

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

May 17, 2016 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.	15-28909-D-13	WESLEY OBERMAN	MOTION TO CONFIRM PLAN
	SJS-1		4-4-16 [62]

2.	16-20614-D-13	ALFONSO PULIDO	MOTION TO CONFIRM PLAN
	HLG-1		4-5-16 [25]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

3. 15-27415-D-13 LORETTA WASHINGTON MOTION TO MODIFY PLAN
RJ-3 4-11-16 [45]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is attached as Exhibit 2 to General Order 05-03. The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

4. 15-28722-D-13 JACOB WINDING MOTION TO DISMISS ADVERSARY
16-2035 SW-1 PROCEEDING
WINDING V. WELLS FARGO 3-24-16 [6]

Final ruling:

This adversary proceeding was dismissed on April 28, 2016. As a result the motion will be denied by minute order as moot. No appearance is necessary.

5. 15-28722-D-13 JACOB WINDING MOTION TO DISMISS ADVERSARY
16-2054 SW-1 PROCEEDING
WINDING V. BANK OF AMERICA 4-13-16 [10]

Tentative ruling:

This is the motion of defendant Bank of America to dismiss this adversary proceeding with prejudice. The plaintiff has not filed opposition. For the following reasons, the motion will be granted in part and the adversary proceeding will be dismissed.

By way of his complaint, the plaintiff, who was the debtor in the underlying chapter 13 case in which this adversary proceeding was filed (the "debtor"), alleges a civil conspiracy in connection with an alleged unlawful foreclosure, fraud, and conversion. He seeks a judgment quieting title to certain real property in the debtor, declaratory relief as to the rights of ownership of the property, punitive damages, special and general damages, cancellation of instruments, and attorney's fees and costs.

The adversary proceeding will be dismissed because the court declines to retain jurisdiction of it now that the chapter 13 case in which it was filed has been dismissed. "[B]ankruptcy courts are not automatically divested of jurisdiction over related cases when the underlying bankruptcy case is dismissed." In re Carraher, 971 F.2d 327, 328 (9th Cir.1992). Instead, the court has discretion to determine whether or not to retain jurisdiction over the adversary proceeding. Id. The factors the court is to consider are judicial economy, convenience, fairness, and comity. Id.

Judicial economy supports dismissal of the adversary proceeding because this court has virtually no time invested in it. The complaint in the adversary proceeding was filed and the summons was issued just one month before the underlying case was dismissed. The debtor had not even served the summons and complaint by the time the underlying case was dismissed.¹ The short time the adversary proceeding has been pending also affects the analysis of the convenience and fairness factors. Neither party has devoted significant time or resources to the adversary proceeding. If the debtor seeks to pursue the claims in another court, the greater inconvenience or unfairness to either party of pursuing or defending the claims in another forum, as opposed to this one, will not be significant enough for either factor to weigh heavily in favor of this court retaining jurisdiction. Finally, the issue of comity weighs strongly in favor of this court declining to retain jurisdiction because the claims asserted in the debtor's complaint are based entirely on state law.

The underlying bankruptcy case having been dismissed, the court sees no possible amendment to the complaint that would affect the court's analysis under Carraher; thus, an amendment would be futile, and leave to amend, if requested, will be denied. See Kendall v. Visa U.S.A., Inc., 518 F.3d 1042, 1051 (9th Cir. 2008). On the other hand, as the court is not exercising jurisdiction over the adversary proceeding, it would not be appropriate for the court to dismiss the complaint with prejudice, as requested by the defendant.

For the reasons stated, the court will exercise its discretion and decline to retain jurisdiction of the adversary proceeding. Accordingly, the motion will be granted in part and the complaint will be dismissed. The court will hear the matter.

1 The debtor had filed a motion for a stay of or injunction against a pending foreclosure sale; however, the debtor failed to set the motion for hearing, as required by applicable rules, and the court did not consider it.

6. 16-21622-D-13 TERRY/JACQUELINE THOMAS OBJECTION TO CONFIRMATION OF
JAA-1 PLAN BY U.S. BANK, N.A.
4-14-16 [21]

Final ruling:

This is the objection of U.S. Bank to confirmation of the debtors' proposed chapter 13 plan. The Notice of Chapter 13 Bankruptcy Case filed in this case informed creditors that objections to confirmation were to be set for hearing on May 31, 2016. Therefore, the hearing will be continued to May 31, 2016 at 10:00 a.m. The hearing will be continued by minute order. No appearance is necessary on May 17, 2016.

