UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

June 15, 2015 at 1:30 p.m.

THIS CALENDAR IS DIVIDED INTO TWO PARTS. THEREFORE, TO FIND ALL MOTIONS AND OBJECTIONS SET FOR HEARING IN A PARTICULAR CASE, YOU MAY HAVE TO LOOK IN BOTH PARTS OF THE CALENDAR. WITHIN EACH PART, CASES ARE ARRANGED BY THE LAST TWO DIGITS OF THE CASE NUMBER.

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 7. A TENTATIVE RULING FOLLOWS EACH OF THESE ITEMS. THE COURT MAY AMEND OR CHANGE A TENTATIVE RULING BASED ON THE PARTIES' ORAL ARGUMENT. IF ALL PARTIES AGREE TO A TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING PURSUANT TO LOCAL BANKRUPTCY RULE 3015-1(c), (d) [eff. May 1, 2012], GENERAL ORDER 05-03, ¶ 3(c), LOCAL BANKRUPTCY RULE 3007-1(c)(2)[eff. through April 30, 2012], OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER. IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON JULY 13, 2015 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY JUNE 29, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY JULY 6, 2015. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 8 THROUGH 16 IN THE SECOND PART OF THE CALENDAR. INSTEAD, THESE ITEMS HAVE BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS; IF IT IS, IT INCLUDES THE COURT'S FINDINGS AND CONCLUSIONS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

IF THE COURT CONCLUDES THAT FED. R. BANKR. P. 9014(d) REQUIRES AN EVIDENTIARY HEARING, UNLESS OTHERWISE ORDERED, IT WILL BE SET ON JUNE 22, 2015, AT 2:30 P.M.

Matters to be Called for Argument

1. 14-27901-A-13 ALEJANDRO/JOANN REYES — MOTION TO MODIFY PLAN
RJ-6 — 4-6-15 [84]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection will be sustained in part.

First, the plan provisions regarding the steps up and down in the monthly plan payment make no sense because they include two errors. The debtor has miscalculated the number of monthly plan payments made through April 2015 and the plan assumes the 14th monthly plan payment will be due in November 2015 which instead will be the 15th month. The confusion continues in section 6.05 which contains inconsistent dates for re-commencement of mortgage installments.

Second, the monthly plan payment of $4,100 due for May and through September 2015 is less than the $4,568 in dividends and expenses the plan requires the trustee to pay each month.

Third, the additional evidence from the debtor indicates that the debtor does not believe the inheritance will fund the increased plan payment of $6,500. The debtor has not proven the feasibility of the proposed plan. See 11 U.S.C. § 1325(a)(6).

Fourth, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, the debtor has not amended the schedules to list an interest in a post-petition inheritance, and the debtor has not amended Schedules I and J to reflect the changes in post-petition financial circumstances as outlined in the debtor's attorney's letter to the trustee. These nondisclosures are a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

To the extent the trustee argues that all "post-petition assets" must be paid to the trustee for distribution to creditors through the plan, that objection will be overruled. Nothing requires that post-petition assets made property of the estate by 11 U.S.C. § 1306(a) be distributed to creditors or turned over to the trustee. On the other hand, the existence of such assets may require, by virtue of 11 U.S.C. § 1325(a)(4), an increase in the dividend payable to holders of unsecured claims. But, until the post-petition assets are scheduled, the court reserves judgment on this issue.

2. 14-31811-B-13 JAYE/PATRICIA DRUMMOND — MOTION TO APPROVE COMPROMISE
CJY-1 — 5-21-15 [20]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule

9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted in part. Because the confirmed plan provided for the surrender of the motor home and also provided for the revesting of property of the estate in the debtor, no court approval is necessary to surrender the property or to modify the terms of surrender with the secured creditor. However, because the debtor will sell the motor home to a third party who will pay the sale price to the secured creditor, the court will treat the motion as a sale motion. The motion to sell the motor home will be granted on the condition that the sale proceeds are used to pay all liens of record in full in a manner consistent with the plan. If the proceeds are not sufficient to pay liens of record in full (including liens ostensibly "stripped off"), no sale may be completed without the consent of each lienholder not being paid in full.

3. 15-21338-A-13 SHAWN GASKINS — ORDER TO SHOW CAUSE 5-29-15 [25]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will be dismissed.

The debtor was given permission to pay the filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The installment in the amount of $77 due on May 26 was not paid. This is cause for dismissal. See 11 U.S.C. § 1307(c)(2).

4. 15-21258-A-13 ELIZABETH GOMEZ — ORDER TO SHOW CAUSE 5-26-15 [48]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will remain pending but the court will modify the terms of its order permitting the debtor to pay the filing fee in installments.

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the $77 installment when due on May 20. While the delinquent installment was paid on June 1, the fact remains the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

5. 15-22365-A-13 OMOTAYO FASUYI ORDER TO SHOW CAUSE 5-29-15 [29]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The case will remain pending but the court will modify the terms of its order permitting the debtor to pay the filing fee in installments.

