

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Sacramento, California

December 10, 2013 at 1:30 p.m.

1. [13-31632](#)-E-13 JANELLE GILMORE MOTION FOR RELIEF FROM
JHW-1 Peter G. Macaluso AUTOMATIC STAY
10-16-13 [[21](#)]
FIRST INVESTORS SERVICING
CORP. VS.

Final Ruling: Creditor First Investors Servicing Corp. having filed a "Withdrawal of Motion" for the pending Motion for Relief from Automatic Stay, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an *ex parte* motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion for Relief from Automatic Stay, and good cause appearing, **the court dismisses without prejudice the Creditor's Motion for Relief from Automatic Stay.**

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

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

A Motion for Relief from Automatic Stay having been filed by Creditor First Investors Servicing Corp. ("Creditor"), Creditor having filed an *ex parte* motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion for Relief from Automatic Stay is dismissed without prejudice.

December 10, 2013 at 1:30 p.m.

2. [12-91763-E-7](#) TERRY/JULIA LEIB MOTION TO AVOID LIEN OF
PBG-5 Patrick B. Greenwell CITIBANK (SOUTH DAKOTA) N.A..
11-25-13 [[41](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, respondent creditor, all creditors and Office of the United States Trustee on November 25, 2013. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Avoid a Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Avoid a Judicial Lien. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

A judgment was entered against the Debtor in favor of Citibank (South Dakota) N.A. for the sum of \$7,448.68. The abstract of judgment was recorded with Stanislaus County on June 23, 2011. That lien attached to the Debtor's residential real property commonly known as 1022 Huntington Drive, Modesto, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$141,500.00 as of the date of the petition. The unavoidable consensual liens total \$233,751.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1,000.00 in Schedule C. 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 is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

A judgment was entered against the Debtor in favor of Citibank (South Dakota) N.A. for the sum of \$3,102.17. The abstract of judgment was recorded with Stanislaus County on November 18, 2011. That lien attached to the Debtor's residential real property commonly known as 1022 Huntington Drive, Modesto, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$141,500.00 as of the date of the petition. The unavoidable consensual liens total \$233,751.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1,000.00 in Schedule C. 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 is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by the Debtor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the judgment lien of Citibank (South Dakota) N.A., Stanislaus County Superior Court Case No. 657818, recorded on November 18, 2011, Document No. 2011-0095506-00, with the Stanislaus County Recorder, against the real property commonly known as 1022 Huntington Drive, Modesto, California, is avoided pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

4. [12-91763-E-7](#) TERRY/JULIA LEIB
PBG-7 Patrick B. Greenwell

MOTION TO AVOID LIEN OF NORTH
STAR CAPITAL ACQUISITION
11-25-13 [[54](#)]

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, respondent creditor, all creditors and Office of the United States Trustee on November 25, 2013. By the court's calculation, 15 days' notice was provided. 14 days' notice is required.

Tentative Ruling: The Motion to Avoid a Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion to Avoid a Judicial Lien. Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

A judgment was entered against the Debtor in favor of North Star Capital Acquisition Assignee of Wells Fargo Financial for the sum of \$4,502.31. The abstract of judgment was recorded with Stanislaus County on June 1, 2012. That lien attached to the Debtor's residential real property commonly known as 1022 Huntington Drive, Modesto, California.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$141,500.00 as of the date of the petition. The unavoidable consensual liens total \$233,751.00 on that same date according to Debtor's Schedule D. The Debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$1,000.00 in Schedule C. 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 is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT DRAFTED ORDER

