

**UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement  
Fresno Federal Courthouse  
2500 Tulare Street, 5<sup>th</sup> Floor  
Courtroom 11, Department A  
Fresno, California

**PRE-HEARING DISPOSITIONS**

**DAY:** THURSDAY  
**DATE:** OCTOBER 11, 2018  
**CALENDAR:** 9:00 A.M. CHAPTER 7 CASES

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

**No Ruling:** All parties will need to appear at the hearing unless otherwise ordered.

**Tentative Ruling:** If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

**Final Ruling:** Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

**Orders:** Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

1. [18-12804](#)-A-7     **IN RE: MITCHELL MIRANDA**  
[SAH-1](#)

MOTION FOR EXEMPTION FROM FINANCIAL MANAGEMENT COURSE AND/OR  
MOTION FOR EXEMPTION FROM CREDIT COUNSELING REQUIREMENT  
9-19-2018    [[12](#)]

MITCHELL MIRANDA/MV  
SUSAN HEMB

### **Tentative Ruling**

**Motion:** Exemption from Financial Management Course

**Notice:** LBR 9014-1(f)(2); no written opposition required

**Disposition:** Denied without prejudice

**Order:** Civil minute order

Mitchell Miranda, through counsel, moves for an exemption from the credit counseling and personal financial management requirements. The motion is unsupported by a declaration or death certificate.

### **DISCUSSION**

#### Suggestion of Death

When a chapter 7 debtor dies, counsel for the debtor shall file a Suggestion of Death.

Notice of Death. In a bankruptcy case which has not been closed, a **Notice of Death of the debtor [Fed. R. Civ. P. 25(a), Fed. R. Bankr. P. 7025]** shall be filed within **sixty (60) days of the death of a debtor by the counsel for the deceased debtor or the person who intends to be appointed as the representative for or successor to a deceased debtor.** The Notice of Death shall be served on the trustee, U.S. Trustee, and all other parties in interest. **A copy of the death certificate (redacted as appropriate) shall be filed as an exhibit to the Notice of Death.**

LBR 1016-1(a) (emphasis added); see also, Fed. R. Civ. P. 25(a), *incorporated by* Fed. R. Bank. P. 7025, 9014(c).

Here, the debtor (apparently) died on August 24, 2018. Motion for Exemption ¶ 2, September 19, 2018, ECF # 12. Though the 60-day period has not yet expired, no such notice has been filed.

#### Substitution of Representative

Upon the death of the debtor, a personal representative for the debtor must be substituted as the real party in interest.

**An action must be prosecuted in the name of the real party in interest. The following may sue in their own names without joining the person for whose benefit the action is brought: (A) an executor; (B) an**

**administrator;** (C) a guardian; (D) a bailee; (E) a trustee of an express trust; (F) a party with whom or in whose name a contract has been made for another's benefit; and (G) a party authorized by statute.

Fed. R. Civ. P. 17(a), *incorporated by* Fed. R. Bankr. P. 7017, 9014(c) (emphasis added).

Where the debtor dies during the administration of a chapter 7 case, the action is not abated, and administration shall continue. Fed. R. Bankr. P. 1016. But a representative for the now deceased debtor needs to be appointed. And that appointment process is implemented by Rule 25(a).

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25, *incorporated by* Fed. R. Bankr. P. 7025, 9014(c) and LBR 1016-1(a).

No such motion has been presented in this case.

#### Credit Counseling

Ordinarily, debtors must participate in pre-filing credit counseling prior to filing bankruptcy. 11 U.S.C. s 109(h)(1). That requirement may be excused in limited circumstances:

The requirements of paragraph (1) shall not apply with respect to **a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone.** For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and **"disability" means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).**

11 U.S.C.A. § 109(h)(4) (emphasis added).

Here, the present motion offers no evidence of the debtor's disability prior to death. LBR 9014-1(d)(3)(D).

Waiver of Post-Petition Education Requirement

In most case, individual chapter 7 debtors must complete a post-petition personal financial management course to receive a discharge. 11 U.S.C. 727(a)(11).

The court shall grant the debtor a discharge unless . . . .  
. . . after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply to a debtor who is a person described in section 109(h)(4).

Section 109(h) provides:

The requirements of paragraph (1) shall not apply with respect to **a debtor whom the court determines, after notice and hearing, is unable to complete those requirements because of incapacity, disability, or active military duty in a military combat zone.** For the purposes of this paragraph, incapacity means that the debtor is impaired by reason of mental illness or mental deficiency so that he is incapable of realizing and making rational decisions with respect to his financial responsibilities; and **"disability" means that the debtor is so physically impaired as to be unable, after reasonable effort, to participate in an in person, telephone, or Internet briefing required under paragraph (1).**

11 U.S.C.A. § 109(h)(4) (emphasis added).

Death is a disability within the meaning of § 109(h)(4). But so far there is no evidence that the debtor has died. LBR 9014-1(d)(3)(D) (declaration); LBR 1016-1 (death certificate). Moreover, there is no evidence of the debtor's disability prior to death. For each of these reasons, the motion will be denied.

**CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Mitchell Miranda's motion has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied without prejudice; and

IT IS FURTHER ORDERED that the Clerk of the Court shall service the minutes for the hearing on this motion and this order on the United States Trustee.

2. [18-11707](#)-A-7     **IN RE: JORGE VALENCIA**  
[PFT-2](#)

MOTION TO SELL  
9-18-2018    [[18](#)]

PETER FEAR/MV  
SUSAN HEMB  
PETER FEAR/ATTY. FOR MV.

