

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil  
Bankruptcy Judge  
Sacramento, California

May 22, 2019 at 10:00 a.m.

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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.

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|----|--------------------------------|------------------------|--------------------------------|
| 1. | 16-22725-D-7                   | PETER/CATHLEEN VERBOOM | CONTINUED PRE-TRIAL CONFERENCE |
|    | 18-2022                        |                        | RE: COMPLAINT TO AVOID AND     |
|    | DACQUISTO V. ARTOIS FEED, INC, |                        | RECOVER TRANSFERS AND FOR      |
|    |                                |                        | DECLARATORY RELIEF             |
|    |                                |                        | 3-9-18 [1]                     |

**Final ruling:**

This pre-trial conference will be removed from calendar because the adversary proceeding has been dismissed with prejudice, by stipulation of the parties.

|    |                    |               |                             |
|----|--------------------|---------------|-----------------------------|
| 2. | 18-27827-D-7       | CASEY BARBOZA | MOTION TO DISMISS ADVERSARY |
|    | 19-2040            | RSG-1         | PROCEEDING                  |
|    | BARBOZA V. BARBOZA |               | 4-17-19 [8]                 |

**Tentative ruling:**

This is the defendant's motion to dismiss the plaintiff's adversary complaint with prejudice for failure to state a claim upon which relief can be granted, pursuant to Fed. R. Civ. P. 12(b)(6), or in the alternative, for lack of subject

matter jurisdiction, pursuant to Fed. R. Civ. P. 12(b)(1), both incorporated herein by Fed. R. Bankr. P. 7012(b). The plaintiff has filed opposition. For the following reasons, the motion will be denied and the court will sua sponte lift the automatic stay to permit the parties to return to the state court to litigate to finality the question of the Watts charges, as well as the division of the parties' property and the issue of attorney's fees, the parties to return to this court for a determination of nondischargeability if necessary. The court will stay this adversary proceeding pending the resolution of the underlying state law issues.

The defendant filed the chapter 7 case in which this adversary proceeding is pending on December 17, 2018. Two days later, the parties appeared in Sutter County Superior Court, where the court dissolved their marriage and issued orders regarding child custody and child and spousal support, all as permitted by § 362(b)(2) of the Bankruptcy Code. As required by § 362(b)(2)(A)(iv), the state court reserved jurisdiction over the division of property and the issue of attorney's fees. The plaintiff, who is the defendant's former spouse, commenced this adversary proceeding seeking a determination that certain debts are not dischargeable - namely, the debts the defendant listed on her Schedule F as being owed to the plaintiff (albeit scheduled as disputed) on account of Watts charges regarding the parties' house, \$18,000, and Watts charges regarding certain gym equipment, \$6,300. The plaintiff also seeks a money judgment for the total of the Watts charges, \$24,300.

The defendant argues the plaintiff's complaint fails to state a claim upon which relief can be granted because the debts for the Watts charges, having not yet been awarded by the state court, "do not exist and may never exist . . . ." Defendant's Memo., filed April 17, 2019 ("Memo."), at 6:17-18. Therefore, in the defendant's opinion, "the potential claims of Plaintiff [for the Watts charges] do not rise to a claim or debt as defined in the bankruptcy code." *Id.* 6:27-28. The defendant cites the Bankruptcy Code's definitions of "claim" and "debt," but incorrectly concludes that because the obligation to pay Watts charges has not yet been determined, there is no debt. As the defendant recognizes, a debt is a liability on a claim, which, in turn, is a right to payment, whether or not reduced to judgment, unliquidated, contingent, or disputed. § 101(12) and (5)(A) of the Code. Thus, it does not matter that the state court has not yet determined whether the defendant owes Watts charges to the plaintiff. Under the very broad definitions of "debt" and "claim," the defendant owes the plaintiff a debt, albeit a disputed one, and for purposes of Rule 12(b)(6), the complaint states a claim upon which relief can be granted.

The defendant's subject matter jurisdiction argument also fails. Focusing on the state law nature of the Watts charges, she argues they "do not depend upon a substantive provision of bankruptcy law" (Memo. at 9:7), and thus, do not "arise under" Title 11 and that the trustee has issued a report of no distribution, and thus, the plaintiff's claims are not "related to" the bankruptcy case. The defendant is not correct. Determinations of the dischargeability of particular debts are core proceedings (28 U.S.C. § 157(b)(2)(I)), and thus, are within this court's jurisdiction. *In re Deitz*, 760 F.3d 1038, 1046 (9th Cir. 2014) (citation omitted).