7. 12-39530-D-13 PATRICIA MADRID CONTINUED MOTION TO MODIFY PLAN
JCK-2 2-29-16 [47]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

8. 12-39530-D-13 PATRICIA MADRID CONTINUED MOTION TO INCUR DEBT
JCK-3 3-3-16 [53]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

9. 16-20141-D-13 ROLAND/ANNA BALDERAS MOTION TO CONFIRM PLAN
TAG-1 3-21-16 [33]

10. 16-21047-D-13 FABIAN PELAYES OBJECTION TO DEBTOR'S CLAIM OF
RDG-3 EXEMPTIONS
4-11-16 [26]

Final ruling:

This is the trustee's objection to the debtor's claim of exemptions. The basis of the objection is that the debtor failed to file a spousal waiver to allow him to use the exemptions provided by Cal. Code Civ. Proc. § 703.140(b). On April 18, 2016, the debtor filed a spousal waiver in the correct form that appears to be signed by the debtor and his spouse. As a result of the filing of the spousal waiver, the objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

11. 16-21452-D-13 MARIO ORTIZ OBJECTION TO CONFIRMATION OF
JAA-1 PLAN BY WELLS FARGO BANK, N.A.
4-11-16 [21]

12. 13-21063-D-13 JASON/ANGELA FOSTER
HWW-3

MOTION TO VALUE COLLATERAL OF
FRANCHISE TAX BOARD
4-17-16 [40]

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 the motion and, for purposes of this motion only, sets the creditor's secured claim in the amount set forth in the motion. Moving parties are to submit an order which provides that the creditor's secured claim is in the amount set forth in the motion, \$3,512. No further relief is being afforded. In particular, the court is issuing no relief concerning the debtors' contention that the remainder of the claim filed as secured, \$4,883.66, is a general unsecured claim, not a priority claim. The determination of the nature of a claim, as between general and priority, is not appropriate on a motion to value collateral.

No appearance is necessary.

13. 13-21063-D-13 JASON/ANGELA FOSTER
HWW-4

MOTION TO VALUE COLLATERAL OF
INTERNAL REVENUE SERVICE
4-17-16 [45]

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 the motion and, for purposes of this motion only, sets the creditor's secured claim in the amount set forth in the motion. Moving parties are to submit an order which provides that the creditor's secured claim is in the amount set forth in the motion, \$0. No further relief is being afforded. In particular, the court is issuing no relief concerning the debtors' contention that the claim filed as secured, \$14,512, is a general unsecured claim, not a priority claim. The determination of the nature of a claim, as between general and priority, is not appropriate on a motion to value collateral.

No appearance is necessary.

14. 15-28063-D-13 PHILLIP ATILANO
DJD-1
SETERUS, INC. VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-13-16 [37]

15. 16-21469-D-13 PETER/SUSAN STREBECK
MKM-2

MOTION TO VALUE COLLATERAL OF
DITECH
4-18-16 [25]

Final ruling:

The matter is resolved without oral argument. This is the debtors' motion to value the secured claim of Ditech at \$0.00, pursuant to § 506(a) of the Bankruptcy Code. The creditor's claim is secured by a junior deed of trust on the debtors' residence and the amount owed on the senior encumbrance exceeds the value of the real property. No timely opposition has been filed and the relief requested in the motion is supported by the record. As such, the court will grant the motion and set the amount of Ditech's secured claim at \$0.00 by minute order. No further relief will be afforded. No appearance is necessary.

16. 15-21770-D-13 SHIRLEY THURMAN
CJY-1

MOTION TO FILE CLAIM AFTER
CLAIMS BAR DATE
4-12-16 [34]

Tentative ruling:

This is the debtor's motion to allow a late claim filed by California Check Cashing Stores, LLC ("Check Cashing"). No opposition has been filed. However, that does not by itself entitle the debtor to the relief requested. "[I]t is black-letter law that entry of default does not entitle a plaintiff to judgment as a matter of right or as a matter of law." All Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 88 (9th Cir. BAP 2007), citing Fed. R. Civ. P. 55(b)(2), incorporated herein by Fed. R. Bankr. P. 7055. "Settled precedent establishes that default judgment is a matter of discretion in which the court is entitled to consider, among other things, the merits of the substantive claim, the sufficiency of the complaint, the possibility of a dispute regarding material facts, whether the default was due to excusable neglect, and the 'strong policy' favoring decisions on the merits." Id., citing Eitel v. McCool, 782 F.2d 1470, 1471-72 (9th Cir. 1986). Thus, the court will consider the merits of the motion.

This case was filed March 5, 2015. The claims bar date for non-governmental units was July 28, 2015. Pursuant to LBR 3007-1(d)(2), on September 15, 2015, the trustee filed and served on the debtor and her attorney his Notice of Filed Claims, which notified the debtor and her attorney, pursuant to LBR 3004-1, that the deadline for the debtor to file claims was November 13, 2015. The Notice clearly indicated that Check Cashing had not filed a proof of claim. However, the debtor and her attorney took no action. On November 30, 2015, long after the non-governmental unit claims bar date and roughly two weeks after the deadline for the debtor to file claims on behalf of creditors, Check Cashing filed a proof of claim for \$3,136.73, secured by the debtor's 2009 Chevy sedan. The debtor now seeks to have that claim allowed, despite its having been filed late.

