

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable René Lastreto II
Hearing Date: Tuesday, March 17, 2020
Place: Department B – Courtroom #13
Fresno, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:30 AM

1. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[FW-1](#)

CONTINUED MOTION FOR ADMINISTRATIVE EXPENSES
8-1-2019 [[1571](#)]

SIEMENS MEDICAL SOLUTIONS USA, INC./MV
RILEY WALTER/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to April 28, 2020 at 9:30 a.m.

ORDER: The court will issue an order.

Pursuant to the parties' stipulation (doc. #2074), this matter is continued to April 28, 2020 at 9:30 a.m.

2. [17-13797](#)-B-9 **IN RE: TULARE LOCAL HEALTHCARE DISTRICT**
[WJH-13](#)

CONTINUED OMNIBUS OBJECTION TO CLAIMS
11-22-2019 [[1718](#)]

TULARE LOCAL HEALTHCARE DISTRICT/MV
RILEY WALTER/ATTY. FOR DBT.
CONTINUED TO 4/14/20 PER ECF STIPULATION AND ORDER #2042

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to April 14, 2020 at 9:30 a.m.

NO ORDER REQUIRED: The court already issued an order. Doc. #2042.

1:30 PM

1. [19-10529](#)-B-7 **IN RE: BRENT/CHRISTINA KUTZBACH**
[FW-4](#)

MOTION TO SELL AND/OR MOTION TO PAY
2-13-2020 [\[60\]](#)

JAMES SALVEN/MV
PETER BUNTING/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed for higher and better
bids only.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order
in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. 11 U.S.C. § 363(b)(1) allows the trustee to "sell, or lease, other than in the ordinary course of business, property of the estate."

Proposed sales under 11 U.S.C. § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, No. 16-00327-GS, 2018 WL 6584772, at *2 (Bankr. D. Alaska Dec. 11, 2018); citing 240 North Brand Partners, Ltd. v. Colony GFP Partners, LP (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (9th Cir. BAP 1996) citing In re Wilde Horse Enterprises, Inc., 136 B.R. 830, 841 (Bankr. C.D. Cal. 1991). In the context of sales of estate property under § 363, a bankruptcy court "should determine only whether the trustee's judgment was reasonable and whether a sound business justification exists supporting the sale and its terms." Alaska Fishing Adventure, LLC, 2018 WL 6584772, at *4, quoting 3 Collier on Bankruptcy ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.). "[T]he trustee's business judgment is to be given great judicial deference." Id., citing In re

Psychometric Systems, Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007), citing In re Bakalis, 220 B.R. 525, 531-32 (Bankr. E.D.N.Y. 1998).

The chapter 7 trustee ("Trustee") asks this court for authorization to sell real property located at 1883 N. Douglas Avenue in Clovis, CA. ("Property") to Hyrum and Brie Fairbanks ("Buyers"), subject to higher and better bids at the hearing, for \$495,150.00. Doc. #60. No interested party has opposed the granting of this motion.

It appears that the sale of the Property is in the best interests of the estate, for a fair and reasonable price, supported by a valid business judgment, and proposed in good faith. Doc. #62, 63.

Any party wishing to overbid must

1. deposit with the Trustee's counsel certified monies in the amount \$10,000 prior to, or at the time of the hearing on this motion as set forth in the Notice of Hearing filed herewith. An unsuccessful bidder's deposit will be returned at the conclusion of the hearing. A successful over bidder's deposit will be applied toward that overbidder's purchase price;
2. Provide written proof of financial ability to cover the necessary overbid amount;
3. Provide written proof that the successful overbidder can close the sale within 15 days of the delivery of a certified copy of the Court's order approving the sale and can execute a purchase agreement for the Property;
4. Be aware that in the event the successful overbidder fails to close the sale and execute a purchase agreement within 15 days of the delivery of a certified copy of the Court's order approving the sale for any reason, the deposit noted in subsection (i) above becomes non-refundable;
5. Be present at the sale hearing;
6. Make all overbids in the amount of \$5,000. Thus, the first overbid shall be \$500,000.00; and
7. Acknowledge that sale of the Property shall be "as-is" with no warranty or representations expressed or implied by the Trustee or his representatives.

