UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, May 30, 2018
Place: Department B – Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 p.m. (Pacific time) at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling under FRCP 60(a)(FRBP 9024) because of the court's error ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 p.m. (Pacific time) one business day before the hearing.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:30 AM

1. 18-10714-B-7 **IN RE: JENNIFER KNIGHT**
RSW-1

CONTINUED MOTION TO AVOID LIEN OF LVNV FUNDING, LLC
3-27-2018 [10]

JENNIFER KNIGHT/MV
ROBERT WILLIAMS

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order after hearing.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. The hearing was continued from May 9, 2018 for the movant to present evidence that she qualified for her claimed exemption.

A judgment was entered against the debtor in favor of LVNV Funding LLC in the sum of $36,407.55 on January 30, 2007. Doc. #13. The abstract of judgment was recorded with Kern County on May 22, 2007. *Id.* That lien attached to the debtor's interest in a residential real property in Bakersfield, CA. The judgment was renewed on January 25, 2017, to an amount of $51,856.31. *Id.* The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $89,653.00 as of the petition date. Doc. #1. There were no unavoidable liens on the property. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of $175,000.00. Doc. #1, 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 will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

2. 15-14225-B-7 **IN RE: LETICIA CAMACHO**
JES-2

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
4-25-2018 [120]

JAMES SALVEN/MV
GLEN GATES

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

The notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

3. 18-10329-B-7 **IN RE: THOMAS BAILEY**
TGM-2

CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY
3-27-2018 [28]

DEUTSCHE BANK NATIONAL TRUST COMPANY/MV
TIMOTHY SPRINGER
TYNEIA MERRITT/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order after hearing.

This motion was continued pursuant to a stipulation entered into by movant and the chapter 7 trustee.

The movant, Deutsche Bank National Trust Company, as Indenture Trustee for Indymac Home Equity Mortgage Loan Asset-Backed Trust, Series 2007-H1 ("Movant"), seeks relief from the automatic stay with respect to a piece of real property commonly known as 1941 W Santa Ana Ave., Fresno, CA 93705. Movant has produced evidence that the debtor is delinquent in the amount of $3,898.29 and has missed at least 17 payments.

The court concludes that there is no equity in the real property, no evidence exists that it is necessary to a reorganization (because debtor is in chapter 7 where reorganization is not possible), and Movant lacks adequate protection.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and (d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived since this motion was filed over two months ago and the parties have had the opportunity to arrange the disposition of the collateral.

4. 15-13932-B-7 **IN RE: VICTOR PASNICK**
JES-2

MOTION FOR COMPENSATION FOR JAMES E. SALVEN, ACCOUNTANT(S)
4-26-2018 [350]

JAMES SALVEN/MV
PETER FEAR

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

The notice did not contain the language required under LBR 9014-1(d)(3)(B)(iii). LBR 9014-1(d)(3)(B), which is about noticing requirements, requires movants to notify respondents that they can determine whether the matter has been resolved without oral argument or if the court has issued a tentative ruling by checking the Court's website at www.caeb.uscourts.gov after 4:00 p.m. the day before the hearing.

5. 15-13932-B-7 **IN RE: VICTOR PASNICK**
RHT-19

MOTION TO PAY
4-27-2018 [357]

ROBERT HAWKINS/MV
PETER FEAR
ROBERT HAWKINS/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. 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 Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

The trustee is authorized to pay $8,926.00 to the Internal Revenue Service and $6,782.00 to the Franchise Tax Board.

6. 17-14233-B-7 **IN RE: MAXWELL/MICHELLE ORENDORFF**
JES-1

MOTION TO EMPLOY BAIRD AUCTIONS & APPRAISALS AS AUCTIONEER, AUTHORIZING SALE OF PROPERTY AT PUBLIC AUCTION AND AUTHORIZING PAYMENT OF AUCTIONEER FEES AND EXPENSES
5-2-2018 [26]

JAMES SALVEN/MV
HAGOP BEDOYAN

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. 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 Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

Trustee is authorized to employ Baird Auctions & Appraisals as auctioneer, to sell the three Public Cruiser bicycles and one Bianchi Infinito CV bicycle, and to pay the auctioneer the 15% of the gross sale price of the bicycles and expenses up to $250.00.

