

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Modesto, California

June 27, 2017 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.	16-91000-D-13 BSH-4	MAURICE/VENISE SMALLEY	MOTION TO CONFIRM PLAN 5-16-17 [66]
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2.	16-90706-D-13 SSA-1	KATHLEEN RUSSELL	MOTION TO MODIFY PLAN 5-11-17 [23]
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3. 13-91526-D-13 KENNETH/ROBIN MOLLESON MOTION TO MODIFY PLAN
MSN-2 5-8-17 [28]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

4. 17-90231-D-13 STEVEN RUIZ OBJECTION TO CONFIRMATION OF
PLAN BY WELLS FARGO BANK, N.A.
5-9-17 [24]

Final ruling:

This case was dismissed on May 31, 2017. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

5. 17-90231-D-13 STEVEN RUIZ OBJECTION TO CONFIRMATION OF
RCO-1 PLAN BY WELLS FARGO BANK, N.A.
5-10-17 [26]

Final ruling:

This case was dismissed on May 31, 2017. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

6. 16-90946-D-13 DIANE HATTON CONTINUED MOTION TO CONFIRM
DCJ-3 PLAN
3-20-17 [43]

7. 16-91153-D-13 RICARDO MARTINEZ AND EVA MOTION FOR RELIEF FROM
JHW-1 HERNANDEZ AUTOMATIC STAY
CREDIT ACCEPTANCE 5-22-17 [67]
CORPORATION VS.

Final ruling:

This matter is resolved without oral argument. This is Credit Acceptance Corporation's motion seeking relief from automatic stay to pursue available insurance proceeds. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is cause for granting limited relief from stay to allow the moving party to proceed with litigation, as is necessary, to collect against available insurance proceeds. Accordingly, the court will grant limited relief from stay to allow the moving party to proceed to judgment against the debtor for the limited purpose of pursuing any available insurance proceeds and waive FRBP 4001(a)(3). There will be no further relief afforded. Moving party is to submit an appropriate order. No appearance is necessary.

8. 15-90257-D-13 BRANDEN/DEONA HALL MOTION TO INCUR DEBT
JAD-1 6-2-17 [69]

9. 15-90858-D-13 TROY/JESSICA HUGHART MOTION TO INCUR DEBT
MSN-1 6-2-17 [39]

10. 16-90362-D-13 KRISTOPHER/JULIE NABORS MOTION TO CONFIRM PLAN
BSH-5 5-4-17 [95]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

11. 16-90362-D-13 KRISTOPHER/JULIE NABORS MOTION TO CONFIRM PLAN
BSH-5 5-4-17 [96]

This is a duplicate of item no. 10. Matter removed from calendar.

12. 16-90868-D-13 LISA COOPER MOTION TO CONFIRM PLAN
BSH-7 5-4-17 [165]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

13. 17-90276-D-13 MARGARET/CHARLES GABLE OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
5-26-17 [18]

14. 17-90277-D-13 GOPIKRISHNAN CHANDRAN CONTINUED MOTION FOR RELIEF
KMT-2 FROM AUTOMATIC STAY AND/OR
EWA OLEJNIK VS. MOTION TO CONFIRM TERMINATION
OR ABSENCE OF STAY
5-2-17 [34]

Tentative ruling:

This is the motion of the debtor's former spouse (the "former spouse") for relief from the automatic stay and/or for an order confirming there is no automatic stay in effect with respect to a state court action involving the dissolution of her marriage to the debtor, as regards spousal support. The debtor has filed opposition and the former spouse has filed a reply. For the following reasons, the motion will be granted.

Before the debtor filed this chapter 13 case, the debtor and the former spouse were parties to a family law proceeding in the state court in which their marriage was dissolved. The parties' marital settlement agreement was attached to and incorporated into the state court's judgment, and spousal support, division of property, and attorney's fees were ordered as set forth in the agreement. About a

year and a half later (and about nine months prior to the filing of this bankruptcy case), the parties entered into a stipulation for modification of certain terms of the marital settlement agreement, and the stipulation was made an order of the court. In support of this motion, the former spouse testifies the debtor has failed to comply with the terms of the modification stipulation and order with regard to spousal support; she seeks relief from stay "to collect unpaid spousal support against [the debtor]" in the state court. The former spouse makes clear she will attempt to collect only from property that is not property of the bankruptcy estate; namely, the debtor's ERISA-qualified 401(k) plan.

The debtor makes two arguments in opposition. First, he contends, "Although the former spouse's claim appears to be a domestic support obligation, it is actually a division of property." Debtor's Opp., DN 55 ("Opp."), at 1:23-24. He makes a number of factual claims in his declaration: concerning the length of the marriage and the amount of support provided for in the original state court judgment, the manner in which the former spouse was to be paid, the debtor's view that the consideration for the agreement to pay what was denominated support was the former spouse's waiver of any community interest in the debtor's business assets, and concerning subsequent disputes between the debtor and his business partners, which he alleges resulted in a dramatic drop in his income. In reply, the former spouse testifies she understood she would be receiving spousal support because she did not work during the marriage, during the parties' separation, or when the state court judgment was entered, and that "[t]he support was never intended to be a property division." Former Spouse's Decl., DN 61, at 2:20-21.