Trustee is authorized to pay CMT properties and Buyers' realtor, Dane Wildey, a 6% commission of the final purchase price, to be split equally between them.

The 14-day stay on the sale under Federal Rule of Bankruptcy Procedure 6004(h) is waived.

2. [19-15246](#)-B-7 **IN RE: ANDREA CASTILLO**
[BDW-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-11-2020 [\[25\]](#)

MARK SEMPER/MV
TIMOTHY SPRINGER/ATTY. FOR DBT.
BRIAN WHELAN/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted. The court strikes and does not
consider any of movant's exhibits.

ORDER: The minutes of the hearing will be the court's
findings and conclusions. The Moving Party
will submit a proposed order after hearing.

This motion was set for hearing on 28 days' notice as required by
Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as
scheduled. The default of the Chapter 7 trustee is entered.

The movant, Mark Semper ("Movant"), seeks relief from the automatic
stay under 11 U.S.C. § 362(d)(1) to permit Movant to proceed in
Fresno County Superior Court against debtor. Doc. #28. Pre-petition,
movant filed an action against the debtor and two other defendants
in the Fresno County Superior Court for damages for alleged
defamation.

Debtor opposes this motion, or in the alternative, asks for an
evidentiary hearing. Doc. #37. The court notes Movant's procedural
error explained in the opposition (doc. #37, ¶6, LBR 9014-1(d)(4)).
The court notes movant's reply. Doc. #39.

Movant has violated LBR 9004-2(c)(1) and (d)(1) since the exhibits
were not separately filed and indexed. Under LBR 9014-1(l), movants
failure to comply can be addressed in any number of ways. Here,
since this is the second motion filed by movant – the first was
denied for failure to comply with several local rules – the court is
perplexed why the local rules were not carefully consulted before
filing this second motion. The court will strike and not consider
any of the exhibits attached to the Whelan declaration.

The court is unpersuaded by movant's argument that the lack of
"prejudice" suffered by the debtor means the failure to follow the
local rules should be excused. Lack of compliance is not excused.
First, movant failed to accurately cite Carmax Auto Superstores Cal.
LLC v. Hernandez, 94 F.Supp 3d 1078, 1088 (C.D. Cal. 2015). Though a
portion of the opinion is accurately cited in part, movant failed to
quote the previous sentence: "In its' discretion the court could
deny . . . [the] motion"

Second, the rule on which the decision is based (Central District
Local Rule 7-3 then pertaining) provides for the court's discretion

to deny or not consider a motion if the parties had not met and conferred before the motion. Rule quoted in Mazal Grp. LLC v. Espana, No. 2:17-cv-05856-RSWL-KS, 2017 U.S. Dist. LEXIS 200108 *6 (C.D. Cal. Dec. 4, 2017). The court is exercising its discretion to strike and not consider the documents under LBR 9014-1 (1).

Now, the merits.

The party moving for relief must first establish a prima facie case that cause for stay relief exists under § 362(d)(1). If that burden is met, the burden shifts to the party opposing relief to show relief is unwarranted. Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.), 311 B.R. 551, 557 (Bankr. C.D. Cal. 2004). Though the court is striking and not considering any documents improperly submitted by movant, the undisputed Whelan declaration meets the initial burden. Among the facts stated:

- Movant filed a lawsuit in the Fresno County Superior Court alleging defamation ten months ago.
- There are two other defendants in that action.
- A default has been taken against one of those defendants.
- The Superior Court set a trial date of January 11, 2021 before this bankruptcy was filed.
- Many discovery motions have been filed in the action.
- The Superior Court denied debtors motion to stay the entire action weeks before this bankruptcy was filed.
- Days before this bankruptcy was filed, debtor was ordered to submit to a second or continued deposition on February 4, 2020.
- The Superior Court has ordered the debtor's and another defendant's deposition be taken before depositions of minor children may be deposed.

