

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

June 4, 2019 at 1:30 p.m.

1. [19-22703-E-13](#) AMY GREENHALGH
[SMR-1](#) Pro Se

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
5-7-19 [11]**

**BOBBY RICH VS.
DEBTOR DISMISSED: 05/20/2019**

Final Ruling: No appearance at the June 4, 2019 hearing is required.

The case having previously been dismissed, the Motion is dismissed as moot .

The court shall issue a minute 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 Automatic Stay having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed as moot, this Bankruptcy Case having been previously been dismissed.

2. [17-22347-E-11](#) UNITED CHARTER LLC
[JJG-12](#) Jeffrey Goodrich

CONTINUED MOTION TO VALUE
COLLATERAL OF WAYNE BIER
9-27-18 [283]

Final Ruling: No appearance at the June 4, 2019 hearing is required.

Local Rule 9014-1(f)(1) Motion—Hearing Not Required.

Sufficient Notice Provided. No Certificate of service has been provided to evidence when notice was served, and who notice was served upon. However, the creditor whose claim is the subject of this Motion filed an Opposition on October 11, 2018. Dckt. 293. Therefore, notice was likely provided. The Notice of Hearing was filed September 27, 2018. Dckt. 284. Presuming notice was actually provided that day, 28 days' notice was provided. 28 days' notice is required.

The Motion to Value Collateral and Secured Claim has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The hearing on the Motion to Value Collateral is continued to June 13, 2019 at 10:00 a.m.

The Motion to Value filed by United Charter LLC (“Debtor in Possession” or “ΔIP”) to value the secured claim of Wayne Bier (“Creditor”) was filed on September 27, 2018. Motion, Dckt. 283. The Declaration of John Hillas, MAI SRA, is filed in support of the Motion. Declaration, Dckt. 285. An exhibit cover sheet has been filed with the Motion, which states that one exhibit, “Appraisal Report of Valbridge Property Advisors dated August 31, 2018” is provided as Exhibit A. Dckt. 286. No Exhibit A is attached to the cover sheet. The Declaration of Mr. Hillis states that he is the “appraiser responsible for directing and supervising the preparation of . . . [the] appraisal report. . . .” Declaration ¶ 2, Dckt. 285.

Debtor in Possession is the owner of the subject real property located in Stockton, California (“Property”). In the Motion, the Debtor in Possession identifies the real property as “a 17+ acre industrial warehouse property located in Stockton, California. Motion, p. 2:3-5; Dckt. 283. By this description, it appears that there is one 17+ acre parcel of property that secures the claim.

The Motion offers no identification of the 17+ acre parcel, but instead merely instructs the court and parties in interest are to review Proof of Claim No. 4 with any questions about the claim that is the subject of this Motion. *Id.* at 2:5.

When one reviews Proof of Claim, No. 4, a Deed of Trust is attached which identifies the real property subject to the encumbrance. The Deed of Trust provides the legal descriptions and Assessor Parcel Numbers for at least twenty (20) different parcels with different APNs. Proof of Claim No. 4, p. 16-16. The court is unsure why the Debtor in Possession could not state these parcel numbers and clearly identify the property subject to the Deed of Trust when stating with particularity the grounds upon which the relief is based and the relief requested (as required in Fed. R. Bankr. P. 9013).

Debtor (who is now serving as the ΔIP) valued the Property at \$7,855,018.99. Schedule A/B, Dckt. 12. Some time thereafter, Creditor East West Bank (“EWB”) holding a senior mortgage filed a motion seeking relief from automatic stay. Dckt. 80. EWB filed as a supporting Exhibit an appraisal asserting the value of the Property is \$5,330,000.00. Dckts. 87-94. Debtor in Possession now seeks to use that appraisal to support the current Motion. Debtor in Possession does not explain why its prior valuation, declared in its Schedules under penalty of perjury, was high by more than \$2 million.

Debtor in Possession filed the Declaration of John Hillas, the Appraiser who drafted the appraisal report. Dckt. 285. The Hillas Declaration provides no detail other than Hillas created the report and can testify as to the value of the Property being \$5,330,000. As stated, *supra*, Debtor in Possession also sought to file as an Exhibit the appraisal report, but the report itself is not included in the filing. *See* Dckt. 286.

Proof of Claim

Creditor filed Proof of Claim, No. 4, on June 25, 2018. Creditor asserts a claim in the amount of \$1,999,215.36 secured by Debtor in Possession’s real property valued at \$7,855,018.99. The Proof of Claim notes Creditor’s valuation relies on Debtor in Possession’s Schedules.

RESPONSE OF CREDITOR EAST WEST BANK

EWB filed a Declaration in Response to the Motion on October 10, 2018. Dckt. 287. The Declaration Furth Demoss states the amount of the EWB’s claim as of September 30, 2018 is \$5,006,168.66.

CREDITOR’S OPPOSITION

Creditor filed an “Objection” To Debtor’s Motion on October 11, 2018, which the court interprets to be an opposition. Dckt. 293. Creditor requests that the Court value the Property at \$7,230,000 (“as-is” market value) or \$7,730,000 (prospective market value).

Creditor states its appraisal report reviews all collateral properties (each within Stockton, California), including:

- (1) industrial park buildings at 1881 E. Market Street valued individually at \$4,860,00,
- (2) industrial park buildings at 1531, 1555, & 1617 E. Main Street valued individually at \$2,250,000,

(3) vacant industrial lots at 1531 & 1555 E. Main Street valued individually at \$330,000,

(4) vacant industrial lots at 1904 to 1936 E. Weber Avenue valued individually at \$170,000, and

(5) two residential-zoned lots at 1914 & 1918 E. Myrtle Street valued individually at \$120,000.

Creditor notes that its claim was also secured by a San Francisco property which was foreclosed in 2010.

Creditor requests an evidentiary hearing to determine the value of the Property, noting that it does not consent to the use of affidavits in accordance with Federal Rules of Civil Procedure 43(c).

APPLICABLE LAW

The valuation of property that secures a claim is the first step, not the end result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

(a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine that creditor's secured claim (rights and interest in collateral), that creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2 (case or controversy requirement for the parties seeking relief from a federal court).

DISCUSSION

The court shall issue a minute 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 to Value Secured Claim filed by United Charter LLC (“Debtor in Possession”) 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 hearing on the Motion to Value Secured Claim is continued to June 13, 2019 at 10:00 a.m.