7. 18-11042-B-7 **IN RE: OSWALDO MUNGUIA AND MIRIAM JACOBO**
APN-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
4-20-2018 [14]

TOYOTA MOTOR CREDIT
CORPORATION/MV
THOMAS GILLIS
AUSTIN NAGEL/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtors' and the trustee's defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

The collateral is a 2010 Toyota Highlander. Doc. #18. The collateral has a value of $13,250.00 and debtor owes $21,981.19. *Id.*

The proposed order shall specifically describe the property or action to which the order relates.

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral is uninsured and is a depreciating asset.

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available in an adversary proceeding then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

8. 10-10544-B-7 **IN RE: JUAN OROZCO MACIEL**
TPH-6

AMENDED MOTION TO AVOID LIEN OF FORD MOTOR CREDIT COMPANY LLC
5-11-2018 [88]

JUAN OROZCO MACIEL/MV
THOMAS HOGAN

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order after hearing.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

A judgment was entered against the debtor in favor of Ford Motor Credit Company in the sum of $3,621.81 on December 23, 2008. Doc. #62. The abstract of judgment was recorded with Merced County on February 20, 2009. *Id.* That lien attached to the debtor's interest in a residential real property in Merced, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $150,000.00 as of the petition date. Doc. #62. The unavoidable liens totaled $189,278.00 on that same date, consisting of a first deed of trust in favor Wachovia (doc. #62, Schedule D). The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00. Doc. #62, 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 will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

9. 10-10544-B-7 **IN RE: JUAN OROZCO MACIEL**
TPH-7

AMENDED MOTION TO AVOID LIEN OF NORTHERN CALIFORNIA COLLECTION SERVICE, INC.
5-11-2018 [93]

JUAN OROZCO MACIEL/MV
THOMAS HOGAN

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order after hearing.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(2) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

A judgment was entered against the debtor in favor of Northern California Collection Service, Inc. in the sum of $21,052.53 on June 9, 2009. Doc. #68. The abstract of judgment was recorded with Merced County on June 29, 2009. *Id.* That lien attached to the debtor's interest in a residential real property in Merced, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $150,000.00 as of the petition date. Doc. #62. The unavoidable liens totaled $189,278.00 on that same date, consisting of a first deed of trust in favor Wachovia (doc. #62, Schedule D). The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(1) in the amount of $1.00. Doc. #62, 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 will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

10. 12-16455-B-7 **IN RE: FRANK/STEPHANIE MAXWELL**
TCS-2

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
4-26-2018 [21]

FRANK MAXWELL/MV
TIMOTHY SPRINGER

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. 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 Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

A judgment was entered against the debtor in favor of Capital One Bank, N.A. in the sum of $10,801.27 on January 12, 2012. Doc. #24. The abstract of judgment was recorded with Fresno County on April 23, 2012. *Id.* That lien attached to the debtor's interest in a residential real property in Fresno, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $139,200.00 as of the petition date. Doc. #1. The unavoidable liens totaled $152,262.00 on that same date, consisting of a first deed of trust in favor Chase (doc. #1, Schedule D) and a second deed of trust in favor of Chase (*id.*). The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.130(b)(5) in the amount of $1.00. Doc. #20.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

11. 12-16455-B-7 **IN RE: FRANK/STEPHANIE MAXWELL**
TCS-3

MOTION TO AVOID LIEN OF DISCOVER BANK
4-26-2018 [26]

FRANK MAXWELL/MV
TIMOTHY SPRINGER

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. 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 Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

A judgment was entered against the debtor in favor of Discover Bank in the sum of $4,441.99 on March 5, 2012. Doc. #29. The abstract of judgment was recorded with Fresno County on March 23, 2012. *Id.* That lien attached to the debtor's interest in a residential real property in Fresno, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $139,200.00 as of the petition date. Doc. #1. The unavoidable liens totaled $152,262.00 on that same date, consisting of a first deed of trust in favor Chase (doc. #1, Schedule D) and a second deed of trust in favor of Chase (*id.*). The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.130(b)(5) in the amount of $1.00. Doc. #20.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

12. 13-16155-B-7 **IN RE: MICHAEL WEILERT AND GENEVIEVE DE MONTREMARE**
DBS-1

MOTION FOR COMPENSATION FOR DANIEL B. SPITZER, SPECIAL COUNSEL(S)
5-2-2018 [627]

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. 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 Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

11 U.S.C. §330(a)(3) states

> In determining the amount of reasonable compensation to be awarded to an examiner, trustee under chapter 11, or professional person, the court shall consider the nature, the extent, and the value of such services, taking into account all relevant factors, including — the time spent on such services; the rates charged for such services; whether the services were necessary to the administration of, or beneficial at the time at which the service was rendered toward the completion of, a case under this title; whether the services were performed within a reasonable amount of time commensurate with the complexity, importance, and nature of the problem, issue, or task addressed; with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and whether the compensation is reasonable based on the customary compensation charged by comparably skilled practitioners in cases other than cases under this title.