However, the question of Watts charges is an issue of a type routinely determined by family court judges, who will have a better grasp than this court of the considerations applicable in determining it. See *In re Mac Donald*, 755 F.2d 715, 717 (9th Cir. 1985) (citations omitted) ["It is appropriate for bankruptcy courts to avoid incursions into family law matters 'out of consideration of court economy, judicial restraint, and deference to our state court brethren and their

established expertise in such matters.'"]; see also In re Stanwyck, 2008 Bankr. LEXIS 4693, \*14-17, 2008 WL 8448839 (9th Cir. BAP 2008).

Therefore, the court will lift the stay to allow the parties to proceed to a final ruling in the state court on the issue of the Watts charges.<sup>1</sup> In addition, as the defendant points out, the trustee in the underlying chapter 7 case has issued a report of no distribution, meaning he does not intend to administer any assets in the case. In these circumstances, the court finds it appropriate to also lift the stay to permit the state court to make final determinations as to the division of the parties' property and the issue of attorney's fees. If the plaintiff obtains a monetary award against the defendant, the parties may return to this court for a determination as to whether the award is nondischargeable. Given the broad coverage of § 523(a)(15) (see In re Adam, 2015 Bankr. LEXIS 1147, \*15 (9th Cir. BAP 2015)), the court expects its review to be relatively cursory. Either party may return to this court by filing a motion to lift the stay of this adversary proceeding.

The court will hear the matter.

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1 The court may lift the automatic stay sua sponte. See Estate of Kempton v. Clark (In re Clark), 2014 Bankr. LEXIS 4633, \*25, 26 (9th Cir. BAP 2014); In re Bellucci, 119 B.R. 763, 779 (Bankr. E.D. Cal. 1990).

3. 17-20731-D-11 CS360 TOWERS, LLC CONTINUED OBJECTION TO CLAIM OF  
DB-37 GEMACK ASSOCIATES, LLP, CLAIM  
NUMBER 16-1  
12-7-18 [548]

4. 19-20833-D-7 JASMEL/AMRIT SINGH MOTION TO DISMISS CASE  
AF-1 3-29-19 [13]

5. 19-20745-D-7 MARILYN/HAROLD LOUNSBURY MOTION TO AVOID LIEN OF CAPITAL  
GMW-1 ONE BANK (USA), N.A.  
4-24-19 [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. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

6. 18-22453-D-7 ECS REFINING, INC. MOTION FOR RELIEF FROM  
PP-1 AUTOMATIC STAY  
DISTRIBUTION DRIVE PARTNERS, 4-24-19 [1097]  
LLC VS.

**Final ruling:**

This matter is resolved without oral argument. This is Distribution Drive Partners, LLC's motion for relief from automatic stay. The court records indicate that no timely opposition has been filed and the Trustee has filed a statement of non-opposition. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay to allow the Distribution Drive Partners, LLC to offset the Security Deposit. Moving party is to submit an appropriate order. There will be no further relief afforded. No appearance is necessary.

7. 18-22453-D-7 ECS REFINING, INC. MOTION FOR ADMINISTRATIVE  
PP-2 EXPENSES  
4-24-19 [1103]

**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 Landlord's motion for administrative lease expense of \$51,291.25 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.

Final ruling:

This is the debtor's motion to avoid an alleged judicial lien held by Capital One Bank (USA), N.A. (the "Bank"). The motion will be denied for a service defect and because the moving party has failed to submit evidence establishing the factual allegations of the motion and demonstrating she is entitled to the relief requested, as required by LBR 9014-1(d) (3) (D).

First, the moving party failed to serve the Bank in strict compliance with Fed. R. Bankr. P. 7004(h), as required by Fed. R. Bankr. P. 9014(b). The moving party served the Bank (1) by first-class mail, "Attn Bankruptcy"; and (2) through the attorneys who obtained the Bank's abstract of judgment. The first method was insufficient because service on an FDIC-insured institution, such as the Bank, must be by certified mail and must be addressed to the attention of an officer. See Rule 7004(h). The second method was insufficient because the attorneys have not appeared on behalf of the Bank in this case, and thus, there is no basis for departing from the rule of service by certified mail to the attention of an officer. See Rule 7004(h) and subd. (1) to same.

