

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Wednesday, May 31, 2017
Place: Department B – Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. The following rulings are tentative. The tentative ruling will not become the final ruling until the matter is called at the scheduled hearing. **Pre-disposed matters will generally be called, and the rulings placed on the record at the end of the calendar.** Any party who desires to be heard with regard to a pre-disposed matter may appear at the hearing. If the party wishes to contest the tentative ruling, he/she shall notify the opposing party/counsel of his/her intention to appear. **If no disposition is set forth below, the hearing will take place as scheduled.**

2. Submission of Orders:

Unless the tentative ruling expressly states that the court will prepare an order, then the tentative ruling will only appear in the minutes. If any party desires an order, then the appropriate form of order, which conforms to the tentative ruling, must be submitted to the court. When the debtor(s) discharge has been entered, proposed orders for relief from stay must reflect that the motion is denied as to the debtor(s) and granted only as to the trustee. Entry of discharge normally is indicated on the calendar.

3. Matters Resolved Without Opposition:

If the tentative ruling states that no opposition was filed, and the moving party is aware of any reason, such as a settlement, why a response may not have been filed, the moving party must advise Vicky McKinney, the Calendar Clerk, at (559) 499-5825 by 4:00 p.m. the day before the scheduled hearing.

4. Matters Resolved by Stipulation:

If the parties resolve a matter by stipulation after the tentative ruling has been posted, but **before the formal order is entered on the docket**, the **moving party** may appear at the hearing and advise the court of the settlement or withdraw the motion. Alternatively, the parties may submit a stipulation and order to modify the tentative ruling together with the proposed order resolving the matter.

5. Resubmittal of Denied Matters:

If the moving party decides to re-file a matter that is denied without prejudice for any reason set forth below, the moving party must file and serve a new set of pleadings with a new docket control number. It may not simply re-notice the original motion.

THE COURT ENDEAVORS TO PUBLISH ITS PREDISPOSITIONS AS SOON AS POSSIBLE, HOWEVER CALENDAR PREPARATION IS ONGOING AND THESE PREDISPOSITIONS 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 A.M.

1. [16-12604](#)-B-7 BENNIE MCLIN ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
5-9-17 [[60](#)]

This matter will proceed as scheduled.

2. [15-14706](#)-B-7 FELIBERTO LIMON AND NORMA MOTION TO COMPROMISE
TMT-2 URBANO CONTROVERSY/APPROVE SETTLEMENT
TRUDI MANFREDO/MV AGREEMENT WITH FELIBERTO LIMON,
JR. AND NORMA URBANO
5-3-17 [[46](#)]

JEFFREY ROWE/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

The motion will be granted without oral argument based upon well-pled facts. The trustee shall submit a proposed order as specified below. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Accordingly, the respondents' defaults will be entered. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). 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 factors in, *In re A & C Properties*, 784 F.2d 1377, 1381 (9th Cir. 1986):

- a. whether the settlement was negotiated in good faith;
- b. whether the trustee reasonably believes that the compromise is the best result that can be negotiated under the facts, and;
- c. whether the settlement is fair and equitable.

Accordingly, it appears that the compromise pursuant to FRBP 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.

3. [15-14706](#)-B-7 FELIBERTO LIMON AND NORMA MOTION TO EMPLOY MONRAE ENGLISH
TMT-3 URBANO AS SPECIAL COUNSEL
TRUDI MANFREDO/MV 5-3-17 [[51](#)]
JEFFREY ROWE/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

The motion will be granted without oral argument based upon well-pled facts. The trustee shall submit a proposed order signed by the trustee and the proposed counsel in conformance with the ruling. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). 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. Accordingly, the respondents' defaults will be entered.

The court notes that the copy of the fee agreement and the declaration of proposed special counsel appear to be inconsistent in that the latter states that the employed firm will also be entitled to be "reimbursed for actual and necessary expenses incurred in recovering the property." The fee agreement itself refers only to litigation and office-related costs incurred in connection with representation of the trustee. The proposed order shall resolve this ambiguity and shall be signed by both parties.

4. [15-14912](#)-B-7 STEVEN/ALTA ROSS MOTION TO COMPROMISE
RHT-1 CONTROVERSY/APPROVE SETTLEMENT
ROBERT HAWKINS/MV AGREEMENT WITH ALTA ROSS
5-5-17 [[21](#)]
MARK ZIMMERMAN/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

This matter 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. The court intends to inquire regarding the status of the proposed property sale. Parties should be prepared to fully discuss these issues.

5. [16-11031](#)-B-7 GILBERT/OLIVIA GARCIA
JES-2
JAMES SALVEN/MV
LEONARD WELSH/Atty. for dbt.

MOTION FOR COMPENSATION FOR
JAMES SALVEN, ACCOUNTANT(S)
5-1-17 [[72](#)]

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order in conformance with the ruling. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). 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. Accordingly, the respondents' defaults will be entered.

6. [16-11855](#)-B-7 HARJOT SINGH AND INDERJIT
GEG-1 SANDHU
1ST CONTINENTAL MORTGAGE
(STARRR) INC./MV
GLEN GATES/Atty. for mv.

MOTION TO CONFIRM TERMINATION
OR ABSENCE OF STAY
5-5-17 [[51](#)]

This motion will be denied. The court will enter an order. No appearance is necessary.

The motion was not filed in compliance with LBR 9014-1(f)(1), which requires service on 28 days' notice. The language in the notice requires written response within 14 days of the hearing, therefore the motion was also not filed in compliance with LBR 9014-1(f)(2). No order shortening or modifying notice was sought or obtained.

