

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

August 8, 2018 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.	18-23726-D-7 TBK-1	ALLEN/MILDRED LOVICK	MOTION TO AVOID LIEN OF WCP SOUTHGATE PLAZA, LLC 7-6-18 [15]
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Final ruling:

This is the debtors' motion to avoid a purported judicial lien held by WCP Southgate Plaza LLC ("WCP"). The motion will be denied for the following reasons. First, the moving parties failed to serve WCP in strict compliance with Fed. R. Bankr. P. 7004(b)(3), as required by Fed. R. Bankr. P. 9014(b). The moving parties served WCP (1) through the attorneys who obtained its judgment; (2) by certified mail to the attention of an owner; (3) by certified mail to an "Agent Service Process" for 360 Mortgage Group, LLC ("360 Mortgage"); and (4) at a street address, as listed on the PACER matrix. The first method was insufficient because there is no evidence the attorneys are authorized to accept service of process on behalf of WCP in bankruptcy contested matters. See In re Villar, 317 B.R. 88, 93 (9th Cir. BAP 2004).

The second and third methods were insufficient because service was made by certified mail, whereas for a corporation, partnership, or other unincorporated association that, like WCP, is not an FDIC-insured institution, service must be by

first-class mail. Compare Fed. R. Bankr. P. 7004(b)(3) and preamble to Rule 7004(b) with Fed. R. Bankr. P. 7004(h). The second method was insufficient for the additional reason that service must be directed to the attention of an officer, managing or general agent, or agent for service of process; the rule does not refer to an owner. The third method was insufficient for the additional reason that service was addressed to "Agent Service Process For 360 Mortgage Group, LLC," whereas there is no indication 360 Mortgage Group, LLC is the target of the motion.¹ The fourth method was insufficient because service on a corporation, partnership, or other unincorporated association that is not an FDIC-insured institution must be to the attention of an officer, managing or general agent, or agent for service of process, whereas here, there was no attention line.

The motion will be denied for the additional independent reason that the debtors have not shown that WCP has a judicial lien. In order to avoid a judicial lien, "the debtor must make a competent record on all elements of the lien avoidance statute, 11 U.S.C. § 522(f)" (In re Mohring, 142 B.R. 389, 391 (Bankr. E.D. Cal. 1992)), including that the creditor has a lien that is a judicial lien. Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting Mohring, 142 B.R. at 392. Here, the debtors have submitted a copy of a judgment in favor of WCP, but there is no admissible evidence an abstract of the judgment was ever recorded.

The only purported evidence on that issue is the debtors' testimony that "[t]he recording took place on February 22nd, 2016 as Document No. 34-2014-00165201 by the Sacramento County Recorder's Office." Debtors' Decl., filed July 6, 2018 ("Decl."), at 2:12-14. That testimony is hearsay and it is not borne out by the exhibit, which shows 34-2014-00165201 as the case number of the case in which WCP obtained its judgment - a case filed in Sacramento County Superior Court. There is no recording information on the judgment. "The operative principle here is that although bankruptcy confers substantial benefits on the honest but unfortunate debtor, including a discharge of debts, the ability to retain exempt property, and the ability to avoid certain liens that impair exemptions, there is a price." Mohring, 142 B.R. at 396. Obtaining a copy of a recorded abstract of judgment seems a small price to pay to avoid an otherwise valid and enforceable property interest.

Further, even if an abstract of judgment had been recorded in Sacramento County, it would not have created a lien on the debtors' property, because the property is located in San Joaquin County. Under California law, a judicial lien on real property is created by the recording of an abstract of judgment with the county recorder of the county in which the property is located. Cal. Code Civ. Proc. §§ 697.310(a), 697.340(a). Thus, again, there is no evidence WCP holds a judicial lien.

Finally, the motion will be denied for the additional independent reason that, even if there were evidence of a judicial lien held by WCP, the lien would not impair the debtors' exemption in the property. For a judicial lien to be avoidable, it must impair an exemption to which the debtors would otherwise be entitled. § 522(f)(1); Goswami, 304 B.R. at 390-91, citing Mohring, 142 B.R. at 392. Applying the formula set forth in § 522(f)(2)(A), the court first adds the amounts of the judicial lien, \$49,525, unavoidable liens, \$306,727, and the debtors' exemption, \$88,748, arriving at a total of \$445,000. A judicial lien impairs an exemption only to the extent that this total exceeds the value the debtors' interest in the property would have in the absence of any liens; in this case, that value is \$445,000. The total of the judicial lien, unavoidable liens, and the debtors' exemption, \$445,000, does not exceed that value. Thus, the judicial lien may not be

avoided. Viewed another way, deducting the amount of the unavoidable liens, \$306,727, and the amount of the debtors' exemption, \$88,748, from the value of the property, \$445,000, leaves \$49,525 in equity available to secure the judicial lien held by WCP (if it had one).²

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

1 According to the debtors' Schedule D, 360 Mortgage Group holds what appears to be a deed of trust, although the debtors failed to check any of the boxes to indicate the nature of the lien.

