

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 22, 2016 at 10:00 a.m.

1. 15-23700-A-12 JOE/MARIA PIMENTEL MOTION TO
JPJ-2 DISMISS CASE
7-28-16 [66]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the chapter 12 trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the debtor, the creditors, 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 offer 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 and the case will be dismissed.

The chapter 12 trustee moves for dismissal because the debtor is \$37,500 delinquent under the terms of the chapter 12 plan.

11 U.S.C. § 1208(c) provides that "on request of a party in interest, and after notice and a hearing, the court may dismiss a case under this chapter for cause, including . . . (6) material default by the debtor with respect to a term of a confirmed plan."

The debtor's delinquency includes default on three plan payments (\$12,500 a month). The court concludes that the debtor is in material default for purposes of 11 U.S.C. § 1208(c)(6). This is cause for dismissal. Accordingly, the motion will be granted and the case will be dismissed.

2. 15-29421-A-12 JERRY WATKINS MOTION TO
CA-4 CONFIRM PLAN
2-29-16 [19]

Final Ruling: The motion will be dismissed as moot.

The debtor seeks to confirm a chapter 12 plan filed on February 29, 2016. The motion will be dismissed as moot because the debtor has filed another motion, seeking confirmation of a plan filed on July 11, 2016. Docket 48.

Tentative Ruling: The motion will be denied.

The debtor seeks to confirm a chapter 12 plan filed on July 11, 2016. Docket 48.

The chapter 12 trustee and U.S. Bank oppose plan confirmation.

The motion will be denied for the following reasons.

(1) The plan provides payment of \$1.00 on account of California Franchise Tax Board's \$53,960.57 secured claim. POC 2-1. The plan says nothing about how the debtor anticipates dealing with FTB's proof of claim.

(2) There is no stipulation and order on file with respect to the modification of Ocwen's secured claim. The court will not confirm a plan until there is an order stripping down Ocwen's claim – voluntarily or involuntarily – consistent with the terms of the plan.

(3) The plan pays only \$25,184.35 to unsecured creditors, whereas the debtor's liquidation analysis states that they would be entitled to \$25,201.57 in a chapter 7 proceeding. Docket 52, Ex. H.

(4) As plan payments are not due to commence until January 2017, approximately five months in the future, the court is not convinced that this plan is proposed in good faith. The motion says nothing about why the debtor is delaying the start of plan payments either.

(5) The court is not convinced that the proposed plan will not be followed by further reorganization. This is the debtor's fourth chapter 12 bankruptcy case since March 31, 2009. Each of the prior cases were dismissed. While the motion explains the failure of his prior cases with "cancer and incarceration," the debtor gives no details about how these life changing events actually impacted the prior cases.

For instance, there is nothing in the motion stating when the debtor first contracted cancer and how that led to his failure to complete his prior chapter 12 cases. The court also notes that the medical records in support of the motion are all dated the year 2015.

The motion does not give details about the timing of his incarceration and how that impacted the success of his prior cases either. And, the debtor was incarcerated only between May and July 2015.

(6) The motion and plan say that unsecured creditors will receive 10% on \$1,250,000 of general unsecured claims, whereas the debtor's liquidation analysis refers to a 2.97% dividend on \$847,958.11 of general unsecured claims. Dockets 50 at 3 & 48 at 4 & 52 at Ex. H. This discrepancy should be corrected.

(7) The motion lacks an analysis of whether and how the debtor is able to make the required plan payments. Docket 50. This is especially important in light of the debtor's health condition and the prior failure of three chapter 12 bankruptcy cases. In short, the motion does not identify and explain (what,

when, why, how) changes in the debtor's ability to make plan payments and complete this chapter 12 case. Docket 50. Providing conclusory figures of what the debtor projects his future income to be does not satisfy these deficiencies.

4. 10-36150-A-11 KARIN FRANK
MLA-2

MOTION FOR
ENTRY OF DISCHARGE
8-8-16 [492]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the revested debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, 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 offer 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.

