

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

July 7, 2014 at 10:00 a.m.

1. 13-30804-A-11 ELWYN/JEANNINE DUBEY MOTION TO
APPROVE AMENDED PLAN
6-11-14 [138]

Final Ruling: This motion will be dropped from calendar as the court has not yet approved the debtors' disclosure statement. Assuming the debtors' disclosure statement is approved, the hearing on the confirmation of the debtor's plan will be set in the order approving the disclosure statement.

2. 12-28413-A-7 F. RODGERS CORPORATION MOTION TO
14-2119 SJL-1 DISMISS
MCGRANAHAN V. WESTERN STATES 5-29-14 [7]
ASBESTOS WORKERS' TRUST FUNDS

Final Ruling: The parties have agreed to continue the hearing on this motion to August 18, 2014 at 10:00 a.m. Docket 18.

3. 14-21371-A-12 JEREMIAH/HOLLY HARPER MOTION TO
SAC-3 USE CASH COLLATERAL
6-6-14 [58]

Final Ruling: The motion will be dismissed without prejudice.

The notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Instead, the notice advises the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). The respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

In short, if the movant gives 28 days or more of notice of the hearing, it does not have the option of pretending the motion has been set for hearing on less than 28 days of notice and dispensing with the court's requirement that written opposition be filed.

4. 14-21371-A-12 JEREMIAH/HOLLY HARPER MOTION TO
SAC-4 VALUE COLLATERAL
VS. WILBUR-ELLIS COMPANY 6-6-14 [63]

Final Ruling: The motion will be dismissed without prejudice.

July 7, 2014 at 10:00 a.m.

The notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Instead, the notice advises the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). The respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

In short, if the movant gives 28 days or more of notice of the hearing, it does not have the option of pretending the motion has been set for hearing on less than 28 days of notice and dispensing with the court's requirement that written opposition be filed.

5. 14-21371-A-12 JEREMIAH/HOLLY HARPER MOTION TO
SAC-5 VALUE COLLATERAL
VS. GREEN TREE SERVICING, LLC 6-6-14 [68]

Tentative Ruling: The hearing on the motion will be continued to allow the respondent creditor to obtain its own valuation of the property.

The debtors request an order valuing their real property in Wheatland, California at \$55,000, in an effort to strip down the only mortgage on the property. It is held by Green Tree Servicing and ostensibly secures a claim of \$179,878. Green Tree Servicing opposes the motion, seeking time to obtain its own valuation of the property.

The court will continue the hearing on this motion to allow Green Tree Servicing to obtain its own valuation of the property.

The debtors' \$55,000 valuation of the property is problematic at best given their statement in the schedules that it has a value of \$90,000 as of the petition date, February 13, 2014. See Schedule A; see also Docket 70.

6. 14-21371-A-12 JEREMIAH/HOLLY HARPER MOTION TO
SAC-6 AVOID JUDICIAL LIEN
VS. JOHN DEERE FINANCIAL FSB 6-6-14 [75]

Final Ruling: The motion will be dismissed without prejudice.

The notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Instead, the notice advises the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). The respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

In short, if the movant gives 28 days or more of notice of the hearing, it does not have the option of pretending the motion has been set for hearing on less than 28 days of notice and dispensing with the court's requirement that written

opposition be filed.

7. 14-21371-A-12 JEREMIAH/HOLLY HARPER MOTION TO
SAC-7 AVOID JUDICIAL LIEN
VS. WILBUR ELLIS COMPANY 6-6-14 [82]

Final Ruling: The motion will be dismissed without prejudice.

The notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Instead, the notice advises the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). The respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

In short, if the movant gives 28 days or more of notice of the hearing, it does not have the option of pretending the motion has been set for hearing on less than 28 days of notice and dispensing with the court's requirement that written opposition be filed.

8. 14-21371-A-12 JEREMIAH/HOLLY HARPER MOTION TO
SAC-8 VALUE COLLATERAL
VS. ALLY FINANCIAL 6-6-14 [89]

Final Ruling: The hearing on this motion has been continued to July 21, 2014 at 10:00 a.m. Docket 126.

