

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Sacramento, California

October 3, 2013 at 10:30 a.m.

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1. [12-31312-E-7](#) PATRICK/LORI FOLEY MOTION TO COMPEL ABANDONMENT  
PLC-4 Peter L. Cianchetta 9-9-13 [[72](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 9, 2013. By the court's calculation, 24 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Motion to Abandon Real Property has been set for hearing on the notice required by Federal Rule of Bankruptcy Procedure 6007(b) and Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, 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 offers 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 court's tentative decision is to grant the Motion to Abandon Real Property.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Debtors move the court for an order compelling the Trustee to Abandon the Estate's interest in the real property commonly known as 9871 Falcon Meadow Drive, Elk Grove, California. The Debtors assert that the reasonable fair-market value of the asset is \$265,000.00. Debtors state that GMAC Mortgage holds a valid security interest in the asset with a balance of \$223,888.15. Debtors have claimed an exemption in the subject real property in the amount of \$100,000.00.

After notice and hearing, the court may order the Trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

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Here, the property is impaired by deed of trust and Debtors have claimed an exemption, both exceeding the value of the asset.

The Trustee has filed a statement of non-opposition.

Since the debt secured by the property exceeds the value of the property, and the negative financial consequences of the Estate retaining the property, the court determines that the property is of inconsequential value and benefit to the Estate, and orders the Trustee to abandon the property.

**ISSUANCE OF A COURT DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Abandon Property filed by the Debtors having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Compel Abandonment is granted and that the real property identified as:

9871 Falcon Meadow Drive, Elk Grove, California

on Schedule A by the Debtors is abandoned to Patrick and Lori Foley, the Debtors by this order, with no further act of the Trustee required.

2. [13-24254-E-7](#)      RUSS TRANSMISSION INC      MOTION TO ABANDON  
HSM-4                      Gary F. Zilaff                      9-19-13 [[69](#)]

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, all creditors, parties requesting special notice, and Office of the United States Trustee on September 19, 2013. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

**Tentative Ruling:** The Motion to Abandon Real Property has been set for hearing on the notice required by Federal Rule of Bankruptcy Procedure 6007(b) and Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, 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 offers 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 court's tentative decision is to grant the Motion to Abandon Real Property.** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Susan Didriksen, Chapter 7 Trustee moves the court for an order authorizing her to abandon the estate's interest in real property of the estate commonly known as 701 Dos Rios Street, Sacramento, California.

After notice and hearing, the court may order the Trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

Here, the Trustee states it has investigated the property independently, through professional input for her counsel and broker from review of the Debtor's schedules filed and review of the Dos Rios Lender Motion for Relief. The Trustee has determined that there is no realizable equity in the property and that the property is of inconsequential value and benefit to the estate.

The Trustee states the primary factor in the Trustee's determination is that she has employed and utilized the services of an experienced commercial property broker who has actively marketed the property for sale

for close to four months. The broker and trustee have been unable to obtain an offer from any potential buyer for an amount even approaching what would be needed to satisfy the debt secured by the property.

The Trustee also argues that the property is burdensome to the estate due to potential security, maintenance and insurance costs, other potential risks faced by the estate through continued ownership of the property, and the possible negative tax consequences to the estate from a foreclosure of the Dos Rios Deed of Trust against the property.

Since the debt secured by the property exceeds the value of the property, and the negative financial consequences of the Estate retaining the property, the court determines that the property is of inconsequential value and benefit to the Estate, and orders the Trustee to abandon the property.

**ISSUANCE OF A COURT DRAFTED ORDER**

An order (not a minute order) substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Abandon Property filed by the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Compel Abandonment is granted and that the real property identified as:

701 Dos Rios Street, Sacramento, California

on Schedule A by the Debtors is abandoned to Russ Transmission Inc., the Debtor by this order, with no further act of the Trustee required.

3. [11-36557-E-7](#) MARTHA RAMIREZ  
SLF-14 C. Anthony Hughes

MOTION TO EMPLOY COLDWELL  
BANKER NORTHERN CALIFORNIA AS  
REALTOR(S)  
8-30-13 [[211](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtors, Debtors' Attorney, Chapter 7 Trustee, all creditors, and Office of the United States Trustee on August 30, 2013. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Employ has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Employ is granted.** No appearance required.

Chapter 7 Trustee, Alan S. Fukushima, seeks to employ Ronald G. Nakano, Associate Broker at Coldwell Banker Northern California to assist the Trustee in marketing and sale of the following real properties:

(I) office building located at 906 Almond Street, Yuba City, California;

(II) single family residence located at 5725 Riverside Drive, West Linda, California; and

(III) parcel of land located at 253 South Elmwood, Lindsay, California

The Trustee argues that counsel's appointment and retention is necessary because the Trustee asserts the properties have equity for the estate. Trustee states Mr. Nakano has substantial experience in the valuation, marketing and sale of real property in the counties in which the properties are located.

