

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

January 18, 2022 at 1:00 p.m.

1. [20-21602](#)-B-13 JOSE/LETICIA GONZALEZ MOTION TO INCUR DEBT
[GSJ](#)-1 Grace S. Johnson 1-3-22 [[63](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to conditionally grant the motion to incur debt.

Debtors seek court approval to refinance real property commonly known as 1804 Chapelle Court, Stockton, California ("Property") with Plaza Home Mortgage Inc. ("Creditor"), holder of the first deed of trust. The refinance mortgage loan is a 30-year fixed rate loan with interest rate of 3.25%. The proposed monthly mortgage payment is \$3,090.10 which includes principal, interest, property tax, property insurance, and mortgage insurance. This is a reduction from the current payment of \$3,973.00. Debtors' refinance also provides for them to pay their plan in full, which is currently estimated to be approximately \$53,900.00. Debtors wish to pay off the Chapter 13 plan early because the payments have been difficult for them to make, and the new mortgage payment will be more affordable for them on a monthly basis.

The motion is supported by the Declaration of Jose Gonzalez and Leticia Gonzalez. The Declaration affirms Debtors' desire to refinance the Property.

The repayment of the new loan does not unduly jeopardize Debtors' performance of the plan filed June 8, 2020, and in fact pays it off in full. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion will be conditionally granted.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, January 21, 2022, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and creditor by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on January 25, 2022, at 1:00 p.m. will be vacated.

If an opposition or response is timely filed and served, the court will hear the motion on January 25, at 1:00 p.m.

January 18, 2022 at 1:00 p.m.

2. [17-25104](#)-B-13 JEROME OTIS
[PLG](#)-2 Steven A. Alpert

MOTION TO MODIFY PLAN
12-1-21 [[50](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to permit the requested modification and confirm the modified plan.

The Chapter 13 Trustee objects to plan confirmation on grounds that the plan is not feasible under 11 U.S.C. §1325(a)(6). Monthly payments owed to secured creditors plus the Chapter 13 Trustee's fees and expenses total \$4,128.07. Debtor's plan payment is only \$3,827.00 per month.

Debtor filed a declaration stating that he has the ability to increase the plan payment as necessary. Debtor filed amended Schedules I and J on December 1, 2021, to show that he can afford the increased plan payment.

The modified plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

3. [21-23809](#)-B-13 DAVID SCHEIDT
[SLH](#)-1 Seth L. Hanson

MOTION TO CONFIRM PLAN
12-2-21 [[19](#)]

Final Ruling

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition and a reply were filed.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to confirm the plan.

The Chapter 13 Trustee's objections to confirmation have been resolved and are therefore moot. Specifically, Class 1 creditor Specialized Loan Servicing filed an amended proof of claim reducing the pre-petition arrears to \$39,060.16 and Ally Financial has filed a withdrawal of its proof of claim on grounds that the claim is timebarred.

The amended plan complies with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

4. [20-20035](#)-B-13 JOHN/KAREN GRAHAM
[MDA](#)-1 Mary D. Anderson

OBJECTION TO NOTICE OF MORTGAGE
PAYMENT CHANGE
12-20-21 [[26](#)]

Final Ruling

The objection has been set for hearing on the 28-days notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to overrule the objection as moot.

Debtors object to the Notice of Mortgage Payment Change filed by Guild Mortgage Company ("Creditor") on November 29, 2021, which increased Debtors' total principal, interest, and escrow payment to \$2,434.15. However, on January 10, 2022, Creditor filed a new Notice of Mortgage Payment Change that lowered Debtors' total principal, interest, and escrow payment to \$1,640.60. This is within the mortgage payment amount of \$1,671.45 listed in Debtors' confirmed plan filed January 15, 2020.

Based on the evidence before the court, the objection to the notice of mortgage payment change is overruled as moot.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

5. [19-24643](#)-B-13 STACY HALLINAN MOTION TO MODIFY PLAN
[JCK](#)-4 Gregory J. Smith 12-10-21 [[63](#)]
Thru #6

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rules 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to not permit the requested modification and not confirm the modified plan.

Feasibility depends on the Debtor selling her primary residence by February 2022 and a balloon payment of \$18,000 from the sale proceeds. There is no evidence that any sale is taking place and no motion to sell has been filed. Although the Debtor filed a response on January 5, 2022, stating that she will file a supplemental reply with the sale listing and a proposed contract for sale, nothing has been filed.

The modified plan does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The motion is ORDERED DENIED for reasons stated in the minutes.

The court will issue an order.

6. [19-24643](#)-B-13 STACY HALLINAN OBJECTION TO CONFIRMATION OF
[RLS](#)-2 Gregory J. Smith PLAN BY UMB BANK, NATIONAL
ASSOCIATION
12-30-21 [[73](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). Debtor filed a reply as dkt. 77.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the objection. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to overrule the objection as moot.

The court denied confirmation of Debtor's modified plan at Item 5, JCK-4. The plan filed December 10, 2021, does not comply with 11 U.S.C. §§ 1322 and 1325(a) and is not confirmed.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

8. [21-22666](#)-B-13 MELISSA BELONG MOTION TO CONFIRM PLAN
[RK-4](#) Richard Kwun 12-2-21 [[50](#)]

Thru #9

Final Ruling

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition and a reply were filed

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to not confirm the second amended plan.

Feasibility depends on the court sustaining an objection to claim of Synchrony Bank, Claim No. 15-1. That objection is overruled at Item #9, RK-5.

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The motion is ORDERED DENIED for reasons stated in the minutes.

The court will issue an order.

