UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

November 16, 2015 at 1:30 p.m.

THIS CALENDAR IS DIVIDED INTO TWO PARTS. THEREFORE, TO FIND ALL MOTIONS AND OBJECTIONS SET FOR HEARING IN A PARTICULAR CASE, YOU MAY HAVE TO LOOK IN BOTH PARTS OF THE CALENDAR. WITHIN EACH PART, CASES ARE ARRANGED BY THE LAST TWO DIGITS OF THE CASE NUMBER.

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 8. A TENTATIVE RULING FOLLOWS EACH OF THESE ITEMS. THE COURT MAY AMEND OR CHANGE A TENTATIVE RULING BASED ON THE PARTIES' ORAL ARGUMENT. IF ALL PARTIES AGREE TO A TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING PURSUANT TO LOCAL BANKRUPTCY RULE 3015-1(c), (d) [eff. May 1, 2012], GENERAL ORDER 05-03, ¶ 3(c), LOCAL BANKRUPTCY RULE 3007-1(c)(2)[eff. through April 30, 2012], OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER. IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE DECEMBER 21, 2015 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY DECEMBER 7, 2015, AND ANY REPLY MUST BE FILED AND SERVED BY DECEMBER 13, 2015. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 9 THROUGH 12 IN THE SECOND PART OF THE CALENDAR. INSTEAD, THESE ITEMS HAVE BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS; IF IT IS, IT INCLUDES THE COURT'S FINDINGS AND CONCLUSIONS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

IF THE COURT CONCLUDES THAT FED. R. BANKR. P. 9014(d) REQUIRES AN EVIDENTIARY HEARING, UNLESS OTHERWISE ORDERED, IT WILL BE SET ON NOVEMBER 23, 2015, AT 2:30 P.M.

Matters to be Called for Argument

1. 10-49502-A-13 ERWIN/ENRIETTA GARRIDO — MOTION TO INCUR DEBT
WW-6 — 10-30-15 [71]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion to incur a purchase money loan in order to purchase a new home will be granted. The motion establishes a need for the home and it does not appear that repayment of the loan will unduly jeopardize the debtor's performance of the plan given that the debtor's performance of the plan is complete or nearly complete.

2. 14-22621-A-13 MIKE/SANDRA HANSBROUGH — MOTION TO MODIFY PLAN
VS-4 — 10-12-15 [54]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection will be sustained.

First, the debtor has failed to give the trustee financial records relating to the debtor's post-petition income, bank accounts records and a 2014 tax return. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

Second, the proposed plan fails to provide for all prior payments made by the debtor under the terms of the confirmed plan. Without providing for the prior payments, the dividends required by the proposed plan cannot be paid and the trustee may be obligated to recoup from the creditors dividends paid with those payments.

3. 15-25240-A-13 MARVIN/KAREN MURASE — MOTION TO CONFIRM PLAN
PGM-1 — 9-3-15 [27]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection will be

sustained.

First, the debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Specifically, Schedule B fails to list the debtor's boat and 401k. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

Second, the plan does not comply with 11 U.S.C. § 1325(b) because it neither pays unsecured creditors in full nor pays them all of the debtor's projected disposable income. The plan will pay $8,859.41 to unsecured creditors.

While this is consistent with Form 22, as Schedule I makes clear, the debtor's monthly income has increased significantly since the case was filed. Before the case was filed, the debtor had no employment income for two months. This depressed the average monthly income in the 6 months prior to bankruptcy. The debtor is no longer disabled and is employed. Using his current income rather than the average for six pre-petition months, increases the debtor's monthly income by $182.24. Hamilton v. Lanning, 130 S.Ct 2464 (2010) permits the trustee to rebut the presumption that the amount of projected disposable income is as stated in Form 22. The debtor has come forward with no evidence that the change is not substantial or likely to continue.

Also, as argued by the trustee, the debtor had deducted inflated amounts for out-of-pocket medical expenses and mortgage expenses. With these reduced, and with the additional monthly income mentioned above, the debtor will have projected disposable income of $1,997.06 which is enough to pay $119,823.60 to unsecured creditors over 60 months. Because the plan does not pay this amount, it cannot be confirmed.