The debtor asks the court to enter her discharge pursuant to 11 U.S.C. § 1141(d)(5), which provides that:

"In a case in which the debtor is an individual—

"(A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan;

"(B) at any time after the confirmation of the plan, and after notice and a hearing, the court may grant a discharge to the debtor who has not completed payments under the plan if —

"(i) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 on such date; and

"(ii) modification of the plan under section 1127 is not practicable; and

"(C) unless after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge, the court finds that there is no reasonable cause to believe that —

"(i) section 522(q)(1) may be applicable to the debtor; and

"(ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B)."

The debtor has shown that she has completed all payments under the plan. The debtor then is entitled to discharge pursuant to section 1141(d)(5)(A). The

debtor has shown also that she satisfies section 1141(d)(5)(C). The motion will be granted.

5. 10-36150-A-11 KARIN FRANK MOTION FOR
16-2005 MLA-1 ENTRY OF DEFAULT JUDGMENT
FRANK V. CHASE HOME FINANCE 6-20-16 [35]

Tentative Ruling: The motion will be denied without prejudice.

The plaintiff, Karin Frank, the debtor in the underlying chapter 11 case, seeks entry of a default judgment against the defendant, Chase Home Finance, requesting damages of \$167,251.05, which includes \$8,629.78 in attorney's fees. This motion concerns solely the property located on Shadygrove Street.

The plaintiff contends that the defendant rejected tenders of payment of the reorganized debt, sent late notice payments, and commenced nonjudicial foreclosures resulting injuries to the plaintiff consisting of:

- lost rental income from tenants who stopped paying rent due to their receipt of foreclosure notices;
- eviction expenses to remove tenants not paying rent;
- vandalism at the property;
- lost rental income when the property was vacant;
- payment of rental broker fees/commissions to replace tenants;
- emotional distress and physical illness as a result of dealing with the defendant (\$75,000);
- paying U.S. Trustee quarterly fees to keep this case open in order to enforce the plan (seeking \$11,700); and
- attorney's fees (seeking \$8,629.78).

Docket 37.

The plaintiff also seeks punitive damages and "extra 64.33 month for the unsecured LOC" she apparently paid to the defendant. Docket 37.

Although the plaintiff has made all payments to the defendant pursuant to the plan, the defendant's statements reflect that as of October 1, 2015 an additional \$9,452.79 is owed on the loan and the defendant is holding \$939.09 in unapplied funds. Docket 37.

Fed. R. Civ. P. 55(b)(2) provides that:

"A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals – preserving any federal statutory right to a jury trial – when, to enter or effectuate judgment, it needs to:

- (A) conduct an accounting;
- (B) determine the amount of damages;
- (C) establish the truth of any allegation by evidence; or
- (D) investigate any other matter."

The factors courts consider in determining whether to enter a default judgment include: (i) the possibility of prejudice to the plaintiff, (ii) the merits of the plaintiff's substantive claim, (iii) the sufficiency of the complaint, (iv) the amount at stake, (v) the possibility of a dispute over material facts, (vi) whether the default was due to excusable neglect, and (vii) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits. Valley Oak Credit Union v. Villegas (In re Villegas), 132 B.R. 742, 746 (B.A.P. 9th Cir. 1991).

As the plaintiff here did not address revestment of the property of the estate in her chapter 11 plan, upon confirmation of the plan, the property revested by operation of law into the plaintiff. 11 U.S.C. § 1141(b); Docket 342. And, as the discharge of an individual in chapter 11 cannot take place until the completion of all plan payments, the automatic stay continues as to the revested debtor until entry of discharge. A discharge will be entered on upon completion of all plan payments. 11 U.S.C. § 1141(d)(5)(A).

11 U.S.C. § 362(k)(1) provides that an individual injured by willful violation of the automatic stay "shall recover actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages."