In this unopposed motion, special counsel Mr. Spitzer asks this court for fees of $190,961.91 and costs of $18,076.18 for a total of $209,038.09. Mr. Spitzer worked a total of 567.1 hours. The court finds that the compensation Mr. Spitzer requests is reasonable considering the nature, extent, and value of his services. Mr. Spitzer has been working on this case for nearly three years, and during that time appealed a discovery dispute up to the California Supreme Court; analyzed hundreds of documents received in discovery requests; defended a motion for disqualification; and negotiated zealously in two mediations.

The court finds the time spent on these services and the contingency fee agreement were reasonable; that the services were necessary and beneficial to the completion of this chapter 7; that the services were performed within a reasonable time commensurate with the complexity, importance, and nature of the problem; and that the compensation is reasonable based on customary compensation charged by comparably skilled practitioners in cases other than cases in bankruptcy. In fact, the amount Mr. Spitzer is requesting is less than what the amount would be if calculated by his usual billing-rate.

Mr. Spitzer shall be awarded fees of $190,961.91 and costs of $18,076.18.

13. 13-16155-B-7 **IN RE: MICHAEL WEILERT AND GENEVIEVE DE MONTREMARE**
FW-23

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH WILD CARTER & TIPTON, P.C.
5-2-2018 [626]

JAMES SALVEN/MV
PETER FEAR/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. 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 Boone v. Burk (In re Eliapo),

468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

It appears from the moving papers that the trustee has considered the standards of In re Woodson, 839 F.2d 610, 620 (9th Cir. 1987) and In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986):

a. the probability of success in the litigation;
b. the difficulties, if any, to be encountered in the matter of collection;
c. the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attending it; and
d. the paramount interest of the creditors and a proper deference to their reasonable views in the premises.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of the trustee's business judgment. The order should be limited to the claims compromised as described in the motion.

The trustee requests approval of a settlement agreement between the estate and various defendants on the other hand, in a consolidated legal malpractice and breach of contract litigation ("Malpractice Case").

The settlement was reached pursuant to a mediation with the assistance of the Hon. Raul Ramirez.

Under the terms of the compromise, the defendants will pay $400,000.00 to the estate, in full satisfaction of the claims. In exchange, the trustee will dismiss the Malpractice Case and grant a general release to defendants. After payment of certain fees associated with the litigation, the trustee expects the estate to net approximately $190,961.91.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is: the probability of success is far from assured as the defendants are protected under the attorney-

client privilege and proving the case would have been difficult; collection will be very easy because there was substantial insurance coverage; the litigation is incredibly complex and moving forward would decrease the net to the estate due to the legal fees; and the creditors will greatly benefit from the net to the estate, that would otherwise not exist; the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

This ruling is not authorizing the payment of any fees or costs associated with the litigation. Fees and costs for special counsel are the subject of separate proceedings (DBS-1).

14. 18-10663-B-7 **IN RE: RALPH GRAHAM**
TMT-2

MOTION TO APPROVE TRUSTEE AND DEBTOR'S STIPULATION TO EXTEND TIME FOR FILING AN ADVERSARY PROCEEDING TO OBJECT TO DEBTOR'S DISCHARGE
5-2-2018 [22]

TRUDI MANFREDO/MV
NICHOLAS WAJDA
TRUDI MANFREDO/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. 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 Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

Pursuant to Federal Rule of Bankruptcy Procedure 9006(b)(1), the court, for cause shown, may extend the time for an act to be done.

In this case, the court finds that cause exists to extend the time for filing an adversary proceeding to object to debtor's discharge. The court finds that the agreement entered into by the parties and the trustee's declaration that the examination of the financial affairs has not been completed based on testimony at the §341 meeting constitutes cause.

Therefore, this motion is GRANTED.

