UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

November 10, 2014 at 10:00 a.m.

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1. 11-47119-A-12 TIMOTHY WILSON — MOTION TO DISMISS CASE 10-1-14 [185]
JPJ-3

Tentative Ruling: The motion will be granted and the case will be dismissed.

The chapter 12 trustee moves for dismissal because the debtor is $30,888 delinquent under the terms of the chapter 12 plan. The debtor has filed a response, indicating that he will become current on plan payments before the hearing on this motion.

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

The debtor's delinquency amounts to four plan payments. The court concludes that the debtor is in material default for purposes of 11 U.S.C. § 1208(c)(6). This is cause for dismissal. Accordingly, the motion will be granted and the case will be dismissed.

The debtor's response to the motion is unhelpful because it only promises for the debtor to bring plan payments current. Even if true, the court must have an explanation of the reason for the default and it must receive assurances that the default will not reoccur and that all other obligations are current. After all, the plan commits all of the debtor's disposable income. Therefore, curing a default would seem to require not paying some other obligation.

2. 14-27620-A-12 JOE/MARIA PIMENTEL — MOTION FOR RELIEF FROM AUTOMATIC STAY 9-25-14 [17]
APN-1
WELLS FARGO BANK, N.A. VS.

Tentative Ruling: The motion will be granted.

The movant, Wells Fargo Bank, seeks relief from the automatic stay with respect to a 2013 Chevrolet Silverado. The debtors oppose the motion, contending that it is necessary to an effective reorganization and offering $600 a month in adequate protection payments to the movant.

The debtors have shown that the vehicle is necessary to an effective reorganization. The debtors need the vehicle: to haul equipment, tools and seed, to maintain the irrigation of the farm, and to navigate the rough terrain. Docket 25 at 1-2. Thus, relief from stay under 11 U.S.C. § 362(d)(2) is improper.

As to relief under 11 U.S.C. § 362(d)(1), the debtors have proposed to make

adequate protection payments to the movant of $600 a month. However, the court is not satisfied that the proposed adequate protection payments will protect the movant's interest in the vehicle.

The movant's original loan amount was $62,627.76 (72 payments of $869.83 a month). The present outstanding balance on the movant's loan is approximately $52,801. Yet, the vehicle has a replacement value of only $42,500 and it is being used for hauling and navigating rough terrain. Docket 19 at 3; Docket 25 at 1-2. The value of the vehicle is based on evidence submitted by the movant, as of September 25, 2014, when this motion was filed. The approximately $10,000 of negative equity in the vehicle and its use as the primary vehicle in the debtors' farming operation indicates that the vehicle is subject to quick depreciation.

This is true also when considering the past depreciation of the vehicle since it was purchased. The vehicle is a 2013 model and it was purchased only on or about May 30, 2013. In approximately 16 months, then, the vehicle has lost approximately 18.26% of its value (depreciated from approximately $52,000 to $42,500).

On the other hand, the debtors are offering to make adequate protection payments to the movant of approximately $270 a month less than the contractually required installments. The proposed $600 a month payments are not sufficient to provide the movant with adequate protection of its interest in this fast depreciating vehicle. Additionally, the debtors have not made two pre-petition and two post-petition payments to the movant.

This is cause for the granting of relief from stay.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to repossess its collateral, dispose of it pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is ordered waived due to the fact that the movant's vehicle is being used by the debtor without compensation and is depreciating in value.

3. 14-30128-A-11 SUPPLY HARDWARE, INC. STATUS CONFERENCE
10-10-14 [1]

Final Ruling: This status conference hearing will be dropped from calendar as moot because this bankruptcy case was dismissed on October 29, 2014.

4. 13-34541-A-11 6056 SYCAMORE TERRACE MOTION TO
CAH-18 LLC VALUE COLLATERAL
VS. MOUNTAIN COUNTIES PLUMBING, INC. 10-24-14 [241]

Tentative Ruling: The motion will be denied without prejudice.

The debtor moves for an order valuing its sole real property in Pleasanton, California, in an effort to strip off a judicial lien held by Mountain Counties Plumbing, Inc. on the property and treat it as a wholly unsecured and

dischargeable claim.

11 U.S.C. § 1123(b)(5) permits a chapter 11 debtor to modify the rights of secured claim holders, other than claims secured only by the debtor's principal residence.

Pursuant to 11 U.S.C. § 506(a)(1), a secured claim is secured only to the extent of the creditor's interest in the estate's interest in the collateral. 11 U.S.C. § 506(a)(1) provides that:

"An allowed claim of a creditor secured by a lien on property in which the estate has an interest . . . is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property . . . and is an unsecured claim to the extent that the value of such creditor's interest . . . is less than the amount of such allowed claim."

"[The value of the collateral] shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest."

The debtor contends that the property has a value of $1,920,000, based on a stipulation about the value of the property between the debtor and the first mortgage holder, JPMorgan Chase Bank.

