

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

June 5, 2019 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled 'Amended Civil Minute Order.'

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

2. The court will not continue any short cause evidentiary hearings scheduled below.

3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.

4. If no disposition is set forth below, the matter will be heard as scheduled.

1.	19-22002-D-7	LEONARD RATHJEN	MOTION FOR RELIEF FROM
	JHW-1		AUTOMATIC STAY
	SANTANDER CONSUMER USA, INC. VS.		4-26-19 [12]

Final ruling:

This matter is resolved without oral argument. This is Santander Consumer USA, Inc.'s motion for relief from automatic stay. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. As the debtor is not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

2. 19-22207-D-7 TOMMY DANG MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER FEE
4-9-19 [2]

3. 18-27510-D-7 TAYLER/JULIA CAMPBELL CONTINUED MOTION TO EMPLOY J.
DNL-1 RUSSELL CUNNINGHAM AS ATTORNEY
4-4-19 [20]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to employ J. Russell Cunningham as attorney pursuant to a hybrid fee agreement is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

4. 19-20420-D-7 MARK GALLAGHER MOTION TO EXTEND DEADLINE TO
GR-1 FILE A COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
4-15-19 [15]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion to extend deadline to file a complaint objecting to discharge of the debtor is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

5. 19-20221-D-7 JACK/CYNTHIA MCAULEY MOTION FOR RELIEF FROM
AP-1 AUTOMATIC STAY
U.S. BANK, N.A. VS. 5-1-19 [47]

Final ruling:

This matter is resolved without oral argument. This is U.S. Bank, N.A.'s motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

6. 19-20221-D-7 JACK/CYNTHIA MCAULEY MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. 5-7-19 [54]

Final ruling:

This matter is resolved without oral argument. This is Wells Fargo Bank, N.A.'s motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

7. 19-22122-D-7 DIANA CHAPMAN MOTION FOR RELIEF FROM
AP-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. 5-8-19 [13]

Final ruling:

This matter is resolved without oral argument. This is Wells Fargo Bank, N.A.'s motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

8. 17-20731-D-11 CS360 TOWERS, LLC MOTION FOR COMPENSATION BY THE
DB-42 LAW OFFICE OF DOWNEY BRAND, LLP
FOR JAMIE P. DREHER, TRUSTEE'S
ATTORNEY(S)
5-8-19 [664]

Tentative ruling:

This is the application of counsel for the chapter 11 trustee for compensation for services. The motion was noticed pursuant to LBR 9014-1(f) (1) and no opposition has been filed. However, the court is not prepared to grant the motion as the proof of service is not signed under oath, as required by 28 U.S.C. § 1746.

The court will hear the matter.

9. 17-20731-D-11 CS360 TOWERS, LLC MOTION FOR COMPENSATION FOR
DB-43 BRADLEY SHARP, CHAPTER 11
TRUSTEE
5-8-19 [669]

Tentative ruling:

This is the application of the chapter 11 trustee for compensation for services. The motion was noticed pursuant to LBR 9014-1(f) (1) and no opposition has been filed. However, the court is not prepared to grant the motion as the proof of service is not signed under oath, as required by 28 U.S.C. § 1746.

The court will hear the matter.

10. 17-20731-D-11 CS360 TOWERS, LLC MOTION FOR COMPENSATION FOR
DB-44 SWICKER AND ASSOCIATES
ACCOUNTANCY CORPORATION,
ACCOUNTANT(S)
5-8-19 [674]

Tentative ruling:

This is the application of Swicker & Associates Accountancy Corporation for compensation for services as tax advisor to the trustee. The motion was noticed pursuant to LBR 9014-1(f) (1) and no opposition has been filed. However, the court is not prepared to grant the motion as (1) the proof of service is not signed; and (2) the form of the proof of service is such that, even if it had been signed, it would not have been signed under oath, as required by 28 U.S.C. § 1746.

The court will hear the matter.

11. 19-21235-D-7 JON/TERRI HAJEK MOTION FOR SUBSTITUTION AS THE
GEL-1 REPRESENTATIVE FOR JON ERIK
HAJEK AND FOR CONTINUED
ADMINISTRATION OF CASE
5-8-19 [24]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion for substitution as the representative for Jon Erik Hajek and for continued administration of the case is supported by the record. As such the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

12. 15-20037-D-7 JASON SCOGGINS MOTION TO SEAL
15-2073 TEH-10 4-28-19 [77]
CHAMP SYSTEMS, INC. V.
SCOGGINS

The court will use this hearing as a status conference.