The time is extended ONLY as to the trustee and the U.S. trustee.

15. 18-10964-B-7 **IN RE: JEFFERY MANNING**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-10-2018 [24]

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: The OSC will be vacated.

ORDER: The OSC will be vacated.

Debtor paid the fee on May 231, 2018. Therefore the order to show cause will be vacated.

16. 17-11878-B-7 **IN RE: GEORGE/SANDRA MOLDEN**
NES-3

MOTION TO AVOID LIEN OF FINANCIAL RECOVERY ALLIANCE, INC.
4-19-2018 [24]

GEORGE MOLDEN/MV
NEIL SCHWARTZ

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. 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 Boone v. Burk (In re Eliapo),

468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

A judgment was entered against the debtor in favor of Financial Recovery Alliance, Inc. in the sum of $6,666.59 on November 13, 2015. Doc. #28. The abstract of judgment was recorded with Kern County on August 5, 2016. *Id.* That lien attached to the debtor's interest in a residential real property in Bakersfield, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $159,905.20 as of the petition date. Doc. #26. The unavoidable liens totaled $149,184.00 on that same date, consisting of a first deed of trust in favor of Roundpoint (doc. #1, Schedule D). The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.130(b)(5) in the amount of $10,721.20. Doc. #1, 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 will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

17. 17-14786-B-7 **IN RE: TODD/PAMELA REINBOLD**
JES-2

MOTION TO SELL
5-2-2018 [22]

JAMES SALVEN/MV
JEFFREY ROWE

TENTATIVE RULING: This matter will proceed for higher and better bids only.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party shall submit a proposed order after hearing.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. 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 Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. It appears that the sale of the 2001 Chevrolet Silverado is a reasonable exercise of the trustee's business judgment. The trustee shall submit a proposed order after the hearing.

18. 17-12691-B-7 **IN RE: DARA PIROZZI**
DLF-1

CONTINUED MOTION TO DISMISS CASE
10-6-2017 [19]

DIAS LAW FIRM, INC./MV
MARK ZIMMERMAN
JONETTE MONTGOMERY/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue the order.

This motion is DENIED based on the ruling in matter #19 below. The court incorporates that ruling here.

19. 17-12691-B-7 **IN RE: DARA PIROZZI**
DRJ-1

MOTION FOR SUMMARY DENIAL OF MOTION TO DISMISS CASE
4-30-2018 [63]

DARA PIROZZI/MV
MARK ZIMMERMAN
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions under Federal Rule of Bankruptcy Procedure 7052 made applicable to this proceeding by Fed. R. Bankr. P. 9014(c). The Moving Party will submit a proposed order after hearing.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled.

In ruling on this motion, the court reviewed this motion and the evidence submitted with the motion, the opposition, the evidence submitted with it, and reply. The court also reviewed the record of the underlying motion (DLF-1).

History of Proceedings for Underlying Motion

Creditor Dias Law Firm ("DLF") is allegedly owed over $24,000.00 in unpaid legal fees by this debtor. Before the debtor filed this case, DLF had a judgment against her for the unpaid fees and was pursuing collection through an Earnings Withholding Order. DLF filed a motion to dismiss under 11 U.S.C. § 707(b) on October 6, 2017. Doc. #19 (DLF-1) and item 18 on this calendar. In the original motion, DLF argued that dismissal was warranted under 11 U.S.C. § 707(b)(2) and (3) because the totality of the circumstances of the debtor's financial situation demonstrated abuse and bad faith. *Id.* DLF essentially contended in support of both claims that debtor understated her income and overstated her expenses. *See id.* at ¶¶2-4.

Debtor opposed the motion arguing that DLF does not have the legal standing to bring a § 707(b) motion because debtor is a below-median debtor, and only the court or U.S. Trustee can bring such a motion. *See* 11 U.S.C. § 707(b)(6). Debtor also argued that DLF "neither claim[ed] nor provide[d] any evidence that the amount of the Debtor's gross income is not accurately disclosed on her Schedule I and her Form 122-A." Doc. #25.

In their reply, DLF argued that they in fact introduced evidence that showed that debtor's current monthly income ("CMI") is greater than she reported on Form 122A-1. Doc. #29. The evidence DLF included with their motion was a declaration from attorney Jonette

Montgomery who attended the § 341 meetings, and four exhibits: the original schedules I and J, an amended schedule J, and a "Notification of account status as of October 5, 2017…". Doc. #23. DLF stated in its reply that it consented to this court ruling on factual matters without live testimony pursuant to Federal Rule of Civil Procedure 43(c). Doc. #29, pg. 6.

