

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

February 22, 2022 at 1:30 p.m.

1.	19-20622 -C-13	MARCO CASTILLO	MOTION TO APPROVE LOAN
	PGM -7	Peter Macaluso	MODIFICATION AND/OR MOTION TO
			BIFURCATE PAYMENTS TO CHAPTER
			13 TRUSTEE
			1-18-22 [109]

Final Ruling: No appearance at the February 22, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 35 days' notice was provided. Dkt. 113.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

<p>The Motion to Approve Trial Loan Modification is granted.</p>

The debtor filed this Motion seeking authority to enter into a trial loan modification for the purpose of qualifying for a permanent loan modification.

The trial modification provides for three payments of \$1,123.17 to be made before a permanent loan modification is offered.

The court finds that the trial loan modification, which if successfully completed will allow the debtor to be considered for permanent modification, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

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.

The Motion to Approve Trial Loan Modification filed by Marco Antonio Castillo having been presented to the court, and upon review of the pleadings, evidence, arguments

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of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted. The debtor's counsel shall prepare an appropriate order granting the Motion, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved submit the proposed order to the court.

2. [21-24123](#)-C-7 ALEXANDER KWAN
[RDG](#)-1 Jasmin Nguyen

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
1-25-22 [[16](#)]

Final Ruling: No appearance at the February 22, 2022 hearing is required.

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice.

Upon review of the Objection and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Objection.

The Objection to Confirmation is overruled as moot.

The Chapter 13 Trustee filed this Objection on January 25, 2022. Thereafter, the debtor filed a Notice of Conversion, converting the case to a proceeding under Chapter 7. Dkt. 23.

The case no longer being under Chapter 13, the Objection shall be overruled as moot.

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.

The Objection to Confirmation filed by Russell D. Greer 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 Objection is overruled as moot.

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 57 days' notice was provided. Dkt. 35.

The Motion to Confirm is XXXXXX

The court granted a continuance at the prior hearing based on the stipulated request of the parties to provide time to resolve the trustee's grounds for opposing confirmation.

The trustee filed a Supplemental Reply (Dkt. 49) noting the following issues remain:

1. After receiving documents related to the debtor's trust, from which the debtor is receiving monies to fund a plan, the trustee is still uncertain what the trust parameters are with respect to when and how much the debtor will be paid. The trustee requests the debtor file a declaration attesting to this missing information.
2. The debtor's plan provides for Administrative Fees to be paid \$5.00 for the first 3 months of the plan. Pursuant to Federal Rule of Bankruptcy Procedure 3010(b), no payment in an amount less than \$15.00 shall be distributed by the trustee to any creditor unless authorized by local rule or order of the court, and funds not distributed because of this subdivision shall accumulate and shall be paid once the accumulation aggregates \$15.00.

DISCUSSION

The trustee's remaining basis for opposing confirmation is that the plan may not be feasible, since it is unclear what monies the debtor is entitled to under the debtor's Trust, and because the plan provides for Administrative Fees to be paid \$5.00 for the first 3 months of the plan.

The court shares the trustee's concerns. A review of the pleadings and the record show the plan is not feasible. The debtor's Schedules I and J show disposable monthly income of only \$10. Dkts. 28, 29. This is sufficient for the first 3 months, but insufficient for the \$200 payment in the next 12 months and for the \$1,300 payment in the next 45 months. Dkt. 20.

The plan and all pleadings filed with the Motion lack explanation of any future entitlement to trust or other income. In fact, the Motion states the debtor "will not be filing amended Schedules I and J as her income, expenses and payment remain the same as when she filed her petition." Dkt. 31 at ¶ 3(emphasis added).

At the hearing, xxxxxxxxxxxxxxxx

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.

The Motion to Confirm filed by the debtor, Megan Danielle Adcock, 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 is xxxxxxxxxxxx

4. [21-20838](#)-C-13 RON COLLA
Peter Macaluso

CONTINUED EVIDENTIARY HEARING
RE: MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-26-21 [[72](#)]

ROCKY TOP RENTALS, LLC VS.