13. 19-22038-D-7 GREGORY/MICHELLE STITT MOTION FOR RELIEF FROM
CLH-1 AUTOMATIC STAY
GREGORY STITT VS. 5-2-19 [13]

14. 18-27854-D-7 DAWN WILLIAMS-HOLBERT
CAS-1
CAPITAL ONE AUTO FINANCE VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-23-19 [16]

Final ruling:

This matter is resolved without oral argument. This is Capital One Auto Finance's motion for relief from automatic stay. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. As the debtor is not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

15. 19-22155-D-7 KRISTINA FONG
HDR-1

MOTION TO AVOID LIEN OF
RESURGENCE FINANCIAL, LLC
4-30-19 [12]

Final ruling:

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

The debtor has failed to submit admissible evidence supporting all the elements of an avoidable lien. The only evidence in support of the motion is the debtor's declaration and a copy of her Schedule C. The debtor testifies Resurgence obtained a judgment against her before she filed this case, and a notice of levy was served on her bank, Wells Fargo Bank, with the result that the funds in the bank were taken by the Sheriff's Department and are being held.

In order to avoid a judicial lien, "the debtor must make a competent record on all elements of the lien avoidance statute, 11 U.S.C. § 522(f)" (In re Mohring, 142 B.R. 389, 391 (Bankr. E.D. Cal. 1992)), including that the creditor has a lien that is a judicial lien. Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting Mohring, 142 B.R. at 392. "The operative principle here is that although bankruptcy confers substantial benefits on the honest but unfortunate debtor, including a discharge of debts, the ability to retain exempt property, and the ability to avoid certain liens that impair exemptions, there is a price." Mohring, 142 B.R. at 396. Here, the debtor's testimony is hearsay. She apparently has copies of the documents creating the purported judicial lien, but she has failed to submit them for the court's review. Submission of that evidence is a small price to pay to avoid an otherwise valid and enforceable property interest.

As a result of this evidentiary defect, the motion will be denied by minute order. No appearance is necessary.

16. 19-20064-D-7 BARRY BINNING OBJECTION TO DEBTOR'S CLAIM OF
DNL-4 EXEMPTIONS
5-1-19 [45]

17. 19-22865-D-7 DIA MITCHELL MOTION TO IMPOSE/EXTEND
AUTOMATIC STAY
5-3-19 [7]

18. 16-26868-D-7 MARILYN GLORIA MOTION FOR RELIEF FROM
JHW-1 AUTOMATIC STAY
SANTANDER CONSUMER USA, INC. 4-26-19 [63]
VS.

Final ruling:

This matter is resolved without oral argument. This is Santander Consumer USA, Inc.'s motion for relief from automatic stay. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. As the debtor is not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

19. 11-37779-D-7 R.C./SUSAN OWENS MOTION FOR COMPENSATION BY THE
DNL-8 LAW OFFICE OF DESMOND, NOLAN,
LIVAICH & CUNNINGHAM FOR J.
RUSSELL CUNNINGHAM, TRUSTEE'S
ATTORNEY
4-26-19 [113]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

20. 19-21083-D-7 TORY/SYLVIA BATTEN CONTINUED REPORT OF TRUSTEE AT
SEC. 341(A) MEETING AND
TRUSTEE'S MOTION TO DISMISS FOR
FAILURE TO APPEAR AT SEC.
341(A) MEETING
4-3-19 [14]

Final ruling:

This is the trustee's motion to dismiss this case for failure to appear at the meeting of creditors. The court's docket indicates both debtors appeared at a continued meeting of creditors on May 15, 2019, and the meeting was held and concluded. Accordingly, the trustee's motion will be denied as moot by minute order. No appearance is required.