Under applicable rules, the court lacks discretion to allow the late-filed claim. Pursuant to Fed. R. Bankr. P. 9006(b)(3), the court may enlarge the time for taking action under Fed. R. Bankr. P. 3002(c) (time for filing proofs of claim) only to the extent and under the conditions stated in that rule. Rule 3002(c), in turn, provides for the allowance of late-filed claims in a variety of circumstances, none of which is present here. Instead, in the circumstances presented here, the court

lacks discretion to enlarge the time for filing claims. Gardenhire v. United States Internal Revenue Service (In re Gardenhire), 209 F.3d 1145, 1148 (9th Cir. 2000) ("a bankruptcy court lacks equitable discretion to enlarge the time to file proofs of claim; rather, it may only enlarge the filing time pursuant to the exceptions set forth in the Bankruptcy Code and Rules"); Coastal Alaska Lines, Inc. v. Forsch (In re Coastal Alaska Lines, Inc.), 920 F.2d 1428, 1432-33 (9th Cir. 1990) ("We . . . hold that the bankruptcy court cannot enlarge the time for filing a proof of claim unless one of the six situations listed in Rule 3002(c) exists"); Spokane Law Enforcement Fed. Credit Union v. Barker (In re Barker), 2014 Bankr. LEXIS 1233, *8 (9th Cir. BAP 2014) ["the bankruptcy court lacks any equitable power to enlarge the time for filing a proof of claim unless one of the six situations in Rule 3002(c) exists."].

The debtor argues Check Cashing was listed as a secured creditor on her schedules "and should be repaid through the plan [of] reorganization." Debtor's Mot., DN 34, at 2:10. She adds the claim is already provided for in her plan and that no unsecured claims were filed in the case, "so no creditors will be harmed by allowing" the late claim. Id. at 2:13-14. None of these circumstances constitutes a basis for allowing a late claim under the Ninth Circuit authority cited above. Even if the debtor had shown excusable neglect (and she has not suggested it), the court would lack discretion to allow the claim, because excusable neglect is not a basis for allowing a late-filed claim. Barker, 2014 Bankr. LEXIS 1233, at *9; Dicker v. Dye (In re Edelman), 237 B.R. 146, 153 (9th Cir. BAP 1999). However, even if it could be shown that no creditors would be harmed, that is not a ground for allowing a late claim under Ninth Circuit authority.

The court recognizes that the amount proposed in the plan to be paid to Check Cashing is only \$54.99 per month, and therefore, the court's ruling may seem trivial. Under applicable authorities, however, it is the only appropriate ruling.

For the reasons stated, the motion will be denied. The court will hear the matter.

17. 11-46783-D-13 GALDINA SANCHEZ MOTION TO MODIFY PLAN
JCK-1 4-5-16 [46]

Final ruling:

The hearing on this motion is continued to May 31, 2016 at 10:00 a.m. No appearance is necessary on May 17, 2016.

18. 15-29786-D-13 JERROLD CLEMENS AND MOTION TO VALUE COLLATERAL OF
LRR-2 SHAYLA TRAYLOR BANK OF THE WEST
4-12-16 [34]

19. 16-22099-D-13 RUBEN VALLEJO OBJECTION TO CONFIRMATION OF
JAA-1 PLAN BY OCWEN LOAN SERVICING,
LLC
4-19-16 [10]

Final ruling:

This is the objection of Ocwen Loan Servicing to confirmation of the debtors' proposed chapter 13 plan. The Notice of Chapter 13 Bankruptcy Case filed in this case informed creditors that objections to confirmation were to be set for hearing on June 14, 2016. Therefore, the hearing will be continued to June 14, 2016 at 10:00 a.m. The hearing will be continued by minute order. No appearance is necessary on May 17, 2016.

20. 16-21303-D-13 JOHN/SHERRY SCHWALL OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
4-25-16 [19]

21. 16-21276-D-13 GRAYLING WILLIAMS OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
4-25-16 [36]

22. 16-21276-D-13 GRAYLING WILLIAMS OBJECTION TO CONFIRMATION OF
USA-1 PLAN BY INTERNAL REVENUE
SERVICE
4-27-16 [39]

23. 16-21783-D-13 HECTOR PEREZ
LRP-1
CENTRAL VALLEY GMC VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-2-16 [17]

24. 12-21390-D-13 LISIATE/ANA TULUA
TBK-10

MOTION TO INCUR DEBT
4-27-16 [139]