

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

October 2, 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.	15-29306-D-13	ROSALIO/ROSA MENDOZA	MOTION TO MODIFY PLAN
	JCK-2		8-28-18 [53]

2.	17-25915-D-13	CLAYTON/NANCY RAPOZA	MOTION TO MODIFY PLAN
	JCK-4		8-20-18 [49]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

3. 17-26727-D-13 BEVERLY LUCIO
KRW-2

MOTION TO MODIFY PLAN
8-20-18 [43]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

4. 18-20932-D-13 RICHARD SANDOVAL
PGM-1

OBJECTION TO CLAIM OF LAKEVIEW
LOAN SERVICING, LLC, CLAIM
NUMBER 2
8-10-18 [48]

Tentative ruling:

This is the debtor's objection to the claim of Lakeview Loan Servicing, LLC ("Lakeview"), Claim No. 2 on the court's claims register. Lakeview has filed opposition and the debtor has filed a reply. For the following reasons, the objection will be overruled.

The debtor purchased his residence in April of 2016, 22 months before he filed this chapter 13 case. There was a minor typographical error in the grant deed by which the debtor took title to the property and the deed of trust securing his obligation to pay for it.¹ In January of this year, Lakeview, successor in interest to the original lender, filed a complaint in state court for reformation of the grant deed and deed of trust to correct those typos. Rather than answer Lakeview's state court complaint, the debtor filed this bankruptcy case, in February of this year, and filed a plan proposing to pay 11% on general unsecured claims totaling \$120,682. The \$120,682 consisted of Lakeview's claim, which the debtor scheduled at \$114,527, the unsecured portion of his car loan, which he scheduled at \$2,034 (although he has not attempted to value the secured portion of the car loan and proposes in his plan to pay it directly, as a Class 4 claim), and \$4,121 in other general unsecured claims. According to his Schedules I and J, if he had not filed this case, the debtor could have paid off the \$4,121 in just over eight months, while remaining current on his car loan. The claims bar date in this case has run and only one unsecured claim has been filed - for \$968.87.

The debtor objects to the secured status of Lakeview's claim, based solely on the typographical error referred to above. As indicated above, the same typo was made in the legal description in the grant deed by which the debtor acquired the property as in the deed of trust by which he secured his promise to pay for it. The debtor, however, would like to keep the house. Thus, his position depends on the logically untenable proposition, although he does not acknowledge it, let alone provide any authority for it, that the typo in the grant deed does not matter, only the typo in the deed of trust.²

Ignoring this blatant discrepancy, the debtor makes several arguments, each of which is, in itself, specious, and which, in combination, strongly suggest this case was filed as a means of forum shopping; that is, in order to have this court, rather than the state court, determine the validity of Lakeview's deed of trust. First, the debtor contends Lakeview "admitted" in its state court complaint that the legal description was incorrect, and therefore, Lakeview "improperly claimed a secured status" in its proof of claim. Obj. at 3:8-9. A party seeking reformation of a

contract must necessarily allege that something in the contract is incorrect. That is the point of a complaint for reformation - something in the contract did not correctly express the parties' intentions and should be made to do so.³ Here, the debtor's position is, necessarily, that he intended to acquire the house but not to pay for it. If he believed this position would be better received in this court than in state court, he was mistaken.

Second, the debtor claims he, "in the name of the trustee" (Obj. at 3:20-21), may assert the trustee's avoiding powers to avoid the deed of trust and claim the property as exempt, in the amount of \$100,000, as he has done, all in order to "benefit the unsecured creditors by paying the non-exempt equity over the life of the plan to general unsecured creditors of at least 12.08%, or \$14,577.00, after trustee fees." *Id.* at 4:25-5:2. If this treatment were allowed, the debtor would pay \$117 on the only unsecured claim filed in the case and \$14,000 for a house for which he promised to pay \$112,917 plus interest at 3.75%. And the other scheduled unsecured claims would be discharged. That is, only the debtor would benefit.⁴

Next, the debtor states "there was no intention between the parties to form a trust, there is no resulting trust between the parties, there is no equitable lien held by the Defendant, there is no constructive trust between the parties, and pursuant to 11 U.S.C. 544(a)(3) actual notice by debtor-in-possession is irrelevant." Obj. at 5:24-6:2. The debtor does not support this statement with any evidence, and he does not explicitly contend he did not intend to give Lakeview's predecessor a security interest in the property to secure his purchase money obligation. If he did make such a contention, it might well be viewed as fraud. The court can only guess that the debtor's reference to § 544(a)(3) is intended to portray him as a "bona fide purchaser," but that subsection refers to a bona fide purchaser "from the debtor." Further, "bona fide" means "[i]n or with good faith; honestly, openly, and sincerely; without deceit or fraud." (Black's Law Dictionary, <https://thelawdictionary.org/bona-fide/>, last visited Sept. 21, 2018). The position the debtor is currently taking does not meet that definition.