**Tentative Ruling**

**Motion:** Sell Property

**Notice:** LBR 9014-1(f)(2); no written opposition required

**Disposition:** Granted

**Order:** Prepared by moving party

**Property:** 1823 Coolidge Street, Madera, California (one-half interest only)

**Buyer:** \$38,000.00 (subject to encumbrance \$78,000, approximately)

**Sale Price:** Melissa O. Renteria

**Sale Type:** Private sale subject to overbid opportunity

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. *See* 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

3. [18-13507](#)-A-7     **IN RE: GILBERT/ELIZABETH GARZA**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
9-14-2018    [[25](#)]

DISMISSED 9/7/18

**Final Ruling**

The case dismissed, the order to show cause is discharged.

4. [11-61821](#)-A-7    **IN RE: RANDY/CHRISTIE MARTIN**  
[TCS-2](#)

MOTION TO AVOID LIEN OF TARGET NATIONAL BANK  
9-24-2018    [[40](#)]

RANDY MARTIN/MV  
TIMOTHY SPRINGER

**Tentative Ruling**

**Motion:** Avoid Multiple Liens that Impair Exemption

**Notice:** LBR 9014-1(f)(2); no written opposition required

**Disposition:** Granted

**Order:** Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

**LIEN-AVOIDANCE STANDARDS**

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

**REVERSE-PRIORITY ANALYSIS**

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B).

The court finds it unnecessary to apply the reverse-priority analysis individually to each of the respondents' liens. See *In re Meyer*, 373 B.R. at 88 ("[O]ne must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight.").

Under the reverse-priority analysis, Sunlan-020105, LLC's judicial lien would be the last judicial lien to be avoided because of its higher priority than the other judicial liens (but it remains subject to any senior consensual lien). In determining whether Sunlan-020105, LLC's lien may be avoided, the court must exclude all junior judicial liens that would already have been avoided under such analysis. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

The senior judicial lien, plus all other liens (excluding junior judicial liens lower in priority), plus the exemption amount together equal \$621,500.06. This sum exceeds the property's value by an amount greater than or equal to the senior judicial lien. As a result, Sunlan-020105, LLC's judicial lien may be avoided entirely.

Because the highest-priority judicial lien is avoidable, all other junior judicial liens are also avoidable, and the reverse-priority analysis is unnecessary to apply to each judicial lien. Stated differently, the sum of the debt secured by the consensual liens plus the debtor's exemption amount equals or exceeds the fair market value of the real property, so all judicial liens on the debtor's property are avoidable under § 522(f).

5. [11-61821](#)-A-7     **IN RE: RANDY/CHRISTIE MARTIN**  
[TCS-3](#)

MOTION TO AVOID LIEN OF SUNLAN-020105, LLC  
9-24-2018    [\[45\]](#)

RANDY MARTIN/MV  
TIMOTHY SPRINGER

**Tentative Ruling**

**Motion:** Avoid Multiple Liens that Impair Exemption

**Notice:** LBR 9014-1(f)(2); no written opposition required

**Disposition:** Granted

**Order:** Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

**LIEN-AVOIDANCE STANDARDS**

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the

property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

#### **REVERSE-PRIORITY ANALYSIS**

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C. § 522(f)(2)(B).

The court finds it unnecessary to apply the reverse-priority analysis individually to each of the respondents' liens. See *In re Meyer*, 373 B.R. at 88 ("[O]ne must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight.").

Under the reverse-priority analysis, Sunlan-020105, LLC's judicial lien would be the last judicial lien to be avoided because of its higher priority than the other judicial liens (but it remains subject to any senior consensual lien). In determining whether Sunlan-020105, LLC's lien may be avoided, the court must exclude all junior judicial liens that would already have been avoided under such analysis. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

The senior judicial lien, plus all other liens (excluding junior judicial liens lower in priority), plus the exemption amount together equal \$621,500.06. This sum exceeds the property's value by an amount greater than or equal to the senior judicial lien. As a result, Sunlan-020105, LLC's judicial lien may be avoided entirely.

Because the highest-priority judicial lien is avoidable, all other junior judicial liens are also avoidable, and the reverse-priority analysis is unnecessary to apply to each judicial lien. Stated differently, the sum of the debt secured by the consensual liens plus the debtor's exemption amount equals or exceeds the fair market value of the real property, so all judicial liens on the debtor's property are avoidable under § 522(f).

6. [18-12333](#)-A-7     **IN RE: MASOUD MIRHADI**  
[PBB-2](#)

MOTION TO AVOID LIEN OF AP WIRELESS INFRASTRUCTURE PARTNERS,  
LLC  
9-7-2018    [[39](#)]

MASOUD MIRHADI/MV  
PETER BUNTING

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

### **LIEN-AVOIDANCE STANDARDS**

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

### **REVERSE-PRIORITY ANALYSIS**

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B).

The liens against the subject real property, listed in the reverse order of their priority are: (i) AP Wireless Infrastructure, (ii)

American Contractors Indemnity Company, (iii) Wells Fargo Bank, N.A., (iv) California Business Bureau, Inc., (v) Central Valley Community Bank, a California Corporation, (vi) Fresno Distributing Co, (vii) Board of Trustees of the Laborers Health and Welfare Trust Fund for Northern California, (viii) Chase Mortgage (second deed of trust), and (ix) Chase Mortgage (first deed of trust). The court takes judicial notice of other motions on this calendar that request avoidance of other judicial liens against the subject real property in this matter. Fed. R. Evid. 201. The debtor has claimed a \$175,000 exemption in the property. The American Contractors Indemnity Company judgment lien is the last judicial lien in a series of seven judgment liens and, hence, the court considers it and all previous six judgment liens and the two consensual liens in performing the reverse priority analysis.