By contrast, no evidence is presented by the debtor in opposition to the motion. Debtor's counsel signed opposition raising many issues about the merits of movant's position, but no declaration or other evidence was presented. The court need not decide the merits of debtor's defenses in the defamation action on a stay relief motion. The issue is whether "cause" exists for stay relief and the debtor has not met the burden of proof why stay relief is not appropriate.

We disregard debtors request for an evidentiary hearing. No separate statement identifying each factual issue in dispute was filed with the opposition. See LBR 9014-1(f)(1)(B).

When a movant prays for relief from the automatic stay to initiate or continue non-bankruptcy court proceedings, a bankruptcy court must consider the "Curtis factors" in making its decision. In re Kronemyer, 405 B.R. 915, 921 (9th Cir. B.A.P. 2009). The relevant factors in this case include:

(1) whether the relief will result in a partial or complete resolution of the issues;

- (2) the lack of any connection with or interference with the bankruptcy case;
- (3) whether the foreign proceeding involves the debtor as a fiduciary;
- (4) whether a specialized tribunal has been established to hear the particular cause of action and whether that tribunal has the expertise to hear such cases;
- (5) whether the debtor's insurance carrier has assumed full financial responsibility for defending the litigation;
- (6) whether the action essentially involves third parties, and the debtor functions only as a bailee or conduit for the goods or proceeds in question;
- (7) whether the litigation in another forum would prejudice the interests of other creditors, the creditors' committee and other interested parties;
- (8) whether the judgment claim arising from the foreign action is subject to equitable subordination under section 510(c);
- (9) whether movant's success in the foreign proceeding would result in a judicial lien avoidable by the debtor under section 522(f);
- (10) the interests of judicial economy and the expeditious and economical determination of litigation for the parties;
- (11) whether the foreign proceedings have progressed to the point where the parties are prepared for trial; and
- (12) the impact of the stay on the parties and the "balance of hurt"

The bankruptcy court is not required to give equal weight to all of the factors. In fact, the balancing of potential harm to the creditor (here movant) on the one hand and to the debtor and the estate on the other frequently is dispositive. In re Brotman Med. Ctr., Inc., No. BAP.CC-08-1056-DKMO, 2008 WL 8444797 at *6 (B.A.P. 9th Cir. Aug. 15, 2008); In re Curtis, 40 B.R. 795, 806 (Bankr. D. Utah 1984).

Relief from the stay may result in complete resolution of the issues since the issue appears to be whether movant was defamed and if so, the damages suffered. The connection with this bankruptcy case is tenuous. Though a liquidated claim may affect the estate's other creditors the prosecution of this action in Superior Court will not interfere with this case. This court cannot determine personal injury claims in any case. 28 U.S.C. § 157(b)(2)(O) and (5). The action involves third parties.

The state court action appears to involve claims that are entirely determined under California state law.

The state court action does not appear to prejudice interests of other creditors or interested parties. The court notes the Trustee does not oppose this motion.

Judicial economy is fostered by stay relief since the district court would need to try the personal injury claims and the superior court has already set a trial date in 2021. The district court would need to start the litigation anew.

The "balance of the hurt" analysis favors movant on this motion because of the lack of evidence in opposition to the motion. The

facts the court discerns from both parties' submissions suggest a tragic and complicated situation involving very difficult issues. But this court does not decide those issues on this motion. The Superior Court has set a trial date, made discovery orders, and is proceeding to try the case but for this bankruptcy case. There are other defendants in the state court action who are not protected by the stay. The debtor would still need to participate in the action as a witness even if the stay was not modified. Our order on this motion is limited to permit the movant to liquidate the claim only. The nature of the injuries alleged are not "core" matters this court can try.

The debtor has not met the burden of proof under 11 U.S.C. § 362(g). The arguments raised in debtor's opposition actually relate more to the material of the state court action and its outcome rather than the narrow issue this court has been asked to decide: whether there is cause to lift the automatic stay.

The court finds that "cause" exists to lift the stay under § 362(d)(1) for the reasons stated above.

This motion will be granted only for the limited purpose of continuing with the state court action and to liquidate the claim. No further relief is granted.