Finally, the proposed plan fails to provide for all prior payments made by the debtor under the terms of the confirmed plan. Without providing for the prior payments, the dividends required by the proposed plan cannot be paid and the trustee may be obligated to recoup from the creditors dividends paid with those payments.

4. 15-22149-A-13 MATTHEW MCKEE — MOTION TO RECONSIDER 10-15-15 [41]
BSJ-3

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted.

The debtor's motion to value their home identified the second deed of trust holder as Wells Fargo Home Mortgage, Inc., and the debtor served the motion on that entity.

The actual holder of the second deed of trust was held by Wells Fargo Home Equity Group. It was not served with the motion.

Inasmuch as the purpose of the valuation motion was to determine that the claim secured by second deed of trust was worthless and therefore need be paid nothing, the failure to serve the correct holder of that lien denied it due

process. In essence, its property interest was taken without the opportunity to be heard.

Therefore, the order granting the valuation motion will be vacated without prejudice to the debtor's right to prosecute a new motion directed to the correct lien holder.

5. 15-26954-A-13 SYLVIA GONZALES — OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
JPJ-1 — 10-19-15 [19]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The objection will be sustained and the motion to dismiss the case will be conditionally denied.

The debtor has failed to fully and accurately provide all information required by the petition, schedules, and statements. Schedules I and J do not include a detailed statement of the gross rents and associated expenses earned and incurred in connection with the rental of property. This nondisclosure is a breach of the duty imposed by 11 U.S.C. § 521(a)(1) to truthfully list all required financial information in the bankruptcy documents. To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith. See 11 U.S.C. § 1325(a)(3).

Because the plan proposed by the debtor is not confirmable, the debtor will be given a further opportunity to confirm a plan. But, if the debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the debtor has not confirmed a plan within 75 days, the case will be dismissed on the trustee's ex parte application.

6. 15-25360-A-13 SIERA CALLOWAY — MOTION TO CONFIRM PLAN
CAH-1 — 10-2-15 [38]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection will be sustained.

First, the debtor has failed to make $3,118 of payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Second, even though 11 U.S.C. § 1322(b)(2) prevents the proposed plan from modifying a claim secured only by the debtor's home, 11 U.S.C. § 1322(b)(2) & (b)(5) permit the plan to provide for the cure of any defaults on such a claim while ongoing installment payments are maintained. The cure of defaults is not limited to the cure of pre-petition defaults. See In re Bellinger, 179 B.R. 220 (Bankr. D. Idaho 1995). The proposed plan, however, does not provide for a cure of the post-petition arrears owed to the Class 1 home loan held by First Mortgage. By failing to provide for a cure, the debtor is, in effect, impermissibly modifying a home loan. Also, the failure to cure the default

means that the Class 1 secured claim will not be paid in full as required by 11 U.S.C. § 1325(a)(5)(B).

7. 14-30390-A-13 PGM-4 — BERNARD MOSE AND FARRAH LAVULO-MOSE — MOTION TO SUBSTITUTE DEBTOR AND TO WAIVE THE 1328 CERTIFICATE AND DEBT MANAGEMENT REQUIREMENT 10-16-15 [74]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: If the dismissal of the case is vacated, the motion will be denied in part and granted in part.

Debtor Lavulo-Mose died after this case was filed. Her spouse, debtor Mose is incarcerated.

This motion is brought by Rose Lavulo, the sister of the decedent. She asks the court to substitute her in place of debtor Lavulo-Mose, allow the case to proceed, and the waive the requirement than debtor Lavulo-Mose complete a course on personal financial management and that she comply with 11 U.S.C. § 1328.

The court will waive the requirement that debtor Lavulo-Mose complete a course on personal financial management.

The court will not, however, otherwise waive the requirements of section 1328. That is, debtor Lavulo-Mose will receive a discharge only if the plan is completed, only if she has not received a disqualifying discharge in an earlier case, only if all domestic support obligations are current, and only if she does not owe debts of the type described in 11 U.S.C. § 522(q) while claiming exemptions that exceed $146,450 in certain property. These requirements remain applicable despite her death. While her death prevents her from filing the certificates required by Local Bankruptcy Rule 5009-1, they may be filed by the co-debtor on her behalf. While he is incarcerated, he must nonetheless sign them on his behalf. Therefore, filing them for his spouse is not a significantly more burdensome.