9. 14-21371-A-12 JEREMIAH/HOLLY HARPER MOTION FOR
SAC-9 ORDER DIRECTING FARMERS GRAIN
ELEVATOR TO TURN OVER REAL ESTATE
FUNDS
6-6-14 [94]

Final Ruling: The motion will be dismissed without prejudice.

The notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Instead, the notice advises the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). The respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

In short, if the movant gives 28 days or more of notice of the hearing, it does not have the option of pretending the motion has been set for hearing on less than 28 days of notice and dispensing with the court's requirement that written opposition be filed.

Tentative Ruling: The motion will be denied.

The hearing on this motion was continued from June 23, to allow the debtor to file an amended plan. No amended plan has been filed and the court has dismissed most of the debtor's valuation and lien avoidance motions set for hearing on July 7. Therefore, the court's prior ruling on the confirmation of the proposed plan remains applicable.

The debtors move for confirmation of their amended chapter 12 plan filed on May 20, 2104. Docket 47. The motion will be denied.

(1) The debtors' proposed plan strips off or strips down secured claims without court approval. Sections 2.10 and 2.03 of the plan state that the debtors shall file motions to value the 2012 crop proceeds and the Wheatland property before the confirmation hearing. However, the motions to value collateral are scheduled for hearing on July 7, 2014. Dockets 69 & 64.

(2) Section 2.11 of the plan contemplates avoiding a judgment lien on the Wheatland property before the confirmation hearing. However, the motion to avoid lien is scheduled for hearing on July 7, 2014. Docket 76.

(3) The proposed plan does not list out all of the priority or unsecured claims to be paid by the plan. For instance, the Franchise Tax Board has filed two priority claims not listed in the plan, POC Nos. 12 & 13.

As to the unsecured claims, the debtors merely state that a portion of the \$50,000 paid semi-annually "shall be distributed to the holders of allowed unsecured claims on a pro rata basis." Without the full list of claims and corresponding amounts, the court cannot determine whether and to what extent the plan is paying the filed proofs of claim.

(4) The proposed plan does not provide for the payment of all and in full of the filed priority claims. Besides seemingly omitting a priority proof of claim filed by the Franchise Tax Board, the plan does not pay the claim of the Internal Revenue Service in full. The amount of the IRS claim in the plan is \$125,066, whereas the amount in the proof of claim is \$149,925.60. POC No. 16.

(5) The proposed plan does not identify the claims to which the debtors will be objecting. Nor does the plan set a deadline for filing claim objections. Rather, section 4.03 of the plan states that the debtors shall retain authority to file objections to any claims from and after the effective date of the plan. The court will require the plan to set a deadline for the filing and prosecution of claim objections.

(6) The plan cannot be confirmed because it does not satisfy the requirements under 11 U.S.C. § 1225(a)(4), which provides that:

"the value, as of the effective date of the plan, of property to be distributed under plan on account of each allowed unsecured claim is not less than the amount that would be paid on such claim if the estate of the debtor were liquidated under chapter 7 of this title on such date."

According to the debtors' liquidation analysis summary, \$130,222.06 will be available for payment of general unsecured claims. Exhibit A, Docket 47.

However, per the court's calculation, the plan provides only \$124,934 in payments to general unsecured claims.

Using the plan formula, \$25,013.20 (\$125,066 times 1/5) will be used yearly to pay the class 2 priority claims. The remaining \$24,986.80 will be distributed to class 14 general unsecured creditors. The payments for the class 14 general unsecured claims during the five-year plan term equals only \$124,934 (\$24,986.80 times five years).

As such, the plan violates 11 U.S.C. § 1225(a)(4).

(7) The court does not have enough information to assess the feasibility of the plan. In his declaration, Mr. Harper provides a financial projection of \$890,000 in annual gross income for the five year plan term. Docket 46.

However, Mr. Harper has not identified the assumptions underlying the financial projections. This is quite important given that the projected income during the life of the plan is substantially higher than the \$490,000 in gross income reported for 2012 and \$140,000 in gross income reported for 2013. Docket 17, Statement of Financial Affairs.

Lastly, the court finds it unnecessary to address the objections raised by Caterpillar Financial Services Corporation and Green Tree Servicing LLC. Dockets 106 & 108.