The court refers both counsel to the redaction rules under Federal Rule of Bankruptcy Procedure 9037 and LBR 9037-1.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived because the action has been pending and is subject to state court scheduling orders.

3. [15-14268](#)-B-7 **IN RE: WILFREDO CHAVEZ**
[EPE-2](#)

MOTION TO AVOID LIEN OF FIA CARD SERVICES, N.A.
2-28-2020 [\[26\]](#)

WILFREDO CHAVEZ/MV
ERIC ESCAMILLA/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to March 31, 2020 at 1:30 p.m.

ORDER: The court will issue an order.

This motion is continued to March 31, 2020 at 1:30 p.m. Federal Rule of Bankruptcy Procedure 4003(b)(1) states that a party in interest may file an objection to amended schedule C within 30 days after it is filed.

An amended schedule C was filed on February 28, 2020. Doc. #24. The 30-day deadline expires March 29, 2020. Therefore this motion is not ripe for decision, and is continued to March 31, 2020 at 1:30 p.m.

4. [15-14268](#)-B-7 **IN RE: WILFREDO CHAVEZ**
[EPE-3](#)

MOTION TO AVOID LIEN OF FIA CARD SERVICES, N.A.
2-28-2020 [\[33\]](#)

WILFREDO CHAVEZ/MV
ERIC ESCAMILLA/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to March 31, 2020 at 1:30 p.m.

ORDER: The court will issue an order.

This motion is continued to March 31, 2020 at 1:30 p.m. Federal Rule of Bankruptcy Procedure 4003(b)(1) states that a party in interest may file an objection to amended schedule C within 30 days after it is filed.

An amended schedule C was filed on February 28, 2020. Doc. #24. The 30-day deadline expires March 29, 2020. Therefore this motion is not ripe for decision, and is continued to March 31, 2020 at 1:30 p.m.

5. [19-14583](#)-B-7 **IN RE: PAULA THOMPSON**
[MAZ-1](#)

MOTION TO AVOID LIEN OF ONEMAIN FINANCIAL SERVICES, INC.
2-14-2020 [\[18\]](#)

PAULA THOMPSON/MV
MARK ZIMMERMAN/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a

prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of Onemail Financial Services, Inc. fka Springleaf Financial Services, Inc. in the sum of \$8,192.59 on September 14, 2017. Doc. #21. The abstract of judgment was recorded with Tulare County on October 16, 2017. Id. That lien attached to the debtor's interest in a residential real property in Visalia, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$375,000.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$224,451.00 on that same date, consisting of a first deed of trust in favor of PennyMac. Id. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(3) in the amount of \$175,000.00. Id.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). 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 debtor's exemption of the real property and its fixing will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

6. [20-10183](#)-B-7 **IN RE: HARBANS VERMA AND GURPREET KAUR**
[JHK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-20-2020 [\[25\]](#)

MERCEDES-BENZ FINANCIAL SERVICES USA LLC/MV
MARIO LANGONE/ATTY. FOR DBT.
JOHN KIM/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This motion is DENIED WITHOUT PREJUDICE for failure to comply with the Local Rules of Practice ("LBR").

LBR 9014-1(f)(2)(C) states that motions filed on less than 28 days' notice, but at least 14 days' notice, require the movant to notify the respondent or respondents that no party in interest shall be required to file written opposition to the motion. Opposition, if any, shall be presented at the hearing on the motion. If opposition is presented, or if there is other good cause, the Court may continue the hearing to permit the filing of evidence and briefs.

This motion was filed and served on February 20, 2020 and set for hearing on March 17, 2020. Doc. #26, 31. March 17, 2020 is 26 days after February 20, 2020, and therefore this hearing was set on less than 28 days' notice under LBR 9014-1(f)(2). The notice stated that written opposition was required and must be filed at least 14 days preceding the date of the hearing. Doc. #26. That is incorrect. Because the hearing was set on less than 28 days' notice, the notice should have stated that no written opposition was required. Because this motion was filed, served, and noticed on less than 28 days' notice, the language of LBR 9014-1(f)(2)(C) needed to have been included in the notice.