Final Ruling: No appearance at the February 22, 2022 hearing is required.

The Motion is dismissed without prejudice.

On January 20, 2022, the Movant filed a Conditional Withdrawal. Dkt. 109. Federal Rule of Civil Procedure 41(a)(2), incorporated by Federal Rules of Bankruptcy Procedure 9014 and 7041, allows dismissal after a responsive pleading has been filed on terms the court considers proper.

The court finds withdrawal is warranted here. The parties settled their disputes and submitted an Order Confirming Plan. Dkt. 115. The Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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.

The Motion filed by Rocky Top Rentals, LLC having been presented to the court, the movant having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed without prejudice.

5. [21-20838](#)-C-13 RON COLLA
[PGM](#)-3 Peter Macaluso

CONTINUED MOTION TO CONFIRM
PLAN
6-29-21 [[47](#)]

Final Ruling: No appearance at the February 22, 2022 hearing is required.

A review of the docket shows the parties submitted, and the court approved, of an Order Confirming Plan on February 16, 2022. Dkt. 115.

6. [21-24051](#)-C-13 LYUBOV ROMANOVICH
[ELP](#)-2 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-11-22 [[19](#)]

U.S. BANK TRUST, NATIONAL
ASSOCIATION VS.

DEBTOR DISMISSED: 01/27/2022

Final Ruling: No appearance at the February 22, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 42 days' notice was provided. Dkt. 24.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion for Relief from the Automatic Stay is granted.

U.S. Bank Trust, National Association, as Trustee of the Lodge Series III Trust, its assignees and/or successors in interest filed this Motion seeking relief from the automatic stay as to the debtor's real property commonly known as 4316 Winje Drive, Antelope, California (the "Property")

The movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtor is delinquent postpetition payments; pursuant to 11 U.S.C. § 1301(a) because the codebtor has received consideration on the debt and Movant will be irreparably harmed with obtaining relief from the codebtor stay; and pursuant to 11 U.S.C. § 362(d)(4) because the filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved the repeated filing of bankruptcy petitions.

DISCUSSION

On January 27, 2022, this case was dismissed. Dismissal of the case terminates the 11 U.S.C. §§ 362 and 1301 stays. Therefore, relief sought pursuant to 11 U.S.C. §§ 362(d)(1) and 1301(c) is moot.

The *In Rem* relief sought pursuant to 11 U.S.C. § 362(d)(4) is still relevant because it seeks relief from prospective stay under a later case.

A review of the docket shows the debtor has an extensive history with bankruptcy. Since 2009, the debtor has filed 8 cases. Those cases are summarized as follows:

<u>Case No.</u>	<u>Filing Date</u>	<u>Chapter</u>	<u>Result</u>	<u>Reason for Dismissal</u>
09-33513	6/30/2009	7	Discharged: 10/13/2009	N/A
10-49592	11/9/2010	13	Date Dismissed: 11/29/2010	Failure to file documents
10-52813	12/16/2010	13	Dismissed: 1/3/2011	Failure to file documents
12-37444	9/28/2012	13	Dismissed: 1/9/2013	Failure to attend 341 Meeting
16-23214	5/17/2016	13	Dismissed: 8/24/2016	Failure to provide 11 U.S.C. § 521 documents and payment delinquency
17-22838	4/27/2017	13	Dismissed: 7/28/2017	Failure to provide 11 U.S.C. § 521 documents, appear at 341 Meeting, file credit counseling certificate, and payment delinquency
18-20945	2/20/2018	13	Dismissed: 6/1/2018	Failure to file credit counseling certificate and Class 1 checklist
21-24051	12/2/2021	13	Dismissed: 1/27/2022	Voluntary Dismissal

Despite successfully completing a Chapter 7 case and receiving the extraordinary relief of a Chapter 7 discharge in 2009, the debtor goes on to file 7 Chapter 13 cases. None of those cases survived more than 4 months, with the main cause of dismissal being that the debtor failed to comply with his basic duties under the Bankruptcy Code by attending the 341 Meeting, filing all necessary documents, and providing to the trustee all 11 U.S.C. § 521 documents.