Excluding all liens against the subject real property that are lower in priority than respondent's lien, the moving party is entitled to relief. The total of the judicial lien, all other liens except junior judicial liens, plus the exemption amount equals approximately \$771,864.82 (= \$48,000.00 AP Wireless Infrastructure judicial lien + 25,000.00 American Contractors Indemnity judicial lien + \$86,987.31 Wells Fargo Bank, N.A. judicial lien + \$3,400.00 California Business Bureau judicial lien + \$51,833.52 Central Valley Community Bank judicial lien + \$6,211.05 Fresno Distributing Co judicial lien + \$80,000.00 Board of Trustees judicial lien + \$73,061.91 Chase (Second Deed of Trust) + \$222,371.03 Chase (First Deed of Trust) + \$175,000.00 exemption). The value of the property is \$511,000.00. The respondent's judicial lien, all other liens (except junior judicial liens), and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the respondent's judicial lien will be avoided entirely.

7. [18-12333](#)-A-7     **IN RE: MASOUD MIRHADI**  
[PBB-3](#)

MOTION TO AVOID LIEN OF AMERICAN CONTRACTORS INDEMNITY  
COMPANY  
9-7-2018    [[44](#)]

MASOUD MIRHADI/MV  
PETER BUNTING

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Granted  
**Order:** Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been

filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

#### **LIEN-AVOIDANCE STANDARDS**

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

#### **REVERSE-PRIORITY ANALYSIS**

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B).

The liens against the subject real property, listed in the reverse order of their priority are: (i) American Contractors Indemnity Company, (ii) Wells Fargo Bank, N.A., (iii) California Business Bureau, Inc., (iv) Central Valley Community Bank, a California Corporation, (v) Fresno Distributing Co, (vi) Board of Trustees of the Laborers Health and Welfare Trust Fund for Northern California, (vii) Chase Mortgage (second deed of trust), and (viii) Chase Mortgage (first deed of trust). The court takes judicial notice of other motions on this calendar that request avoidance of other judicial liens against the subject real property in this matter. Fed. R. Evid. 201. The debtor has claimed a \$175,000 exemption in the property. The American Contractors Indemnity Company judgment lien is the sixth judicial lien in a series of seven judgment liens and, hence, the court considers it and all previous five judgment liens and the two consensual liens in performing the reverse priority analysis.

Excluding all liens against the subject real property that are lower in priority than respondent's lien, the moving party is entitled to relief. The total of the judicial lien, all other liens except junior judicial liens, plus the exemption amount equals approximately \$723,864.82 (= 25,000.00 American Contractors Indemnity judicial lien + \$86,987.31 Wells Fargo Bank, N.A. judicial

lien + \$3,400.00 California Business Bureau judicial lien + \$51,833.52 Central Valley Community Bank judicial lien + \$6,211.05 Fresno Distributing Co judicial lien + \$80,000.00 Board of Trustees judicial lien + \$73,061.91 Chase (Second Deed of Trust) + \$222,371.03 Chase (First Deed of Trust) + \$175,000.00 exemption). The value of the property is \$511,000.00. The respondent's judicial lien, all other liens (except junior judicial liens), and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the respondent's judicial lien will be avoided entirely.

8. [18-12333](#)-A-7     **IN RE: MASOUD MIRHADI**  
[PBB-4](#)

MOTION TO AVOID LIEN OF WELLS FARGO BANK, NATIONAL  
ASSOCIATION  
9-7-2018    [[49](#)]

MASOUD MIRHADI/MV  
PETER BUNTING

**Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

**LIEN-AVOIDANCE STANDARDS**

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property;

exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

#### **REVERSE-PRIORITY ANALYSIS**

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B).

The liens against the subject real property, listed in the reverse order of their priority are: (i) Wells Fargo Bank, N.A., (ii) California Business Bureau, Inc., (iii) Central Valley Community Bank, a California Corporation, (iv) Fresno Distributing Co, (v) Board of Trustees of the Laborers Health and Welfare Trust Fund for Northern California, (vi) Chase Mortgage (second deed of trust), and (vii) Chase Mortgage (first deed of trust). The court takes judicial notice of other motions on this calendar that request avoidance of other judicial liens against the subject real property in this matter. Fed. R. Evid. 201. The debtor has claimed a \$175,000 exemption in the property. The Wells Fargo Bank, N.A. judgment lien is the fifth judicial lien in a series of seven judgment liens and, hence, the court considers it and all previous four judgment liens and the two consensual liens in performing the reverse priority analysis.

Excluding all liens against the subject real property that are lower in priority than respondent's lien, the moving party is entitled to relief. The total of the judicial lien, all other liens except junior judicial liens, plus the exemption amount equals approximately \$698,864.82 (= \$86,987.31 Wells Fargo Bank, N.A. judicial lien + \$3,400.00 California Business Bureau judicial lien + \$51,833.52 Central Valley Community Bank judicial lien + \$6,211.05 Fresno Distributing Co judicial lien + \$80,000.00 Board of Trustees judicial lien + \$73,061.91 Chase (Second Deed of Trust) + \$222,371.03 Chase (First Deed of Trust) + \$175,000.00 exemption). The value of the property is \$511,000.00. The respondent's judicial lien, all other liens (except junior judicial liens), and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the respondent's judicial lien will be avoided entirely.

9. [18-12333](#)-A-7     **IN RE: MASOUD MIRHADI**  
[PBB-5](#)

MOTION TO AVOID LIEN OF CALIFORNIA BUSINESS BUREAU, INC.  
9-10-2018    [\[54\]](#)

MASOUD MIRHADI/MV  
PETER BUNTING

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

### **LIEN-AVOIDANCE STANDARDS**

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

### **REVERSE-PRIORITY ANALYSIS**

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. *See In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B).