The initial hearing on the underlying motion was held November 29, 2017. Before the hearing, the court posted a tentative ruling announcing its intention to continue the hearing. The tentative ruling isolated DLF's standing to prosecute the motion as a threshold issue since there was both a legal and factual question whether this debtor was in fact "below-median." This factor is important as explained below.

The court continued the hearing to February 14, 2018 and at that hearing (Doc. #50, 51) the parties indicated discovery was proceeding. The court continued the matter again to April 10, 2018. Also, the court restated its comments posted before the November 29, 2017 hearing. At the April 10, 2018 hearing the court continued the hearing once again to May 30, 2018 and both parties agreed that would be a final pre-trial conference. The debtor wanted the opportunity to file a "dispositive" motion and the court accommodated the request. This motion to "summarily deny" the underlying motion followed.

Analysis of this Motion

Procedure on motions to dismiss Chapter 7 cases for substantial abuse is governed by Fed. R. Bankr. P. 9014. *See* Fed. R. Bankr. P. 1017(f)(1). Among the "adversary proceeding" rules automatically applicable is Fed. R. Bankr. P. 7052 which incorporates with changes not relevant here, Fed. R. Civ. P. 52. *See* Fed. R. Bankr. P. 9014(c). Fed. R. Civ. P. 52(c) provides (in part):

> If a party has been fully heard on an issue during a non-jury trial and the court finds against the party on that issue, the court may enter judgment against the party on that claim . . . . that, under the controlling law, can be maintained. . .only with a favorable ruling on that issue. . .

This rule applies in bankruptcy proceedings. In re Williams, 323 B.R. 691, 700 (9th Cir. B.A.P. 2005) abrogated on other grounds Eden Place v. Perl (In re Perl), 811 F.3d 1120, 1129-30 (9th Cir. 2017). A court on this motion "is within its prerogative to weigh the evidence, resolve any conflicts in it, and decide for itself where the preponderance lies". Johnston v. Parker (In re Johnston), 321 B.R. 262, 273 (D. Ariz. 2005) quoting Von Zuckerstein v. Argonne Nat'l Lab., 984 F.2d 1467, 1475 (7th Cir. 1993) see also Kuan v. Lund (In re Lund), 202 B.R. 127, 130 (9th Cir. B.A.P. 1996). No special inferences in the non-movant's favor are required in considering a motion for judgment on partial findings. See, Lee v. West Coast Life Ins. Co., 688 F.3d 1004, 1009 (9th Cir. 2012); Ritchie v. U.S., 451 F.3d 1019, 1023 (9th Cir. 2006) cert. den. 549 U.S. 1211 (2007).

The parties have had six months to develop the record on the underlying motion. The threshold standing issue will determine whether the underlying motion is granted or denied. Based on the evidence, DLF has not established by a preponderance of the evidence that this debtor was "above median" at the time of filing and thus did not have standing to bring the motion to dismiss.

The debtor raised the argument that DLF did not establish standing in the original motion because DLF's initial pleadings did not raise the issue of the debtor being above median and instead argued that the debtor had overstated expenses and understated income. That may be true, but is not the only ground for granting this motion. Assuming the debtor's argument is meritless does not change the result.

On the "insufficiency of pleading" issue, ultimately this court must decide if DLF followed Fed. R. Bankr. P. 1017(e). If not, the court must decide if creditor's reply in the motion to dismiss (DLF-1, doc. #29) can be deemed an amendment "relating back" to the time of the filing of the motion. If the reply can be deemed an amendment "relating back," then there may be an issue of fact as to the status of debtor as a below-median debtor, and therefore, if DLF has the legal standing to file a motion to dismiss under 11 U.S.C. § 707(b).

Fed. R. Bankr. P. 1017(e) governs the filing and requirements for motions to dismiss under 11 U.S.C. § 707(b). Fed. R. Bankr. P. 1017(e)(1) states that the motion:

> may be filed only within 60 days after the first date set for the meeting of creditors under § 341(a), unless, on request filed before the time has expired, the court for cause extends the time for filing the motion to dismiss. The party filing the motion shall set forth in the motion all matters to be considered at the hearing.

