

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

August 30, 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.	17-21700-D-12 DBL-10	PAUL SCHMIDT	MOTION TO VALUE COLLATERAL OF FARM SERVICE AGENCY FOR EQUIPMENT AND LIVESTOCK 8-2-17 [95]
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Tentative ruling:

This is the debtor's motion to value collateral of the Farm Service Agency (an agency of the U.S. Department of Agriculture) (the "Agency"). The Agency has not filed opposition. For the following reasons, the motion will be granted in part and denied in part.

The motion refers to the Agency's proof of claim which is Claim No. 3 on the court's claims register. The filed claim is in the amount of \$41,800 secured and \$32,875.02 unsecured. According to the proof of claim, the claim is secured by the debtor's real property and his equipment and livestock. Although the motion refers to valuing the secured portion of the Agency's "claim for equipment and livestock," it appears to recognize that the claim is secured also by the debtor's real property. See Debtor's Motion, DN 95, ¶ 7. And the debtor's calculation of the secured portion of the claim takes into account both the real property and the equipment and livestock. The debtor lists the value of the real property as

\$525,200 and the value of the livestock and equipment as \$29,800, for a total of \$555,000. After deducting the amount owed Steve Rasmussen on his first position deed of trust, \$143,940.66, and the secured portion of the Agency's claim, as evidenced by its Claim No. 2, \$369,259.34, the amount remaining to secure the Agency's Claim No. 3 is \$41,800. Thus, the debtor asks the court "to determine that the value of the secured portion of the claim held by FARM SERVICE AGENCY, for equipment and livestock in the ASSET, be set at \$41,800.00." Id. at 4:2-4.

It appears at first glance that this portion of the motion was unnecessary in that the debtor is not seeking to value the Agency's secured claim at any amount less than the full amount claimed as secured by the Agency. It may be the debtor seeks to "pin down" the issue by obtaining an order that will prevail if the Agency amends its claim to assert a higher amount as secured. The Agency has not filed opposition. Therefore, the court will grant the motion in part and fix the amount of the Agency's secured claim at \$41,800.

The problem is that the motion goes on to propose a treatment of the claim, which is a matter that is not appropriately addressed in a motion to value collateral. The motion states:

The Debtor further asserts that, upon the Debtor obtaining a Discharge in this case, the claim of FARM SERVICE AGENCY for equipment and livestock will continue to be based upon the seven year mortgage at 6%, as detailed in the Chapter 13 Plan. [¶] Upon completion of the seven year mortgage, if such interest is not recognized, the Debtor may file an adversary proceeding under Rule 7001(2), of the Federal Rules of Bankruptcy Procedure to obtain such relief.

Mot., ¶¶ 12-13. As a general rule, the treatment of claims is appropriately considered only when the court is considering a debtor's plan. It is not appropriately considered on a motion to value collateral.

For the reasons stated, the court will grant the motion in part and fix the amount of the Agency's secured claim, as asserted in its Claim No. 3, at \$41,800. Except for that relief, the motion will be denied. The court will hear the matter.

2. 17-21700-D-12 PAUL SCHMIDT
DBL-8

MOTION TO VALUE COLLATERAL OF
STEVE RASMUSSEN
8-2-17 [85]

Tentative ruling:

This is the debtor's motion to value collateral of Steve Rasmussen. Mr. Rasmussen has filed opposition. For the following reasons, the motion will be granted in part and denied in part.

First, the motion acknowledges there is no creditor with a superior claim in the collateral that secures Mr. Rasmussen's claim. Then the debtor asserts that the value of that collateral is \$555,000 and that "the value of the security interests held by STEVE RASMUSSEN is \$143,940.66." Debtor's Motion, DN 85 ("Mot."), ¶ 11. The debtor asks the court "to determine that the value of the secured portion of the claim held by STEVE RASMUSSEN, in the ASSET, be set at \$143,940.66." Id. at 3:16-17. Mr. Rasmussen has filed a proof of claim for \$143,940.66 secured and additional \$10,778.04 unsecured. An attachment to the proof of claim indicates the unsecured portion consists of "unsecured personal loans" and "monies advanced."

It appears at first glance that this portion of the motion was unnecessary in that the debtor is not seeking to value Mr. Rasmussen's secured claim at any amount less than the full amount claimed as secured by Mr. Rasmussen. It may be the debtor seeks to "pin down" the issue by obtaining an order that will prevail if Mr. Rasmussen amends his claim to assert a higher amount as secured. Mr. Rasmussen states in his opposition he "does not object to having his secured claim valued at the amount stated in his proof of claim, i.e., \$143,940.66." Rasmussen Opp., DN 100, at 4:2-3. Therefore, the court will grant the motion in part and fix the amount of Mr. Rasmussen's secured claim at \$143,940.66.