Nor will the court substitute Rose Lavulo for debtor Lavulo-Mose. There is no provision in the rules for such a substitution. A representative may be appointed to act for a debtor only when the debtor is incompetent or an infant. Fed. R. Bankr. P. 7025 cited in the motion applies only in adversary proceedings.

However, if Rose Lavulo wishes to make the plan payments for the debtors the trustee will be permitted to accept the payments and credit them to this case.

8. 14-30390-A-13 PGM-3 — BERNARD MOSE AND FARRAH LAVULO-MOSE — MOTION TO VACATE DISMISSAL 10-16-15 [68]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied.

This case was dismissed on October 8, 2015 on the trustee's motion. On or about August 27, 2015, he served a Notice of Default indicating that the debtor had failed to make plan payments totaling $1,372. The debtors then had 30 days to pay the delinquency, or contest the notice of default, or modify their plan. The debtors did none of these things and the case was dismissed.

However, as noted in the motion to vacate the dismissal, the debtors did not respond because Mr. Mose was in prison and Ms. Lavulo-Mose was ill and died on August 31. It was Ms. Lavulo-Mose who dealt with this case.

While these facts certainly warrant a re-examination of the dismissal, the motion does not establish that the debtors have the ability to continue with the case. The motion does not indicate the default has been cured or that anyone will make future plan payments, or that the debtors qualify for a hardship discharge without further payments being made. In the absence of such evidence, no purpose would be served by vacating the dismissal.

THE FINAL RULINGS BEGIN HERE

9. 14-23725-A-13 JAMES WATSON — MOTION TO MODIFY PLAN
NSV-3 — 9-28-15 [43]

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

10. 14-32546-A-13 PATRICK BLANSON — OBJECTION TO CLAIM
JPJ-2
VS. LEGACY VISA — 9-23-15 [23]

Final Ruling: This objection to the proof of claim of Legacy Visa has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(c)(1)(ii). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

The proof of claim fails to attach the statement required by Fed. R. Bankr. P. 3001(c)(3)(A). That is, the statement does not disclose the debtor's last transaction on the open end credit arrangement, a credit card, nor the date of the last payment. This information is crucial to determining whether the claim is time barred.

In In re Heath, 331 B.R. 424, 436 (9th Cir. BAP 2005) and In re Campbell, 336 B.R. 430, 436 (9th Cir. BAP 2005), creditors filed proofs of claim that failed to provide adequate summaries or attach the documentation as required by Fed. R. Bankr. P. 3001. The debtors in these cases objected to the proofs of claim but came forward with no evidence that the claims were not owed. Therefore, the BAP concluded that even though the failure to include the summaries and/or documentation required by Rule 3001 deprived the proofs of claim of their prima facie validity, this was not a basis for disallowing the claims in the absence of evidence the claims were not owed.

Here, however, information included in the statement attached to the proof of claim suggests it is time barred. The claim indicates that the claim was delinquent on June 29, 2009 and was charged off on October 30, 2009.

Because the underlying debt is a contract claim, most likely based on a written contract, California law provides a four year statute of limitations to file actions for breach of written contracts. See Cal. Civ. Pro. Code § 337. This statute begins to run from the date of the contract's breach but the statute renews upon each payment made after default. While the proof of claim does not indicate the date of breach or the date of the last payment, it does indicate when a default was declared and when the creditor charged off the debt. While it is possible that the debtor had a payment after these debts, the creditor has not come forward with that information.

When a basis for disallowance of a claim is raised and a creditor does not provide information or is unable to support its claim, the failure to document the claim may itself may raise an evidentiary basis to disallow the claim. See Heath.

Therefore, using the delinquency date of June 29, 2009 as the date of breach, when the case was filed, this debt was time barred under applicable nonbankruptcy law and must be disallowed. See 11 U.S.C. § 502(b)(1).

11. 15-21053-A-13 MATTHEW/MAYRA SPINKS — MOTION TO MODIFY PLAN 10-7-15 [38]
PGM-2

Final Ruling: This motion to confirm a modified plan proposed after confirmation of a plan has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(d)(2) and 9014-1(f)(1) and Fed. R. Bankr. R. 3015(g). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion will be granted. The modified plan complies with 11 U.S.C. §§ 1322(a) & (b), 1323(c), 1325(a), and 1329.