The liens against the subject real property, listed in the reverse order of their priority are: (i) California Business Bureau, Inc., (ii) Central Valley Community Bank, a California Corporation, (iii)

Fresno Distributing Co, (iv) Board of Trustees of the Laborers Health and Welfare Trust Fund for Northern California, (v) Chase Mortgage (second deed of trust), and (vi) Chase Mortgage (first deed of trust). The court takes judicial notice of other motions on this calendar that request avoidance of other judicial liens against the subject real property in this matter. Fed. R. Evid. 201. The debtor has claimed a \$175,000 exemption in the property. The California Business Bureau, Inc. judgment lien is the fourth judicial lien in a series of seven judgment liens and, hence, the court considers it and all previous three judgment liens and the two consensual liens in performing the reverse priority analysis.

Excluding all liens against the subject real property that are lower in priority than respondent's lien, the moving party is entitled to relief. The total of the judicial lien, all other liens except junior judicial liens, plus the exemption amount equals approximately \$611,877.51 (= \$3,400.00 California Business Bureau judicial lien + \$51,833.52 Central Valley Community Bank judicial lien + \$6,211.05 Fresno Distributing Co judicial lien + \$80,000.00 Board of Trustees judicial lien + \$73,061.91 Chase (Second Deed of Trust) + \$222,371.03 Chase (First Deed of Trust) + \$175,000.00 exemption). The value of the property is \$511,000.00. The respondent's judicial lien, all other liens (except junior judicial liens), and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the respondent's judicial lien will be avoided entirely.

10. [18-12333](#)-A-7    **IN RE: MASOUD MIRHADI**  
[PBB-6](#)

MOTION TO AVOID LIEN OF CENTRAL VALLEY COMMUNITY BANK  
9-10-2018    [[59](#)]

MASOUD MIRHADI/MV  
PETER BUNTING

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

## **LIEN-AVOIDANCE STANDARDS**

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

## **REVERSE-PRIORITY ANALYSIS**

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B).

The liens against the subject real property, listed in the reverse order of their priority are: (i) Central Valley Community Bank, a California Corporation, (ii) Fresno Distributing Co, (iii) Board of Trustees of the Laborers Health and Welfare Trust Fund for Northern California, (iv) Chase Mortgage (second deed of trust), and (v) Chase Mortgage (first deed of trust). The court takes judicial notice of other motions on this calendar that request avoidance of other judicial liens against the subject real property in this matter. Fed. R. Evid. 201. The debtor has claimed a \$175,000 exemption in the property. The Central Valley Community Bank judgment lien is the third judicial lien in a series of seven judgment liens and, hence, the court considers it and the previous two judgment liens and the two consensual liens in performing the reverse priority analysis.

Excluding all liens against the subject real property that are lower in priority than respondent's lien, the moving party is entitled to relief. The total of the judicial lien, all other liens except junior judicial liens, plus the exemption amount equals approximately \$608,477.51 (= \$51,833.52 Central Valley Community Bank judicial lien + \$6,211.05 Fresno Distributing Co judicial lien + \$80,000.00 Board of Trustees judicial lien + \$73,061.91 Chase (Second Deed of Trust) + \$222,371.03 Chase (First Deed of Trust) + \$175,000.00 exemption). The value of the property is \$511,000.00. The respondent's judicial lien, all other liens (except junior judicial liens), and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial

lien. As a result, the respondent's judicial lien will be avoided entirely.

11. [18-12333](#)-A-7     **IN RE: MASOUD MIRHADI**  
[PBB-7](#)

MOTION TO AVOID LIEN OF FRESNO DISTRIBUTING COMPANY  
9-10-2018    [[64](#)]

MASOUD MIRHADI/MV  
PETER BUNTING

### **Final Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

### **LIEN-AVOIDANCE STANDARDS**

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

### **REVERSE-PRIORITY ANALYSIS**

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already

avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B).

The liens against the subject real property, listed in the reverse order of their priority are: (i) Fresno Distributing Co, (ii) Board of Trustees of the Laborers Health and Welfare Trust Fund for Northern California, (iii) Chase Mortgage (second deed of trust), and (iv) Chase Mortgage (first deed of trust). The court takes judicial notice of other motions on this calendar that request avoidance of other judicial liens against the subject real property in this matter. Fed. R. Evid. 201. The debtor has claimed a \$175,000 exemption in the property. The Fresno Distributing Co judgment lien is the second judicial lien in a series of seven judgment liens and, hence, the court considers it and the previous judgment lien and the two consensual liens in performing the reverse priority analysis.

Excluding all liens against the subject real property that are lower in priority than respondent's lien, the moving party is entitled to relief. The total of the judicial lien, all other liens except junior judicial liens, plus the exemption amount equals approximately \$556,643.99 (= \$6,211.05 Fresno Distributing Co judicial lien + \$80,000.00 Board of Trustees judicial lien + \$73,061.91 Chase (Second Deed of Trust) + \$222,371.03 Chase (First Deed of Trust) + \$175,000.00 exemption). The value of the property is \$511,000.00. The respondent's judicial lien, all other liens (except junior judicial liens), and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the respondent's judicial lien will be avoided entirely.

12. [18-12333](#)-A-7     **IN RE: MASOUD MIRHADI**  
[PBB-8](#)

MOTION TO AVOID LIEN OF BOARD OF TRUSTEES OF THE LABORERS  
HEALTH AND WELFARE TRUST FUND FOR NORTHERN CALIFORNIA, ET.  
AL.

