UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

November 19, 2018 at 10:00 a.m.

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1. 18-25800-A-7 HALEY HAWS — MOTION FOR RELIEF FROM AUTOMATIC STAY
JHW-1 — 10-10-18 [18]
SANTANDER CONSUMER USA, INC. VS.

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, 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 above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be dismissed as moot.

The movant, Santander Consumer U.S.A., seeks relief from the automatic stay with respect to a 2014 Chevrolet Volt vehicle.

11 U.S.C. § 521(a)(2)(A) requires an individual chapter 7 debtor to file a statement of intention with reference to property that secures a debt. The statement must be filed within 30 days of the filing of the petition (or within 30 days of a conversion order, when applicable) or by the date of the meeting of creditors, whichever is earlier. The debtor must disclose in the statement whether he or she intends to retain or surrender the property, whether the property is claimed as exempt, and whether the debtor intends to redeem such property or reaffirm the debt it secures. See 11 U.S.C. § 521(a)(2)(A); Fed. R. Bankr. P. 1019(1)(B).

The petition here was filed on September 13, 2018 and a meeting of creditors was first convened on October 23, 2018. Therefore, a statement of intention that refers to the movant's property and debt was due no later than October 15. The debtor filed a statement of intention on September 24, but the statement makes no reference to the vehicle.

If the property securing the debt is personal property and an individual chapter 7 debtor fails to file a statement of intention, or fails to indicate in the statement that he or she either will redeem the property or enter into a reaffirmation agreement, or fails to timely surrender, redeem, or reaffirm, the automatic stay is automatically terminated and the property is no longer property of the bankruptcy estate. See 11 U.S.C. § 362(h).

Here, although the debtor filed a statement of intention, the debtor made no reference whatsoever to the vehicle in the statement. See Docket 16. And, no

reaffirmation agreement or motion to redeem has been filed, nor has the debtor requested an extension of the 30-day period. As a result, the automatic stay automatically terminated on October 15, 2018, 30 days after the petition date.

The trustee may avoid automatic termination of the automatic stay by filing a motion within whichever of the two 30-day periods set by section 521(a)(2) is applicable, and proving that such property is of consequential value or benefit to the estate. If proven, the court must order appropriate adequate protection of the creditor's interest in its collateral and order the debtor to deliver possession of the property to the trustee. If not proven, the automatic stay terminates upon the conclusion of the hearing on the trustee's motion. See 11 U.S.C. § 362(h)(2).

The trustee in this case has filed no such motion and the time to do so has expired. The court also notes that the trustee filed a non-opposition to this motion.

Therefore, without this motion being filed, the automatic stay terminated on October 15, 2018.

Nothing in section 362(h)(1), however, permits the court to issue an order confirming the automatic stay's termination. 11 U.S.C. § 362(j) authorizes the court to issue an order confirming that the automatic stay has terminated under 11 U.S.C. § 362(c). See also 11 U.S.C. § 362(c)(4)(A)(ii). But, this case does not implicate section 362(c). Section 362(h) is applicable and it does not provide for the issuance of an order confirming the termination of the automatic stay. Therefore, if the movant needs a declaration of rights under section 362(h), an adversary proceeding seeking such declaration is necessary. See Fed. R. Bankr. P. 7001.

2. 18-24718-A-7 NICK SISNEROS — OBJECTION TO EXEMPTIONS
MF-2 — 10-17-18 [34]

Tentative Ruling: The objection will be sustained.

The trustee objects to the debtor's exemption of a home, cash on hand, cash on deposit, and a pension.

The objection to the exemption of the homestead will be sustained.

The trustee correctly notes that the debtor has impermissibly claimed two homestead exemptions, $75,000 pursuant to Cal. Civ. Pro. Code § 704.730 and $100,000 pursuant to that same statute. The debtor concedes this point in the response to the objection. However, contrary to the response, no amended Schedule C appears on the docket eliminating the $75,000 exemption.

