began enforcement of both pre-petition and post-petition claims, asserting that these debts are nondischargeable. Debtor asserts that pursuant to the statement of intentions in the discharged case, Debtor surrendered the Properties and vacated the property, which was eventually foreclosed upon. Debtor argues that while she may or may not be liable for post-petition HOA assessments through foreclosure, she is not liable for pre-petition claims and therefore Creditor is in violation of the discharge injunction.

**EVIDENCE**

Debtor alleges the following pre-petition activity by the City:

1. On or about 10/1/09, Debtor filed for Chapter 13 bankruptcy, Case No. 09-41353, Docket No. 1;
2. On or about 7/22/10, the debtor obtained a conversion to chapter 7, Docket No. 36;
3. Debtor vacated the Properties with the intent to surrender any interest in them as filed with this bankruptcy court;
4. On or about 10/27/10, this Court entered a discharge order;
5. On or about 2/27/12, the real property at issue was foreclosed upon as evidenced by the Trustee's Deed Upon Sale recorded with the Sacramento County Recorder;
6. On or about 2/5/13, the HOA communicated with the debtor asserting that a "outstanding balance currently totals \$8,468.45;"

7. According to the provided delinquent account summary includes approximately \$2,380.40 in pre-petition claims which is identified as "Declarations Date for Bankruptcy", "Discharge Bankruptcy Date", and "Write Off;"
8. On or about 5/21/13, the HOA filed small claims action #13SC01954, seeking \$8,468.45;
9. On or about 7/23/13, a notice of Entry of Judgment was entered in the amount of \$8,543.45, which includes \$2,380.40 pre-petition claims;
10. On or about 2/6/14, the debtor received an Application and Order to Produce Statement of Assets and To Appear for Examination;
11. The HOA has began collection efforts, small claims action and now seeks to enforce a judgment based in part on pre-petition claims.

Motion, Dckt. 57.

#### **CREDITOR'S OPPOSITION**

Creditor opposes the Order to Show Cause, arguing that it had the right to seek the post-petition assessments pursuant to 11 U.S.C. § 523(a)(16). Creditor argues that on October 1, 2009, Debtor filed her Chapter 13 case, which was converted to a Chapter 7 on July 22, 2010. Creditor states that the court entered a discharge on October 27, 2010 and it subsequently wrote off the pre-petition debt consisting of assessments, late charges, interest and costs of collection owed as of October 1, 2009. The mortgage lender foreclosed on February 27, 2012 and title to the property was finally transferred to the lender pursuant to a Trustee's Deed Upon Sale.

Creditor states that the Small Claims Action entered against the Debtor sought damages of \$8,542.45, comprised solely of post-petition debt through the date of foreclosure, as allowed pursuant to 11 U.S.C. § 523(a)(16). Creditor argues that Debtor retained legal title until the senior lender foreclosed on February 27, 2012 and from the date of the petition to the date the Debtor is taken of title, Debtor remains responsible for homeowners association dues.

Creditor argues that Debtor is personally responsible for paying all post-petition assessments from the date the bankruptcy was filed.

#### **DEBTOR'S RESPONSE**

Debtor responds, arguing that Creditor began enforcement of both pre-petition and post-petition claims after the chapter 7 case was discharged. Debtor contends that she is not liable for any pre-petition claims and therefore, Creditor is in violation of this Court's order.

#### **STANDARD**

## Motion for Contempt

"Civil contempt is the normal sanction for violation of the discharge injunction." *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 507 (9th Cir. 2002). 11 U.S.C. § 105 does not itself create a private right of action, but it does provide a bankruptcy court with statutory contempt powers in addition to whatever inherent contempt powers the court may have. Because these powers inherently include the ability to sanction a party, a bankruptcy court is authorized to invoke § 105 to enforce the discharge injunction and order damages for the debtor if appropriate on the merits. *Id.* at 506-507.

