

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Bakersfield Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: JUNE 8, 2016
CALENDAR: 10:00 A.M. CHAPTER 7 CASES

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

COURT'S ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [14-11501](#)-A-7 ERIK/YASMIN SALAZAR
WDO-2
ERIK SALAZAR/MV
WILLIAM OLCOTT/Atty. for dbt.

MOTION TO AVOID LIEN OF MIDLAND
FUNDING LLC
5-10-16 [[24](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

APPLICABLE LAW

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003).

A judicial lien or nonpossessory, nonpurchase-money security interest that does not impair an exemption cannot be avoided under § 522(f). See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)); cf. *In re Nelson*, 197 B.R. 665, 672 (B.A.P. 9th Cir. 1996) (lien not impairing exemption cannot be avoided under 11 U.S.C. § 522(f)). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

PROCEDURE

Rule 9013 provides in pertinent part: "The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought." Fed. R. Bankr. P. 9013. Under this rule, a motion lacking proper grounds for relief does not comply with this rule even though the declaration, exhibits or other papers in support together can be read as containing the required grounds.

The motion does not state with particularity the grounds for the relief requested. The motion fails to include essential facts necessary for the court to grant relief under § 522(f)(1). The motion does not include (1) the amount of other liens on the property (e.g., consensual liens), (2) a specific value for the property (a range of values is given in the declaration), (3) an exemption amount, and (4) a statement indicating whether the other judicial lien on the property should be deemed "avoided" under the reverse priority analysis, See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007) (In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority, and liens already avoided are excluded from the exemption-impairment calculation as to other liens)

NO IMPAIRMENT

In this case, the responding party's judicial lien does not impair the exemption claimed in the property subject to the responding party's lien because the total amount of (1) the responding party's lien (\$5423.03), (2) all other liens (\$134,194 per the schedules—lower priority judicial liens should be considered excluded), and (3) the exemption amount (\$1.00 per the schedules), does not exceed the property's value (\$140,000—the highest value in the range of values given). The total amount of the respondent's judicial lien, plus all other liens, plus the exemption is \$139,618.03. The value of the property is given as a range: \$130,000 - \$140,000. This range of value is inappropriate for a motion to avoid a lien, especially where various valuations in that range would not entitle the movant to the relief sought or would entitle the movant only to partial relief. The court has no way of ascertaining which value is asserted by the debtor, given that different outcomes depend on the specific value selected from the range of values. Accordingly, a prima facie case has not been made for relief under § 522(f).

GUIDELINES FOR LIEN-AVOIDANCE MOTIONS

The court would like to identify the essential components for drafting lien-avoidance motions in the future. Such motions should succinctly set forth the facts providing the basis for the relief sought. A well-drafted motion should include (1) a concise description of property and its value; (2) a statement of the amount of the respondent's lien and the date it was recorded; (3) a statement describing any consensual lien or liens against the property and their amounts; and (4) a statement identifying any other judicial lien on the property and indicating whether such lien should be factored into or excluded from the impairment calculation based on its priority relative to the respondent's lien.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

The debtor's motion to avoid a lien has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling, and the lack of facts that would warrant relief,

IT IS ORDERED that the motion is denied without prejudice.

2. [14-11501](#)-A-7 ERIK/YASMIN SALAZAR
WDO-3
ERIK SALAZAR/MV
WILLIAM OLCOTT/Atty. for dbt.

MOTION TO AVOID LIEN OF CACH,
LLC
5-10-16 [[30](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

APPLICABLE LAW

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003).

A judicial lien or nonpossessory, nonpurchase-money security interest that does not impair an exemption cannot be avoided under § 522(f). See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)); cf. *In re Nelson*, 197 B.R. 665, 672 (B.A.P. 9th Cir. 1996) (lien not impairing exemption cannot be avoided under 11 U.S.C. § 522(f)). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

PROCEDURE

Rule 9013 provides in pertinent part: "The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought." Fed. R. Bankr. P. 9013. Under this rule, a motion lacking proper grounds for relief does not comply with this rule even though the declaration, exhibits or other papers in support together can be read as containing the required grounds.