The problem is that the motion goes on to propose a treatment of the claim, which is a matter that, as Mr. Rasmussen points out, is not appropriately addressed in a motion to value collateral. The motion states:

The Debtor further asserts that, upon the Debtor obtaining a Discharge in this case, the claim of STEVE RASMUSSEN, secured by an interest in the ASSET, shall not be deemed satisfied and the Debtor will only be entitled to the reconveyance of the subject Deed of Trust upon payment of the claim pursuant to the plan, as a ten year mortgage at 6%. [¶] For the first three years of the mortgage, payment will be made via the Trustee, and the last seven years by payment directly to Steve Rasmussen. [¶] If such interest is not recognized after all payments are made in ten years, the Debtor may file an adversary proceeding under Rule 7001(2), of the Federal Rules of Bankruptcy Procedure to obtain such relief.

Mot., ¶¶ 12-14. As a general rule, the treatment of claims is appropriately considered only when the court is considering a debtor's plan. It is not appropriately considered on a motion to value collateral.

For the reasons stated, the court will grant the motion in part and fix the amount of Mr. Rasmussen's secured claim at \$143,940.66. Except for that relief, the motion will be denied. The court will hear the matter.

3. 17-21700-D-12 PAUL SCHMIDT
DBL-9

MOTION TO VALUE COLLATERAL OF
FARM SERVICE AGENCY
8-2-17 [90]

Tentative ruling:

This is the debtor's motion to value collateral of the Farm Service Agency (an agency of the U.S. Department of Agriculture) (the "Agency"). The Agency has not filed opposition. For the following reasons, the motion will be granted in part and denied in part.

The motion refers to the Agency's proof of claim which is Claim No. 2 on the court's claims register. The filed claim is in the amount of \$369,259.34 secured and \$124,863.04 unsecured. According to the proof of claim and the motion, the claim is secured only by the debtor's real property and not by his equipment or livestock. The motion states the Agency's deed of trust is junior to Steve Rasmussen's, a position that appears to be acknowledged by the Agency's calculation of the secured portion of its claim.¹ The debtor's calculation in his motion is confusing because it includes the value of the equipment and livestock that are not collateral for this particular claim. However, from the motion, the court deduces the debtor's position is this. The value of the "land and buildings" (the real property that is the Agency's collateral) is \$525,200. Mr. Rasmussen is owed

\$143,940.66 on his first position deed of trust, leaving \$381,259.34 in value to secure the Agency's claim. As the secured portion of the Agency's claim, as reflected in its proof of claim, is \$369,259.34, the full amount is secured. In fact, the debtor asks the court "to determine that the value of the secured portion of the claim held by FARM SERVICE AGENCY, for Real Property in the ASSET, be set at \$369,259.34." Debtor's Motion, DN 90 ("Mot."), at 3:10-12.

It appears at first glance that this portion of the motion was unnecessary in that the debtor is not seeking to value the Agency's secured claim at any amount less than the full amount claimed as secured by the Agency. It may be the debtor seeks to "pin down" the issue by obtaining an order that will prevail if the Agency amends its claim to assert a higher amount as secured. The Agency has not filed opposition. Therefore, the court will grant the motion in part and fix the amount of the Agency's secured claim at \$369,259.34.

The problem is that the motion goes on to propose a treatment of the claim, which is a matter that is not appropriately addressed in a motion to value collateral. The motion states:

The Debtor further asserts that, upon the Debtor obtaining a Discharge in this case, the claim of FARM SERVICE AGENCY will continue to be based upon the 25 year mortgage at 6%, as detailed in the Chapter 13 Plan. [¶] Upon completion of the payments for the 25 year mortgage, if such interest is not recognized, the Debtor may file an adversary proceeding under Rule 7001(2), of the Federal Rules of Bankruptcy Procedure to obtain such relief.

Mot., ¶¶ 9-10. As a general rule, the treatment of claims is appropriately considered only when the court is considering a debtor's plan. It is not appropriately considered on a motion to value collateral.

For the reasons stated, the court will grant the motion in part and fix the amount of the Agency's secured claim, as asserted in its Claim No. 2, at \$369,259.34. Except for that relief, the motion will be denied. The court will hear the matter.