The trustee objects to the $100,000 exemption on the ground that the debtor does not reside in the property with a "family unit". Hence, the debtor is limited to the $75,000 homestead exemption.

The term "family unit" is defined in Cal. Civ. Pro. Code § 704.710(b). A family unit may be comprised of the debtor and (a) a spouse or (b) a minor child or grandchild of the debtor or the debtor's spouse; a minor brother or sister of the debtor or the debtor's spouse; a father, mother, grandfather, or grandmother of the debtor or the debtor's spouse; an unmarried relative of the type just described who has reached the age of majority but is unable to

support himself or herself.

Schedule J includes a description of the debtor's household and the description includes no spouse or any of the relatives mentioned in section 704.710(b). Therefore, the debtor is limited to an exemption of $75,000.

The response to the objection asserts that the debtor has amended Schedule J to identify the debtor's four minor children. However, no amended Schedule J appears on the docket.

Therefore, the objections to the homestead exemptions will be sustained and the exemption is limited to $75,000. This is without prejudice, however, to the debtor filing amended schedules and claiming a $100,000 (to which the trustee may object if there is good cause).

The response to the objection concedes the merits of the trustee's objections to the exemption of the cash on hand and the cash on deposit. Those objections are sustained.

As to the pension, Schedule B identifies at line 21 a pension account with a value of "$0.00". Other than to state that this is a pension, the entry includes no other information regarding the pension. Schedule C is equally as cryptic. It identifies a pension with no value to which the debtor claims an exemption of $0.00 pursuant to Cal. Civ. Pro. Code § 704.115(a)(1) & (2).

At least for an intangible assets such as a pension, if there is no value, there is nothing to exempt. Further, claiming an exemption of $0.00 is to claim nothing.

Outside of a bankruptcy, exemptions protect assets from a levy to enforce a money judgment. See Cal. Civ. Pro. Code § 703.510. An account with nothing in it cannot be levied and a judgment debtor cannot protect an account with something in it by claiming an exemption of $0.00.

Therefore, the exemption of the pension will be disallowed without prejudice. Should the debtor amend Schedule B to identify a pension with a value, the debtor may claim an exemption subject to the trustee's (and any creditor's) right to object to the exemption.

3. 18-24047-A-7 SONIA TRIPLET-ORY — MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT
CLH-2 — 10-17-18 [23]

Tentative Ruling: The motion will be denied without prejudice because it is not supported by any evidence, such as a declaration or an affidavit to support the motion's factual assertions and exhibits to the motion. See Local Bankruptcy Rule 9014-1(d)(3)(D) (Every motion shall be accompanied by evidence establishing its factual allegations and demonstrating that the movant is entitled to the relief requested. Affidavits and declarations shall comply with Fed. R. Civ. P. 56(c)(4).)

4. 17-23853-A-7 ELIZABETH SETTLES
HSM-6

MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY
10-29-18 [131]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee's counsel, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, 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 will be granted.

Hefner, Stark & Marois, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $40,700 in fees and $248.25 in expenses, for a total of $40,948.25. This motion covers the period from November 15, 2017 through November 19, 2018. The court approved the movant's employment as the trustee's attorney on December 4, 2017. In performing its services, the movant charged hourly rates of $320, $340, $400, and $420.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation:

(1) analyzing and advising the trustee about the debtor's interests in various assets, including a real property in the State of Washington,

(2) analyzing and researching issues pertaining to the debtor's homestead exemption,

(3) advising the trustee about the exemption claim,

(4) negotiating exemption objection deadline,

(5) preparing and prosecuting a contested objection to the debtor's exemption in the Washington property,

(6) conducting and reviewing discovery pertaining to the exemption objection,

(7) conferring with the estate's accountant about tax issues,

(8) preparing and prosecuting an abandonment motion pertaining to the debtor's interest in a limited liability company,

(9) discussing chapter 11 attorney's fees issues with the debtor's counsel,

(10) negotiating sale and settlement with the debtor over the administration of the Washington property,

(11) preparing and prosecuting a motion for approval of the sale and settlement with the debtor,

(12) assisting the trustee with the general administration of the estate, and

(13) preparing and filing employment and compensation motions.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved.