Ronald G. Nakano, the broker at Coldwell Banker Northern California seeking employ, testifies that he, his firm, or proposed joint special counsel do not represent or hold any interest adverse to the Debtor or to

the estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys.

Pursuant to § 327(a) a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate, and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of counsel, considering the declaration demonstrating that counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Ronald G. Nakano, Associate Broker at Coldwell Banker Northern California. The approval of any fee is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Employ filed by the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion to Employ is granted and the Chapter 7 Trustee is authorized to employ Ronald G. Nakano, Associate Broker at Coldwell Banker Northern California.

**IT IS FURTHER ORDERED** that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

**IT IS FURTHER ORDERED** that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

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**IT IS FURTHER ORDERED** that except as otherwise ordered by the Court, all funds received by applicant in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

**IT IS FURTHER ORDERED** that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

4. [13-26159-E-11](#) IVAN RAVLOV MOTION TO APPROVE STIPULATION  
PD-1 Scott A. CoBen RE: TREATMENT OF CLAIM UNDER  
DEBTOR'S PROPOSED CHAPTER 11  
PLAN AND/OR MOTION FOR ADEQUATE  
PROTECTION  
8-22-13 [[235](#)]

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, all creditors and Office of the U.S. Trustee on August 22, 2013. By the court's calculation, 42 days' notice was provided. 28 days' notice is required.

**Final Ruling:** The Motion to Approve Stipulation has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

**The Motion to Approve Stipulation for Treatment of Claim is granted.** No appearance required.

Creditor Wells Fargo Bank, N.A., as Trustee for Wamu Mortgage Pass-Through Certificates Series 2005-PR1 Trust ("Movant") moves the court for an order approving the stipulation regarding the treatment of claim under Debtor's proposed Chapter 11 plan. The Motion is filed pursuant to Federal

Rule of Bankruptcy Procedure 4001(d)(1). Creditor states the parties have reached an agreement regarding adequate protection payments, conditions by which the automatic stay shall terminate and the treatment of Wells Fargo's claim in the Debtor's proposed Plan.

The material provisions of the stipulation state that the Debtor will pay creditor Wells Fargo Bank, N.A. in full at a monthly payment by Debtor's of \$1,050.41. In addition, the stipulation states Debtor shall tender monthly escrow payments to Movant for real property tax advances and real property hazard insurance advances for the property. The stipulation states that if there is a default under these terms that the automatic stay shall be terminated, if Debtor's do not cure the default within thirty (30) days. Lastly, the parties agreed that Debtor will incorporate the terms of the Stipulation into any Chapter 11 plan or confirmation order.

This Stipulation is in the nature of adequate protection for the Debtor in Possession's continued retention and use of the property which secures the claim of Wells Fargo Bank, N.A. As part of the comprehensive agreement, the Debtor in Possession and Wells Fargo Bank, N.A. have agreed to terms for treatment of this creditor's claim in the Chapter 13 Plan.

The court approves the Stipulation and issues an order of adequate protection. This approval of the Stipulation does not constitute a "pre-confirmation adjudication" of the Debtor in Possession's Plan.

The Debtor in Possession filed a Non-Opposition on July 19, 2013.

#### **DISCUSSION**

Federal Rule of Bankruptcy Procedure 4001(d) specifies how a creditor obtains approval of a stipulation and order for relief from the automatic stay to be, in pertinent part,

(d) Agreement Relating to Relief From the Automatic Stay, Prohibiting or Conditioning the Use, Sale, or Lease of Property, Providing Adequate Protection, Use of Cash Collateral, and Obtaining Credit.

(1) Motion; Service.

(A) Motion. A motion for approval of any of the following shall be accompanied by a copy of the agreement and a proposed form of order:

- (i) an agreement to provide adequate protection;
- (ii) an agreement to prohibit or condition the use, sale, or lease of property;
- (iii) an agreement to modify or terminate the stay provided for in §362;
- (iv) an agreement to use cash collateral; or

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(v) an agreement between the debtor and an entity that has a lien or interest in property of the estate pursuant to which the entity consents to the creation of a lien senior or equal to the entity's lien or interest in such property....

(B) Contents. The Motion shall consist of... a concise statement of the relief requested...that lists, or summarizes, and sets out the location within the relevant documents of, all material provisions of the agreement...

(C) Service. The motion shall be served on: (1) any committee elected under §705 or appointed under §1102 of the Code, or its authorized agent, or, if the case is a chapter 9 municipality case or a chapter 11 reorganization case and no committee of unsecured creditors has been appointed under §1102, on the creditors included on the list filed under Rule 1007(d); and (2) on any other entity the court directs....

(3) Disposition; Hearing. If no objection is filed, the court may enter an order approving or disapproving the agreement without conducting a hearing. If an objection is filed or if the court determines a hearing is appropriate, the court shall hold a hearing on no less than seven days' notice to the objector, the movant, the parties on whom service is required by paragraph (1) of this subdivision and such other entities as the court may direct.