In other words, the dispute is fact intensive and the issues are of the type that are routinely determined by family court judges, who are likely to have a better grasp of the considerations applicable in determining them. See In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985) (citations omitted) ["It is appropriate for bankruptcy courts to avoid incursions into family law matters 'out of consideration of court economy, judicial restraint, and deference to our state court brethren and their established expertise in such matters.'"]. In accord with this general policy, the Bankruptcy Code excepts from the coverage of the automatic stay "the commencement or continuation of a civil action or proceeding . . . for the establishment or modification of an order for domestic support obligations" (§ 362(b)(2)(A)(ii)) and "the collection of a domestic support obligation from property that is not property of the estate . . ." § 362(b)(2)(B).

In Allen v. Allen (In re Allen), 275 F.3d 1160 (9th Cir. 2002), the bankruptcy court denied the debtor's former spouse's motion for relief from stay to pursue in state court a modification of a spousal support award. The district court affirmed and the Ninth Circuit reversed. 275 F.3d at 1161. Citing Mac Donald, the court held that § 362(b)(2)(A)(ii) covered the spouse's modification request. Allen, 275 F.3d at 1163. More recently, in Stanwyck v. Stanwyck (In re Stanwyck), 2008 Bankr. LEXIS 4693 (9th Cir. BAP 2008), the debtor's chapter 11 filing interrupted the pending marital dissolution proceeding between the debtor and his spouse. The bankruptcy court granted the spouse's motion for relief from stay to permit her to continue with that proceeding in state court. The bankruptcy appellate panel, citing the above-quoted language from Mac Donald and dicta in a subsequent United States Supreme Court case,¹ held the bankruptcy court had appropriately found cause for relief from stay "based on the expertise of the state court in family law matters." 2008 Bankr. LEXIS 4693, at *17.

In In re Cohen, 551 B.R. 23 (C.D. Cal. 2015), the parties raised virtually the

same issue that is raised here. After the debtor filed a chapter 11 petition, his spouse² filed a request in the family court to clarify whether an earlier pre-petition family court order that on its face provided for spousal support was intended to be in the nature of support. The debtor responded with an adversary proceeding charging his spouse with violating the automatic stay. Similarly to the debtor here, he contended the family court order "represented an advance distribution of their community property" (551 B.R. at 26, quoting debtor's brief), not spousal support. The district court, citing Mac Donald and § 362(b)(2)(A)(ii), held the spouse's request to the state court for clarification fell within the spousal support exception to the automatic stay, and thus, did not violate the stay. 551 B.R. at 30.

The Cohen court suggested that, although it was granting relief from stay, the bankruptcy court would make the ultimate decision whether the state court order was "truly a domestic support obligation," considering the state court's decision as a factor. Cohen, 551 B.R. at 32. Nevertheless, the district court "agree[d] with the Bankruptcy Court that should the State Court determine that the FCO is intended as a domestic support obligation, '[further proceedings] would be a waste of time and resources for both [the debtor's spouse] and the bankruptcy estate. . . .'" Id. at 32, n.3. "The Court believes, however, that by enacting the Support Exception [§ 362(b)(2)(A)(ii)], Congress intended that a spouse in [the debtor's spouse's] position have the opportunity for her claim to be heard in State Court." Id.

This court agrees. "Section 362(b)(2)(A)(ii) was added to the bankruptcy code in 1994 (citation) . . . to 'provide greater protection for alimony, maintenance, and support obligations owing to a spouse, former spouse or child of a debtor in bankruptcy. '[A] debtor should not use the protection of a bankruptcy filing in order to avoid legitimate marital and child support obligations.'" Allen, 275 F.3d at 1163, citing H.R. Rep. No. 103-835, at 54 (1994), reprinted in 1994 U.S.C.C.A.N. 3363. The cases cited by the debtor in this case predate the enactment of § 362(b)(2)(A)(ii) and (B) and the debtor has cited no case, and the court has found none, where a bankruptcy court has denied relief from stay to a debtor's spouse or former spouse for the purpose of returning to state court to seek a determination whether that court's prior judgment which, on its face, was a judgment for support (as here), was actually a judgment for support or instead represented a division of property. If a debtor could avoid the effect of § 362(b)(2)(A)(ii) and (B) simply by claiming in bankruptcy court that a state court order appearing on its face to be a support order is really a property division order, those subdivisions would effectively have no meaning.