11 U.S.C. § 707(b)(6) states:

> [o]nly the judge or United States trustee…may file a motion under section 707(b), if the current monthly income of the debtor…as of the date of the order for relief, when multiplied by 12, is equal to or less than the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals.

In order for DLF to have standing on the motion to dismiss, the debtor must be an above-median debtor.

Fed. R. Bankr. P. 1017(e) required DLF to include "all matters" to be considered at the hearing, including the median-income issue. 11 U.S.C. § 707(b)(6) is clear that only a judge or U.S. trustee can bring a motion to dismiss under § 707(b) if the debtor is a below-median debtor.

DLF argues that it presented evidence in support of the reply to the underlying motion showing a factual issue regarding the debtor's annual income. DLF did not make any allegations about the median-income status of the debtor in the original motion and did not ask the court to make findings on that issue. DLF was also present at the § 341 meetings and could have inquired about the median-income issue or scheduled examinations under Fed. R. Bankr. P. 2004. DLF did not. If DLF needed more time to develop evidence before filing the underlying motion, DLF could have asked for an extension under FRBP 1013 (e)(1). DLF did not. DLF did not comply with the requirements under Fed. R. Bankr. P. 1017(e) because DLF failed to include "all matters" to be considered at the hearing by not raising the "below median" question in the original motion.

Next, the court must consider if DLF's reply to the debtor's opposition to the underlying motion can be deemed an amendment and "relate back" to the date of the filing of the motion. It cannot.

First, the amendment issue is a "red herring" since the rule governing pleading amendments (Fed. R. Bankr. P. 7015 incorporating Fed. R. Civ. P. 15) is inapplicable to contested matters under Fed. R. Bankr. P. 9014 without a court order making them applicable. No such order was entered in this or the underlying motion.

Second, even if applicable, the "relation back" doctrine would not apply here. In Percy v. San Francisco General Hospital, 841 F.2d 975, 978 (9th Cir. 1988), the Ninth Circuit stated that "when a plaintiff seeks to amend a complaint to state a new claim against an original defendant…the court compares the original complaint with the amended complaint and decides whether the claim to be added will likely be proved by the 'same kind of evidence' offered in support of the original pleading." (citing Rural Fire Protection Co. v. Hepp, 366 F.2d 355, 362 (9th Cir. 1966)). In making this decision, the court must consider if the "allegations of a new theory in an amended complaint…involve the same transaction, occurrence, or core of operative facts involved in the original claim." Percy, 841 F.2d at 978, citing Clipper Exxpress v. Rocky Mountain Motor Tariff Bureau, Inc., 690 F.2d 1240, 1259 n.29 (9th Cir. 1982).

In Percy, the Ninth Circuit affirmed a lower court's dismissal of plaintiff's 42 U.S.C. § 1983 claim as time barred because that claim did not "relate back" under Fed. R. Civ. P. 15(c) because the claim did not arise from the same "conduct, transaction or occurrence." Percy, 841 F.2d at 977.

The court finds that the evidence included in the motion, the declaration and four exhibits, do not show that the debtor's CMI is greater than what she reported on Form 122A-1. Ms. Montgomery's declaration shows that if anything, debtor's monthly gross income of $5,333.00 was overstated due to the inclusion of social security benefits (see 11 U.S.C. § 101(10A)), and the declaration consisted mostly of notes from the § 341 meeting about discrepancies between statements debtor made and what her schedules reflected. Doc. #22. So, by definition the "same kind of evidence" would not establish the debtor was above median. Additional evidence, not developed when the motion was filed would necessarily be required to positively

allege the debtor was above "median." The assertion the debtor's income was understated and their expenses overstated is just that – an assertion. "The core of operative facts" offered by DLF in the motion does not fairly include whether the debtor was "above median."

Therefore, the court finds that the claim raised in DLF's reply does not "relate back" and cannot be deemed an amendment.

Third, even if "relation back" was applicable, the preponderance of the evidence does not establish that this debtor was above-median when the underlying motion was filed. There is no dispute that the relevant median annual income for a three person household when this case was filed was $75,160.00. DLF's evidence submitted in opposition to this motion shows that when Mr. Ortiz's (the debtor's 19 year old son) income is annualized for the relevant period and 100% of that income is added to the debtor's annual income of $63,684.00, the debtor's annual income is approximately $600 over median. That sum assumes that "dollar for dollar" Mr. Ortiz's income should be added to the debtor's income because that is "dollar for dollar" less that debtor would pay for Mr. Ortiz's nourishment or care.