Here, the Motion states the material provisions of the agreement, as required by Federal Rule of Bankruptcy Procedure 4001(d)(1)(B). The court grants the motion to approve the stipulation, provided as Exhibit A, Dckt. 238.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve Stipulation filed by the Wells Fargo Bank, N.A. having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is granted and pursuant to the Stipulation Re: Treatment of Claim under Debtor's Proposed Chapter 11 Plan of Reorganization, Exhibit A, Dckt. 238, Wells Fargo Bank, N.A. granted adequate protection for its interest in the collateral securing its claim in the form of the payments on the claim, payments for property taxes and insurance, default provisions, relief from stay procedure provisions, claim dispute resolution procedures, and disclosure of information by the Debtor in Possession. Approval of the Stipulation shall not be deemed a pre-

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confirmation approval of any proposed plan of the Debtor in Possession, however, the court will consider compliance with the agreement for plan terms in determining the Debtor in Possession's good faith in seeking to confirm a Chapter 11 Plan.

5. [10-23577-E-11](#) GLORIA FREEMAN  
Pro Se

ORDER FOR STATUS CONFERENCE ON  
ABILITY OF LAURENCE FREEMAN TO  
PARTICIPATE IN BANKRUPTCY COURT  
PROCEEDINGS AND APPEARANCE OF  
INDEPENDENT COUNSEL RE: CHAPTER  
11 VOLUNTARY  
9-12-13 [[1044](#)]

Debtor's Atty: Pro Se

Notes:

Set by order of the court dated 9/12/13 [Dckt 1044]

Appearance of Counsel [Craig A. Simmermon, as attorney for Laurence H. Freeman] filed 9/16/13 [Dckt 1050]

The Local Bankruptcy Rules provide for the appearance of attorneys and designation of counsel of record in this District. LBR 2017-1 and see corresponding Rule 182 of the District Court Local Rules.

Local Bankruptcy Rule 2017-1 provides, in pertinent part,

LOCAL RULE 2017-1

Attorneys - Appearances, Scope of Representation, and  
Withdrawal

(b) Appearance as Attorney of Record.

(1) Appearance Required. Except as permitted in Subpart (c) of this Rule, no attorney may participate in any action unless the attorney has appeared as an attorney of record. A single client may be represented by more than one attorney of record to the extent authorized by the applicable Rules of Professional Conduct.

(2) Manner of Making Appearance. Appearance as an attorney of record is made:

(A) By signing and filing an initial document;

(B) By causing the attorney's name to be listed in the upper left hand corner of the first page of the initial document;

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(C) By physically appearing at a court hearing in the matter, formally stating the appearance on the record, and then signing and filing a confirmation of appearance within seven (7) days; or

(D) By filing and serving on all parties a substitution of attorneys as provided in Subpart (h) of this Rule.

(h) Substitution of Attorneys. An attorney who has appeared in an action may substitute another attorney and thereby withdraw from the action by submitting a substitution of attorneys that shall set forth the full name and address of the new individual attorney and shall be signed by the withdrawing attorney, the new attorney, and the client. All substitutions of attorneys shall require the approval of the Court.

On September 16, 2013, Craig A. Simmermon (Cal. State Bar No. 258607) filed a document entitled "APPEARANCE OF COUNSEL." Dckt. 1050. This document states,

"To: The Clerk of Court and to all parties of record.

I am admitted or otherwise authorized to practice in this court, and I appear in this case as counsel for LAURENCE H. FREEMAN."

A certificate of service was filed by Mr. Simmermon stating that the Appearance of Counsel was served on Gloria Freeman, David D. Flemmer (Trustee), J. Russell Cunningham, Jon Tesar (Trustee), Allen C. Massey, and the Office of the U.S. Trustee. Mr. Simmermon has filed Appearances of Counsel in the *Freeman v. Flemmer* (13-2027) adversary proceeding, but has not filed one in the *Flemmer v. Freeman* (11-2629).

6. [10-23577](#)-E-11 GLORIA FREEMAN 1) MOTION TO SET ASIDE ORDER OF  
LHF-2 Pro Se THE SETTLEMENT AGREEMENT IN THE  
ESTATE, 2) NOTICE OF OBJECTIONS  
TO PLAN AND DISCLOSURE  
STATEMENT, 3) REQUEST FOR TRO  
AND 4) REQUEST TO RETURN FUNDS,  
ETC.  
9-5-13 [[1031](#)]

**Final Ruling:** This matter was resolved by the Civil Minute Order, Dckt. 1065, denying the Motion to Set Aside Order of the Settlement Agreement in the Estate, Notice of Objections to Plan and Disclosure Statement and Request for TRO and to Return Funds filed by Debtor and Mr. Freeman. **This Matter is removed from the calendar.**

See Civil Minute Order, Dckt. 1067, stating,