The court granted the debtor permission to pay the filing fee in installments. The debtor failed to pay the $77 installment when due on May 26. While the delinquent installment was paid on June 1, the fact remains the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

6. 15-20379-A-13 ALBERTO/KATHARINE OBREGON MOTION TO VALUE COLLATERAL 5-14-15 [77]
PGM-5
VS. SIERRA CENTRAL CREDIT UNION

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

The debtor has filed a valuation motion in connection with a proposed chapter 13 plan. The valuation motion addresses the value of a 2012 Ford Escape that secures Sierra Central Credit Union's Class 2 claim.

The debtor's evidence is an appraisal from an expert opining that the vehicle has a "retail value after repairs of an average of $11,300."

The court does not understand this opinion. What does "retail value after repairs" mean? Is the value given net of some unspecified amount to repair the vehicle? Is the vehicle worth $11,300 if some unspecified amount is spent to do unspecified repairs? And, what does the appraiser mean by the phrase "an average of $11,300"? This suggests that the vehicle has several different values and the appraisers has averaged those values. What are the values? What accounts for the variation in values?

Further, this opinion is substantially below the $19,557 Kelley Blue Book valuation and there is nothing to account for the more than $8,000 difference.

The court finds the creditor's appraisal of $17,949 most persuasive. It is from a car dealer and is based on a survey of similar vehicles in the area. The $17,949 places the value at the lower end of the price spectrum for these similar vehicles.

7. 15-24188-A-13 FRANKIE/YVETTE GAMBOA
MET-1

MOTION TO
EXTEND AUTOMATIC STAY
5-28-15 [8]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be denied.

First, the motion indicates that it has been brought pursuant to 11 U.S.C. § 362(c)(3). However, that provision is applicable only when the debtor has filed one prior case which has been dismissed in the prior year. Here, the debtor has filed two prior cases that were dismissed in the year prior to this most recent case.

Second, the plan proposed here is unconfirmable on its face. It assumes the home lender will agree to a loan modification. That modification cannot be imposed by the court and there is no evidence the lender has agreed to it. See 11 U.S.C. § 1322(b)(2). Therefore, to be confirmable the plan must propose an alternative treatment that is consistent with 11 U.S.C. § 1322(b)(5) (provides for the ongoing mortgage payment and the cure of the arrears) or provides for surrender as permitted by 11 U.S.C. § 1325(a)(5)(C). Promising only to modify the plan if the loan modification is not accepted by the home lender is not a plan; it is a promise to have a plan of unspecified terms.

Therefore, the court cannot conclude that there is clear and convincing evidence that this case will be different than the first two cases and it cannot impose the automatic stay pursuant to 11 U.S.C. § 362(c)(4).

THE FINAL RULINGS BEGIN HERE

8. 14-28902-A-13 JULIE CALLAHAN — MOTION TO MODIFY PLAN
MC-2 — 4-24-15 [42]

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, the motion is removed from calendar for resolution without oral argument.

The motion will be granted on the condition that the plan is further modified to provide for a cure of post-petition mortgage arrears of $2,972. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

9. 15-23228-A-13 EDORENO/MARY GONZALES — MOTION TO VALUE COLLATERAL
MC-1 — 5-15-15 [17]
VS. SANTANDER CONSUMER USA, INC.

Final Ruling: This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor 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 as consent to the granting of the motion. 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 Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The valuation motion pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a) will be granted. The motion is accompanied by the debtor's declaration. The debtor is the owner of the subject property. In the debtor's opinion, the subject property had a value of $7,822 as of the date the petition was filed and the effective date of the plan. Given the absence of contrary evidence, the debtor's opinion of value is conclusive. See Enewally v. Washington Mutual Bank (In re Enewally), 368 F.3d 1165 (9th Cir. 2004). Therefore, $7,822 of the respondent's claim is an allowed secured claim. When the respondent is paid $7,822 and subject to the completion of the plan, its secured claim shall be satisfied in full and the collateral free of the respondent's lien. Provided a timely proof of claim is filed, the remainder of its claim is allowed as a general unsecured claim unless previously paid by the trustee as a secured claim.

10. 15-23144-A-13 STACI TERRY — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 5-27-15 [16]

Final Ruling: The trustee has voluntarily dismissed his objection to confirmation and his related dismissal motion.

11. 09-47645-B-13 RYAN/RITSA PRESTON — MOTION TO AVOID JUDICIAL LIEN
SNM-4 — 5-4-15 [65]
VS. BANK OF AMERICA, N. A.

Final Ruling: The movant has voluntarily dismissed the motion.

12. 15-23263-A-13 MICHAEL EUSTAQUIO — ORDER TO SHOW CAUSE 5-27-15 [22]

Final Ruling: The order to show cause will be discharged as moot. The case was dismissed on May 27.