1 On his Schedule A, the debtor listed the value of the real property as \$513,200. The secured portion of Mr. Rasmussen's claim is \$143,940.66. The difference between those two figures is \$369,259.34.

4. 17-23903-D-7 EMILY COX
JCO-1

MOTION TO AVOID LIEN OF
PORTFOLIO RECOVERY ASSOCIATES,
LLC

Final ruling:

7-27-17 [14]

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. No appearance is necessary.

5. 17-24904-D-11 AK BUILDERS AND STATUS CONFERENCE RE: VOLUNTARY
COATINGS, INC PETITION
7-26-17 [1]

Final ruling:

As the case was dismissed on August 14, 2017, this hearing will be removed from calendar as moot. No appearance is necessary.

6. 17-24311-D-7 TARICK ABUKHDEIR MOTION FOR RELIEF FROM
MDE-1 AUTOMATIC STAY
TOYOTA LEASE TRUST VS. 7-31-17 [14]

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 he 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.

7. 16-22725-D-7 PETER/CATHLEEN VERBOOM MOTION TO COMPROMISE
HSM-2 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH ORLAND COMMUNITY
CHURCH
8-2-17 [227]

8. 16-22230-D-7 NORMAN/CHERI RYAN MOTION TO COMPROMISE
MPD-5 CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH PASKENTA BAND OF
NOMLAKI INDIANS AND PASKENTA
ENTERPRISES CORP
8-2-17 [71]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the trustee's motion to approve compromise of controversy, and the trustee has demonstrated the compromise is in the best interest of the creditors and the estate. Specifically, the motion demonstrates that when the compromise is put up against the factors enumerated in In re Woodson, 839 F.2d 610 (9th Cir. 1988), the likelihood of success on the merits, the complexity of the litigation, the difficulty in collectability, and the paramount interests of creditors, the compromise should be approved. Accordingly, the motion is granted and the compromise approved. The moving party is to submit an appropriate order. No appearance is necessary.

9. 17-20731-D-11 CS360 TOWERS, LLC CONTINUED MOTION TO USE CASH
TBG-2 COLLATERAL
2-15-17 [12]

10. 17-24836-D-7 BRADLEY/BARBARA TAGGART MOTION TO COMPEL ABANDONMENT
DBJ-1 7-26-17 [7]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the debtors' motion to compel the trustee to abandon property and the debtors have demonstrated the property to be abandoned is of inconsequential value to the estate. Accordingly, the motion will be granted and the property that is the subject of the motion will be deemed abandoned by minute order. No appearance is necessary.

11. 16-24739-D-7 ANN POFFENBERGER MOTION TO SELL, MOTION FOR
DNL-3 COMPENSATION FOR REMAX
EXECUTIVE, BROKER(S) AND WAIVER
OF 14 DAY STAY PERIOD
7-24-17 [33]

12. 16-25239-D-7 DIVINDER HUNDAL MOTION FOR COMPENSATION BY THE
HSM-3 LAW OFFICE OF HEFNER, STARK AND
MAROIS, LLP FOR HOWARD S.
NEVINS, TRUSTEES ATTORNEY(S)
7-25-17 [160]

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. Moving party is to submit an appropriate order. No appearance is necessary.

13. 17-21344-D-7 CONNIE ADAMS MOTION FOR RELIEF FROM
AP-1 AUTOMATIC STAY
BANK OF AMERICA, N.A. VS. 7-26-17 [26]

14. 16-28455-D-7 TEX/HEATHER RICKARD MOTION TO SELL
SCB-3 8-1-17 [27]

15. 17-21974-D-7 GABLE/ALLISON ANDRADE MOTION FOR RELIEF FROM
EAT-1 AUTOMATIC STAY
U.S. BANK NATIONAL 8-1-17 [20]
ASSOCIATION 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. The debtors received their discharge on July 24, 2017 and, as a result, the stay is no longer in effect as to the debtors (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtors as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

16. 17-20984-D-7 DAVID/JENNIFER VON SAVOYE CONTINUED MOTION FOR RELIEF
EGS-1 FROM AUTOMATIC STAY
BAYVIEW LOAN SERVICING, LLC 4-12-17 [24]
VS.

Tentative ruling:

This is the trustee's motion to compel the debtors to turn over the almond crop the trustee says is ready to harvest from trees growing on real property that is property of the bankruptcy estate. The debtors have filed opposition and the trustee has filed a reply. For the following reasons, the motion will be granted.

