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OCT 27 2015

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1 UNITED STATES BANKRUPTCY COURT

2 EASTERN DISTRICT OF CALIFORNIA UNITED STATES BANKRUPTCY COURT
3 EASTERN DISTRICT OF CALIFORNIA

4 In re:) Case No. 14-30386-B-7
5 LISA J. PASHENEE,) DC No. PGM-1
6)
7 Debtor(s).)

8 ORDER GRANTING MOTION TO COMPEL ABANDONMENT

9 Background

10 Debtor Lisa Pashenee has filed a motion under 11 U.S.C.
11 § 554(b) to compel the trustee to abandon the estate's interest
12 in her residence located at 8404 Adagio Way, Citrus Heights,
13 California. Section 554(b) permits the court to order the
14 trustee to abandon any property of the estate that is burdensome
15 to the estate or that is of inconsequential value and benefit to
16 the estate. The trustee has opposed the debtor's motion and
17 objects to abandonment.

18 The court held a hearing on October 13, 2015, which was
19 continued to October 27, 2015. Appearances at both hearings were
20 noted on the record. Notice was properly given.

21 The court has considered the debtor's motion, the trustee's
22 opposition and supplemental statement of position, and the
23 exhibits and declarations related to each.

24 The court has also reviewed and considered the Schedules
25 that were filed with the petition on October 20, 2014, and the
26 amended Schedules filed on October 14, 2015. The court takes
27 judicial notice of those Schedules and, because they are signed
28 under oath, admits them under Federal Rule of Evidence 801(d)(2).

1 Suter v. Goedert, 396 B.R. 535, 541 (D. Nev. 2008) (citation and
2 quotation omitted); see also In re Gibson, 355 B.R. 807, 808
3 (Bankr. E.D. Cal. 2006); In re Applin, 108 BR. 253, 257 (Bankr.
4 E.D. Cal. 1989). The relevant Schedules are Schedules A and D
5 which reflect liens recorded against the debtor's residence
6 totaling \$226,244 and amended Schedule C in which the debtor
7 claims a \$100,000 homestead exemption under California Code of
8 Civil Procedure § 704.730(a)(2).¹

9 The court has further reviewed and accepts the debtor's
10 appraisal dated October 14, 2015, which values the debtor's
11 residence at \$250,000.² That value is consistent with the value
12 included in amended Schedule A.

13 For the reasons explained below, the debtor's motion will be
14 granted and the trustee ordered to abandon the estate's interest
15 in the debtor's residence to the debtor.

16 17 Discussion

18 Section 554(b) provides that on request of a party in
19 interest, and after notice and a hearing, the court may order the
20 trustee to abandon property of the estate that is burdensome to
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22 ¹The court expresses no opinion on what appears to be the
23 trustee's objection to the homestead exemption the debtor now
24 claims in amended Schedule C. Initially raised in the trustee's
25 supplemental response to the debtor's abandonment motion, that
objection is not properly before the court. If the trustee
intends to object to the debtor's amended homestead exemption he
must do so under Federal Rule of Bankruptcy Procedure 4003(b)(1).

26 ²The court gives no weight to the trustee's statement that he
27 was informed by a broker that the debtor's residence may be worth
between \$260,000 and \$275,000.

1 the estate or that is of inconsequential value and benefit to the
2 estate. 11 U.S.C. § 554(b). On a motion to compel abandonment
3 under § 554(b), the burden is on the movant to make out a prima
4 facie case that property to be abandoned is burdensome or of
5 inconsequential value. In re DiDario, 232 B.R. 311, 313 (Bankr.
6 D.N.J. 1999). The movant's prima facie case may then be rebutted
7 by evidence of equity in the property or there is some other form
8 of value or benefit to the estate if the property is retained.
9 In re Beaudoin, 160 B.R. 25, 32 (Bankr. N.D.N.Y. 1993). If the
10 movant's prima facie case is overcome, the movant's ultimate
11 burden of proof is the preponderance of the evidence. In re
12 Siegel, 204 B.R. 6, 10 (W.D.N.Y. 1996).

13 The debtor has established a prima facie case that her
14 residence is of inconsequential value by demonstrating an absence
15 of equity in the residence available for the benefit of unsecured
16 creditors. Subtracting the recorded liens (\$226,244) from the
17 appraised value (\$250,000) leaves equity of \$23,756. That amount
18 is well within the debtor's amended homestead exemption, even
19 without an 8% deduction for costs of sale.³

20 The trustee has not rebutted the debtor's prima facie case.
21 The court is unable to discern anything in the trustee's
22 opposition or supplemental response that demonstrates there is
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24
25 ³With an 8% cost of sale allocation at \$20,000, equity is
26 further reduced to \$3,756. The court would reach the same
27 conclusion under the prior \$18,756 exemption, *i.e.*, \$250,000
(appraised value) - \$226,244 (recorded liens) - \$20,000 (8% cost
of sale) = \$3,756 (equity) which is within the previously-claimed
\$18,756 homestead exemption.

1 equity in the debtor's residence for the benefit of unsecured
2 creditors or that retention of the residence may provide some
3 other benefit to the estate. The trustee cites KVN Corporation
4 v. Green (In re KVN Corp.), 514 B.R. 1 (9th Cir. BAP 2014), for
5 the proposition that he should be given an opportunity to
6 negotiate a short sale and carve-outs. However, the trustee
7 concedes that neither may be successful. And although KVN
8 sanctions short-sales and carve-outs as a basis for the estate to
9 retain and sell rather than abandon property that lacks equity,
10 unlike KVN, in this case there is no short-sale pending and no
11 agreed-upon (or guaranteed) carve-out. At best, both are
12 speculative. Speculation is not evidence of value or benefit to
13 the estate that overcomes the debtor's prima facie case which
14 means abandonment is warranted. See KVN, 514 B.R. at 6.

15 Therefore, based on the foregoing;

16 IT IS ORDERED that the debtor's motion is GRANTED.

17 IT IS FURTHER ORDERED that the trustee is hereby deemed to
18 have abandoned the following property and upon entry of this
19 order the following property is deemed to no longer be part of
20 the bankruptcy estate: 8404 Adagio Way, Citrus Heights,
21 California.

22 Dated: October 27, 2015.

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UNITED STATES BANKRUPTCY JUDGE

**INSTRUCTIONS TO CLERK OF COURT
SERVICE LIST**

The Clerk of Court is instructed to send the attached document, via the BNC, to the following parties:

Peter G. Macaluso
7230 South Land Park Drive #127
Sacramento CA 95831

Estela O. Pino
800 Howe Ave #420
Sacramento CA 95825