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2
3 UNITED STATES BANKRUPTCY COURT
4 EASTERN DISTRICT OF CALIFORNIA
5 MODESTO DIVISION

6 In re)
7) Case No. 07-90112-A-13G
8 CHRISTOPHER BONORA,)
9) Docket Control No. IAM-1
10 Debtor.) Date: May 14, 2007
Time: 2:00 p.m.
)

11 On May 14, 2007 at 2:00 p.m., the court considered the
12 chapter 13 debtor's motion to determine the secured status of
13 several creditors all secured by a single parcel of real
14 property. If the court determined that the collateral of these
15 creditors was worthless, the motion also requested that the court
16 avoid the liens of these creditors. The court's ruling on the
17 motion is appended to the minutes of the hearing. Because that
18 ruling constitutes a "reasoned explanation" of the court's
19 decision, it is also posted on the court's Internet site,
20 www.caeb.uscourts.gov, in a text-searchable format as required by
21 the E-Government Act of 2002. The official record, however,
22 remains the ruling appended to the minutes of the hearing.

23 **FINAL RULING**

24 The motion will be dismissed without prejudice.

25 The motion requests that the subject real property be
26 valued. This relief may be requested in a motion. Valuations
27 pursuant to 11 U.S.C. § 506(a) and Fed. R. Bankr. P. 3012 are
28 contested matters and do not require the filing of an adversary
proceeding. Rule 3012 motions may 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

1 and character of claims is vital to assessing the feasibility of
2 a plan and determining whether the treatment accorded to secured
3 claims complies with 11 U.S.C. § 1325(a)(5).

4 The court can also allow claims as secured or unsecured
5 based on the value of the property evaluated. Whether this is
6 part of the valuation process under 11 U.S.C. § 506(a) or is in
7 the nature of a claim objection, an adversary proceeding is not
8 required. Fed. R. Bankr. P. 3007. See also In re State Line
9 Hotel, Inc., 323 B.R. 703, 713 (B.A.P. 9th Cir. 2005) (holding
10 that a claim objection is not governed by the service of process
11 rules applicable in adversary proceedings).

12 However, to the extent a chapter 13 debtor when making a
13 valuation motion also requests other relief, such as declaratory
14 relief regarding the extent, validity, or priority of the
15 respondents' liens, or an order avoiding those liens on grounds
16 other than 11 U.S.C. § 522(f), the motion must be denied without
17 prejudice because such relief requires an adversary proceeding.
18 See Fed. R. Bankr. P. 7001.

19 Whether the relief requested in this motion may be sought in
20 a contested matter or must be demanded in an adversary
21 proceeding, no relief may be granted in this case at this time.
22 According to the certificates of service, many of the respondents
23 holding liens on the subject property were not properly served.

24 Fed. R. Bankr. P. 9013(a) provides that relief in a
25 contested matter must be requested in a motion. That motion must
26 be served in the "manner provided for service of a summons and a
27 complaint by Rule 7004." See Fed. R. Bankr. P. 9013(b). When
28 service is by mail, as it was in this case, Fed. R. Bankr. P.

1 7004(b)(3) requires that service on corporate and partnership
2 respondents be "to the attention of an officer, a managing or
3 general agent, or to any other agent authorized by appointment or
4 by law to receive service of process...." When service by mail
5 is directed to a state or municipal corporation, process must be
6 directed "to the person or office upon whom process is prescribed
7 to be served by [state] law ... or in the absence of the
8 designation of any such person or office by state law, then to
9 the chief executive officer thereof." See Fed. R. Bankr. P.
10 7004(b)(6).

11 A review of the certificates reveals that service on the
12 nonfederal government agencies was not directed to an executive
13 officer. And, none of the entities, Northern California
14 Collection Service, Everest National Insurance Company, Financial
15 Pacific Leasing, and Race Street Foods, were served in the care
16 of their agent for service of process or other authorized agent.

17 Also, Local Bankruptcy Rule 2002-1(c) provides that notices
18 in adversary proceedings and contested matters that are served on
19 the IRS shall be mailed to three entities at three different
20 addresses: (1) IRS, P.O. Box 21126, Philadelphia, PA 19114; (2)
21 United States Attorney, for the IRS, 501 I Street, Suite 10-100,
22 Sacramento, CA 95814 [if the case is pending in the Sacramento
23 Division] or United States Attorney, for the IRS, 2500 Tulare
24 Street, Suite 4401, Fresno, CA 93721-1318 [if the case is pending
25 in the Modesto or Fresno Divisions]; and (3) United States
26 Department of Justice, Civil Trial Section, Western Region, Box
27 683, Franklin Station, Washington, D.C. 20044.

28 According to the debtor, the subject property in Stanislaus

1 County has a value of \$168,000 and it is encumbered by a first
2 priority consensual lien held by Litton Loan Servicing and
3 securing a claim of \$98,178.70.

4 Also according to the debtor, in second and third priority
5 positions are two tax liens recorded in Stanislaus County on
6 October 25, 2002 and held by the IRS securing tax claims of
7 \$8,486.53 and \$54,679.03. These two tax debts total \$63,165.56.