9-11-2018    [[69](#)]

MASOUD MIRHADI/MV  
PETER BUNTING

**Tentative Ruling**

**Motion:** Avoid Lien that Impairs Exemption

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted in part, denied in part

**Order:** Prepared by moving party

**Judicial Lien:** \$80,000.00

**All Other Liens:** \$295,432.94

**Exemption:** \$175,000.00

**Value of Property:** \$511,000.00

**Extent Judicial Lien Not Avoided:** \$40,567.06

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

#### **LIEN-AVOIDANCE STANDARDS**

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

#### **PARTIAL RELIEF REQUESTED (IDENTITY OF JUDGMENT CREDITORS)**

The judgment lien lists the following creditors: Board of Trustees of the Laborers Health and Welfare Trust Fund for Northern California, Board of Trustees of the Laborers Vacation-Holiday Trust Fund for Northern California, Board of Trustees of the Laborers Pension Trust Fund for Northern California, and Board of Trustees of the Laborers Training and Retraining Trust Fund for Northern California. Exhibit D, ECF No. 72. However, the motion seeks relief only against judgment creditor Board of Trustees of the Laborers Health and Welfare Trust Fund for Northern California. Motion, ECF No. 69.

Federal Rule of Bankruptcy Procedure 9013 requires that a written motion "set forth the relief or order sought". Since the motion seeks relief only against Board of Trustees of the Laborers Health and Welfare Trust Fund for Northern California the court grants relief only as to that judgment creditor. Additionally, the record does not establish that the motion was served on judgment creditors: Board of Trustees of the Laborers Vacation-Holiday Trust Fund for Northern California, Board of Trustees of the Laborers Pension Trust Fund for Northern California, and Board of Trustees of the Laborers Training and Retraining Trust Fund for Northern California in compliance with Federal Rule of Bankruptcy Procedure 7004(b)(3).

*Beneficial Cal., Inc. v. Villar (In re Villar)*, 317 B.R. 88 (9th Cir. BAP 2004).

#### **RELIEF LIMITED TO JUDGMENT CREDITOR NAMED IN MOTION**

The order avoiding lien will apply only to judgment creditor Board of Trustees of the Laborers Health and Welfare Trust Fund for Northern California but will not impact the rights of judgment creditors: Board of Trustees of the Laborers Vacation-Holiday Trust Fund for Northern California, Board of Trustees of the Laborers Pension Trust Fund for Northern California, and Board of Trustees of the Laborers Training and Retraining Trust Fund for Northern California. In the alternative, the debtor may withdraw the motion and re-file to name all judgment creditors.

#### **REVERSE-PRIORITY ANALYSIS**

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). “[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens.” *Id.*; 11 U.S.C § 522(f)(2)(B).

The liens against the subject real property, listed in the reverse order of their priority are: (i) Board of Trustees of the Laborers Health and Welfare Trust Fund for Northern California, (ii) Chase Mortgage (second deed of trust), and (iii) Chase Mortgage (first deed of trust). The court takes judicial notice of other motions on this calendar that request avoidance of other judicial liens against the subject real property in this matter. Fed. R. Evid. 201. The debtor has claimed a \$175,000 exemption in the property. The Board of Trustees of the Laborers Health and Welfare Trust Fund for Northern California judgment lien is the first judicial lien in a series of seven judgment liens and, hence, the court considers it and the two consensual liens in performing the reverse priority analysis.

Excluding all liens against the subject real property that are lower in priority than respondent's lien, the moving party is entitled to relief. The total of the judicial lien, all other liens except junior judicial liens, plus the exemption amount equals approximately \$550,432.94 (= \$80,000.00 Board of Trustees judicial lien + \$73,061.91 Chase (Second Deed of Trust) + \$222,371.03 Chase (First Deed of Trust) + \$175,000.00 exemption). The value of the property is \$511,000.00. The respondent's judicial lien, all other liens, and the exemption amount together do not exceed the property's value by an amount equal to the respondent's judicial lien. The responding party's judicial lien is not avoided to the extent set forth above, and the remaining balance of the judicial lien is avoided.

The motion is granted in part and denied in part. As to judgment creditor Board of Trustees of the Laborers Health and Welfare Trust Fund for Northern California, the motion is granted and the judicial lien is avoided except as to the amount of \$40,567.06. The motion is denied without prejudice, as to judgment creditors: Board of

Trustees of the Laborers Vacation-Holiday Trust Fund for Northern California, Board of Trustees of the Laborers Pension Trust Fund for Northern California, and Board of Trustees of the Laborers Training and Retraining Trust Fund for Northern California.

13. [18-13540](#)-A-7     **IN RE: ERIC KILIJANSKI**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
9-20-2018   [\[27\]](#)

\$335.00 FILING FEE PAID IN FULL 9/27/18

**Final Ruling**

The fee paid, the order to show cause is discharged.

14. [18-13255](#)-A-7     **IN RE: JACOB LOMELI**  
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
9-11-2018   [\[20\]](#)

SUNTRUST BANK/MV  
THOMAS GILLIS  
JENNIFER WANG/ATTY. FOR MV.

**Final Ruling**

**Motion:** Stay Relief

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Civil minute order

**Subject:** 2012 Chevrolet Volt

Unopposed motions are subject to the rules of default. Fed. R. Civ. P.55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

**STAY RELIEF**

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of*

*Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

#### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Suntrust Bank's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2012 Chevrolet Volt, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

15. [18-12958](#)-A-7    **IN RE: ALMA LARA ARZATE**  
[TMT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING OF CREDITORS  
8-30-2018    [[14](#)]

ERIC ESCAMILLA

#### **Tentative Ruling**

**Motion:** Dismiss Case and Extend Trustee's Deadlines

**Notice:** LBR 9014-1(f)(1); written opposition required or case dismissed without hearing

**Disposition:** Conditionally denied in part, granted in part

**Order:** Civil minute order

#### **DISMISSAL**

Chapter 7 debtors shall attend the § 341(a) meeting of creditors. 11 U.S.C. § 343. A continuing failure to attend this meeting may be cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343,

707(a); *In re Witkowski*, 523 B.R. 300, 307 n.8 (B.A.P. 1st Cir. 2014) ("Some courts have ruled that the failure to attend the § 341 meeting of creditors constitutes 'cause' for dismissal.").