The present case was filed on the same day as the movant's scheduled foreclosure sale. Declaration, Dkt. 21 at ¶ 14. After thwarting the foreclosure attempt, the debtor voluntarily dismissed the case without any explanation for the debtor's choice not to continue his reorganization attempts. Dkt. 31.

A review of the debtor's Schedules shows a single debt - the movant's secured claim. Dkt. 13. No other debts are sought to be reorganized. The debtor's Chapter 13 plan proposes paying only \$140 a month, despite the debtor having \$1,646 in disposable monthly income. Dkts. 11, 13.

The total arrearages on the debtor's mortgage are \$409,713.63. Declaration, Dkt. 21.

The present case and the debtor's long history of filing half-hearted bankruptcies smacks of a bad faith scheme to keep the debtor's secured creditor at bay in perpetuity. Had the case not already been

dismissed, the issue would be ripe whether the case should be dismissed *with prejudice*.

Based on the foregoing, the Motion is granted. The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

The court also finds adequate cause for relief from the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3).

No other further relief is granted.

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.

The Motion for Relief from the Automatic Stay filed by U.S. Bank Trust, National Association, as Trustee of the Lodge Series III Trust, its assignees and/or successors in interest ("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 the Motion is granted pursuant to 11 U.S.C. § 362(d)(4), the court having found that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved multiple bankruptcy filings affecting the Property. The automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 4316 Winje Drive, Antelope, California ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property. If recorded in compliance with applicable State laws governing notices of interests or liens in real property, this order shall be binding in any other case under this title purporting to affect the Property filed not later than 2 years after the date of the entry of this Order.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.

7. [21-24051](#)-C-13 LYUBOV ROMANOVICH
[RDG](#)-1 Pro Se

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
1-24-22 [[27](#)]

DEBTOR DISMISSED: 1/27/22

Final Ruling: No appearance at the February 22, 2022 hearing is required.

The case having previously been dismissed, the Objection is overruled as moot.

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.

The Objection having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is overruled as moot, the case having been dismissed.

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 71 days' notice was provided. Dkt. 29.

The Motion to Confirm is XXXXXXX

The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 24) filed on December 13, 2021.

The Chapter 13 trustee filed an Opposition (Dkt. 39) on January 31, 2022, opposing confirmation on the following grounds:

1. The plan provides for payments of \$3,300.00 a month for 60 months. Trustee estimates a plan payment of \$3,443.00 a month for 60 months is necessary to pay the claims filed to date.
2. The debtor has nonexempt assets available for distribution to Debtor's general unsecured creditors of \$7,444.09. To meet the liquidation test, the debtor's plan must pay 100% (\$7,444.09 divided by \$288.00) to the debtor's general unsecured creditors, plus interest at the Federal Judgment Rate of .15% since the value of the non-exempt assets exceeds the amount of the general unsecured claims.

Thereafter, the debtor filed a Reply suggesting the following be added to the order confirming plan to address the trustee's grounds for opposition:

The administrative fees pursuant to section 3.06 shall be paid in months 1 through 3. Cenlar Central Mortgage shall be paid \$415 in months 1 through 3 and shall be paid \$1,190 in months 4 through 60. The Chapter 13 Plan payment shall be \$3,443 in months 1 through 60. Unsecured creditors will receive 100% plus interest at .15%.

Dkt. 44.

DISCUSSION

At the hearing, XXXXXXXXXXXXXXXXXX

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.

The Motion to Confirm filed by the debtors, Terance Lavelle Williams, 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 is ~~xxxxxxxxxx~~