

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

July 3, 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. 19-22904-D-7 ANDREW HOREJS MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
5-6-19 [5]

2. 19-20420-D-7 MARK GALLAGHER MOTION FOR RELIEF FROM
RAS-1 AUTOMATIC STAY
DEUTSCHE BANK NATIONAL TRUST 5-29-19 [27]
COMPANY VS.

Final ruling:

This matter is resolved without oral argument. This is Deutsche Bank National Trust Company'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.

3. 19-23026-D-7 MUSTAPHA FATINE MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
GATEWAY ONE LENDING & 5-23-19 [13]
FINANCE VS.

Final ruling:

This matter is resolved without oral argument. This is Gateway One Lending & Finance'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.

4. 17-20731-D-11 CS360 TOWERS, LLC CONTINUED OBJECTION TO CLAIM OF
DB-37 GEMACK ASSOCIATES, LLP, CLAIM
NUMBER 16-1
12-7-18 [548]

Final ruling:

The hearing on this objection is continued to July 11, 2019 at 10:00 a.m. No appearance is necessary on July 3, 2019.

5. 19-23133-D-7 NAKIA VAUGHN MOTION FOR RELIEF FROM
SMR-1 AUTOMATIC STAY
VASARI APARTMENTS I & II, 5-28-19 [14]
LLC VS.

6. 19-22939-D-7 REBIE MOTT-MITCHELL MOTION FOR RELIEF FROM
ETW-1 AUTOMATIC STAY
SHMUEL MAHGEREFTEH VS. 6-3-19 [27]
7. 19-23045-D-7 JONEANIA WARRENS MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
5-13-19 [2]
8. 17-21149-D-7 LESLEY REEVE MOTION FOR COMPENSATION FOR
ASF-2 GABRIELSON AND COMPANY,
ACCOUNTANT(S)
6-3-19 [106]

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 by minute order. No appearance is necessary.

9. 19-21149-D-7 MARTINIQUE BAKER MOTION TO AVOID LIEN OF
GJS-1 DISCOVER BANK
5-30-19 [12]

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 is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

10. 19-23452-D-11 CIAO RESTAURANTS, LLC STATUS CONFERENCE RE: VOLUNTARY
PETITION
5-30-19 [1]

11. 19-22660-D-7 MARLINDA GIRLEY MOTION FOR RELIEF FROM
JHW-1 AUTOMATIC STAY
SANTANDER CONSUMER USA, INC. 5-23-19 [10]
VS.

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 is supported by the record. As such the court will grant relief from stay. As the debtor's Statement of Intentions indicates she will surrender the property, the court will also waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

12. 19-22969-D-7 KELLI BURGESS ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
6-6-19 [24]

Final ruling:

The deficiency has been corrected. As a result the court will issue a minute order discharging the order to show cause and the case will remain open. No appearance is necessary.

13. 19-22284-D-7 ARI/MAYA COLONDRES MOTION TO AVOID LIEN OF
TLA-1 DISCOVER BANK
5-23-19 [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 is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

14. 17-20689-D-7 MONUMENT SECURITY, INC. MOTION FOR RELIEF FROM
APN-8 AUTOMATIC STAY
TOYOTA MOTOR CREDIT 5-28-19 [707]
CORPORATION VS.

Final ruling:

This matter is resolved without oral argument. This is Toyota Motor Credit Corporation'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 debtors are 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. 17-20689-D-7 MONUMENT SECURITY, INC. MOTION FOR ADMINISTRATIVE
DNL-19 EXPENSES
5-29-19 [713]

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 administrative expense of Texas Comptroller of \$1,453.04 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.