In this case, the debtor has failed to appear at a scheduled meeting of creditors required by 11 U.S.C. § 341. Because the debtor's failure to attend this meeting has occurred once, the court will not dismiss the case on condition that the debtor attend the next creditors' meeting. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

#### **EXTENSION OF DEADLINES**

The court will grant the motion in part to the extent it asks for an extension of deadlines. The court extends the following deadlines to 60 days after the next continued date of the creditors' meeting: (1) the trustee and all creditors' deadline to object to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee and all creditors' deadline to bring a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e). These deadlines are no longer set at 60 days after the first creditors' meeting.

#### **CIVIL MINUTE ORDER**

The court will issue a minute order that conforms substantially to the following form:

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

IT IS ORDERED that the Motion to Dismiss is denied on the condition that the debtor attend the next continued § 341(a) meeting of creditors scheduled for October 29, 2018 at 8:30 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

IT IS ALSO ORDERED that following deadlines shall be extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee and all creditors' deadline to object to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee and all creditors' deadline to bring a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

16. [14-10260](#)-A-7    **IN RE: PETRA ENRIQUEZ**  
[DRJ-7](#)

MOTION TO ENFORCE DEBTOR'S DISCHARGE IN BANKRUPTCY  
CONCERNING LOBEL FINANCIAL CORPORATION  
8-28-2018    [[67](#)]

PETRA ENRIQUEZ/MV  
DAVID JENKINS

**No Ruling**

17. [14-10260](#)-A-7    **IN RE: PETRA ENRIQUEZ**  
[DRJ-8](#)

MOTION TO ENFORCE DEBTOR'S DISCHARGE CONCERNING WENCELASO  
HEREDIA, MARIA ELENA HEREDIA  
8-30-2018    [[77](#)]

PETRA ENRIQUEZ/MV  
DAVID JENKINS

**No Ruling**

18. [18-12566](#)-A-7    **IN RE: VERONICA CORONA**  
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-31-2018    [[14](#)]

TOYOTA MOTOR CREDIT  
CORPORATION/MV  
MARIO LANGONE  
AUSTIN NAGEL/ATTY. FOR MV.

**Tentative Ruling**

**Motion:** Stay Relief

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Denied as moot

**Order:** Civil minute order

**Subject:** 2015 Lexus GS350

Unopposed motions are subject to the rules of default. Fed. R. Civ. P.55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

## **AUTOMATIC TERMINATION OF THE STAY**

If personal property is collateral for a secured claim, then the debtor must timely file a statement of intention and perform under the statement of intention to prevent the automatic stay from terminating. Section 362(h) provides in pertinent part:

In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to *personal property* of the estate or of the debtor *securing in whole or in part a claim*, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2)-(A) *to file timely any statement of intention required under section 521(a)(2) with respect to such personal property* or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and (B) *to take timely the action specified in such statement*[.]

11 U.S.C. § 362(h)(1) (emphases added).

Section 521(a)(2) establishes the deadline to perform under a statement of intention. In pertinent part, paragraph (2) of § 521(a) requires the debtor to perform "within 30 days after the first date set for the meeting of creditors under section 341(a) or within such additional time as the court, for cause, within such 30-day period fixes[.] The first date set for the meeting of creditors was July 30, 2018. The 30-day period following the meeting of creditors ended on August 29, 2018. Given that the debtor did not perform under the statement of intention by this date, the automatic stay has expired under § 362(h).

## **DOCTRINE OF MOOTNESS**

The court adheres to the principle that federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "Mootness has been described as the doctrine of standing set in a time frame: The requisite personal interest that must exist at the commencement of the litigation (standing) must continue throughout its existence (mootness)." *Id.* at 68 n.22 (quoting *U.S. Parole Comm'n v. Geraghty*, 445 U.S. 388, 397 (1980)) (internal quotation marks omitted).

Because the stay has automatically terminated, no effective relief can be awarded. The movant's personal interest in obtaining relief from the stay no longer exists. The motion will be denied as moot.

## CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Toyota Motor Credit Corporation's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter,

IT IS ORDERED that the motion is denied as moot. The stay under § 362(a) has terminated automatically with respect to the subject personal property given the debtor's failure to perform under the statement of intention.

19. [17-12272](#)-A-7    **IN RE: LEONARD/SONYA HUTCHINSON**  
[17-1076](#)

CONTINUED PRE-TRIAL CONFERENCE RE: CROSSCLAIM BY JAMES  
EDWARD SALVEN AGAINST THE UNITED STATES OF AMERICA,  
DEPARTMENT OF TREASURY, INTERNAL REVENUE SERVICE  
9-7-2017    [7]

HUTCHINSON ET AL V. SALVEN ET  
AL  
RUSSELL REYNOLDS/ATTY. FOR PL.

### Final Ruling

The pretrial conference is continued to November 14, 2018, at 9:00 a.m. The court commends, and thanks, Jonathan M. Hauck and Russell W. Reynolds, counsel for the United States and for trustee James E. Salven, respectively, for their clear and insightful hypothetical and statements of position on the issues presented by this adversary proceeding. Joint Statement, September 4, 2018, ECF # 79.