The trustee contends the harvest is ready to begin this month, August. He states he is prepared either to sell the crop prior to harvest or to employ a contractor to harvest the crop and then sell it. The trustee believes he "can recover approximately \$40,000.00 for the estate from the harvest and sale" of the crop. Trustee's Decl., DN 57, at 2:7-8. The trustee's counsel testifies she emailed a stipulation for turnover to the debtors' counsel on July 11, 2017, that she spoke with the debtors' counsel on July 19 about the urgency of the situation, in light of the upcoming harvest, but that her emails and telephone messages to the debtors' counsel on July 21, 21, 25, and 26 have gone unanswered.

The debtors respond that, since the case was filed, on February 17, 2017, the trustee "has not done anything to promote, preserve or advance the almond trees" or to produce the crop, and therefore, that "the Debtors, under the fear of committing waste of trees that are over 15 years old, [were] forced to irrigate, prune, fertilize and maintain the trees which in turn developed a crop that is getting ready to harvest." Debtors' Opp., DN 61 ("Opp."), at 2:16-27. Debtor David Von Savoye testifies he is the only person who has done any work to develop the crop since the filing of this case. He has itemized his services by date, description, and amount of time spent, for a total of 314 hours, for which he would charge \$25 per hour, for a total of \$7,850, and has spent \$2,946 for irrigation taxes and charges, chemicals, equipment, and so on. He believes that after reimbursement for his time and expenses, and the costs of harvesting, the crop would yield no profit for the estate.

The debtor testifies that "[o]n February 17, 2017, the trees did not have an [sic] crop on them as they were dormant because of winter." Debtor's Decl., DN 62 ("Decl."), at 2:8-9. Thus, the debtors contend that if the debtor had not done the work he did, there would be no crop and the trees would have died. The crop, therefore, in the debtors' view, is not property of the estate. If the trustee is entitled to anything, the debtors add, it is a small percentage, say 10%, "based on the value of the ability of the tree to produce a crop as of the date of filing" Opp. at 6:21-22.

The debtors claim the trustee has not done "anything related to the crop that did not exist on the date of filing, February 17, 2017" (Opp. at 3:1-2) except for somehow forcing debtor David Von Savoye to spend large amounts of time and energy tending the orchard. The debtors go so far as to claim the trustee has made the debtor "feel like his slave" and has treated him "as a second class citizen to work as [the trustee] directs and [the trustee] takes all of the profits." Decl. at 5:12-13, 5:18-19. The trustee's reply amply refutes these charges. In any event, however, it is clear that the real property and the trees growing on it are property of the estate, as is the crop. § 541(a)(1) and (6).¹ Although the debtors might have an administrative claim arising from debtor David's post-petition services, that is an issue for another day.² As the crop is property of the estate, the

motion will be granted and the debtors will be ordered to turn it over to the trustee prior to or after harvest, as the trustee directs.

The court will hear the matter.

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- 1 Property of the estate includes "[p]roceeds, product, offspring, rents, or profits of or from property of the estate, except such as are earnings from services performed by an individual debtor after the commencement of the case." § 541(a)(6). The crop itself is not "earnings," although it may well have been produced in part through the post-petition efforts of the debtor. After the crop has been harvested and sold, some portion of the proceeds might be viewed as "earnings" from the debtor's post-petition services. As of the petition date, however, the crop was just that - a crop, albeit perhaps a nascent crop. It was not "earnings."
 - 2 The court rejects out of hand the debtors' contention that the motion represents a violation of their rights under the 13th Amendment (involuntary servitude) and 42 U.S.C. § 1994 (peonage, or debt servitude), as well as their characterization of the trustee's proposed stipulation for turnover as "an attempt to extort free labor and expense from the debtor" Opp. at 5:9-10.

18. 17-24589-D-7 EDWARD/VERENICE MCTHORN MOTION FOR RELIEF FROM
AP-1 AUTOMATIC STAY
CITIBANK, N.A. VS. 7-31-17 [11]

Final ruling:

This matter is resolved without oral argument. This is Citibank, N.A.'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.

19. 17-21748-D-7 MANZOOR SHOLIAY MOTION TO WAIVE FILING FEE
8-6-17 [27]

Tentative ruling:

This is the debtor's motion to compel the trustee to abandon certain real property. The notice of hearing purports to require the filing of written opposition not less than 14 days preceding the date of the hearing. However, the moving party gave only 23 days' notice of the hearing, rather than 28 days', as required by LBR 9014-1(f)(1). Accordingly, the court will hear the matter as a motion brought under LBR 9014-1(f)(2) and will entertain opposition, if any, at the hearing.