The motion does not state with particularity the grounds for the relief requested. The motion fails to include essential facts necessary for the court to grant relief under § 522(f)(1). The motion does not include the amount of other liens on the property (e.g., consensual liens). The motion does not include the exemption amount claimed. And the motion gives a range of values in which some of the values within the range would not entitle the movant to relief.

NO IMPAIRMENT

In this case, the responding party's judicial lien does not impair the exemption claimed in the property subject to the responding party's lien because the total amount of the responding party's lien

(\$5388.18), all other liens (\$134,194 per the schedules), and the exemption amount (\$1.00 per the schedules), does not exceed the property's value (\$140,000). The total amount of the respondent's judicial lien, plus all other liens, plus the exemption is \$139,583. The value of the property is given as a range: \$130,000 - \$140,000. This range of value is inappropriate for a motion to avoid a lien, especially where various valuations in that range would not entitle the movant to the relief sought or would entitle the movant only to partial relief. The court has no way of ascertaining which value is asserted by the debtor, given that different outcomes depend on the specific value selected from the range of values. Accordingly, a prima facie case has not been made for relief under § 522(f).

The court notes in cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007).

"[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B). Here, the debtors have not indicated in the motion the existence of the lien of Midland Funding, LLC, a lien that has priority over the respondent's lien based on the recording date. The lien of Midland Funding LLC, when added to "all other liens," would result in a partial lien avoidance assuming a valuation of \$140,000 for the property. However, the motion should not leave the court to put the puzzle pieces together with other motions. Instead, the movant's attorney should set forth all material facts necessary to the relief sought.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

The debtor's motion to avoid a lien has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling, and the lack of facts that would warrant relief,

IT IS ORDERED that the motion is denied without prejudice.

3. [16-11104](#)-A-7 HENRIETTA FOX MOTION FOR RELIEF FROM
ABG-1 AUTOMATIC STAY
KINECTA FEDERAL CREDIT 4-20-16 [9]
UNION/MV
JOSEPH PEARL/Atty. for dbt.
MARK BLACKMAN/Atty. for mv.

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Subject: 2013 Volkswagen Beetle TDI Hatchback

Unopposed motions are subject to the rules of default. Fed. R. Civ. P.55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written

opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

STAY RELIEF

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Kinecta Federal Credit Union's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2013 Volkswagen Beetle TDI Hatchback, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

4. [16-10711](#)-A-7 LILLIE GIBSON MOTION TO AVOID LIEN OF ATA
JSP-1 PROPERTIES, LLC
LILLIE GIBSON/MV 5-6-16 [[12](#)]
JOSEPH PEARL/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Disposition: Denied without prejudice

Order: Civil minute order

The court will deny the motion without prejudice on grounds of insufficient service of process on the responding party. A motion to avoid a lien is a contested matter requiring service of the motion in the manner provided by Federal Rule of Bankruptcy Procedure 7004. Fed. R. Bankr. P. 4003(d), 9014(b); see also *In re Villar*, 317 B.R. 88, 92 n.6 (B.A.P. 9th Cir. 2004). Under Rule 7004, service on corporations and other business entities must be made by mailing a copy of the motion "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Fed. R. Bankr. P. 7004(b) (3).

Service of the motion was insufficient. No proof of service has been filed.

5. [16-11513](#)-A-7 BARBRA HART ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
\$30.00 AMENDMENT FEE PAID 5-20-16 [[24](#)]
5/26/16

Final Ruling

The fee paid, the order to show cause is discharged.

6. [15-11835](#)-A-7 JAMES/JAMIE CANNON ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
ROBERT WILLIAMS/Atty. for dbt. 4-26-16 [[466](#)]
\$12.50 FILING FEE PAID
4/26/16

Final Ruling

The fee paid, the order to show cause is discharged.

7. [15-11835](#)-A-7 JAMES/JAMIE CANNON ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
4-26-16 [[467](#)]

ROBERT WILLIAMS/Atty. for dbt.
\$12.00 FILING FEE PAID
4/26/16

Final Ruling

The fee paid, the order to show cause is discharged.