In his conclusion, the debtor makes a confusing argument about the rule affording presumptive validity to a proof of claim (Fed. R. Bankr. P. 3001(f)), the rule making that rule inapplicable to a mortgage holder's notice of payment change and notice of fees, expenses, and charges (Fed. R. Bankr. P. 3002.1(d)), and the burden of proof on an objection to claim. All of this appears to center on the theme that "the Creditor's POC fails to disclose the status of the Complaint in Superior Court where they [them]selves assert that the security instruments are incorrect" (Obj. at 6:21-23). Apparently, the debtor believes all he needed to do to shift the burden of proof to Lakeview was to point out this alleged defect - the absence of a copy of the complaint as an attachment to the proof of claim.

The debtor states: "Under the plain language of Rule 3002.1(d), this type of Notice [apparently, Lakeview's proof of claim without a copy of the complaint] does not constitute prima facie evidence of validity under Rule 3001(f), and [Lakeview] has not presented sufficient evidence to support it's [sic] claim." Obj. at 6:24-7:1. The debtor is objecting to Lakeview's proof of claim itself, not a notice of payment change or a notice of fees, expenses, and charges, so the citation to Rule 3002.1(d) makes no sense. And there is no reason Lakeview needed to attach a copy of its state court complaint to its proof of claim in order to give the claim prima facie validity.

Finally, citing Atwood v. Chase Manhattan Mort. Co. (In re Atwood), 293 B.R. 227, 233 (9th Cir. BAP 2003), the debtor states that the creditor "has the

affirmative burden of showing reasonableness as a matter of law, including that there was a contract and a balance of the account owed." Obj. at 7:8-9. This is as inexplicable as the rest of the objection - Lakeview included a copy of the Note signed by the debtor and a loan payment history with its proof of claim, and the debtor has challenged neither.

To conclude, the debtor has provided no evidence to overcome the prima facie validity of Lakeview's claim, including its secured status, and no argument remotely supporting the theory that the claim should not be afforded prima facie validity. Accordingly, the objection will be overruled. The court will hear the matter.

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- 1 The legal description was "Lot Ninety (90), as shown upon map entitled "Louise Park Terrace . . .," whereas it should have been "Lot Ninety (90), as shown upon map entitled "Louis Park Terrace"
 - 2 The debtor states twice that "the security instruments are incorrect" (Debtor's Obj. to Claim, filed Aug. 10, 2018 ("Obj."), at 3:12-13 and 6:22-23), and once that "the security instruments lack the proper identification of [the] property." Id. at 7:21-22. In fact, there was only one security instrument - the deed of trust. The other incorrect document - incorrect for exactly the same reason - was the grant deed.
 - 3 "When, through fraud, mistake, or accident, a written contract fails to express the real intention of the parties, such intention is to be regarded, and the erroneous parts of the writing disregarding." Cal. Civ. Code § 1640.

When, through fraud or a mutual mistake of the parties, or a mistake of one party, which the other at the time knew or suspected, a written contract does not truly express the intention of the parties, it may be revised on the application of a party aggrieved, so as to express that intention, so far as it can be done without prejudice to rights acquired by third persons, in good faith and for value.

Cal. Civ. Code § 3399.

- 4 The debtor cites Houston v. Eiler (In re Cohen), 305 B.R. 886 (9th Cir. BAP 2004) (with no pin cite), for the proposition that chapter 13 debtors are authorized to exercise the trustee's avoiding powers. The complete holding of the case is that chapter 13 debtors have standing to exercise the trustee's avoiding powers for the benefit of the estate. 305 B.R. at 889. The panel, in fact, recognized the concern that "such use of avoiding powers would transmogrify their purpose by allowing the debtor to pocket proceeds of avoiding actions without there being any benefit to the estate or creditors." Id. at 897-98.