A contempt proceeding by the United States trustee or a party in interest in bankruptcy is a contested matter. *Barrientos v. Wells Fargo Bank, N.A.*, 633 F.3d 1186, 1189 (9th Cir. 2011). Contempt proceedings are not listed under Bankruptcy Rule 7001 and are therefore contested matters not qualifying as adversary proceedings. *Id.* Contempt proceedings for a violation of § 524 must be initiated by motion in the bankruptcy case under Rule 9014 and not by adversary proceeding. *Id.*

A creditor who attempts to collect a pre-petition discharged debt in violation of the discharge injunction is in contempt of the bankruptcy court that issued the order of discharge. *Eady v. Bankr. Receivables Mgmt. (In re Eady)*, 2008 Bankr. LEXIS 4696 (B.A.P. 9th Cir. 2008). In addition to the bankruptcy court's inherent power to impose an order for contempt only upon a showing of "bad faith," section 105 grants statutory contempt powers and a creditor may be liable under section 105 if it willfully violated the permanent injunction of section 524. *Renwick v. Bennett (In re Bennett)*, 298 F.3d 1059, 1069 (9th Cir. 2002); *Walls*, 276 F.3d at 509.

The primary purpose of a civil contempt sanction is to compensate losses sustained by another's disobedience of a court order and to compel future compliance with court orders. *Knupfer v. Lindblade (In re Dyer)*, 322 F.3d 1178, 1192 (9th Cir. 2003). The contempnor must have an opportunity to reduce or avoid the fine through compliance. *Id.* The federal court's authority to regulate the practice of law is broader, allowing the court to punish bad faith or willful misconduct. *Price v. Lehtinen (in re Lehtinen)*, 564 F.3d 1052, 1058 (9th Cir. 2009); see also 11 U.S.C. § 105(a).

The party seeking contempt sanctions has the burden of proving by clear and convincing evidence that the contempnors violated a specific and definite order of the court. *Bennett*, 298 F.3d at 1069. The burden then shifts to the contempnors to demonstrate why they were unable to comply. *Id.* The movant must prove that the creditor (1) knew the discharge injunction was applicable and (2) intended the actions which violated the injunction. *Id.* For the second prong, the court employs an objective test and the focus of the inquiry is not on the subjective beliefs or intent of the alleged contempnor in complying with the order, but whether in fact their conduct complied with the order at issue. *Bassett v. Am. Gen. Fin. (In re Bassett)*, 255 B.R. 747, 758 (9th Cir. B.A.P. 2000)(rev'd on other grounds, 285 F.3d 882 (9th Cir. 2002)).

Discharge and 11 U.S.C. § 523(a)(16)

The Bankruptcy Code provides for the effect of a discharge obtained by a debtor, providing in 11 U.S.C. § 524,

A discharge in a case under this title --

(1) voids any judgment at any time obtained, to the extent that such judgment is a determination of the personal liability of the debtor with respect to any debt discharged under section 727, 944, 1141, 1228, or 1328 of this title, whether or not discharge of such debt is waived;

(2) operates as an injunction against the commencement or continuation of an action, the employment of process, or an act, to collect, recover or offset any such debt as a personal liability of the debtor, whether or not discharge of such debt is waived

The discharge granted in a Chapter 7 case is provided for in 11 U.S.C. § 727(b) and applies to the following debts,

(b) Except as provided in section 523 of this title, a discharge under subsection (a) of this section discharges the debtor from all debts that arose before the date of the order for relief under this chapter, and any liability on a claim that is determined under section 502 of this title as if such claim had arisen before the commencement of the case, whether or not a proof of claim based on any such debt or liability is filed under section 501 of this title, and whether or not a claim based on any such debt or liability is allowed under section 502 of this title.

11 U.S.C. § 727(b)(emphasis added).

Additionally, section 523(a)(16) excepts from discharge fees and assessments that become due and payable post-petition with respect to the debtor's interest in a dwelling unit that has condominium ownership or ownership through a share in a cooperative housing corporation. 4 COLLIER ON BANKRUPTCY ¶ 523.24 (Alan N. Resnick & Henry J. Sommer eds. 16th ed.).

For an assessment to be nondischargeable under § 523(a)(16), four elements must be met. The assessment:

- (1) must become due and payable after the order for relief;
- (2) must relate to property in which the debtor had an interest upon filing for bankruptcy;
- (3) for which the debtor would be liable outside of bankruptcy;
- (4) for as long as either the debtor or the trustee has a legal, equitable, or possessory ownership interest in the property.

