

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

March 16, 2021 at 1:00 p.m.

1. [17-25104](#)-B-13 JEROME OTIS MOTION TO MODIFY PLAN
[PLG](#)-1 Steven A. Alpert 2-4-21 [[29](#)]

Final Ruling

The motion 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 this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

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

The Chapter 13 Trustee objects to confirmation of the plan on grounds that the plan provides for Beneficial State Bank as a Class 2 claim in the amount of \$11,000.00. However, the claim was filed late by the Debtor on behalf of this creditor. The Trustee does not oppose providing for this late claim, however, Trustee is unable to retroactively administer Section 7.05 of Debtor's plan as it calls for a monthly dividend of \$526.04 to begin September 2019. The Trustee requests that Debtor provide a monthly dividend that pays this claim in the 19 months remaining of the 60 month plan term and also clarify when the interest rate of 5.75% shall begin.

Separately, the monthly plan payment of \$3,300.00 is not sufficient to cover monthly payments to secured creditors and the Trustee's fees and expenses, altogether which total \$3,890.17.

The Debtor filed a response stating he will provide a monthly dividend of \$607.09 that pays the late filed claim in the 19 months remaining of the 60-month plan term in the order confirming plan. The interest rate of 5.75% shall begin the date the first modified plan is confirmed. Additionally, the Debtor agrees to a monthly plan payment of \$3,300.00 in February 2021 and to increase the payment to \$3,827.00 beginning March 2021 through the end of the plan in the order confirming.

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.

March 16, 2021 at 1:00 p.m.

The court will issue an order.

2. [21-20409](#)-B-13 SHERMAN GRAY
[SC-1](#) Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
2-25-21 [[20](#)]

BRECKENRIDGE PROPERTY FUND
2016, LLC VS.

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). The court has determined that this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

The court's decision is to grant the motion for relief from stay.

Breckenridge Property Fund 2016, LLC ("Movant") seeks relief from the automatic stay with respect to real property commonly known as 2526 Stanfield Drive, Stockton, California (the "Property"). Movant has provided the Declaration of Olivia Reyes to introduce into evidence the documents upon which it bases the claim and the obligation secured by the Property.

The Reyes Declaration states that Movant is the legal owner of the property acquiring title at a trustee's foreclosure sale on October 1, 2018. Movant filed an unlawful detainer on May 17, 2019, and judgment was entered on December 29, 2020, against Margaret Jackson. Although the Debtor was not named in the unlawful detainer action, Debtor is an occupant, had filed a claim of right to possession, and appeared at that hearing claiming to be the husband of Ms. Jackson.

Discussion

Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant has provided as an exhibit a copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Dkt. 25, exh. 1. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. § 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti* (*In re Johnson*), 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of property including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

The request for relief from stay as to any non-filing co-debtor, who is liable on such debt with the Debtor, shall be granted pursuant to 11 U.S.C. § 1301(c).

No other or additional relief is granted by the court.

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

The court will issue an order.

3. [20-24859](#)-B-13 RAMZI/GHADA ZUMOUT MOTION TO AVOID LIEN OF
[CDL](#)-1 Colby D. LaVelle CITIBANK N.A.
Thru #5 2-5-21 [[45](#)]

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 deny without prejudice the motion to avoid lien.

This is a request for an order avoiding the judicial lien of Citibank, N.A. ("Creditor") against the Debtors' property commonly known as 10558 Dnieper Lane, Stockton, California.

The motion to avoid Creditor's lien will be denied because of defective service. Creditor is an insured depository institution which means it must be served by certified mail addressed to an officer of the institution. See Fed. R. Bankr. P. 7004(h). The certificate of service reflects that Creditor was served by first class mail and not to the attention of an officer of the institution.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.

4. [20-24859](#)-B-13 RAMZI/GHADA ZUMOUT MOTION TO AVOID LIEN OF CAPITAL
[CDL](#)-2 Colby D. LaVelle ONE
2-5-21 [[50](#)]

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 deny without prejudice 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 10558 Dnieper Lane, Stockton, California.

The motion to avoid Creditor's lien will be denied because of defective service. Creditor is an insured depository institution which means it must be served by certified mail addressed to an officer of the institution. Fed. R. Bankr. P. 7004(h). The certificate of service reflects that Creditor was served by first class mail and not to the attention of an officer of the institution.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.