5. 18-20557-D-13 RICHARD NYE
MOT-3

MOTION TO CONFIRM PLAN
8-17-18 [83]

6. 15-26560-D-13 JOHN/ROBIN IVY MOTION TO MODIFY PLAN
JCK-5 8-15-18 [71]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

7. 18-24260-D-13 MARILOU PAAS OBJECTION TO CONFIRMATION OF
AP-1 PLAN BY ONEMAIN FINANCIAL
SERVICES, INC.
8-17-18 [19]

Final ruling:

This is the objection of OneMain Financial Services, Inc., to confirmation of the debtor's proposed chapter 13 plan. On August 23, 2018, after the objection was filed, the debtor filed an amended plan. As a result of the filing of the amended plan, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

8. 18-24260-D-13 MARILOU PAAS OBJECTION TO DEBTOR'S CLAIM OF
RDG-1 EXEMPTIONS
8-31-18 [23]

Final ruling:

This is the trustee's objection to the debtor's claim of exemptions. The objection was brought on the ground the debtor had failed to file a spousal waiver to permit the debtor to claim the exemptions provided by Cal. Code Civ. Proc. § 703.140(b). On September 18, 2018, the debtor filed a spousal waiver that appears to be signed by the debtor and her spouse. As a result of the filing of the spousal waiver, this objection is moot. The objection will be overruled as moot by minute order. No appearance is necessary.

9. 18-21661-D-13 GERARDO LARA AND NORMA MOTION TO CONFIRM PLAN
CLH-3 CAMARENA 8-21-18 [80]

10. 18-21661-D-13 GERARDO LARA AND NORMA CONTINUED MOTION FOR RELIEF
HRH-1 CAMARENA FROM AUTOMATIC STAY
BMO HARRIS BANK, N.A. VS. 8-9-18 [57]

11. 18-24562-D-13 JAMES POLLARD OBJECTION TO CONFIRMATION OF
RDG-2 PLAN BY RUSSELL D. GREER
8-31-18 [22]

Final ruling:

This case was dismissed on September 18, 2018. As a result the objection will be overruled by minute order as moot. No appearance is necessary.

12. 18-22673-D-13 RONALD/MAFFIE DIOSO MOTION TO CONFIRM PLAN
MKM-3 8-20-18 [44]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

13. 15-27278-D-13 PAUL/SHARON WILLIAMS MOTION TO INCUR DEBT
MJH-6 8-27-18 [101]

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 to incur debt is supported by the record. As such the court will grant the motion by minute order. No appearance is necessary.

14. 18-24279-D-13 TONJA GOINS OBJECTION TO CONFIRMATION OF
AP-1 PLAN BY JPMORGAN CHASE BANK, N.A.
9-5-18 [15]

15. 18-23987-D-13 ASMAR ERVIN CONTINUED OBJECTION TO
RDG-1 CONFIRMATION OF PLAN BY RUSSELL
D. GREER
8-13-18 [16]

16. 18-23696-D-13 JALEAIL NABIZADAH MOTION TO CONFIRM PLAN
NDB-1 8-24-18 [19]

Final ruling:

The relief requested in the motion is supported by the record and no timely opposition to the motion has been filed. Accordingly, the court will grant the motion by minute order and no appearance is necessary. The moving party is to lodge an order confirming the plan, amended plan, or modification to plan, and shall use the form of order which is referenced in LBR 3015-1(e). The order is to be signed by the Chapter 13 trustee approving its form prior to the order being submitted to the court.

17. 18-20932-D-13 RICHARD SANDOVAL CONTINUED MOTION FOR RELIEF
NLL-2 FROM AUTOMATIC STAY
M&T BANK VS. 8-16-18 [52]

18. 18-22741-D-13 MICHAEL/ORINA WHITE CONTINUED MOTION TO CONFIRM
RKW-2 PLAN
7-26-18 [39]

Final ruling:

The motion will be denied as moot. The debtor filed a second amended plan on September 24, 2018, making this motion moot. As a result the court will deny the motion without prejudice by minute order. No appearance is necessary.

19. 18-22250-D-13 RUSSELL/SHIRLEY SMITH CONTINUED MOTION TO CONFIRM
CLH-1 PLAN
7-5-18 [32]

20. 17-27960-D-13 CRAIG GILMORE CONTINUED MOTION TO CONFIRM
GMW-3 PLAN
6-5-18 [100]

21. 14-20173-D-13 DEANN STEWARD CONTINUED MOTION TO INCUR DEBT
PGM-1 8-15-18 [32]

22. 15-27287-D-13 GINA TOSCANO
PGM-7

CONTINUED MOTION TO MODIFY PLAN
7-5-18 [114]