The court reviewed Mr. Ortiz's deposition testimony and the exhibits submitted by DLF in opposition to the motion. Nothing in that testimony supports the conclusion that the "dollar for dollar additional income" is established or appropriate. DLF cites In re Coverstone, 461 B.R. 629 (Bankr. D. Idaho 2011) to support its position that all of Mr. Ortiz's income should be included. But, Coverstone, does not go that far. In Coverstone, a chapter 13 case, an adult with two children (the debtors' adult daughter) residing with the debtors was able to contribute to her and the children's care post-petition. The change in financial circumstances supported a finding that the debtors' future projected disposable income should include the daughter's contribution, in part. The Coverstone court said a portion of the daughter's income should be considered in the CMI calculation, not all of the daughter's income. *Id.*, p. 635-36. There is no evidence before the court what "portion" of Mr. Ortiz's income during the "look back period" should be considered. So, absent any such evidence the court cannot find that all of Mr. Ortiz's income should be considered or what portion should be. Assuming some portion should be included, does not mean all of it should be. Given the nature of Mr. Ortiz's employment and age at the time of the petition is filed, the court does not find that including all of his income is appropriate. The debtor was "below median" when the case was filed.

DLF did not have standing under 11 U.S.C. § 707(b)(6).

Evidentiary hearings are not needed to determine issues of law or when there are no disputed facts. Hebbring v. United States Trustee, 463 F.3d 902, 908 (9th Cir. 2006) [pre-BAPCPA case but applying the "totality of circumstances" test to voluntary retirement plan contributions]. Debtors are also entitled to timely resolution of issues affecting their right to a discharge. In re Bomarito, 448 B.R. 242, 251 (Bankr. E.D. Cal. 2011). The court has

reviewed the evidence here. The parties have consented to the court's resolution of these issues on this record. The evidence does not support a finding the debtor was above median when the case was filed. Without movant's standing, DLF's motion to dismiss should be denied.

The motion is GRANTED.

20. 18-11092-B-7 **IN RE: CHRISTINA BIER**
SAH-1

MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA) N.A.
4-6-2018 [10]

CHRISTINA BIER/MV
SUSAN HEMB
WITHDRAWN

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Dropped from calendar.

NO ORDER REQUIRED: Movant withdrew the motion.

21. 15-14995-B-7 **IN RE: HIPOLITO MARIANO**
WW-2

CONTINUED MOTION TO AVOID LIEN OF COASTAL NATIONAL BANK
4-17-2018 [74]

HIPOLITO MARIANO/MV
RILEY WALTER

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue the order.

This matter was continued to allow movant to serve debtor's declaration. For the reasons cited below, this motion is DENIED WITHOUT PREJUDICE.

A writ of attachment was recorded against the debtor in favor of Coastal National Bank for the sum of $117,949.83 on April 24, 2015. Doc. #77. This bankruptcy case was filed about eight months later. The writ of attachment attached to the debtor's interest in a residential real property in Clovis, CA. The subject real property had an approximate value of $410,000.00 as of the petition date. Doc. #1, Schedule A/B. The unavoidable liens totaled $337,859.00 on that same date, consisting of a first deed of trust in favor of Bank of America. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(2) in the amount of $100,000.00. Doc. #48, Schedule C.

In order to be eligible for the $100,000.00 homestead exemption under Cal. Civ. Proc. Code § 704.730(a)(2), the judgment debtor or spouse of the judgment debtor who resides in the homestead is a member of a family unit, inter alia. "Family unit" is defined in Cal. Civ. Proc. Code § 704.710(b). In debtor's declaration, he states that he qualifies for this exemption because his niece, who was 20 years old at the time of the petition date, resided with him in his residence and he "supported her, paying for her expenses, and claiming her as a dependent on my taxes, while she attended college." Doc. #80. A niece is not included within the definition of "family unit.". Cal. Civ. Proc. Code § 704.710 (b)(2)(D) includes in the definition of "family unit" a resident "unmarried. . .who is unable to support himself or herself." While the debtor may have supported the niece and claimed her as a dependent on taxes that does not mean the niece was *unable* to support herself during the period she lived with the debtor.