8. [15-11835](#)-A-7 JAMES/JAMIE CANNON MOTION FOR ORDER AUTHORIZING
KDG-22 SALE OF REAL PROPERTY SUBJECT
RANDELL PARKER/MV TO OVERBID AND/OR MOTION FOR
ORDER AUTHORIZING PAYMENT OF
REAL ESTATE BROKER'S
COMMISSIONS (408 OILDALE DR)
5-18-16 [[494](#)]

ROBERT WILLIAMS/Atty. for dbt.
LISA HOLDER/Atty. for mv.

Tentative Ruling

Motion: Sell Real Property and Compensate Real Estate Broker

Notice: LBR 9014-1(f) (2); no written opposition required

Disposition: Granted

Order: Prepared by moving party

Property: 408 Oildale Drive, Bakersfield, CA

Buyer: Capitalist Masters Group, LLC

Sale Price: \$70,000

Sale Type: Private sale subject to overbid opportunity

Broker's Compensation: 6% commission based on the final selling price

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 363(b) (1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b) (1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. *See* 11 U.S.C. § 704(a) (1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under § 327 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a) (3). The court finds that the compensation sought is reasonable and will approve the application.

9. [15-11835](#)-A-7 JAMES/JAMIE CANNON
KDG-23
RANDELL PARKER/MV
ROBERT WILLIAMS/Atty. for dbt.
LISA HOLDER/Atty. for mv.

MOTION TO SELL
5-11-16 [[475](#)]

Tentative Ruling

Motion: Sell Real Property and Compensate Real Estate Broker

Notice: LBR 9014-1(f) (2); no written opposition required

Disposition: Granted

Order: Prepared by moving party

Property: 405 Oildale Drive, Bakersfield, CA

Buyer: Capitalist Masters Group, LLC

Sale Price: \$69,000

Sale Type: Private sale subject to overbid opportunity

Broker's Compensation: \$3000 if sold to the proposed buyer, and \$3000 plus 6% of any excess over \$69,000 if the property is sold on overbid

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. *See* 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under § 327 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application.

10. [15-14636](#)-A-7 JONNA BOWSER
PPR-1
MICHAEL FETTERS/MV
ROBERT WILLIAMS/Atty. for dbt.
ASYA LANDA/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-12-16 [[42](#)]

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f) (1); written opposition required

Disposition: Granted

Order: Civil minute order

Subject: 10701 Division Street, Mojave, CA

Unopposed motions are subject to the rules of default. Fed. R. Civ. P.55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f) (1) (B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

STAY RELIEF

Section 362(d) (2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d) (2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a) (3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Michael S. Fetters, Trustee of the Child's Exempt Trust, has filed a motion for relief from the automatic stay that has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 10701 Division Street, Mojave, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a) (3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

11. [16-10138](#)-A-7 MONICA BAUER MOTION TO DISMISS CASE
UST-1 5-2-16 [[46](#)]
TRACY DAVIS/MV
JOHN GARNER/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.

Final Ruling

Motion: Dismiss Case Pursuant to 11 U.S.C. § 707(a)

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by the movant

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The court takes judicial notice of all documents filed by the debtor or debtor's attorney that are referenced in this motion. Fed. R. Evid. 201.

Official Form 106Dec, Declaration about an Individual Debtor's Schedules instructs the debtor to certify under penalty of perjury that the debtor has read the summary and schedules filed with this declaration and that they are true and correct. In this case, this declaration is signed with a "/s/" by the debtor's attorney on the debtor's signature line. This document has been improperly verified. Other critical documents contain the same problem. For example, the Statement of Financial Affairs, Official Form 107, has not been signed by the debtor on the debtor's signature line, but by the debtor's attorney. The same is true for Official Form 122A-1, Chapter 7 Statement of Current Monthly Income. These improperly verified documents constitute cause to dismiss the case.