21. 17-20689-D-7 MONUMENT SECURITY, INC. MOTION TO SET CHAPTER 11
DNL-18 ADMINISTRATIVE EXPENSE CLAIMS
BAR DATE
5-8-19 [690]

22. 17-20689-D-7 MONUMENT SECURITY, INC. CONTINUED MOTION FOR
ET-31 COMPENSATION BY THE LAW OFFICE
OF EASON AND TAMBORNINI, ALC
FOR MATTHEW R. EASON, DEBTOR'S
ATTORNEY(S)
4-4-19 [654]

23. 16-22030-D-7 DAVID WALKER MOTION TO AVOID LIEN OF
MKJ-1 DISCOVER BANK
5-13-19 [26]

Final ruling:

This is the debtor's motion to avoid an alleged judicial lien held by Riverwalk Holdings, LTD ("Riverwalk"). The motion will be denied for two reasons. First, the moving party failed to serve Riverwalk in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving party served Riverwalk (1) through CT Corporation System at an address in Nevada; (2) through the attorneys who obtained its abstract of judgment; and (3) at a street address with no attention line. The first method was insufficient because the Nevada Secretary of State's office shows Riverwalk as an entity whose right to do business in Nevada has been permanently revoked and the moving party has failed to demonstrate service on Riverwalk's agent for service of process during the time it was authorized to do business in Nevada remains authorized to receive service of process on its behalf.

The second method was insufficient because there is no evidence the attorneys are authorized to receive service of process on behalf of Riverwalk in bankruptcy contested matters pursuant to Fed. R. Bankr. P. 7004(b)(3) and 9014(b). See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004). The third method was insufficient because service on a corporation, partnership, or other unincorporated association must be to the attention of an officer, managing or general agent, or agent for service of process, whereas here, there was no attention line.

Second, the moving party has failed to demonstrate the existence of a judicial lien that is subject to avoidance under the Bankruptcy Code. The moving party has filed as an exhibit a copy of an abstract of judgment in favor of Riverwalk recorded in Yolo County, California in June of 2013, before the debtor filed the petition commencing this case. However, when he filed this case, the debtor owned no real property, either in Yolo County or elsewhere. Therefore, by his motion, he purports to seek to avoid Riverwalk's lien as against the personal property he owned and claimed as exempt at the time the petition was filed. He states the lien "impair[s] the exemptions on his personal property." Debtor's Motion, filed May 22, 2019, at 3:1. The debtor adds, "Debtor now seeks to purchase a home but is unable to because of the recorded judicial lien." Id. at 2:13-14.

"There are four basic elements of an avoidable lien under § 522(f)(1)(A): First, there must be an exemption to which the debtor would have been entitled under subsection (b) of this section. 11 U.S.C. § 522(f). Second, the property must be listed on the debtor's schedules and claimed as exempt. Third, the lien must impair that exemption. Fourth, the lien must be ... a judicial lien. 11 U.S.C. § 522(f)(1)." Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992) (emphasis added, internal quotation marks omitted). A debtor's exemption rights and lien avoidance rights are both determined as of the petition date. Goswami, 304 B.R. at 391-92.

Under California law, a judicial lien on real property is created by the recording of an abstract of judgment with the county recorder of the county in which the property is located. Cal. Code Civ. Proc. §§ 697.310(a), 697.340(a). Riverwalk recorded an abstract of judgment in Yolo County, California, whereas at the time the abstract was recorded, the debtor owned no real property in that county (or any

other). Under California law, the judicial lien attaches only to real property, not to personal property. There are mechanisms for acquiring a judicial lien against personal property; here, there is no evidence Riverwalk took the necessary steps.

The debtor's Schedule A reveals he did not own any real property when he filed his petition, on September 28, 2013, and his statement of financial affairs reveals he had not transferred any real property during the two years prior to the filing. Thus, he did not own any real property when Riverwalk recorded its abstract of judgment, on June 4, 2013. The debtor did not list any real property on his schedules and did not claim any interest in real property as exempt. Thus, he has not satisfied the second Mohring test. He has not satisfied the first test because there was no exemption in real property to which he would have been entitled in the absence of the lien. He has not satisfied the third test because the alleged lien did not impair an exemption to which the debtor would otherwise have been entitled.

Finally, the debtor has not satisfied the fourth test - that the lien must be a judicial lien. Because the debtor owned no real property in Yolo County when Riverwalk recorded its abstract of judgment, there was no property for a judgment lien to attach to and no judgment lien was created. Thus, Riverwalk does not hold a judicial lien that is subject to avoidance. See Farrey v. Sanderfoot, 500 U.S. 291, 296 (1991) ["[U]nless the debtor had the property interest to which the lien attached at some point before the lien attached to that interest, he or she cannot avoid the fixing of the lien under the terms of § 522(f)(1)."]; Weeks v. Pederson (In re Pederson), 230 B.R. 158, 163, 164 (9th Cir. BAP 1999) ["A debtor must acquire an interest in property before the judicial lien attaches in order to be able to avoid the lien under § 522(f)(1)."].