20. [17-12272](#)-A-7    **IN RE: LEONARD/SONYA HUTCHINSON**  
[US-2](#)

CONTINUED MOTION TO COMPEL ABANDONMENT  
8-20-2018    [[53](#)]

UNITED STATES OF AMERICA/MV  
DAVID JENKINS  
JONATHAN HAUCK/ATTY. FOR MV.  
RESPONSIVE PLEADING

### **Final Ruling**

On its own motion, the court continues this matter to November 14, 2018, at 9:00 a.m. This continuance is necessary for the court to consider the esoteric issues raised in the intertwined adversary proceeding. The record in support of, and opposition to, the motion is closed and neither party may file additional documents with respect to the motion without leave of court. A civil minute order will issue.

21. [18-12379](#)-A-7    **IN RE: TIMOTHY SPATE**  
[TCS-1](#)

MOTION TO AVOID LIEN OF 84 LUMBER COMPANY, L.P.  
9-5-2018    [[25](#)]

TIMOTHY SPATE/MV  
TIMOTHY SPRINGER

### **Final Ruling**

**Motion:** Avoid Multiple Liens that Impair Exemption

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

### **LIEN-AVOIDANCE STANDARDS**

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the

property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

#### **REVERSE-PRIORITY ANALYSIS**

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C. § 522(f)(2)(B).

The court finds it unnecessary to apply the reverse-priority analysis individually to each of the respondents' liens. See *In re Meyer*, 373 B.R. at 88 ("[O]ne must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight.").

Under the reverse-priority analysis, 84 Lumber Company, L.P.'s judicial lien would be the last judicial lien to be avoided because of its higher priority than the other judicial liens (but it remains subject to any senior consensual lien). In determining whether 84 Lumber Company, L.P.'s lien may be avoided, the court must exclude all junior judicial liens that would already have been avoided under such analysis. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

The senior judicial lien, plus all other liens (excluding junior judicial liens lower in priority), plus the exemption amount together equal \$588,298.16. This sum exceeds the property's value by an amount greater than or equal to the senior judicial lien. As a result, 84 Lumber Company, L.P.'s judicial lien may be avoided entirely.

Because the highest-priority judicial lien is avoidable, all other junior judicial liens are also avoidable, and the reverse-priority analysis is unnecessary to apply to each judicial lien. Stated differently, the sum of the debt secured by the consensual liens plus the debtor's exemption amount equals or exceeds the fair market value of the real property, so all judicial liens on the debtor's property are avoidable under § 522(f).

22. [18-12379](#)-A-7    **IN RE: TIMOTHY SPATE**  
[TCS-2](#)

MOTION TO AVOID LIEN OF KELLY MILLER  
9-7-2018    [[30](#)]

TIMOTHY SPATE/MV  
TIMOTHY SPRINGER

### **Final Ruling**

**Motion:** Avoid Multiple Liens that Impair Exemption

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

### **LIEN-AVOIDANCE STANDARDS**

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

### **REVERSE-PRIORITY ANALYSIS**

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. *See In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B).

The court finds it unnecessary to apply the reverse-priority analysis individually to each of the respondents' liens. *See In re Meyer*, 373 B.R. at 88 ("[O]ne must approach lien avoidance from the

back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." ).

Under the reverse-priority analysis, 84 Lumber Company, L.P.'s judicial lien would be the last judicial lien to be avoided because of its higher priority than the other judicial liens (but it remains subject to any senior consensual lien). In determining whether 84 Lumber Company, L.P.'s lien may be avoided, the court must exclude all junior judicial liens that would already have been avoided under such analysis. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

The senior judicial lien, plus all other liens (excluding junior judicial liens lower in priority), plus the exemption amount together equal \$588,298.16. This sum exceeds the property's value by an amount greater than or equal to the senior judicial lien. As a result, 84 Lumber Company, L.P.'s judicial lien may be avoided entirely.

Because the highest-priority judicial lien is avoidable, all other junior judicial liens are also avoidable, and the reverse-priority analysis is unnecessary to apply to each judicial lien. Stated differently, the sum of the debt secured by the consensual liens plus the debtor's exemption amount equals or exceeds the fair market value of the real property, so all judicial liens on the debtor's property are avoidable under § 522(f).

23. [18-12379](#)-A-7     **IN RE: TIMOTHY SPATE**  
[TCS-3](#)

MOTION TO AVOID LIEN OF CREDITORS BUREAU USA  
9-10-2018    [[35](#)]

TIMOTHY SPATE/MV  
TIMOTHY SPRINGER

### **Final Ruling**

**Motion:** Avoid Multiple Liens that Impair Exemption

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted

**Order:** Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

## **LIEN-AVOIDANCE STANDARDS**

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

## **REVERSE-PRIORITY ANALYSIS**

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C. § 522(f)(2)(B).

The court finds it unnecessary to apply the reverse-priority analysis individually to each of the respondents' liens. See *In re Meyer*, 373 B.R. at 88 ("[O]ne must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight.").

Under the reverse-priority analysis, 84 Lumber Company, L.P.'s judicial lien would be the last judicial lien to be avoided because of its higher priority than the other judicial liens (but it remains subject to any senior consensual lien). In determining whether 84 Lumber Company, L.P.'s lien may be avoided, the court must exclude all junior judicial liens that would already have been avoided under such analysis. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

The senior judicial lien, plus all other liens (excluding junior judicial liens lower in priority), plus the exemption amount together equal \$588,298.16. This sum exceeds the property's value by an amount greater than or equal to the senior judicial lien. As a result, 84 Lumber Company, L.P.'s judicial lien may be avoided entirely.

Because the highest-priority judicial lien is avoidable, all other junior judicial liens are also avoidable, and the reverse-priority analysis is unnecessary to apply to each judicial lien. Stated differently, the sum of the debt secured by the consensual liens plus the debtor's exemption amount equals or exceeds the fair market

value of the real property, so all judicial liens on the debtor's property are avoidable under § 522(f).

