

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Bankruptcy Judge  
Sacramento, California

June 3, 2014 at 1:30 p.m.

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1. [11-29307-E-7](#) SHAWN/KARA NELSON CONTINUED MOTION TO AVOID LIEN  
PLG-4 Stuart M. Price OF STOHLMAN AND ROGERS, INC.  
4-17-14 [[115](#)]

**Tentative Ruling:** The Motion to Avoid Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

**Below is the court's tentative ruling.**

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

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

The Motion to Avoid a Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995).

**The court's decision is to grant the Motion to Avoid a Judicial Lien.**

**CONTINUANCE OF HEARING**

At the May 15, 2014 hearing, the objecting Creditor asserted not only its argument that a debtor does not have the ability to amend schedules after a case had been closed and reopened pursuant to Federal Rule of Bankruptcy Procedure 1009(a) without leave of the court. Further, that allowing the avoiding of a lien without the reappointment of a Chapter 7 trustee to review the amendment to Schedule C and assert an objection was improper.

The court has continued the hearing to allow the parties to address issues concerning the avoidance of the lien and whether the reappointment of a trustee is necessary.

At the hearing the court addressed to Creditor the question as to whether there was any value in the Property for its junior lien. Creditor stated that it had no opinion as to the value of the property it would present to the court, and it appeared that it does not have any opinion that the Property at issue has sufficient value to provide for its debt by virtue of its junior lien on the Property. The court expressed concern that this may be an opposition based on theory as opposed to any real, practical economic issues.

The Debtors stated that after the bankruptcy case was closed, and the Property encumbered by Creditors junior judgment lien was abandoned by the Trustee to the Debtors by operation of law, 11 U.S.C. § 554(c), an agreement was reached with beneficiary of the senior deed of trust for the Debtors to conduct a short sale. The Debtors believe that by conducting a short sale, rather than allowing the beneficiary of the deed of trust conducting a non-judicial foreclosure sale, the Debtors will improve their credit score. (The court expresses no opinion on whether such a short sale, in light of the other derogatory information on the Debtors' credit report and having filed a recent Chapter 7 bankruptcy case, on this credit improvement theory.) Presumably, as a real life business matter, the beneficiary under the deed of trust appreciates the Debtors assisting in a "owner" sale of the collateral rather than an REO post-foreclosure sale.

In addition to input from the Parties, the court requests that the U.S. Trustee weigh in on whether post-abandonment of the Property pursuant to 11 U.S.C. § 544(c) and the reopening of this case, reason exists for the reappointment of a Chapter 7 trustee to review the amended schedules to claim an exemption in this Property and for the avoidance of this creditor's lien. If possible, the court requests that the U.S. Trustee file with the court and serve on counsel for the Debtors and Counsel for Stohlman and Rogers, Inc. a statement as to whether the U.S. Trustee is seeking the reappointment of a trustee, has determined that the U.S. Trustee does not intend to so do in this case, or is in the process of reviewing this issue.

**REVIEW OF MOTION AND TENTATIVE RULING POSTED FOR  
MAY 15, 2014 HEARING.**

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

**OPPOSITION**

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

cause, allow the amendment to Schedule C.

#### REPLY

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

#### DISCUSSION

Federal Rule of Bankruptcy Procedure 1009(a) states

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

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

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

The United States Trustee filed a Statement Regarding Whether A Trustee Should Be Appointed in this Reopened Case, stating that there being no assets of the estate for a Trustee to administer, the UST does not intend to seek permission to appoint a Chapter 7 trustee in this reopened case.

No other argument has been presented by counsel. Therefore, the court grants the motion based on the analysis provided in *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 394 (B.A.P. 9th Cir. 2003).

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

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

**ISSUANCE OF A COURT DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the judgment lien of Stohlman and Rogers, Inc., Placer County Superior Court Case No. CVCS 08-2221, recorded on November 24, 2008, Document No. 2008-0091531-00, with the Placer County Recorder, against the real property commonly known as 3613 Westchester Drive, Roseville, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

2. [14-24041-E-7](#) CHARLES/JOVEN RUSSELL  
MLG-1 C. Anthony Hughes

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
4-30-14 [9]

EMMANUEL PASCUA VS.

**Final Ruling:** No appearance at the June 3, 2014 hearing is required.  
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Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on April 30, 2014. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion for Relief From the Automatic Stay is granted.**

Emmanuel Pascua ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 8059 Buttonwood Way, Citrus Heights, California (the "Property"). The moving party has provided the Declaration of Carol Hahl, Property Manager for Movant, to introduce evidence as a basis for Movant's contention that Charles and Joven Russell ("Debtor") do not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property, which he rented to Debtors pursuant to a written rental agreement on a one year lease, which expired on November 1, 2012. Based on the evidence presented, Debtor would be at best tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento (Case No. 14UD02258).

Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the property is *per se* not necessary for an effective reorganization. *See In re Preuss*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

The court shall issue an order terminating and vacating the automatic stay to allow Emmanuel Pascua, and its agents, representatives and

successors, to exercise its rights to obtain possession and control of the real property commonly known as 8059 Buttonwood Way, Citrus Heights, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The Movant has alleged adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3).

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by Emmanuel Pascua having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Emmanuel Pascua and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 8059 Buttonwood Way, Citrus Heights, California.

**IT IS FURTHER ORDERED** that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause shown by Movant.

No other or additional relief is granted.