*Id.* While an order from relief from the automatic stay signals debtor's surrender of possession of property, it does not terminate debtor's 11 U.S.C. § 523(a)(16) liability when he or she remains in title; meaning

post-petition HOA fees, and legal fees incurred in litigating them, are nondischargeable pursuant to § 523(a)(16). *In re Burgueno*, 451 B.R. 1 (Bankr. D. Ariz. 2011). Section § 523(a)(16) appears to establish that nondischargeable personal liability for homeowner association fees continues post-petition for so long as debtor or trustee has either legal interest, equitable interest, or possessory ownership interest in property. *Id.*

Some courts have held that the term "order for relief" that appears in 11 U.S.C. § 523(a)(16) is the date debtor files the petition, not the date the case was converted to one under Chapter 7. 11 U.S.C. § 348; *In re Hijjawi*, 471 B.R. 917 (Bankr. N.D. Ill. 2012). Assessments that become due to property owners associations after the petition date, and any related additional charges resulting from those delinquent assessments, constitute post-petition debt and are nondischargeable pursuant to 11 U.S.C. § 523(a)(16). *In re Moreno*, 479 B.R. 553 (Bankr. E.D. Cal. 2012). However, attorney's fees and interest awarded post-discharge to property owners association in state court default judgment against debtor, related to pre-petition debt, are debts for period arising before entry of order for relief and fall outside scope of 11 U.S.C. § 523(a)(16). *Id.*

The Debtor has not addressed the proper date for computing the reach of 11 U.S.C. § 523(a)(16) and assumes that the discharge provisions of 11 U.S.C. § 1328 should apply. There has been no discharge entered in the Chapter 13 case and 11 U.S.C. § 1328 is inapplicable. However, a discharge was entered in the Chapter 7 case on October 27, 2010. Dckt. 49. The effect of that discharge is governed by 11 U.S.C. § 727. A debtor is discharged of "all debts which arose before the date of the order for relief under this Chapter [7]...." 11 U.S.C. § 727(b). When a case is converted to one under Chapter 7 then the "order for relief" date is the date of conversion, unless otherwise ordered by the court. 11 U.S.C. § 348(b).

Whether the court uses the 2009 commencement date of the case or the July 22, 2010 conversion date, the evidence presented shows that the assessments and fees post-date the conversion.

**DISCUSSION**

First, the discharge injunction only discharges debts that arose before the date of the order for relief, but from Debtor's evidence, it appears the questioned charges appear post-petition. The first charge on the "Financial Transaction" worksheet begin on June 1, 2010, well after the date of the order for relief. Exhibit A, Dckt. 61. The last payment reflected by the Debtor to Creditor is May 7, 2010. *Id.*

The basic time line in this case is as follows:

| Date            | Notation   |
|-----------------|--|
| October 1, 2009 | Order for Relief, Commencement of Bankruptcy Case (Chapter 13) |
| 07/22/10        | Conversion of Case to Chapter 7                                |

|          |   |
|----------|---|
| 10/27/10 | Bankruptcy Discharge Date                       |
|          |   |
| 11/23/10 | Write Off                                       |
| 02/27/12 | Creditor Conducts Non-Judicial Foreclosure Sale |

Exhibit A, Dckt. 61.

The Claim filed by Creditor in Small Claims Court is filed as Exhibit B by Debtor. Dckt. 61 at 10. The Claim states that Debtor is obligated to Creditor to pay \$8,468.45 for monthly dues and assessments for the Monteverde Lane Property. The time period asserted for this obligation is June 1, 2010, to January 1, 2012. It is asserted that the unpaid monthly dues total \$6,152.00, and \$565.00 in insurance assessments, \$300.00 special assessment, and \$1,451.45 for interest/late fees. *Id.* These total \$8,468.45.

The Debtor has provided the court with a demand letter from Creditor dated February 5, 2013, for the payment of \$8468.45 in "Homeowner Association dues, assessments, late charges and collection costs while you were the legal owner of record of the [Montevarde Lane Property] home ....This outstanding balance currently totals \$8,468.45. Exhibit A, Dckt. 10. This Exhibit also include a June 25, 2012 letter demanding payment of the \$8,468.45, and includes an Account Summary for the amounts demanded and the foreclosure deed for the property. The Account Summary begins with an assessment on June 1, 2010 and ends with an interest charge on January 1, 31, 2012.