5.	15-23164-A-7 DNL-13	JF MCCRAY PLASTERING, INC.	MOTION TO APPROVE COMPROMISE 10-25-18 [158]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the chapter 7 trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, 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 will be granted.

The trustee requests approval of a settlement agreement between the estate and the IRS, resolving a pending adversary proceeding where the trustee disputes IRS' assertion that $203,777.69 of their $1,193,253.77 total proof of claim amount is secured by proceeds the trustee received from the sale of a real property which had been purchased by proceeds generated from a receivable of the debtor. The receivable was transferred by the debtor to its principal on October 23, 2014, 48 days before IRS' December 10, 2014 notice of tax lien against the debtor.

Under the terms of the compromise, the IRS will be allowed a secured claim for $20,000 in full satisfaction of its alleged secured claim against the sale proceeds. The trustee has also agreed not to object to an amendment of IRS' proof of claim to reclassify the balance of the alleged secured claim as a priority claim (excluding penalties avoidable under 11 U.S.C. § 724(a)). The pending adversary proceeding between the parties will be dismissed.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given that the trustee received $253,000 from the sale of the real property, given that IRS' alleged secured claim is in the amount of $203,777.69, and given the inherent costs, risks, delay, and inconvenience of further litigation, the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

6. 16-27489-A-7 PALMER COOKE — MOTION TO APPROVE COMPENSATION OF TRUSTEE 10-29-18 [169]
KJH-6

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, 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 offer 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 will be granted.

The chapter 7 trustee, Kimberly Husted, has filed first and final motion for approval of compensation. The requested compensation consists of $9,773.55 in fees and $727.90 in expenses, for a total of $10,501.45. The services for the sought compensation were provided from June 29, 2017 through the present.

The court is satisfied that the requested compensation does not exceed the cap of section 326(a).

The movant will make or has made $138,849.21 in distributions to creditors. This means that the cap under section 326(a) on the movant's compensation is $10,192.46 ($1,250 (25% of the first $5,000) + $4,500 (10% of the next $45,000) + $4,442.46 (5% of the next $950,000 ($88,849.21)) + $0.00 (3% on anything above $1 million). Hence, the requested trustee fees of $9,773.55 do not exceed the cap of section 326(a).

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

"[A]bsent extraordinary circumstances, chapter 7, 12 and 13 trustee fees should be presumed reasonable if they are requested at the statutory rate. Congress would not have set commission rates for bankruptcy trustees in §§ 326 and 330(a)(7), and taken them out of the considerations set forth in § 330(a)(3), unless it considered them reasonable in most instances. Thus, absent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review."

Hopkins v. Asset Acceptance LLC (In re Salgado-Nava), 473 B.R. 911, 921 (B.A.P. 9th Cir. 2012).

The movant's services did not involve extraordinary circumstances and included, without limitation:

(1) reviewing petition documents and analyzing assets,

(2) conducting the meeting of creditors,

(3) evaluating the debtor's interest in a real property,

(4) employing professionals to assist with the administration of the estate,

(5) communicating with the estate's professionals about various issues,

(6) reviewing claims,

(7) reviewing various pleadings and documents,

(8) addressing tax issues,

(9) preparing final report, and

(10) preparing compensation motion.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The compensation will be approved.

7. 18-24391-A-7 RACHAEL OIE — MOTION TO EXTEND DEADLINE TO FILE A COMPLAINT
KJH-1 — 10-19-18 [26]

Tentative Ruling: The motion will be dismissed without prejudice because it violates Local Bankruptcy Rule 9014-1(e)(1), which provides "[s]ervice of all pleadings and documents filed in support of, or in opposition to, a motion shall be made on or before the date they are filed with the Court."