The debtor makes a second argument. According to her motion, the former spouse intends to seek to enforce in the state court a modification stipulation and order under which, at least facially, the debtor agreed to modify the "Spousal Support" provisions of the original stipulated judgment by agreeing to transfer \$175,000 from his 401(k) plan to the former spouse by way of a qualified domestic relations order ("QDRO"). The debtor acknowledges his 401(k) is not property of the bankruptcy estate. See Patterson v. Shumate, 504 U.S. 753, 758-59 (1992). Nevertheless, he argues, "It does not follow that the Former Spouse is therefore able to collect a debt by obtaining an assignment of the Debtor's interest in such a [4]01(k) plan." Opp. at 4:4-5. He complains that the former spouse obtained a copy of the 401(k) plan improperly, but he then quotes a provision of the plan that appears to be a spendthrift clause and argues (1) the clause prohibits the action the former spouse proposes to take; (2) the former spouse has failed to follow the proper procedures for obtaining a QDRO; (3) if her attempt to reach the 401(k) plan is successful, "the entire retirement plan risks loss of tax-deferred status" (id. at 4:15-16); and

(4) the former spouse waived any interest in the 401(k) plan in the original stipulated judgment. All of these are issues that are better left to the state court as the preferred court for family law matters.

For the reasons stated, the court intends to grant the motion, finding there is no automatic stay in place as to the former spouse's attempts to modify or enforce a state court order for spousal support (or any attempt the debtor might make to modify such a state court order), as to either party's attempts to obtain a determination as to the true nature of the debtor's obligations denominated as spousal support, or as to the former spouse's attempts to collect spousal support from property that is not property of the bankruptcy estate. The court will hear the matter.

1

One of the principal areas in which this Court has customarily declined to intervene is the realm of domestic relations. Long ago we observed that "[t]he whole subject of the domestic relations of husband and wife, parent and child, belongs to the laws of the States and not to the laws of the United States." So strong is our deference to state law in this area that we have recognized a "domestic relations exception" that "divests the federal courts of power to issue divorce, alimony, and child custody decrees."

Stanwyck, 2008 Bankr. LEXIS 4693, at *15-16, quoting Elk Grove Unified Sch. Dist. v. Newdow, 542 U.S. 1, 12 (2004) (citations omitted).

2

At the time of the debtor's chapter 11 filing, the parties' marriage had not yet been dissolved, a fact the court held to be irrelevant. 551 B.R. at 29-30.

15. 17-90279-D-13 RAMON/LETICIA GARCIA OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
5-26-17 [16]

16. 17-90180-D-13 CALVIN/JULIE LIMBOCKER MOTION TO CONFIRM PLAN
CJY-1 4-27-17 [14]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

17. 17-90307-D-13 ANA MENDOZA OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
6-2-17 [24]

18. 17-90026-D-13 AURANGZEB KHAN MOTION FOR RELIEF FROM
SHR-1 AUTOMATIC STAY
LANTERN FINANCIAL CORPORATION VS. 6-13-17 [114]

Final ruling:

The motion is denied for the following reasons: (1) moving party used the same docket control number on three separate motions for relief from stay contrary to LBR 9014-1(c); and (2) moving party failed to file a proof of service that has been signed under oath as required by 28 U.S.C. § 1746. As a result of these procedural defects, the court will deny the motion by minute order. No appearance is necessary.

19. 17-90026-D-13 AURANGZEB KHAN MOTION FOR RELIEF FROM
SHR-1 AUTOMATIC STAY
LANTERN FINANCIAL CORPORATION VS. 6-13-17 [119]

Final ruling:

The motion is denied for the following reasons: (1) moving party used the same docket control number on three separate motions for relief from stay contrary to LBR 9014-1(c); and (2) moving party failed to file a proof of service that has been signed under oath as required by 28 U.S.C. § 1746. As a result of these procedural defects, the court will deny the motion by minute order. No appearance is necessary.

20. 17-90026-D-13 AURANGZEB KHAN MOTION FOR RELIEF FROM
SHR-1 AUTOMATIC STAY
LANTERN FINANCIAL CORPORATION VS. 6-13-17 [125]

Final ruling:

The motion is denied for the following reasons: (1) moving party used the same docket control number on three separate motions for relief from stay contrary to LBR 9014-1(c); and (2) moving party failed to file a proof of service that has been signed under oath as required by 28 U.S.C. § 1746. As a result of these procedural defects, the court will deny the motion by minute order. No appearance is necessary.

21. 17-90339-D-13 RAMON PARRA OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
6-2-17 [13]

Final ruling:

This is the trustee's objection to confirmation of the debtor's proposed chapter 13 plan. The debtor has filed a statement that he does not oppose the objection, and he has filed an amended plan. Accordingly, the objection will be sustained by minute order. No appearance is necessary.

22. 17-90340-D-13 LEO/NIA BARRAGAN OBJECTION TO CONFIRMATION OF
RDG-1 PLAN BY RUSSELL D. GREER
6-2-17 [13]

23. 11-92649-D-13 HUMBERTO/MARTHA MORENO MOTION TO AMEND
16-9014 SSA-2 6-2-17 [46]
MORENO ET AL V. PNC BANK, NA

24. 12-92784-D-13 ROBERT/ROCHELL WILLIAMS CONTINUED MOTION TO INCUR DEBT
MSN-1 5-24-17 [48]

25. 17-23757-D-13
RLF-1

LAUREN/DOUGLAS MILLER

MOTION TO EXTEND AUTOMATIC STAY
6-19-17 [14]