16. 19-22698-D-7 KEITH DAVENPORT MOTION TO AVOID LIEN OF PACIFIC
MC-1 CREDIT EXCHANGE
5-29-19 [12]

Tentative ruling:

This is the debtor's motion to avoid a judicial lien allegedly held by Pacific Credit Exchange ("Pacific"). The motion will be denied because 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 Pacific recorded in Sacramento County, California in 2009 - ten years ago. The debtor's address as listed on the abstract of judgment was in Sacramento. In contrast, the debtor's petition, filed April 29, 2019, indicates that at the time of filing, he owned a different property - in Rancho Cordova. According to his statement of financial affairs, the debtor resided at a third address as recently as 2017. The court cannot determine when the debtor purchased the property he currently owns - where required to do so on his Schedule D, he failed to list the date he incurred the mortgage debt on the property.

However, given that he resided elsewhere as recently as 2017, it is almost certain that at the time Pacific's abstract was recorded, the debtor did not own the real property as against which he now seeks to avoid the lien.

If the debtor did not own the property as against which he seeks to avoid the lien at the time the abstract of judgment was recorded, Pacific's judicial lien is not subject to avoidance under § 522(f). 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)."]. The debtor may have remedies against Pacific (see In re Kenney, 2018 Bankr. LEXIS 3615, *5-6, 2018 WL 6039094 (Bankr. C.D. Cal. 2018)) but lien avoidance under § 522(f) is not among them.

For the reasons stated, the motion will be denied. The court will hear the matter.

17. 18-25811-D-11 JLM ENERGY, INC.
FBD-2

CONTINUED MOTION TO CONVERT
CASE TO CHAPTER 7 AND/OR MOTION
TO APPOINT TRUSTEE
5-28-19 [76]

18. 19-22038-D-7 GREGORY/MICHELLE STITT
CLH-2

MOTION TO COMPEL ABANDONMENT
6-17-19 [30]

Final ruling:

This is the debtor's motion for clarification of the court's order, filed June 6, 2019, denying the debtor's motion to avoid an alleged judicial lien held by Riverwalk Holdings, LTD ("Riverwalk"). The motion will be denied for three reasons. First, although this motion was served on Riverwalk, correctly or not (see below), the original motion was denied for two reasons, one of which was the failure to serve Riverwalk in compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The present motion is not a motion to avoid the lien, but a motion to clarify the order denying it. Thus, Riverwalk has never been properly served with a motion to avoid the lien.

Second, the moving party has not demonstrated service of the present motion was made in compliance with Rule 7004(b)(3). The original motion was served on Riverwalk, among other ways, at a street address in Texas but with no attention line. This time, the moving party has addressed service to an officer, managing or general agent, or agent for service of process, but has made service by certified mail, whereas service pursuant to Rule 7004(b)(3) must be by first-class mail. See preamble to Rule 7004(b).¹ The moving party also attempted to serve this motion on Riverwalk through a corporate agent for service of process in New York but at an address different from the one listed by the New York Secretary of State's office for Riverwalk's agent for service.² The court will expect any future motion to ensure proper service by serving Riverwalk in accordance with the New York Secretary of State's website, which lists Riverwalk by its actual name as listed on its abstract of judgment.

Third, the moving party has failed to address the case law cited in the motion as authority for the court's conclusion that the debtor cannot avoid the fixing of a lien under § 522(f) of the Bankruptcy Code where he did not have a property interest in particular property before the lien attached to that interest. That is, the moving party ignores Farrey v. Sanderfoot, 500 U.S. 291, 296 (1991), and Weeks v. Pederson (In re Pederson), 230 B.R. 158, 163, 164 (9th Cir. BAP 1999). The moving party is free to address that case authority if he so chooses, but in the meantime, the court views the motion for clarification as asking the court to ensure title to property he intends to acquire as against the lien, which would be contrary to Farrey and Pederson. The debtor's intention is clear from the motion itself, which states:

The Court reasoned that the relevant sections of [the] bankruptcy code do not provide for avoidance of liens which do not attach to real property. The Court went further and implied, but did not expressly state, that because the subject lien was recorded with no real property to attach to, that it could not cloud title for any future purchases. Specifically, the Court reasoned that there is no "judicial lien" by virtue of the fact that there was no real property to attach to, thus implying that it is of no legal consequence. And since there is no lien to attach to future purchases, the motion was essentially moot. This is arguably an accurate recitation of the law but presents a practical problem.