The movant served only the notice of hearing for the motion. Docket 29. The court also notes that the notice of hearing gives virtually no details about the motion. It states that the trustee is "mov[ing] for authority to extend the deadline to object to debtor's discharge" and that "[r]eference to the Motion is suggested for more detail." Docket 27 at 1.

8. 18-23895-A-7 KATHLEEN BEVIER — MOTION TO AVOID JUDICIAL LIEN
MOH-1 — 10-9-18 [15]
VS. MIDLAND FUNDING, L.L.C.

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent creditor 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 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 above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted.

A judgment was entered against the debtor in favor of Midland Funding, L.L.C. for the sum of $7,092.89 on October 29, 2009. The abstract of judgment was recorded with Tehama County on December 30, 2010. That lien attached to the debtor's interest in a residential real property in Corning, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of $153,157 as of the petition date. Dockets 17 & 18. The unavoidable liens totaled $14,065 on that same date, consisting of a single mortgage in favor of Ditech. Dockets 17 & 18. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $175,000 in Schedule C. Dockets 17 & 18.

The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

9. 18-23895-A-7 KATHLEEN BEVIER — MOTION TO AVOID JUDICIAL LIEN
MOH-2
VS. CAPITAL ONE BANK (USA), N.A. — 10-9-18 [20]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the respondent creditor, Capital One Bank, in accordance with Fed. R. Bankr. P. 7004(h), which requires service on insured depository institutions (as defined by section 3 of the Federal Deposit Insurance Act) to be made by certified mail and addressed to an officer of the institution.

The proof of service and additional declaration from the debtor's counsel accompanying the motion indicate that the notice was not addressed solely to an officer of the creditor. It was addressed "To the attention of an officer, a managing general agent, or to any other agent authorized by appointment of law to receive service of process." Docket 25 at 2. This does not satisfy Rule 7004(h).

Rule 7004(h) requires service solely to the attention of an officer. Nothing in the rule or its legislative history suggests that Congress intended the term "officer" to include anything other than officer of the respondent creditor. Hamlett v. Amsouth Bank (In re Hamlett), 322 F.3d 342, 345-46 (4th Cir. 2003) (examining the legislative history of Rule 7004(h), comparing it to Rule 7004(b)(3), and concluding that the term "officer" in Rule 7004(h) does not include other posts with the respondent creditor, such as "registered agent").

While the debtor appears to have served Capital One's attorney, unless the attorney agreed to accept service (and there is no evidence of such an agreement), service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

10. 18-25499-A-7 MICHAEL NEWHARD
CYB-2

MOTION TO RECONSIDER
10-23-18 [23]

Tentative Ruling: The motion will be denied.

To determine whether or not a judicial lien impairs an exemption under 11 U.S.C. § 522(f)(1)(A), the court must apply the statutory formula mandated by 11 U.S.C. § 522(f)(2)(A).

A judicial lien impairs an exemption in property to the extent the sum of the judicial lien, all other liens, and the debtor's exemption, exceeds the value of the subject property. 11 U.S.C. § 522(f)(2)(A).

Here, the evidence in the original motion indicated: the judicial lien secured a claim of $29,635.85; the only other lien was an unavoidable deed of trust securing a claim of $387,644.76; the debtor claimed an exemption was $13,000; and the value of the property was $410,000. Using these values, the statutory formula yields the following result:

[$29,635.85 + $387,644.76 + $13,000 = $430,280.61] - $410,000 = $20,280.61

This means that $20,280.61 of the $29,635.85 judicial lien is avoidable and the difference, $9,335.24, is not avoidable.

The same result is obtained if this alternative calculation is made:

Value of Property	$410,000.00	
Unavoidable lien	-387,644.76	
Equity remaining	22,355.24	
Exempt equity	- 13,000.00	
	$9,355.24	[Nonexempt equity and unavoidable portion of judicial lien]

Therefore, the judicial lien was partially avoidable. $20,280.61 is avoidable but the remainder, $9,355.24, is not. Inasmuch as this was the court's original ruling, there is no need for reconsideration and this motion will be denied.