9. [21-22666](#)-B-13 MELISSA BELONG OBJECTION TO CLAIM OF SYNCHRONY
[RK-5](#) Richard Kwun BANK, CLAIM NUMBER 15
12-3-21 [[57](#)]

Final Ruling

The objection has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1). The failure of the claimant to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to overrule the objection to Claim No. 15-1 of Synchrony Bank.

Debtor requests that the court disallow the claim of Synchrony Bank ("Creditor"), Claim No. 15-1. See *e.g.*, dkt. 57 at (actual) page 1 (designated as page 4) ("The proof of claim (POC) describes an unsecured loan from Synchrony Bank to Debtor in the amount of \$19,701.32. See claim 15 on the Claims Register."). Claim No. 15-1 is actually in the amount of \$2,729.19, with account number ending in -7713. The Debtor asserts that the claim should be disallowed because it is incomplete and does not include supporting documentation for the basis of its claim.

Debtor states that she entered into a purchase money secured loan agreement with regard to a 2020 Kawasaki Teryx 4 utility task vehicle ("Vehicle"), with account number ending in -8144. Synchrony Bank has filed Claim No. 16-1 in support of that secured claim.

Discussion

Section 502(a) provides that a claim supported by a proof of claim is allowed unless a party in interest objects. See 11 U.S.C. § 502(a). Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. See 11 U.S.C. § 502(b). The party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). Moreover, "[a] mere assertion that the proof of claim is not valid or that the debt is not owed is not sufficient to overcome the presumptive validity of the proof of claim." Local Bankr. R. 3007-1(a).

The court finds that the Debtor has failed to satisfy the burden of overcoming the presumptive validity of the claim. Debtor states that Synchrony Bank, Claim No. 15-1, does not have an unsecured claim but rather a secured claim as to the Vehicle but may have an unsecured claim for any deficiency balance after auction of the Vehicle.

However, Debtor is mistaken as to Synchrony Bank's claim. Claim No. 15-1 pertains to a credit card with account number ending in -7713, which the Debtor herself has included in Schedule E/F, 4.12. Debtor lists the debt as a nonpriority unsecured claim in the amount of \$2,729.00 and its description as a credit card opened in June 2016 and last active on October 13, 2020.

Based on the evidence before the court, the Creditor's Claim No. 15-1 is allowed. The objection to the proof of claim is overruled.

The objection is ORDERED OVERRULED for reasons stated in the minutes.

The court will issue an order.

Final Ruling

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to not confirm the second amended plan.

First, the Debtor has still not provided evidence of the fair market value of rural Georgia property that she co-owns with her mother. Evidence of the fair market value was requested by the Chapter 13 Trustee nearly a year ago on April 28, 2021, raised in a sustained objection to confirmation on June 1, 2021, and raised again in a sustained opposition to confirmation on October 9, 2021. Debtor's plan has not been proposed in good faith. 11 U.S.C. § 1325(a)(3).

Given the substantial delay caused by the Debtor's failure to comply with the Trustee's request for information regarding the Georgia property, the absence of any explanation for the delay, and the resulting absence of a confirmed chapter 13 plan for nearly one year since this case was filed on March 4, 2021, the Debtor shall comply with the Trustee's request by February 8, 2022, or this case may be dismissed on the Trustee's ex parte application. See 11 U.S.C. § 1307(c)(1); see also *Ellsworth v. Lifescape Med. Assocs., P.C. (In re Ellsworth)*, 455 B.R. 904, 915 (9th Cir. BAP 2011) ("A debtor's unjustified failure to expeditiously accomplish any task required either to propose or to confirm a chapter 13 plan may constitute cause for dismissal under § 1307(c)(1).").

Second, the Debtor's plan is not feasible under 11 U.S.C. §1325(a)(6). Monthly payments owed to secured creditors plus the Chapter 13 Trustee's fees and expenses total \$503.83. Debtor's plan payment is only \$455.00 per month for months 1 through 36.

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The motion is ORDERED DENIED for reasons stated in the minutes.

The court will issue an order.

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to grant the motion to extend automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was voluntarily dismissed on October 18, 2021 (case no. 18-27004, dkt. 67). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end in their entirety 30 days after filing of the petition. See e.g., *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011) (stay terminates in its entirety); accord *Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018).

Discussion

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtor assert that she voluntarily dismissed the prior bankruptcy case in order to close escrow on a reverse mortgage that would have paid off the mortgage on her home. However, the loan documents expired after the Debtor became ill and was hospitalized in November 2021 and again in December 2021. Both American Advisors Group, which provided the reverse mortgage to Debtor, and Debtor's attorney were unsuccessful reaching the Debtor during that time until Debtor contacted her attorney regarding the hospitalizations. Debtor has since been released to a skilled nursing facility and is still recuperating there. Since a trustee's sale of Debtor's home was scheduled for December 29, 2021, Debtor decided it was best to refile a new chapter 13 bankruptcy.

The Debtor has sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

12. [14-22796](#)-B-13 FRANCISCO/LETICIA
[PGM](#)-3 QUINTANA
Peter Macaluso

MOTION TO AVOID LIEN OF CAPITAL
ONE BANK (USA), N.A.
12-20-21 [[84](#)]

Final Ruling

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion to avoid lien.

This is a request for an order avoiding the judicial lien of Capital One Bank (USA), N.A. ("Creditor") against the Debtors' property commonly known as 655 Fountain Way, Dixon, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$3,875.22. An abstract of judgment was recorded with Solano County on July 10, 2013, which encumbers the Property.

Pursuant to the Debtors' Schedule A, the Property has an approximate value of \$190,000.00 as of the date of the petition. Debtors have claimed an exemption pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in the amount of \$14,910.94 on Schedule C. All other liens recorded against the Property total \$175,089.06.

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 Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.