The US Trustee, moreover, has requested wet signatures from the debtor's attorney under LBR 9004-1(c)(1)(D) for various documents listed on page 3-4 of the motion, including the ones referenced in the previous paragraph of this ruling. The signatures provided by the debtor's attorney raise questions about the authenticity of the debtor's signature. With the exception of the voluntary petition, the date of execution on the wet-signature documents is different from the date of execution on the "/s/ signature" documents. Because the dates on the wet-signature documents and the dates on the "/s/ signature" documents do not correspond, doubts arise as to whether the documents were properly verified. Where debtor's signatures are required, the expectation is the date of execution on a "/s/ signature" is the same as the date of execution of the debtor's signed original, or at least very near in time. A gap of 8 days between execution of the wet-signature documents and "/s/ signature" documents is considerable, and

the debtor or her attorney have not appeared to explain the difference.

12. [16-10544](#)-A-7 DOLORES BACON MOTION FOR RELIEF FROM
RDW-1 AUTOMATIC STAY
CAM VII TRUST/MV 4-15-16 [[36](#)]
ROBERT WILLIAMS/Atty. for dbt.
REILLY WILKINSON/Atty. for mv.

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f) (1); written opposition required

Disposition: Granted

Order: Civil minute order

Subject: 27548 Maple Street, Taft, CA

Unopposed motions are subject to the rules of default. Fed. R. Civ. P.55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f) (1) (B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

STAY RELIEF

Section 362(d) (2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d) (2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a) (3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

CAM VII TRUST's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 27548 Maple Street, Taft, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy

Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

13. [15-10869](#)-A-7 RAMIRO/CECILIA CELEDON MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
CAPITAL ONE AUTO FINANCE/MV 5-5-16 [[25](#)]
SCOTT LYONS/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.
DISCHARGED

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted in part, denied in part as moot

Order: Civil minute order

Subject: 2011 Kia Soul

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

AS TO DEBTOR

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. The stay that protects the debtor terminates at the entry of discharge. 11 U.S.C. § 362(c)(2). In this case, discharge has been entered. As a result, the motion will be denied in part as moot as to the debtor.

AS TO ESTATE

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Capital One Auto Finance's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the trustee in the property described in the motion, commonly known as a 2011 Kia Soul. Relief from the automatic stay as to the interest of the debtor in such property is denied as moot given the entry of the discharge in this case. 11 U.S.C. § 362(c)(2)(C).

IT IS FURTHER ORDERED that the 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

14. [12-18378](#)-A-7 ARMANDO/MARIA GUILLEN MOTION TO AVOID LIEN OF ALTA
TGF-2 ONE FEDERAL CREDIT UNION
ARMANDO GUILLEN/MV 4-29-16 [[22](#)]
VINCENT GORSKI/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the

property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

15. [16-10081](#)-A-7 VITO/KATHLEEN FERRIN MOTION TO EXTEND TIME TO FILE A
UST-1 MOTION TO DISMISS CASE UNDER
TRACY DAVIS/MV SEC. 707(B) AND/OR MOTION TO
EXTEND DEADLINE TO FILE A
COMPLAINT OBJECTING TO
DISCHARGE OF THE DEBTOR
5-2-16 [[25](#)]

WILLIAM EDWARDS/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.

Final Ruling

Motion: Extend U.S. Trustee and Chapter 7 Trustee's Deadlines to Object to Discharge or File a Motion to Dismiss

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

EXTENSION OF DEADLINE FOR OBJECTING TO DISCHARGE

A party in interest may bring a motion for an extension of the deadline for objecting to discharge under § 727, but the motion must be filed before the original time to object to discharge has expired. Fed. R. Bankr. P. 4004(b). The deadline may be extended for "cause." *Id.*

Based on the motion and supporting papers, the court finds that cause exists to extend the U.S. Trustee and the trustee's deadline for objecting to discharge under § 727(a). This deadline to object to discharge will be extended through August 3, 2016.

EXTENSION OF DEADLINE FOR FILING MOTION TO DISMISS

Under Rule 1017(e) (1), a motion to dismiss a chapter 7 case for abuse under § 707(b) and (c) must be filed within 60 days after the first date set for the § 341(a) creditors' meeting. Fed. R. Bankr. P. 1017(e) (1). The court may extend this period for cause if the request for such extension is made before the original period expires.