12. 15-27971-A-13 JESSICA KNAPP AND KAREN TRAHAN — MOTION TO VALUE COLLATERAL 10-16-15 [8]
SNM-1
VS. E*TRADE BANK

Final Ruling: This valuation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The motion will be granted.

The debtor seeks to value the debtor's residence at a fair market value of $300,000 as of the date the petition was filed. It is encumbered by a first

deed of trust held by Bayview Loan Servicing. The first deed of trust secures a loan with a balance of approximately $390,642 as of the petition date. Therefore, E*Trade Bank's claim secured by a junior deed of trust is completely under-collateralized. No portion of this claim will be allowed as a secured claim. See 11 U.S.C. § 506(a).

Any assertion that the respondent's claim cannot be modified because it is secured only by a security interest in real property that is the debtor's principal residence is disposed of by In re Zimmer, 313 F.3d 1220 (9th Cir. 2002) and In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997). See also In re Bartee, 212 F.3d 277 (5th Cir. 2000); In re Tanner, 217 F.3d 1357 (11th Cir. 2000); McDonald v. Master Fin., Inc. (In re McDonald), 205 F.3d 606, 611-13 (3rd Cir. 2000); and Domestic Bank v. Mann (In re Mann), 249 B.R. 831, 840 (B.A.P. 1st Cir. 2000).

Because the claim is completely under-secured, no interest need be paid on the claim except to the extent otherwise required by 11 U.S.C. § 1325(a)(4). If the secured claim is $0, because the value of the respondent's collateral is $0, no interest need be paid pursuant to 11 U.S.C. § 1325(a)(5)(B)(ii).

Any argument that the plan, by valuing the respondent's security and providing the above treatment, violates In re Hobdy, 130 B.R. 318 (B.A.P. 9th Cir. 1991), will be overruled. The plan is not an objection to the respondent's proof of claim pursuant to Fed. R. Bankr. P. 3007 and 11 U.S.C. § 502. The plan makes provision for the treatment of the claim and all other claims, and a separate valuation motion has been filed and served as permitted by Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a). The plan was served by the trustee on all creditors, and the motion to value collateral was served by the debtor with a notice that the collateral for the respondent's claim would be valued. That motion is supported by a declaration of the debtor as to the value of the real property. There is nothing about the process for considering the valuation motion which amounts to a denial of due process.

To the extent the respondent objects to valuation of its collateral in a contested matter rather than an adversary proceeding, the objection is overruled. Valuations pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are contested matters and do not require the filing of an adversary proceeding. Further, even if considered in the nature of a claim objection, an adversary proceeding is not required. Fed. R. Bankr. P. 3007. It is only when such a motion or objection is joined with a request to determine the extent, validity or priority of a security interest, or a request to avoid a lien that an adversary proceeding is required. Fed. R. Bankr. P. 7001(2). The court is not determining the validity of a claim or avoiding a lien or security interest. The respondent's deed of trust will remain of record until the plan is completed. This is required by 11 U.S.C. § 1325(a)(5)(B)(I). Once the plan is completed, if the respondent will not reconvey its deed of trust, the court will entertain an adversary proceeding. See also 11 U.S.C. § 1325(a)(5)(B)(I).

In the meantime, the court is merely valuing the respondent's collateral. Rule 3012 specifies that this is done by motion. Rule 3012 motions can be filed and heard any time during the case. It is particularly appropriate that such motions be heard in connection with the confirmation of a plan. The value of collateral will set the upper bounds of the amount of the secured claim. 11 U.S.C. § 506(a). Knowing the amount and character of claims is vital to assessing the feasibility of a plan, 11 U.S.C. § 1325(a)(6), and determining whether the treatment accorded to secured claims complies with 11 U.S.C. § 1325(a)(5).

To the extent the creditor objects to the debtor's opinion of value, that objection is also overruled, particularly in light of its failure to file any contrary evidence of value. According to the debtor, the residence has a fair market value of $300,000. Evidence in the form of the debtor's declaration supports the valuation motion. The debtor may testify regarding the value of property owned by the debtor. Fed. R. Evid. 701; So. Central Livestock Dealers, Inc., v. Security State Bank, 614 F.2d 1056, 1061 (5th Cir. 1980).