For the reasons stated, the motion will be denied by minute order. No appearance is necessary.

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| 25. | 18-22453-D-7
HSM-10 | ECS REFINING, INC. | MOTION FOR COMPENSATION FOR
TRANZON ASSET STRATEGIES,
AUCTIONEER(S)
5-15-19 [1112] |
| | | | |
| 26. | 19-22560-D-7
VVF-1 | VERONICA RODRIGUEZ
HONDA LEASE TRUST VS. | MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
5-17-19 [21] |

27. 19-20064-D-7 BARRY BINNING CONTINUED MOTION FOR RELIEF
KSR-1 FROM AUTOMATIC STAY
5-7-19 [49]
28. 19-20064-D-7 BARRY BINNING MOTION TO ABANDON
DNL-5 5-16-19 [57]
29. 19-22393-D-7 GARY TEIXEIRA MOTION TO COMPEL ABANDONMENT
RAH-2 O.S.T.
5-22-19 [10]

Tentative ruling:

This is the debtor's motion to compel the trustee to abandon the estate's interest in the debtor's shares in his business, Precision Plus Installation, Inc. The debtor's counsel filed the motion, exhibits, and debtor's declaration on May 22, 2019, along with an application for an order shortening time. None of these documents included a date, time, or place for the hearing. There is a proof of service indicating the debtor's counsel served these documents on May 22, 2019 on the chapter 7 trustee and the United States Trustee. He did not serve any creditors.

The court signed the order shortening time on May 22, 2019, requiring service of a notice of hearing and all related pleadings no later than May 24, 2019. On May 24, 2019, the debtor filed a second copy of the motion that, unlike the first, included the date, time, and place of the hearing. There is no evidence that copy of the motion was served on anyone. As of this writing, there is no notice of hearing on file and no evidence of service of a notice of hearing.

Thus, the moving party has failed to serve notice of the motion in accordance with Fed. R. Bankr. P. 6007. Fed. R. Bankr. P. 6007(a) requires the trustee or debtor in possession to give notice of a proposed abandonment or disposition of

property to the United States trustee [and] all creditors. On the other hand, Fed. R. Bankr. P. 6007(b) provides that "[a] party in interest may file and serve a motion requiring the trustee or debtor in possession to abandon property of the estate." Ostensibly, the latter subparagraph does not require that notice be given to all creditors, although the former does. A motion under subparagraph (b), however, should generally be served on the same parties who would receive notice under subparagraph (a) of the rule. See In re Jandous Elec. Constr. Corp., 96 B.R. 462, 465 (Bankr. S.D.N.Y. 1989) (citing Sierra Switchboard Co. v. Westinghouse Elec. Corp., 789 F.2d 705, 709-10 (9th Cir. 1986)).

If the moving party requests, the court will continue the hearing and require the moving party to file a notice of continued hearing and serve it, together with the motion, on all creditors in this case, including those listed on the debtor's creditor schedules and those filing claims in this case at the addresses on their proofs of claim. The notice of continued hearing may be a notice pursuant to LBR 9014-1(f)(1) or (f)(2) so long as the proper amount of notice is given. If the moving party does not so request, the motion will be denied.

The court will hear the matter.

30. 19-22025-D-12 JEFFREY DYER AND JAN MOTION TO APPROVE POST-PETITION
RLC-2 WING-DYER FINANCING AGREEMENT AND
GRANTING SECURITY INTERESTS
5-23-19 [40]

Tentative ruling:

This is the debtors' motion to approve post-petition financing. The motion will be denied because there is no proof of service on file. The court will hear the matter.

31. 14-25820-D-11 INTERNATIONAL MOTION FOR FAILURE TO COMPLY
15-2122 MANUFACTURING GROUP, INC. WITH A COURT ORDER AND/OR
IWC-5 MCFARLAND V. CARTER ET AL MOTION FOR FAILURE TO RESPOND TO
REQUEST FOR INSPECTION, MOTION
FOR REQUEST FOR STAY OF FURTHER
PROCEEDINGS MOTION/APPLICATION
FOR SANCTIONS
5-24-19 [210]

32. 18-25811-D-11 JLM ENERGY, INC.
FBD-2

MOTION TO CONVERT CASE FROM
CHAPTER 11 TO CHAPTER 7 AND/OR
MOTION TO APPOINT TRUSTEE
O.S.T.
5-28-19 [76]