Based on the motion and supporting papers, the court finds that cause exists to extend the deadline for the trustee and the U.S. Trustee to file a motion to dismiss under § 707(b) and (c). This deadline to file a motion to dismiss will be extended through August 3, 2016.

16. [16-10483](#)-A-7 ANITRA BLUE MOTION TO REDEEM
SAA-1 4-26-16 [[16](#)]
ANITRA BLUE/MV
STEVEN ALPERT/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

Having been resolved by stipulation and order, the matter is dropped as moot.

17. [16-10784](#)-A-7 ADAM AGCAOILI MOTION TO CONVERT CASE FROM
CHAPTER 7 TO CHAPTER 13
ADAM AGCAOILI/MV 5-2-16 [[12](#)]
PATRICK KAVANAGH/Atty. for dbt.

Final Ruling

Motion: Convert Case from Chapter 7 to Chapter 13

Notice: LBR 9014-1(f) (1); written opposition required

Disposition: Continued to July 6, 2016, at 10:00 a.m.

Order: Not applicable

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f) (1) (B). None has been filed.

The defaults of all parties other than the U.S. Trustee are entered.

PROCEDURE

The U.S. Trustee has not been given notice of the motion. Fed. R. Bankr. P. 2002(a) (4), (k), 9034(c). The email address used is incorrect. And the U.S. Trustee has been crossed off of the court's ECF mailing matrix. The court will not grant the relief sought unless the U.S. Trustee has received a copy of the motion and a notice of the continued hearing. The notice of the continued hearing must use the notice procedure specified under LBR 9014-1(f) (2).

MERITS

Section 706 of the Bankruptcy Code gives Chapter 7 debtors a qualified conversion right. See 11 U.S.C. § 706(a), (d). A debtor's right to convert a case from Chapter 7 to Chapter 11, 12, or 13 is conditioned on (i) the debtor's eligibility for relief under the chapter to which the case will be converted and (ii) the case not having been previously converted under §§ 1112, 1208, or 1307. 11 U.S.C. § 706(a), (d); see also *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 372-74 (2007) (affirming denial of debtor's conversion from Chapter 7 to Chapter 13 based on bad faith conduct sufficient to establish cause under § 1307(c)).

The secured and unsecured debt amounts shown in the debtor's schedules are below the debt limits provided in § 109(e). See 11 U.S.C. § 109(e).

The case has not been previously converted under § 1112, 1208, or 1307 of the Bankruptcy Code. See *id.* § 706(a). No party in interest has questioned the debtor's eligibility for relief under Chapter 13.

If the U.S. Trustee has been served and if the U.S. Trustee does not oppose the motion, the court will grant the relief requested at the continued hearing.

18. [12-13889](#)-A-7 ENRIQUETA BENAVIDES MOTION TO AVOID LIEN OF MIDLAND
JSP-3 FUNDING, LLC.
ENRIQUETA BENAVIDES/MV 5-6-16 [[30](#)]
NEIL SCHWARTZ/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re*

Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the debt secured by the responding party's lien. As a result, the responding party's judicial lien will be avoided entirely.

19. [16-11096](#)-A-7 OSCAR ALMANZA MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
SANTANDER CONSUMER USA, 5-11-16 [[12](#)]
INC./MV
ROBERT WILLIAMS/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Subject: 2013 Dodge Charger

Unopposed motions are subject to the rules of default. Fed. R. Civ. P.55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

STAY RELIEF

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Santander Consumer USA Inc.'s motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2013 Dodge Charger, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

20. [14-15856-A-7](#) SOHIL ESCHEIK CONTINUED STATUS CONFERENCE RE:
[15-1029](#) COMPLAINT
NEXTGEAR CAPITAL, INC. V. 3-16-15 [[1](#)]
ESCHEIK
MATTHEW QUALL/Atty. for pl.
ORDER #52, RESPONSIVE
PLEADING

Final Ruling

Because the adversary proceeding is being transferred to Judge Richard Lee for trial setting purposes, the status conference is continued to June 14, 2016, at 1:30 p.m. in Department C, Courtroom 12, 2500 Tulare Street, Fresno, California.