Because the Debtor asserts that the Account Summary included as Exhibit A contains \$2,380.40 in pre-petition debt, an analysis of the Account Summary is required to determine if the total amount at the bottom of the Account Summary includes any amounts in excess of the post-petition obligations identified on the Account Summary. No analysis has been provided by Debtor.

The Account Summary is missing page 2, so the court cannot create its own analysis. The court cannot tell if Creditor failed to send all three pages to the Debtor or if a page was misplaced. The court has created the following analysis:

**Post-Petition Obligations Owed By Debtor**

Debtor asserts that the \$8,468.45 sought by in the Small Claims Proceeding includes \$2,380.40 in pre-petition claims. The evidence in support of this contention is identified as an Account Summary provided by Creditor to Debtor. Exhibit A, Dckt. 41. It is asserted that the Account Summary identifies \$2,380.40 in pre-petition fees.

A review of the document shows that first, the dates of the amount which comprise the \$8,468.45 that is the subject of the Small Claims Action are all pre-petition assessments and obligations of the Debtor. Exhibit A, Dckt. 61. The first Assessment is for June 1, 2010. Page 1 of Account

Summary. The last Assessment is for January 1, 2012. Page 3 of Account Summary. Though Page 2 of the Account Summary is not included as part of Exhibit A, it is logical to infer that the dates of Assessments and charges on page two of an account statement would be for dates between the first date on Page 1 and the first date of Page 3 (which is October 19, 2011, for a late fee). The bankruptcy case having been filed on October 1, 2009, the Assessments, interest, and collection costs all appear to be after that time (with the earliest being for June 1, 2010).

The Creditor's Claim in Small Claims Court does not provide additional documentation of the items which comprise the \$8,468.45 which is asserted to be due, but does include the allegation that the Debtor quit making the assessment payments on May 31, 2010. Exhibit B, Dckt. 61, page 11.

In responding to the Motion, Creditor does not provide the court with any evidence, but merely the arguments of counsel in the Opposition. Dckt. 63. Creditor relies upon the exhibits provided by the Debtor. The court is directed to the November 23, 2010 adjustments of \$717.20 which are asserted to be write offs for the June and July assessments which predate the July 22, 2010 conversion of this case to one under Chapter 7.

The law has been clearly written by Congress to provide that assessments that become due to home owners association after the filing of the bankruptcy petition, along with any related charges resulting from those delinquent assessments, are post-petition debt that is nondischargeable pursuant to 11 U.S.C. § 523(a)(16). These are not pre-petition obligations subject to the stay of 11 U.S.C. § 362 concerning commencing a non-bankruptcy action against the Debtor.

From the evidence presented by the Debtor, the court finds that the charges in the Small Claims Action are post-petition debt through the date of the foreclosure. It is undisputed that Debtor filed for Chapter 13 bankruptcy relief on October 1, 2009. Dckt. 1. It is undisputed that these charges related to the real property in which the debtor had an interest upon filing for bankruptcy. The first charge on the "Financial Transaction" worksheet begin on June 1, 2010, well after the date of the order for relief. Exhibit A, Dckt. 61. The dates run through January 31, 2012. *Id.* It is undisputed that on or about February 27, 2012, the real property at issue was foreclosed upon as evidenced by the Trustee's Deed Upon Sale recorded with the Sacramento County Recorder. Exhibit A, Dckt. 61. Therefore, the transactions in the amount of \$8,468.45 appear to be solely post-petition (and post-conversion to Chapter 7) and prior to the foreclosure.

It is also undisputed that debtor had a legal ownership interest (title) in the subject real property until the senior lender foreclosed on February 27, 2012. Therefore, the elements of 11 U.S.C. § 523(a)(16) have been met and the post-petition assessments are thus nondischargeable. The court finds that in this case, section § 523(a)(16) establishes that nondischargeable personal liability for homeowner association fees continued post-petition for so long as debtor had legal interest in the subject property.