2 The declaration states the equity does not exceed the "amount allowed to be claimed exempt," but it does not state what that amount is. To the extent the debtors are asking the court to speculate as to what that amount might be, the court declines to do so. The court and interested parties should not have to speculate as to amounts the debtors might be allowed to exempt if they amended their schedule of exemptions. If the debtors believe they are entitled to claim a different amount as exempt, they must file an amended Schedule C.

2. 15-23746-D-7 GORDON BONES
MAS-1
MELISSA JOSEPH, ET AL. VS.

MOTION FOR CHANGE OF VENUE FROM
SOUTHERN DISTRICT OF INDIANA,
MOTION FOR RELIEF FROM
AUTOMATIC STAY AND MOTION FOR
IMPOSITION OF 180 DAY BAR TO
FILING ANY ADDITIONAL
BANKRUPTCY CASE
6-7-18 [103]

Final ruling:

The moving parties have filed a corrected amended notice of hearing purporting to continue the hearing on this motion to September 5, 2018. This court's local rules provide that continuances must be approved by the court. LBR 9014-1(j). In this instance, the court will construe the corrected amended notice as a request for a continuance and will continue the hearing to September 5, 2018 at 10:00 a.m. The moving parties served the debtor, the Office of the United States Trustee for the Southern District of Indiana, the chapter 13 trustee in the debtor's case pending in the bankruptcy court for the Southern District of Indiana, and most of the creditors in that case. The moving parties shall, no later than August 8, 2017, serve the corrected amended notice of hearing and all moving papers on creditors Cynthia Ice-Bones and North American Company for Life & Health, added to the debtor's schedules in the Indiana case by amendment filed June 25, 2018, and shall file a proof of service not more than three days after the date service is made.

The hearing will be continued by minute order. No appearance is necessary on August 8, 2018.

3. 16-27672-D-7 DAVID LIND CONTINUED MOTION TO SELL AND/OR
DNL-20 MOTION FOR COMPENSATION FOR
RE/MAX GOLD, BROKER(S)
6-12-18 [487]
4. 16-27672-D-7 DAVID LIND CONTINUED MOTION TO SELL AND/OR
DNL-21 MOTION FOR COMPENSATION FOR GIL
ALBIANI, BROKER(S)
6-12-18 [496]
5. 18-20774-D-11 S360 RENTALS, LLC CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
2-12-18 [1]
6. 18-23188-D-7 DANE BESNEATTE MOTION TO AVOID LIEN OF RHONDA
SDB-2 RAYN
7-10-18 [22]

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.

7. 18-22453-D-11 ECS REFINING, INC.
BJ-2
SUMMITBRIDGE NATIONAL
INVESTMENTS V, LLC VS. CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY
7-6-18 [248]

8. 18-22453-D-11 ECS REFINING, INC.
BJ-3 CONTINUED MOTION TO CONVERT
CASE TO CHAPTER 7
7-6-18 [256]

9. 18-22453-D-11 ECS REFINING, INC.
FWP-12 CONTINUED MOTION TO ABANDON
7-6-18 [263]

10. 18-22453-D-11 ECS REFINING, INC.
FWP-13 CONTINUED MOTION TO REJECT
LEASE OR EXECUTORY CONTRACT
7-6-18 [269]

11. 18-22453-D-11 ECS REFINING, INC. CONTINUED MOTION TO REJECT
FWP-14 LEASE OR EXECUTORY CONTRACT
7-6-18 [276]
12. 18-22453-D-11 ECS REFINING, INC. CONTINUED MOTION TO REJECT
FWP-15 LEASE OR EXECUTORY CONTRACT
7-6-18 [283]
13. 18-22453-D-11 ECS REFINING, INC. FINAL HEARING RE: MOTION TO USE
FWP-16 CASH COLLATERAL
7-12-18 [297]
14. 18-23379-D-7 WILLIAM BATTILANA, II MOTION FOR RELIEF FROM
SJS-1 AUTOMATIC STAY
JILLIAN BATTILANA VS. 7-13-18 [12]

15. 17-20689-D-11 MONUMENT SECURITY, INC. CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
2-1-17 [1]
16. 18-23874-D-7 MIA DUTTON MOTION TO EXTEND AUTOMATIC STAY
8-1-18 [33]
17. 18-22453-D-11 ECS REFINING, INC. MOTION TO USE CASH COLLATERAL
FWP-19 AND/OR MOTION TO SCHEDULE A
FINAL HEARING O.S.T.
8-3-18 [380]