Second, the debtor has failed to submit admissible evidence supporting all the elements of an avoidable lien. The only evidence in support of the motion is the debtor's declaration and copies of her schedules and an unrecorded abstract of judgment in favor of the Bank. The debtor testifies there is an involuntary judgment lien filed by the Bank against her property and she refers to the case number in which the Bank obtained a judgment. Her testimony is inadmissible as hearsay. As already indicated, the copy of the abstract of judgment bears no recording information.

In order to avoid a judicial lien, "the debtor must make a competent record on all elements of the lien avoidance statute, 11 U.S.C. § 522(f)" (In re Mohring, 142 B.R. 389, 391 (Bankr. E.D. Cal. 1992)), including that the creditor has a lien that is a judicial lien. Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting Mohring, 142 B.R. at 392. "The operative principle here is that although bankruptcy confers substantial benefits on the honest but unfortunate debtor, including a discharge of debts, the ability to retain exempt property, and the ability to avoid certain liens that impair exemptions, there is a price." Mohring, 142 B.R. at 396. Obtaining a copy of a recorded abstract of judgment seems a small price to pay to avoid an otherwise valid and enforceable property interest.

Third, the alleged lien, even if it were proven, does not impair the debtor's exemption. 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).

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), aff'd, 24 F.3d 247 (9th Cir. 1994) (table). A judicial lien is considered to impair the debtor's exemption to the extent that



11. 11-37779-D-7 R.C./SUSAN OWENS MOTION FOR ENTRY OF DEFAULT  
19-2034 DNL-1 JUDGMENT  
NIMS V. KAISER FOUNDATION 4-16-19 [15]  
HEALTH PLAN, INC.

**Final ruling:**

This is the plaintiff's application for entry of a default judgment against the defendant. On April 24, 2019, a stipulated judgment was entered, which renders this application moot. The application will be denied as moot by minute order. No appearance is necessary.

12. 19-20480-D-7 ZELJKO/MARINA ARSENIJEVIC MOTION TO COMPEL ABANDONMENT  
MKJ-1 4-13-19 [19]

**Final ruling:**

The matter is resolved without oral argument. There is no timely opposition to the debtors' motion to compel the trustee to abandon property and the debtors have demonstrated the property to be abandoned is of inconsequential value to the estate. Accordingly, the motion will be granted and the property that is the subject of the motion will be deemed abandoned. Moving party is to submit an appropriate order. No appearance is necessary.

13. 19-20480-D-7 ZELJKO/MARINA ARSENIJEVIC MOTION TO AVOID LIEN OF  
MKJ-2 DISCOVER BANK  
4-13-19 [23]

**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 debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

14. 19-20480-D-7 ZELJKO/MARINA ARSENIJEVIC MOTION TO AVOID LIEN OF  
MKJ-3 PORTFOLIO RECOVERY ASSOCIATES, LLC  
4-15-19 [39]

**Final ruling:**

This is the debtors' motion to avoid a judicial lien held by Portfolio Recovery Associates LLC ("Portfolio"). The motion will be denied because the moving parties failed to serve Portfolio in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served Portfolio (1) by certified mail to the attention of its named CEO; and (2) at the address of the

attorneys who obtained its abstract of judgment. The first method was insufficient because service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution must be by first-class mail, not certified mail. Compare Fed. R. Bankr. P. 7004(b)(3) and preamble to Rule 7004(b) with Rule 7004(h). The second method was insufficient because there is no evidence the attorneys are authorized to receive service of process on behalf of Portfolio 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 by minute order. No appearance is necessary.

15. 19-20480-D-7 ZELJKO/MARINA ARSENIJEVIC MOTION TO AVOID LIEN OF  
MKJ-4 CITIBANK, N.A.  
4-13-19 [27]

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 debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

16. 19-20480-D-7 ZELJKO/MARINA ARSENIJEVIC MOTION TO AVOID LIEN OF CACH, LLC  
MKJ-5 4-13-19 [31]

Final ruling:

This is the debtors' motion to avoid an alleged judicial lien held by CACH, LLC ("CACH"). The motion will be denied because the moving parties failed to serve CACH in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served CACH (1) by certified mail to the attention of its named president; and (2) through the attorneys who obtained its abstract of judgment. The first method was insufficient because service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution must be by first-class mail, not certified mail. Compare Fed. R. Bankr. P. 7004(b)(3) and preamble to Rule 7004(b) with Rule 7004(h). The second method was insufficient because there is no evidence the attorneys are authorized to receive service of process on behalf of CACH 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 by minute order. No appearance is necessary.