Because the debtor has not established that he is entitled to this exemption on this record, this motion is DENIED WITHOUT PREJUDICE.

22. 17-11798-B-7 **IN RE: MARK/AMY AVILA**
RWR-3

MOTION FOR COMPENSATION FOR RUSSELL W. REYNOLDS, TRUSTEES ATTORNEY(S)
4-26-2018 [29]

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. 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 Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

Russell W. Reynolds shall be awarded fees of $4,482.00 and costs of $299.60.

23. 18-11530-B-7 **IN RE: ROBERT/LINDA GALLARDO**
TCS-2

MOTION TO COMPEL ABANDONMENT
5-22-2018 [21]

ROBERT GALLARDO/MV
TIMOTHY SPRINGER
OST 5/22/18

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order after hearing.

This motion was filed and served pursuant to Local Rule of Practice ("LBR") 9014-1(f)(3) and an order shortening time (doc. #24) and will proceed as scheduled. Unless opposition is presented at the hearing, the court intends to enter the respondents' defaults and grant the motion. If opposition is presented at the hearing, the court will consider the opposition and whether further hearing is proper pursuant to LBR 9014-1(f)(2). The court will issue an order if a further hearing is necessary.

11 U.S.C. § 554(b) provides that "on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." In order to grant a motion to abandon property, the bankruptcy court must find either that: (1) the property is burdensome to the estate or (2) of inconsequential value and inconsequential benefit to the estate. In re Vu, 245 B.R. 644, 647 (9th Cir. B.A.P. 2000). As one court noted, "an order compelling abandonment is the exception, not the rule. Abandonment should only be compelled in order to help the creditors by assuring some benefit in the administration of each asset… Absent an attempt by the trustee to churn property worthless to the estate just to increase fees, abandonment should rarely be ordered." In re K.C. Mach. & Tool Co., 816 F.2d 238, 246 (6th Cir. 1987). And in evaluating a proposal to abandon property, it is the interests of the estate and the creditors that have primary consideration, not the interests of the debtor. In re Johnson, 49 F.3d 538, 541 (9th Cir. 1995) (noting that the debtor is not mentioned in § 554). In re Galloway, No. AZ-13-1085-PaKiTa, 2014 Bankr. LEXIS 3626, at 16-17 (B.A.P. 9th Cir. 2014).

This motion is GRANTED. The court finds that the property is of inconsequential value and benefit to the estate. The accounts receivable due to the business are fully exempt under California Code of Civil Procedure § 703.140(b)(5), and debtor would still have nearly $24,000.00 available to exempt property under that section.

11:00 AM

1. 18-10924-B-7 **IN RE: RAQUEL PEREZ**

PRO SE REAFFIRMATION AGREEMENT WITH BENEFICIAL STATE BANK
5-7-2018 [16]

NO RULING.

2. 18-10831-B-7 **IN RE: KAWANA WILLIAMS**

PRO SE REAFFIRMATION AGREEMENT WITH BENEFICIAL STATE BANK
5-8-2018 [22]

NO RULING.

3. 18-11249-B-7 **IN RE: MICHAEL MOLINA**

PRO SE REAFFIRMATION AGREEMENT WITH GOLDEN 1 CREDIT UNION
5-7-2018 [12]

TIMOTHY SPRINGER

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied.

ORDER: The court will issue an order.

Debtor's counsel will inform debtor that no appearance is necessary.

The court is not approving or denying approval of the reaffirmation agreement. Debtor was represented by counsel when he entered into the reaffirmation agreement. Pursuant to 11 U.S.C. §524(c)(3), if the debtor is represented by counsel, the agreement must be accompanied by an affidavit of the debtor's attorney attesting to the referenced items before the agreement will have legal effect. *In re Minardi*, 399 B.R. 841, 846 (Bankr. N.D. Ok, 2009) (emphasis in original). The reaffirmation agreement, in the absence of a declaration by debtor's counsel, does not meet the requirements of 11 U.S.C. §524(c) and is not enforceable.

1:30

1. 17-13797-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
   18-1018

   STATUS CONFERENCE RE: NOTICE OF REMOVAL
   4-25-2018 [1]

   MAXIM HEALTHCARE SERVICES,
   INC. V. HEALTHCARE
   UNKNOWN TIME OF FILING/ATTY. FOR PL.

NO RULING.