An award for damages for a willful violation of section 362(a) is mandatory. Eskanos & Adler, P.C. v. Roman (In re Roman), 283 B.R. 1, 7 (B.A.P. 9th Cir. 2002); Tsafaroff v. Taylor (In re Taylor), 884 F.2d 478, 483 (9th Cir. 1989).

The "[movants] ha[ve] the burden of proof under § 362(k), which requires a showing (1) by an individual debtor of (2) injury from (3) a willful (4) violation of the stay." Harris v. Johnson (In re Harris), Case No. 10-00880-GBN, WL 3300716, at *4 (B.A.P. 9th Cir. Apr. 7, 2011) (citing to Fernandez v. G.E. Capital Mortg. Servs. (In re Fernandez), 227 B.R. 174, 180 (B.A.P. 9th Cir. 1998)).

The plaintiff has not met her burden of proof under section 362(k) or her burden to establish that the defendant violated the court's plan confirmation order.

While the motion recounts some of the defendant's misconduct and damages sustained by the plaintiff, the motion lacks indispensable details.

For instance, the plaintiff's declaration states that the defendant rejected over 12 tendered payments, but it does not identify the amount and date of each payment and the reason given by the defendant for rejecting the payment. Nor does the motion compare rejected payment amounts with the payments required by the plan. See Docket 37.

The same is true with respect to the plaintiff's loss of tenants. There is insufficient evidence to connect the loss of tenants with the actions of the defendants. The motion does not even align the timing of foreclosure notices with the loss of tenants.

This also is true as to the damages sustained due vandalism on the property.

and farm implements located on the property. Further, the court is unable to discern which creditors hold liens, the amounts secured by those liens, and their relative priorities.

8. 16-20774-A-12 TIMOTHY/JILL PEDROZO MOTION TO
DBL-16 VALUE COLLATERAL
VS. USDA FARM SERVICE AGENCY 8-8-16 [128]

Tentative Ruling: None. All of the valuation motions (DBL-15 through DBL-18) appear to concern the same collateral but the motions given inconsistent values for it. Is the value \$414,360, \$69,360, or 342,000. All are values stated in the motion for 7713 County Road 24, Orland, as well as building, farm animals, and farm implements located on the property. Further, the court is unable to discern which creditors hold liens, the amounts secured by those liens, and their relative priorities.

9. 16-20774-A-12 TIMOTHY/JILL PEDROZO MOTION TO
DBL-17 VALUE COLLATERAL
VS. ROBERT PARKER 8-8-16 [123]

Tentative Ruling: None. All of the valuation motions (DBL-15 through DBL-18) appear to concern the same collateral but the motions given inconsistent values for it. Is the value \$414,360, \$69,360, or 342,000. All are values stated in the motion for 7713 County Road 24, Orland, as well as building, farm animals, and farm implements located on the property. Further, the court is unable to discern which creditors hold liens, the amounts secured by those liens, and their relative priorities.

10. 16-20774-A-12 TIMOTHY/JILL PEDROZO MOTION TO
DBL-18 VALUE COLLATERAL
VS. COUNTY OF GLENN 8-8-16 [133]

Tentative Ruling: None. All of the valuation motions (DBL-15 through DBL-18) appear to concern the same collateral but the motions given inconsistent values for it. Is the value \$414,360, \$69,360, or 342,000. All are values stated in the motion for 7713 County Road 24, Orland, as well as building, farm animals, and farm implements located on the property. Further, the court is unable to discern which creditors hold liens, the amounts secured by those liens, and their relative priorities.

11. 16-20774-A-12 TIMOTHY/JILL PEDROZO MOTION TO
DBL-13 CONFIRM PLAN
7-11-16 [105]

Tentative Ruling: The motion will be denied without prejudice.

The debtors seek to confirm their chapter 12 plan filed on July 11, 2016. Docket 108.

The motion will be denied because the court has not granted any of the valuation motions also set for hearing on this calendar. The plan is premised on the assumption that those motions would be granted.