In addition, the motion does not request relief from stay to proceed in the special proceeding and the moving papers do not cite any authority for the proposition that these excess proceeds are not property of the estate. Indeed, the order of priority specified by Cal.Civ.Proc. § 2924k(a) for distribution of such proceeds includes "the vested owner of record at the time of the trustee's sale," which here was the debtors.

Also, the post-petition notice of the special proceeding pursuant to Cal.Civ.Proc. § 2924k filed by the foreclosing trustee was not noticed to the ch. 7 bankruptcy trustee.

The relief actually sought, a determination that the excess proceeds from the pre-petition foreclosure of the debtors' property is not property of the estate, requires an adversary proceeding pursuant to FRBP 7001(2), or abandonment by the ch. 7 trustee.

Finally, an order confirming that no stay is in effect is only available in motions brought pursuant to §362(c) and §362(j).

7. [17-11455](#)-B-7 PIERPOINT SPRINGS, LLC
JLG-1
BANK OF THE SIERRA/MV
PETER FEAR/Atty. for dbt.
JESSICA GIANNETTA/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-17-17 [[15](#)]

This matter will proceed as scheduled. This motion for relief from stay was noticed pursuant to LBR 9014-1(f)(2) and written opposition was not required. Unless opposition is presented at the hearing, the court intends to enter the debtor's and the trustee's defaults and enter the following ruling granting the motion for relief from stay. 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.

Tentative Ruling. The motion will be granted without oral argument for cause shown. Movant shall submit a proposed order as specified below. No appearance is necessary.

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

The order shall also provide that the bankruptcy proceeding has been finalized for purposes of California Civil Code § 2923.5.

The motion for relief under 11 U.S.C. §362(d)(4) is also granted. It appears from the evidence submitted and from the record that the debtor's bankruptcy case was used as part of a scheme to delay, hinder, or defraud creditors that involved transfer of an interest in the subject real property. It appears from the record that the debtor's principal executed a quit-claim deed on December 16, 2016, conveying its interest in the subject property to a nonprofit corporation controlled by the debtor's principal, who then, on April 18, 2017, executed a subsequent quit-claim deed conveying the property back to the debtor prior to the filing of this chapter 7 bankruptcy case. The court does not address the issue of a nonprofit organization making a gift of its assets to a for-profit corporation within the preference period for insider conveyances.

A waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will not be granted. The movant has shown no exigency.

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. [16-14571](#)-B-7 SCHEHERZADE COLEMAN
ASW-1
U.S. BANK, N.A./MV
JANINE ESQUIVEL/Atty. for dbt.
DANIEL FUJIMOTO/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-26-17 [[35](#)]

The motion will be denied. The court will enter an order. No appearance is necessary. The form of the proof of service does not comply with LBR 9014-1(d)(2).

In addition, the "Supplemental Proof of Service," doc. # 41, filed April 26, 2017, does not have a docket control number as required by LBR 9014-1(c).

Finally, pleadings do not comply with the Local Rules of Practice for the U.S. Bankruptcy Court, Eastern District of California, Appendix II, EDC.002-901, E.D. Cal. Bankruptcy Court's Guidelines for the Preparation of Documents (effective August 12, 2015), Section IV.B. and C.

9. [16-14676](#)-B-7 JOHN/PATRICIA FARINELLI
TGM-3
PETER FEAR/MV

MOTION TO EMPLOY BERKSHIRE
HATHAWAY HOMESERVICES CALIFORNIA
REALTY AS BROKER(S)
5-3-17 [[67](#)]

PETER BUNTING/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

The motion will be granted without oral argument based upon well-pled facts. The moving party shall submit a proposed order in conformance with the ruling. No appearance is necessary.

This matter was fully noticed in compliance with the Local Rules of Practice and there is no opposition. Federal Rule of Civil Procedure 55, made applicable by Federal Rule of Bankruptcy Procedure 7055, governs default matters and is applicable to contested matters under Federal Rule of Bankruptcy Procedure 9014(c). 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. Accordingly, the respondents' defaults will be entered.

10. 17-10888-B-7 ONEL SANDOVAL ARELLANO
APN-1
SANTANDER CONSUMER USA INC./MV
JIM TREVINO/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.
RESPONSIVE PLEADING

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-26-17 [11]

The motion will be granted without oral argument for cause shown. Movant shall submit a proposed order as specified below. No appearance is necessary.

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice. The debtor filed a notice of nonopposition and there was no other opposition. The trustee's default 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 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 debtor filed a notice of nonopposition and the moving papers show the collateral is in movant's possession 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).

11. 17-11789-B-7 WON HAN
WON HAN/MV
OST 5/25/17

MOTION TO EXTEND AUTOMATIC STAY
5-24-17 [23]

This matter will proceed as scheduled. Telephonic appearances will NOT be permitted.

12. 17-11789-B-7 WON HAN
WON HAN/MV
OST 5/25/17

MOTION TO SEEK ENFORCEMENT OF
THE AUTOMATIC STAY
5-24-17 [22]

This matter will proceed as scheduled. Telephonic appearances will NOT be permitted.

11:00 A.M.

1. [17-10649](#)-B-7 DALE/LINDA FRY

PRO SE REAFFIRMATION AGREEMENT
WITH ALLY BANK
5-12-17 [[28](#)]

This matter will proceed as scheduled.

1:30 P.M.

1. [16-11605](#)-B-7 CAROLYN CHARLTON
[16-1078](#) NMB-1
CHARLTON V. CHARLTON
NANETTE BEAUMONT/Atty. for mv.
RESPONSIVE PLEADING

MOTION FOR ENTRY OF DEFAULT
JUDGMENT
4-27-17 [[40](#)]

This matter will proceed as scheduled. Telephonic appearances will NOT be permitted.