Therefore, based on the evidence provided by Debtor, the request for an order to show cause is denied and the request to hold Creditor in contempt for violation the discharge injunction is denied.

Furthermore, if Debtor seeks injunctive and declaratory relief, such relief must be sought through an adversary proceeding. A request to obtain a declaratory judgment or to obtain an injunction or equitable relief requires adversary proceeding. Fed. R. Bankr. P. 7001.

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 Order to Show Cause 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 Order to Show Cause is denied.

11. [13-21878-E-7](#) THOMAS EATON ORDER TO SHOW CAUSE - FAILURE  
David Foyil TO PAY FEES  
4-18-14 [[113](#)]

**Final Ruling:** The court issued an order to show cause based on Debtor's failure to pay the required fees in this case (\$176.00 due on April 4, 2014). The court docket reflects that on April 21, 2014, the Debtor paid the fees upon which the Order to Show Cause was based.

**The Order to Show Cause is discharged.** No appearance required.

The fees having been paid, the Order to Show Cause is discharged.

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 Order to Show Cause 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 Order to Show Cause is discharged, no sanctions are ordered, and the case shall proceed.

12. [12-93049-E-11](#) MARK/ANGELA GARCIA  
MLM-6 Mark J. Hannon

CONTINUED MOTION TO SELL  
4-7-14 [[342](#)]

CONT. FROM 5-1-14

**Tentative Ruling:** The Motion to Sell Property 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 whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).**  
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Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 11 Trustee, creditors holding the 20 largest unsecured claims, parties requesting special notice, and Office of the United States Trustee on April 7, 2014. By the court's calculation, 24 days' notice was provided. 21 days' notice is required. (Fed. R. Bankr. P. 2002(a)(2), 21 day notice.)

The Motion to Sell Property 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 court's decision to grant the Motion to Sell Property.**

#### **PRIOR HEARING**

At the May 1, 2014 hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, an over-bidder appeared. The court continued the hearing to allow the Trustee to receive and present to the court the various offers.

The Bankruptcy Code permits the Trustee ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363. Here Movant proposes to sell the "Property" described as follows:

- A. The name and label of "Most Wanted Wine, Co." and its two associated domains/websites, mostwantedwine.com and garciafamilyestate.com. ("Most Wanted Assets")
- B. 21 French oak barrels of 2010 and 2011 Cabernet Sauvignon, not including the physical barrels which shall remain part of the estate. ("Barreled Wine")
- C. Approximately 738 cases of 2008 and 2009 Cabernet Sauvignon. ("Bottled Wine")

#### **TERMS OF SALE**

The proposed purchaser of the Property is Amourvino Winery ("Amourvino"). The sale will have two phases, discussed below:

##### *Phase One*

Amourvino will purchase the Most Wanted Assets and the Bottled Wine from the estate for the price of \$21,600, which shall be paid to the Trustee by cashier's check within three (3) days of the court approving the sale.

##### *Phase Two*

Amourvino will purchase the Barreled Wine (not including the physical barrels) for the price of \$7 per gallon, the barrels include an estimated 1,207.5 gallons. The exact number of gallons will be determined when the barrels are weighed upon transfer to Amourvino, as is the industry standard.

However, sale of the Barreled Wine is contingent on the following conditions being met within thirty (30) days:

- A. the volatile acidity ("VA") levels of the Barreled Wine dropping below 1 g/L, and
- B. the Sulphur Dioxide ("SO2") levels of the wine being above 2 ppm, as tested by the MyEnologist testing facility in Napa, California, or another facility agreed to by the parties.

The Trustee will use the proceeds from phase one of the sale, to have the Barreled wine treated so that it may be sold in phase two.

#### **DISCUSSION**

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate.

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 Sell Property filed by John Bell 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 John Bell, the Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Amourvino Winery or nominee ("Buyer"), the following property:

1. The name and label of "Most Wanted Wine, Co." and its two associated domains/websites, mostwantedwine.com and garciafamilyestate.com;
2. 21 French oak barrels of 2010 and 2011 Cabernet Sauvignon, not including the physical barrels; and
3. Approximately 738 cases of 2008 and 2009 Cabernet Sauvignon,

on the terms and conditions set forth in the Purchase Agreement, Exhibit E, Dckt. 345.