24. [18-12379](#)-A-7     **IN RE: TIMOTHY SPATE**  
[TCS-4](#)

MOTION TO AVOID LIEN OF ALADDIN'S CARPET, INC.  
9-10-2018    [[40](#)]

TIMOTHY SPATE/MV  
TIMOTHY SPRINGER

**Final Ruling**

**Motion:** Avoid Multiple Liens that Impair Exemption  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Granted  
**Order:** Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

**LIEN-AVOIDANCE STANDARDS**

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

**REVERSE-PRIORITY ANALYSIS**

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already

avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B).

The court finds it unnecessary to apply the reverse-priority analysis individually to each of the respondents' liens. See *In re Meyer*, 373 B.R. at 88 ("[O]ne must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight.").

Under the reverse-priority analysis, 84 Lumber Company, L.P.'s judicial lien would be the last judicial lien to be avoided because of its higher priority than the other judicial liens (but it remains subject to any senior consensual lien). In determining whether 84 Lumber Company, L.P.'s lien may be avoided, the court must exclude all junior judicial liens that would already have been avoided under such analysis. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

The senior judicial lien, plus all other liens (excluding junior judicial liens lower in priority), plus the exemption amount together equal \$588,298.16. This sum exceeds the property's value by an amount greater than or equal to the senior judicial lien. As a result, 84 Lumber Company, L.P.'s judicial lien may be avoided entirely.

Because the highest-priority judicial lien is avoidable, all other junior judicial liens are also avoidable, and the reverse-priority analysis is unnecessary to apply to each judicial lien. Stated differently, the sum of the debt secured by the consensual liens plus the debtor's exemption amount equals or exceeds the fair market value of the real property, so all judicial liens on the debtor's property are avoidable under § 522(f).

25. [18-12379](#)-A-7     **IN RE: TIMOTHY SPATE**  
[TCS-5](#)

MOTION TO AVOID LIEN OF CUSTOM DRYWALL SERVICE  
9-10-2018    [\[45\]](#)

TIMOTHY SPATE/MV  
TIMOTHY SPRINGER

### **Final Ruling**

**Motion:** Avoid Multiple Liens that Impair Exemption  
**Notice:** LBR 9014-1(f)(1); written opposition required  
**Disposition:** Granted  
**Order:** Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court

considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

#### **LIEN-AVOIDANCE STANDARDS**

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

#### **REVERSE-PRIORITY ANALYSIS**

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C. § 522(f)(2)(B).

The court finds it unnecessary to apply the reverse-priority analysis individually to each of the respondents' liens. See *In re Meyer*, 373 B.R. at 88 ("[O]ne must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight.").

Under the reverse-priority analysis, 84 Lumber Company, L.P.'s judicial lien would be the last judicial lien to be avoided because of its higher priority than the other judicial liens (but it remains subject to any senior consensual lien). In determining whether 84 Lumber Company, L.P.'s lien may be avoided, the court must exclude all junior judicial liens that would already have been avoided under such analysis. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

The senior judicial lien, plus all other liens (excluding junior judicial liens lower in priority), plus the exemption amount together equal \$588,298.16. This sum exceeds the property's value by an amount greater than or equal to the senior judicial lien. As a result, 84 Lumber Company, L.P.'s judicial lien may be avoided entirely.

Because the highest-priority judicial lien is avoidable, all other junior judicial liens are also avoidable, and the reverse-priority

analysis is unnecessary to apply to each judicial lien. Stated differently, the sum of the debt secured by the consensual liens plus the debtor's exemption amount equals or exceeds the fair market value of the real property, so all judicial liens on the debtor's property are avoidable under § 522(f).

26. [18-12280](#)-A-7    **IN RE: OZIEL GARZA**  
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY  
8-31-2018    [[28](#)]

WELLS FARGO BANK, N.A./MV  
CATARINA BENITEZ  
JAMIE HANAWALT/ATTY. FOR MV.  
DISCHARGED 9/6/18

### **Final Ruling**

**Motion:** Stay Relief

**Notice:** LBR 9014-1(f)(1); written opposition required

**Disposition:** Granted in part; denied in part as moot

**Order:** Civil minute order

**Subject:** 376 South Knox Street, Madera, California

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

### **AS TO THE DEBTOR**

The motion is denied as moot. The stay that protects the debtor terminates at the entry of discharge. 11 U.S.C. § 362(c)(2). In this case, discharge has been entered. As a result, the motion is moot as to the debtor.

### **AS TO THE ESTATE**

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

"[U]nder section 362(d)(1), the stay must be terminated for 'cause.' Lack of adequate protection is but one example of "cause" for relief

from stay." *In re Ellis*, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). The panel in the *Ellis* case rejected the argument that under § 362(d)(1) "the stay can only be terminated if [the movant-creditors] show a lack of adequate protection." *Id.*

The debtor has missed 2 post-petition payments due on the debt secured by the moving party's lien. This constitutes cause for stay relief.

The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

#### **CIVIL MINUTE ORDER**

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Wells Fargo Bank, N.A.'s motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the trustee in the property described in the motion, commonly known as 376 South Knox Street, Madera, California. Relief from the automatic stay as to the interest of the debtor in such property is denied as moot given the entry of the discharge in this case. 11 U.S.C. § 362(c)(2)(C).

IT IS FURTHER ORDERED that the 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

27. [18-13685](#)-A-7    **IN RE: CASSELL MEADORS**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES  
9-25-2018    [[19](#)]

**Tentative Ruling**

If the filing fee has not been paid in full by the time of the hearing, the case may be dismissed without further notice or hearing.