13. 15-21576-A-7 JEREMY/KAREE HARRISON — MOTION TO CONFIRM PLAN 5-1-15 [30]
SJS-2

Amended Final Ruling: This motion will be dismissed without prejudice. This is a chapter 7 case. While the debtor filed a motion to convert to chapter 13, no order was lodged after the hearing on the motion. Consequently, it remains pending under chapter 7 and no chapter 13 trustee has been appointed. The court cannot confirm a chapter 13 plan in a chapter 7 case.

14. 14-30879-A-13 ROBERT/JESSICA RODGERS — MOTION TO CONFIRM PLAN 5-1-15 [46]
JME-2

Final Ruling: This motion to confirm a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(c)(3) & (d)(1) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party 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 as consent to the granting of the motion. 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 debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

15. 15-20379-A-13 ALBERTO/KATHARINE OBREGON — MOTION FOR RELIEF FROM AUTOMATIC STAY 5-15-15 [83]
KAZ-1
WELLS FARGO BANK, N.A. VS.

Final Ruling: This 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 debtor and the trustee 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 as consent to the granting of the motion. 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 Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The movant holds the senior deed of trust on the subject property. After the original borrower granted this lien, that borrower granted two junior deeds of trust, one in 2014 to a third party and a another in 2015 to the debtor. The third party filed a bankruptcy case in 2014 and the debtor filed this case in 2015. Both of these prior bankruptcies were preceded by the bankruptcy case of the original borrower.

The movant obtained relief from the automatic stay in the case of its original borrower as well as the bankruptcy of the third party. It now seeks such relief in this case and it also seeks an "in rem" order pursuant to 11 U.S.C. § 362(d)(4).

There is a preliminary issue: does the automatic stay prevent the holder of a senior lien from foreclosing on security when the holder of a junior lien on that property has filed a bankruptcy case? This was answered in the affirmative in Monumental Life Ins. Co. v. Bibo, Inc. (In re Bibo, Inc.), 200 B.R. 348, 350 (9th Cir. BAP 1996), vacated as moot, 139 F.3d 659 (9th Cir.1998) but the Ninth Circuit has vacated that opinion. Nonetheless, other bankruptcy courts have this circuit have concluded the automatic stay is applicable. See e.g., In re A Partners, LLC, 344 B.R. 114 (Bankr. E.D. Cal. 2006); In re Capital Mortg. & Loan, Inc., 35 B.R. 967 (Bankr. E.D. Cal. 1983).

In this case, the debtor has made no pretense of attempting to protect the debtor's interest in the underlying real property, either by foreclosing its lien or by paying the movant. The proposed plan makes no provision for the claim.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject real property following sale. The movant is secured by a deed of trust encumbering the subject real property. The debtor has proposed a plan that does not provide for the payment of the movant's claim. Further, neither the debtor nor the original borrower has not paid the claim under the terms of the contract with the movant. Because the movant's claim is not being paid and because the debtor's plan will not pay it in connection with the chapter 13 case, there is cause to terminate the automatic stay.

Further relief will be granted under 11 U.S.C. § 362(d)(4), which provides:

"On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay . . . with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-

(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

(B) multiple bankruptcy filings affecting such real property."

Section 362(d)(4) implicates 11 U.S.C. § 362(b)(20). Section 362(b)(20) is an "in rem" exception to the automatic stay. If the court grants relief in this case under section 362(d)(4), but then another petition is filed by any debtor who claims an interest in the subject real property, section 362(b)(20) provides that the automatic stay does not operate in the second case so as to prevent the enforcement of a lien or security interest in the subject real property. The exception to the automatic stay in the second case is effective for 2 years after the entry of the order under section 362(d)(4) in the first case.

A debtor in the subsequent bankruptcy case, however, may move for relief from the in rem order. The request for relief from the in rem order may be premised

upon "changed circumstances or for other good cause shown. . . ."

Here, the original borrower incurred the obligation to the movant then soon defaulted and then filed a bankruptcy case that did not cure the default or pay off the movant. When the movant began a nonjudicial foreclosure, the original borrower conveyed a junior lien to a third party who immediately filed a second bankruptcy case which did not cure the default or pay off the movant. The debtor then conveyed yet another security interest to the debtor and the debtor then filed this case. As indicated above, this case will not cure the default or pay off the movant's lien.

The court concludes that the purpose of filing three bankruptcy cases and creating two junior liens was to prevent a foreclosure without paying the movant's claim. These facts evidence a scheme to delay, hinder, or defraud creditors involving the subject property.

Therefore, the court will grant relief from the automatic stay that will be effective for a period of two years in any future case filed by anyone claiming an interest in the subject property, provided the recordation requirements of section 362(d)(4) are satisfied by the movant or its successor.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

16. 14-31090-A-13 STEVEN/LEYNA IRWIN — MOTION TO MODIFY PLAN 5-7-15 [59]
SDB-4

Final Ruling: The court finds that a hearing will not be helpful to its consideration and resolution of this matter. Accordingly, the motion is removed from calendar for resolution without oral argument.

The motion will be granted on the condition that the plan is further modified in the confirmation order to provide for a plan payment of $600 beginning June 2015 and continuing for 5 months then increasing to $1,125 thereafter. As further modified, the plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.