17. 19-22330-D-7 NICOLE GALVIN MOTION FOR RELIEF FROM  
VVF-1 AUTOMATIC STAY  
AMERICAN HONDA FINANCE 5-1-19 [11]  
CORPORATION VS.
18. 18-25346-D-7 SHIV SINGH MOTION TO COMPEL ABANDONMENT  
GMW-6 5-6-19 [64]
19. 17-21149-D-7 LESLEY REEVE MOTION TO COMPROMISE  
DNL-5 CONTROVERSY/APPROVE SETTLEMENT  
AGREEMENT WITH LESLEY ANN  
REEVE, TAMARIND REEF RESORT AND  
MARINA, INC. AND WESLEY REEVE  
O.S.T.  
5-7-19 [88]
20. 19-22459-D-7 CHYANNE CASTEEL MOTION FOR RELIEF FROM  
VVF-1 AUTOMATIC STAY AND/OR MOTION  
HONDA LEASE TRUST VS. FOR ADEQUATE PROTECTION  
5-3-19 [10]

21. 19-22361-D-7 NEDRA SANDERS  
MS-1

MOTION TO AVOID LIEN OF  
KIMBALL, TIREY & ST. JOHN, LLP  
5-1-19 [15]

**Final ruling:**

This is the debtor's motion to avoid a judicial lien ostensibly held by "creditor Kimball, Tirey & St. John, LLP," in the nature of a wage garnishment order. The motion was noticed pursuant to LBR 9014-1(f)(2); thus, the court would ordinarily entertain opposition, if any, at the hearing. However, as a result of service and notice defects, the court cannot consider the motion.

First, the Sheriff's Department's Notice of Bankruptcy Procedures filed as an exhibit shows the name of the litigation giving rise to the judgment as Equity Residential Mgmt. ("Equity") v. Nedra Sanders (the debtor) and Kimball as the "Creditor's Attorney or Creditor Without Attorney." There is no evidence Kimball is the actual creditor, and it appears much more likely Equity is the actual creditor and the entity that holds the judicial lien the debtor seeks to avoid. The moving papers do not mention Equity; thus, they do not give Equity notice that its judicial lien is the lien sought to be avoided.

Second, the moving party served Kimball and not Equity, whereas there is no evidence Kimball is authorized to receive service of process on behalf of Equity 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).

Finally, to the extent Kimball is the actual creditor holding the lien, it was not properly served. The moving party served Kimball at a street address with no attention line, whereas service on a corporation, partnership, or other unincorporated association must be to the attention of an officer, managing or general agent, or agent for service of process. Fed. R. Bankr. P. 7004(b)(3) and 9014(b).

As a result of these service and notice defects, the motion will be denied by minute order. No appearance is necessary.

22. 19-20064-D-7 BARRY BINNING  
KSR-1  
THOMAS MUELLER VS.

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
5-7-19 [49]

23. 19-21567-D-7 JAMIE/MICHELLE ALLRED MOTION FOR RELIEF FROM  
VVF-1 AUTOMATIC STAY AND/OR MOTION  
HONDA LEASE TRUST VS. FOR ADEQUATE PROTECTION  
5-3-19 [14]
24. 19-21580-D-7 S&K SACRAMENTO ARMORY, MOTION TO COMPEL ABANDONMENT  
MOU-1 INC. 4-29-19 [13]
25. 19-22885-D-7 RICHARD SAETEUN MOTION FOR RELIEF FROM  
JKB-1 AUTOMATIC STAY  
TY INVESTMENT, LLC VS. 5-8-19 [9]
26. 15-29890-D-7 GRAIL SEMICONDUCTOR MOTION BY JAMIE P. DREHER TO  
DB-2 WITHDRAW AS ATTORNEY  
5-2-19 [1253]

27. 15-29890-D-7        GRAIL SEMICONDUCTOR                    MOTION BY JAMIE P. DREHER TO  
18-2180                    DB-1    WITHDRAW AS ATTORNEY  
SEDGWICK FUNDINGCO, LLC V.                5-2-19 [66]  
NEWDELMAN ET AL
28. 18-23396-D-11        METRO PALISADES, LLC                    MOTION TO DISMISS CASE  
RAH-11    5-1-19 [132]
29. 19-23087-D-12        ACAT, LLC    MOTION TO USE CASH COLLATERAL  
MHK-1    O.S.T.  
5-16-19 [11]