5. [20-24859](#)-B-13 RAMZI/GHADA ZUMOUT
[CDL](#)-3 Colby D. LaVelle

MOTION TO AVOID LIEN OF
DEPARTMENT STORES NATIONAL BANK
2-5-21 [[55](#)]

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 deny without prejudice the motion to avoid lien.

This is a request for an order avoiding the judicial lien of Department Stores National Bank ("Creditor") against the Debtors' property commonly known as 10558 Dnieper Lane, Stockton, California.

The motion to avoid Creditor's lien will be denied because of defective service. Creditor is an insured depository institution which means it must be served by certified mail addressed to an officer of the institution. Fed. R. Bankr. P. 7004(h). The certificate of service reflects that Creditor was served by first class mail and not to the attention of an officer of the institution.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.

6. [20-24072](#)-B-13 LORENA FLORES CONTINUED MOTION TO CONFIRM
[PGM-2](#) Peter G. Macaluso PLAN
Thru #7 1-22-21 [[43](#)]

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 this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

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

The Chapter 13 Trustee objects to confirmation on grounds that feasibility depends on the outcome of the objection to the claim of Edward Schellinck, M.D. That matter is heard at calendar Item No. 7, PGM-3, and is overruled. The Trustee's objection is therefore sustained for the reasons stated in the court's ruling on dkt. 53, PGM-3.

Creditor Edward Schellinck objects to confirmation primarily on the grounds that the plan fails to provide for his claim. Creditor's objection is sustained for the reasons stated in the court's ruling on dkt. 53, PGM-3.

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.

7. [20-24072](#)-B-13 LORENA FLORES OBJECTION TO CLAIM OF EDWARD
[PGM-3](#) Peter G. Macaluso SCHELLINCK, M.D., CLAIM NUMBER
7
1-28-21 [[53](#)]

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). Opposition was filed.

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

The court has reviewed the objection, response, and all related declarations and exhibits. The court has also reviewed and takes judicial notice of the docket. See Fed. R. Evid. 201(c)(1). Findings of fact and conclusions of law are set forth below. See Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052, 9014(c).

The court's decision is to overrule the objection to claim and, to the extent applicable, deny without prejudice the request for reconsideration.

Background

Before the court is an objection to the claim of Edward Schellinck, M.D. ("Creditor") filed by debtor Lorena L. Flores ("Debtor"). Creditor filed a response. This is Debtor's second objection to claim no. 7. The prior objection was heard on January 5, 2021, and overruled in an order entered on January 8, 2021, on the basis that Creditor filed a response with supporting documentation showing that he had an interest in Debtor's motor vehicle as security for the claim. See dkt. 39. This second objection followed 20 days later on January 28, 2021.

Debtor's renewed objection states that Creditor has made no showing, nor has presented any evidence, to substantiate a secured claim. Debtor states that the Creditor failed to attach documentation that provides proof of security because none exists. Debtor also states that the exhibit filed in support of the Creditor's response to the prior objection shows that a different entity - and not Creditor - has an interest in the subject vehicle. According to the Debtor, Creditor's payment of the lease in question on the Debtor's behalf is not a purchase money security interest and is merely an unsecured claim.

Creditor states that Debtor's renewed objection is actually a motion for reconsideration and that the Debtor does not set forth facts or elements to satisfy a granting of the motion for reconsideration.

The court agrees with Creditor.

Discussion

A claim that has been allowed may be reconsidered for cause. See 11 U.S.C. § 502(j); Fed. R. Bankr. P. 3008. "As the Advisory Committee Note to Bankruptcy Rule 3008 evidences, the bankruptcy court's discretion in deciding whether to reconsider a claim is virtually plenary, as the court may decline to reconsider without a hearing or notice to the parties involved." *In re Yellowstone Mountain Club, LLC*, 2012 WL 830306 at *4 (Bankr. D. Mont. March 9, 2012) (quotation omitted), *aff'd*, 2013 WL 11319237 (D. Mont. Feb. 8, 2013), *aff'd*, 593 Fed. Appx. 643 (9th Cir. Feb. 11, 2015).