The property is encumbered by at least five encumbrances:

- a first mortgage with a balance of approximately $2,250,700 held by JPMorgan Chase Bank (stripped down to $1,920,000 by stipulation - Dockets 111, 112, 160),

- a second mortgage with a balance of approximately $250,000 held by Indymac Bank (stripped off - Dockets 133 & 148),

- a third mortgage with a balance of approximately $200,000 held by Jahan and Faran Honardoost (stripped off - Dockets 134 & 149),

- a fourth mortgage with an unknown balance held by Valley Community Bank (See Docket 223),

- a judicial lien in favor of the respondent creditor, Mountain Counties Plumbing,

However, any stipulation between the debtor and the first mortgage holder, JPMorgan Chase Bank, as to the value of the property is not binding on anyone else, including Mountain Counties Plumbing, Inc. The debtor's stipulation with JPMorgan is not persuasive evidence of value as to Mountain Counties Plumbing. And, the court does not have other admissible evidence of value. Thus, the debtor has not carried its burden of persuasion in establishing the value of the property with respect to this motion. Accordingly, it will be denied.

5.	13-34541-A-11 14-2238 6056 SYCAMORE TERRACE, L.L.C. V. MEISSNER ET AL	6056 SYCAMORE TERRACE LLC CAH-17	MOTION TO APPROVE SETTLEMENT 10-24-14 [15]

Final Ruling: The motion will be dismissed without prejudice because it was set for hearing on 17 days notice in violation of Fed. R. Bankr. P. 2002(a)(3),

which requires at least 21 days notice of the hearing on dismissal motions. The motion was served on October 24, 2014, 17 days prior to the November 10 hearing. Docket 19. While Local Bankruptcy Rule 9014-(f)(2) permits motions to be set on as little as 14 days of notice, and permits opposition to be made at the hearing, this local rule also provides this amount of notice is permitted "unless additional notice is required by the Federal Rules of Bankruptcy Procedure. . . ." Because Rule 2002(a)(3) requires a minimum of 21 days of notice of the hearing and because only 17 days' was given, notice is insufficient.

6. 14-22480-A-7 TYRONE LEON-GUERRERO — MOTION FOR SUMMARY JUDGMENT
14-2168 SNM-1
CASTRO ET AL V. LEON-GUERRERO
10-1-14 [16]

Tentative Ruling: The motion will be denied.

The defendant, Tyrone Leon-Guerrero, the debtor in the underlying bankruptcy case, moves for summary judgment on the 11 U.S.C. § 523(a)(2)(A) and (a)(4) claims.

For summary judgment to be granted, the movant must show "that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a) incorporated by Fed. R. Bankr. P. 7056. The Supreme Court discussed the standards for summary judgment in a trilogy of cases, Celotex Corporation v. Catrett, 477 U.S. 317, 327 (1986), Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986), and Matsushita Electrical Industry Co. v. Zenith Radio Corp., 475 U.S. 574 (1986).

In a motion for summary judgment, the moving party bears the initial burden of persuasion in demonstrating that no issues of material fact exist. See Anderson at 255.

A genuine issue of material fact exists when the trier of fact could reasonably find for the non-moving party. Id. at 248. The court may consider pleadings, depositions, answers to interrogatories and any affidavits. Celotex at 323. Where the movant bears the burden of persuasion as to the claim, it must point to evidence in the record that satisfies its claim. Id. at 252. The court must evaluate whether there is a genuine issue of material fact with regard to each element of the plaintiff's claim.

The motion will be denied because it does not contain a Statement of Undisputed Facts in violation of Local Bankruptcy Rule 7056-1(a). The court will not speculate about what facts are undisputed. The court will not speculate also about the location of the evidence establishing "the specific material facts relied upon in support of the motion."

Additionally, the motion is utterly unhelpful in establishing that no issues of material fact exist. The motion papers are devoid of the law upon which the claims are asserted. The motion - barely a two-paragraph document - contends that "there was no fraud under § 523(a)(4) or § 523(a)(2)(A)," without any legal or factual support in the motion. Docket 16. It is incumbent on the moving party to brief the law and the facts, as they apply to each other, and substantiate the contentions he is advancing. See Local Bankruptcy Rule 9014-1(d)(5) & (6) (prescribing that "[e]ach motion, opposition, and reply shall cite the legal authority relied upon by the filing party [and] [e]very motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested").

The supporting declarations, while asserting that the plaintiffs failed to timely respond to requests for admission and that the requests should be now deemed admitted, state nothing about why the deemed admissions establish the lack of fraud.

There is no recitation of the background facts in the case, there is no recitation of the allegations in the complaint, there is no legal discussion of 11 U.S.C. § 523(a)(2)(A) and (a)(4), and there is no discussion about why the deemed admissions have any relevance to the allegations in the complaint. The defendant has failed to meet his initial burden of persuasion and has failed to show that he is entitled to relief. Accordingly, the motion will be denied.