8 However, the proof of claim filed by the IRS demands \$61,181
9 as its secured claim. Further, its proof of claim reveals that a
10 total of \$40,678.86 of the \$61,181 in taxes, interest, and
11 penalties is not secured by the tax liens recorded on October 25,
12 2002 but by later recorded liens. This discrepancy is not
13 surprising given that the only evidence of the tax liens with the
14 motion is a title report. A title report gives information
15 regarding documents recorded against a specific property. When a
16 lien is reported, the amount secured by the lien is the amount
17 initially reported, not the balance due as of the date of the
18 title report.

19 Parenthetically, if the title report is an accurate
20 recitation of the amounts due each lien holder, the total amount
21 due to these respondents, not counting amounts owed to Litton and
22 to the IRS on its October 25, 2002 liens, exceeds the maximum
23 amount of unsecured debt a chapter 13 debtor may have under 11
24 U.S.C. § 109(e). See United States v. Edmonston (In re
25 Edmonston), 99 B.R. 995, 999 (E.D. Cal. 1989).

26 Therefore, even if service and process were correct, on this
27 record, the court would be unable to determine whether the taxes
28 secured by the two October 25, 2002 IRS tax liens are fully or

1 only partially secured. Nor would the court be able to make any
2 informed judgment regarding the current amounts secured by any of
3 the other junior liens. Because of this, neither could the court
4 determine which of the liens recorded by other respondents after
5 October 25, 2002 are supported by any equity.

6 Additionally, if the court were in a position to value the
7 property and determine the amount of each respondent's secured
8 claim, the court would not, at this time, also avoid any
9 respondent's lien or security interest. Their liens must remain
10 of record until the plan is completed and the debtor is
11 discharged, or their claims are paid in full per the terms of any
12 agreement and/or applicable nonbankruptcy law. Once the
13 discharge is entered, or an obligation is satisfied under
14 applicable nonbankruptcy law, if a respondent will not reconvey
15 its lien, the court will entertain an adversary proceeding to
16 void that lien. See Cal. Civil Code § 2941(d).

17 There are three reasons why it would be premature to avoid a
18 respondent's lien in connection with a valuation motion.

19 First, a secured creditor is entitled to retain its lien
20 until the earlier of the date its claim is paid in full as
21 determined under applicable nonbankruptcy law or the date the
22 debtor receives a discharge under 11 U.S.C. § 1328. See 11
23 U.S.C. § 1325(a)(5)(B)(i). Neither has occurred in this case.

24 Second, if the court now avoided a lien and permitted the
25 debtor to sell or encumber the real property encumbered by that
26 lien, but the case was later dismissed without the lien holder
27 being paid in full per the terms of its obligation or applicable
28 nonbankruptcy law or without the discharge being entered, the

1 court would be unable to restore the respondent's lien as
2 required by 11 U.S.C. § 349(b) (1) (C) .

3 Third, a court of the United States is permitted to resolve
4 "cases" and "controversies." U.S. Constitution, Art. III, § 2.
5 This requirement means that "there must be a tangible dispute
6 that is capable of resolution in a manner that will have a
7 concrete impact on the parties to the dispute" before a federal
8 court may act. 15 James W. Moore, Moore's Federal Practice §
9 101.01, p. 101-13 (Daniel R. Coquillette et al. eds., 3d ed.
10 2002). The existence of a case and controversy is a prerequisite
11 to a federal court's subject matter jurisdiction. S. Jackson &
12 Son Inc., v. Coffee, Sugar & Cocoa Exch., Inc., 24 F.3d 427, 431
13 (2nd Cir. 1994); Southern Pac. Transp. Co. v. Los Angeles, 922
14 F.2d 498, 502 (9th Cir. 1990) .

15 The doctrine of ripeness is one of the doctrines used by
16 federal courts to determine whether a case or controversy is
17 justiciable. Whether or not a case and controversy is ripe for
18 adjudication is a question of timing. Anderson v. Green, 115 S.
19 Ct. 1059 (1995). Has the dispute been brought at a point so
20 early that it is not clear whether a real dispute exists between
21 the parties? The ripeness doctrine, therefore, prevents federal
22 courts from becoming entangled in purely abstract, hypothetical,
23 or theoretical disagreements. Abbott Lab. v. Gardner, 87 S. Ct.
24 1507 (1967) .

25 Any dispute regarding the avoidability of a respondent's
26 lien is both premature and hypothetical until the debtor
27 completes the chapter 13 plan and obtains a discharge. Once this
28 occurs, the debtor can demand that the respondent reconvey its

1 lien. If the demand is refused, a case and controversy will have
2 ripened into an actual dispute that can be resolved by this
3 court.

4 At this time, the debtor has not been discharged and none of
5 the respondents have been paid in full under applicable
6 nonbankruptcy law. Since the absence of a ripe controversy
7 implicates the court's subject matter jurisdiction, the court may
8 raise the issue *sua sponte*. Southern Pac. Transp. Co. v. Los
9 Angeles, 922 F.2d at 502.