Filed more than 14 days after entry of the order overruling the Debtor's prior objection, the cause standard for reconsideration of Creditor's allowed claim is governed by Fed. R. Civ. P. 60(b) applicable by Fed. R. Bankr. P. 9024. *S.G. Wilson Co., Inc. v. Cleanmaster Indus. Inc. (In re Cleanmaster Indus., Inc.)*, 106 B.R. 628, 630 (9th Cir. BAP 1989). The Debtor has not met that standard with regard to any provision of Rule 60(b).

The court initially notes that a defective claim, *i.e.*, one filed without the documentation showing an interest in property as required by Fed. R. Bankr. P. 3001(c)(2)(B), is not a basis on which a claim may be disallowed. *Campbell v. Verizon Wireless S-CA (In re Campbell)*, 336 B.R. 430, 436 (9th Cir. BAP 2005) (citing and reaffirming *Heath v. American Express Travel Related Services Co., Inc. (In re Heath)*, 331 B.R. 424, 435 (9th Cir. BAP 2005)). The court therefore overrules the Debtor's objection and will not disallow (or reconsider) Creditor's claim on the basis that the proof of claim lacks required documents.

However, a defectively-filed claim is one that is not filed in accordance with the applicable rules and, therefore, is one that is not entitled to the presumptive validity of Fed. R. Bankr. P. 3001(f). *Campbell*, 336 B.R. at 436; *Heath*, 331 B.R. at 437. Under those circumstances, the Creditor must produce evidence to support the

claim. See *Atwood v. Chase Manhattan Mortgage, Co. (In re Atwood)*, 293 B.R. 277, 233 (9th Cir. BAP 2003). Creditor has met that standard as the court previously determined.

It is true, as the Debtor points out, that the certificate of title submitted as an exhibit with Creditor's response to the Debtor's prior objection shows that an entity other than Creditor has an interest in the Debtor's vehicle that is the subject of Creditor's secured claim. It is equally true that the exhibit is signed by the Debtor. The signed exhibit also includes the Debtor's authorization for Creditor to payoff the Debtor's remaining obligation on the Debtor's behalf, the Debtor's acceptance of Creditor's payoff and, significantly, a directive from the Debtor to the entity then holding an interest in the vehicle and receiving the payoff "to surrender [to Creditor], or order, the properly endorsed Certificate of Ownership to the [subject] vehicle." Dkt. 33. Those facts permit an inference that the subject vehicle is or was to be collateral for an obligation by the Debtor to repay Creditor for Creditor's payoff on the Debtor's behalf. And although the facts may not establish a perfected security interest, at a minimum, they may suffice for an interest in the vehicle to attach as between the Debtor and Creditor. See Cal. Veh. Code § 6300, 6303.

Conclusion

Based on the foregoing, the Debtor's objection is overruled and, to the extent applicable, the Debtor's request for reconsideration is denied without prejudice.

The objection is ORDERED OVERRULED and reconsideration ORDERED DENIED WITHOUT PREJUDICE for the reasons stated in the minutes.

The court will issue an order.

8. [19-24282](#)-B-13 JUAN/MARIA SALAS
[PGM](#)-6 Peter G. Macaluso

MOTION TO MODIFY PLAN
2-4-21 [[104](#)]

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 Debtors have 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 Debtors 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.

Final Ruling

The motion 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 this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due to the COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also 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).

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

The Chapter 13 Trustee objects to confirmation of the plan on grounds that it does not pass the liquidation test since non-exempt assets totaling \$6,692.42 from insurance proceeds should be paid into the plan and general unsecured creditors should receive 40.91%. The Trustee is amenable to the issue being resolved if the order confirming the plan provides that the additional funds of \$6,620.92 from Progressive shall be paid into the plan and treated as an additional plan payment, and that general unsecured creditors shall receive 40.91%

Additionally, Debtors' plan provides for \$4,000.00 in total fees to be paid to the Debtors' former attorney of record Thomas Gillis. Pursuant to the order entered on July 23, 2020, total fees to Mr. Gillis were to be allowed in the sum of \$3,200.00, of which \$2,000.00 was paid prepetition and \$1,800.00 was paid pursuant to the prior plan confirmed in this case, which leaves \$600.00 to be returned by Mr. Gillis to the Clerk of the Court. The Trustee is amenable to the issue being resolved if the order confirming the plan provides that the total fees to Mr. Gillis are allowed in the sum of \$3,200.00.

The Debtors filed a response stating that the Trustee's requested language will be included in the order to make the plan confirmable.

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 Debtors 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.