Despite the lien technically not being able to cloud future title, it in reality does. Future lenders will not loan to Debtor, believing that the prior lien clouds future title. Debtor has been specifically informed by his mortgage broker that he cannot purchase a home until the public record is free of this lien.

Debtor's Motion, filed June 12, 2019, at 1:27-2:10.

Contrary to the debtor's position, it is not the court's job to function as a title company. The Farrey and Pederson cases do not make exceptions for situations where it would be convenient or desirable for the court simply to issue an order avoiding the lien, and neither they nor their progeny provide for the type of declaratory relief the debtor seeks in the present motion.³ An adversary proceeding would be required for this type of relief. Fed. R. Bankr. P. 7001(2) and (9). Like the case law, the rule makes no exception for convenience to the debtor.

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

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- 1 The court is also not persuaded the address in Texas was the address of the correct entity. On the Foreign Limited Partnership Application for Registration filed with the California Secretary of State, the partnership crossed out the "Ltd." at the end of its name and handwrote in "LP."
 - 2 The moving party apparently obtained the address of the corporate agent for service in New York from the California Secretary of State's website, where it is listed as 111 Eighth Ave., 13th Fl., but the moving party used an incorrect address - 1111 Eighth Ave., 13th Fl.
 - 3 The debtor states:

Arguably, Debtor could simply file a contempt action against the lien-holder for violation of the Bankruptcy Discharge. Having to go to the time and expense of prosecuting a contempt action and then punishing the lien-holder by forcing it to pay Debtor's attorney's fees is arguably a foolish strain on party and judicial resources. A simple clarifying order by this Court would go a long way to avoid a year of litigation, coupled with tens of thousands of dollars in litigation costs.

Id. at 3:3-8.

20. 19-23452-D-11 CIAO RESTAURANTS, LLC MOTION TO EMPLOY GABRIEL E.
GEL-2 LIBERMAN AS ATTORNEY
6-11-19 [22]

Tentative ruling:

This is the application of the debtor-in-possession in this case to employ Gabriel E. Liberman, of the Law Offices of Gabriel Liberman, APC ("Counsel") as its bankruptcy counsel. The application was noticed pursuant to LBR 9014-1(f)(2); thus, the court will entertain opposition, if any, at the hearing. However, the court has certain initial concern.

The application is not clear about the amount of the retainer Counsel has received and is to receive post-petition. The application states (1) that the debtor has paid Counsel \$10,000 for a pre-petition retainer, that pre-petition fees and costs totaled \$6,277, and that Counsel is currently holding a retainer of \$3,723 in its client trust account; (2) that a third-party payor, Palmer Riedel, will pay \$5,000 per month, for a total of \$20,000, "for total fees of \$25,000.00" (Debtor's Appl., filed June 11, 2019, at 4:28); and (3) that "[p]ost-petition payments shall be held in THE FIRM's client-trust account and the FIRM will file the necessary disclosures with the Court for any post-petition payments." Id. at 5:1-2. The numbers do not appear to add up. If Counsel received \$10,000 pre-petition and is to receive another \$20,000 post-petition, the "total fees" received as a retainer would be \$30,000, not \$25,000.

The court will hear the matter.

21. 14-26469-D-7 GERARDO CHAVEZ MOTION TO AVOID LIEN OF
CLH-4 CITIBANK, N.A.
6-19-19 [91]

22. 15-29890-D-7 GRAIL SEMICONDUCTOR MOTION TO FILE CLAIM AFTER
DNL-61 CLAIMS BAR DATE
6-18-19 [1296]

23. 19-23452-D-11 CIAO RESTAURANTS, LLC
GEL-5

MOTION FOR ORDER TO APPROVE
STIPULATION FOR ORDER
AUTHORIZING CASH COLLATERAL
O.S.T.
6-26-19 [47]

24. 19-23452-D-11 CIAO RESTAURANTS, LLC
GEL-7

MOTION TO CONVERT CASE FROM
CHAPTER 11 TO CHAPTER 7 O.S.T.
6-26-19 [52]