

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

January 26, 2023 at 10:30 a.m.

1. <u>20-90115-E-7</u> <u>WF-11</u>	ALI MUTHANA Gurjeet Rai	MOTION TO SELL FREE AND CLEAR OF LIENS 1-5-23 [<u>130</u>]
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Tentative Ruling: 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.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor's Attorney, Chapter 7 Trustee, Trustee's Attorney, creditors, parties in interest, parties requesting special notice, and Office of the United States Trustee on January 5, 2023. By the court's calculation, 21 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The court notes that the Trustee's Certificate of Service does not document service on the Debtor. Dckt. 134. Federal Rule of Bankruptcy Procedure 2002(a)(2) specifies that notice of a proposed sale shall be served on the debtor. The Certificate of Service does document service on Debtor's counsel.

At the hearing, **XXXXXXX**

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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 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. At the hearing, -----.

The Motion to Sell Property is granted.
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The Bankruptcy Code permits Michael D. McGranahan, the Chapter 7 Trustee, (“Movant”) to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the real property commonly known as 2022 White Fall Court, Ceres, California (“Property”).

The proposed purchaser of the Property is Martin Vargas Pano, and the terms of the sale are:

- A. Purchase Price: \$495,000
- B. Initial Deposit: \$4,000
- C. Loan Amount: \$470,250
- D. Balance of Down Payment: \$20,750
- E. Seller Credit to Buyer: \$5,000
- F. Escrow to close within 14 days of written court approval
- G. Compensation to broker: 6%

Sale Free and Clear of Liens

The Motion seeks to sell the Property free and clear of the lien of GNN Lien (“Creditor”). The Bankruptcy Code provides for the sale of estate property free and clear of liens in the following specified circumstances,

(f) The trustee[, debtor in possession, or Chapter 13 debtor] may sell property under subsection (b) or (c) of this section free and clear of any interest in such property of an entity other than the estate, only if–

(1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(2) such entity consents;

(3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;

(4) such interest is in bona fide dispute; or

(5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1)–(5).

For this Motion, Movant has established (3) the price of sale is greater than the amount of the lien and (4) the validity of the lien is in *bona fide* dispute, as evidenced by Adversary Proceeding No. 21-9008.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: **xxxxxxxxxxxxxxxxxx**.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it allows for an estimated \$423,886.48 of proceeds to be paid to the bankruptcy estate.

Movant has estimated that a 6% percent broker's commission from the sale of the Property will equal approximately \$29,700. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than 6% percent commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court because closing is to take place within 14 days of the entry of an order approving the sale.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

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

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

The Motion to Sell Property filed by Michael D. McGranahan, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Michael D. McGranahan, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to Martin Vargas Pano or nominee ("Buyer"), the Property commonly known as 2022 White Fall Court, Ceres, California ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$495,000.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 133, and as further provided in this Order.

- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred to effectuate the sale.
- C. The Property is sold free and clear of the lien of GNN Mortgage and Real Estate, Inc., Creditor asserting a secured claim, pursuant to 11 U.S.C. § 363(f)(3)-(4), with the lien of such creditor attaching to the proceeds. The Chapter 7 Trustee shall hold the net sales proceeds; after payment of the closing costs, other secured claims, and amount provided in this order; pending further order of the court.
- D. The Chapter 7 is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- E. The Chapter 7 Trustee is authorized to pay a real estate broker's commission in an amount not more than six percent of the actual purchase price upon consummation of the sale. The six percent commission shall be paid to the Chapter 7 Trustee's broker, Bob Brazeal of Remax Executive.
- G. The Chapter 7 Debtor is authorized to receive the \$25,000 credit as a wildcard exemption, but no other fees, compensation, or other monies in connection with this sale.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

FINAL RULINGS

2. [22-90248-E-7](#) **LYMAN/CLORETTA CHURCH** **RESPONSE/REPLY AND MOTION FOR**
[JCK-1](#) **Kathleen Crist** **WAIVER OF FINANCIAL**
MANAGEMENT COURSE
12-2-22 [16]

Final Ruling: No appearance at the January 26, 2023 hearing is required.

The Order Setting Hearing was served by the Clerk of the Court on Debtor, Debtor's Attorney, Chapter 7 Trustee, and US Trustee as stated on the Certificate of Service on January 6 and 7, 2023. The court computes that 19 and 20 days' notice has been provided.

The Motion for Waiver of Financial Management Course is granted

On November 29, 2022, the Clerk of the Court issued a Notice of Intent to Close this Bankruptcy Case without entry of a discharge for Co-Debtor Cloretta Sue Church due to the failure of Co-Debtor to file a Certification About a Financial Management Course to document completion of such course. Dckt. 14. The Discharge for Debtor Lyman Church was entered on December 20, 2022. Dckt. 17.

Debtors' counsel filed a pleading titled Debtors' Response to Notice of Intent to Close Chapter 7 Case Without Entry of Discharge Due to Failure to File Certification About a Financial Management Course. Dckt. 16. The Response asserts various grounds upon which the court should not require Cloretta Church to complete such course. No declarations or other evidence was filed supporting the allegations in the Response.

When a party seeks an order from the court, such as an order waiving the requirement to complete the Financial Management Course, such request must be made by motion (unless the Federal Rules of Bankruptcy Procedure provide for it to be made by an "application"). Fed. R. Bankr. P. 9013. Such Motion must be supported by competent, admissible evidence.

The Court construes the Response to also be a Motion for Waiver of the requirement for Co-Debtor Cloretta Church to Complete the Financial Management Course as required by 11 U.S.C. § 727(a)(11).

Based upon the information provided, the court sets a hearing on the Reply/Motion for Waiver for 10:30 a.m. on January 26, 2023. Debtors shall file a declaration or other admissible evidence supporting the statements made in the Reply/Motion as to Co-Debtor's inability to complete the Financial Management Course on or before January 17, 2023.

Oppositions, if any, shall be filed and served on or before January 24, 2023.

The court sets the short supplemental document filing schedule and the Opposition deadline for two days before the hearing date to expedite the determination thereof and the conclusion of this case. Such scheduling is appropriate in light of the grounds stated in the Reply/Motion.

Debtor's Declaration

Debtor Lyman W. Church ("debtor Lyman") filed a Declaration on January 14, 2023. Dckt. 22. Debtor Lyman states their wife, co-debtor debtor Cloretta S. Church ("debtor Cloretta"), has suffered from Lou Gehrig's Disease ("ALS") for a number of years. Debtor Lyman has been debtor Cloretta's power of attorney for "some time now." Debtor Cloretta is unable to complete the financial management course due to her disease. Debtor Lyman requests the court waive the requirement for debtor Cloretta.

DISCUSSION

Pursuant to 11 U.S.C. § 1328(g)(1), the court shall not grant a discharge unless the debtor has completed an instructional course concerning personal financial management. One exception to this requirement is for individuals described in 11 U.S.C. § 109(h)(4). This excuses individuals who the court finds unable to comply with the requirement because of incapacity, disability, or active military duty in a combat zone. 11 U.S.C. § 109(h)(4); 8 Collier on Bankruptcy P 1328.08 (16th 2021). For incapacity, the debtor must be impaired by reason of mental illness or mental deficiency so that they are incapable of realizing and making rational decisions with respect to their financial responsibilities.

The court finds sufficient grounds to waive the financial management requirement for debtor Loretta. The Motion is granted.

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

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

The Motion to Waive Financial Management Course filed by Lyman Wilbur Church and Cloretta Sue Church ("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 Motion to Waive Financial Management Course for debtor Cloretta Sue Church is granted.