

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime  
Bankruptcy Judge  
Sacramento, California

March 19, 2018 at 9:30 a.m.

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1.	<a href="#"><u>17-27572</u></a> -B-13	JOHN WHITE	EVIDENTIARY HEARING RE: MOTION
	<a href="#"><u>DJC</u></a> -6	Diana J. Cavanaugh	TO AVOID LIEN OF 1357 N. MAIN
	<a href="#"><u>Thru #6</u></a>		STREET, LLC
			1-6-18 [ <a href="#"><u>67</u></a> ]

**Final Ruling:** No appearance at the March 19, 2018, hearing is required.

This matter was continued from January 23, 2018. At that hearing, 1357 N. Main Street, LLC ("Creditor") made an oral objection to Debtor's motion and disputed valuation of Debtor's property commonly known as 616 E. N. Street, Benicia, California ("Property").

Creditor is the most junior lien holder against the Property and no opposition was filed by any other lien holders at Items #2 through #6. Creditor requested an opportunity to oppose the motion and also requested an evidentiary hearing. The court granted Creditor's requests. The court ordered Creditor to file an opposition on or before February 20, 2018, and the Debtor to file a reply, if any, on or before March 6, 2018. Creditor failed to file any opposition and no response was filed by the Debtor.

The court also ordered the parties to submit their evidence on or before March 12, 2018, as provided in Local Bankruptcy Rule 9017-1 (Alternate Direct Testimony Declarations, Exhibits and Objections), and to deliver evidence to the courtroom deputy for Department B (not filed with the clerk). The parties failed to do this.

The court construes Creditor's failure to file an opposition to the motion as it requested and the court permitted it to do and its failure to deliver any alternative direct testimony declaration(s) and evidence to the court in advance of the evidentiary hearing as Creditor's nonopposition and consent to the granting of the motion and a waiver of its request for an evidentiary hearing. Therefore, the evidentiary hearing set for March 19, 2018, at 9:30 a.m. will be vacated.

Creditor's default is also entered pursuant to Fed. R. Civ. P. 55 applicable by Fed. R. Bankr. P. 7055 and 9014.

Additionally, in the absence of evidence to the contrary, the court accepts the Debtor's value of the Property as conclusive. See Fed. R. Evid. 701; *Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

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

Debtor requests an order avoiding Creditor's judicial lien against the Debtor's Property. A judgment was entered against Debtor in favor of Creditor in the amount of \$104,647.81. An abstract of judgment was recorded with Solano County on February 11, 2016, which encumbers the Property. The first and second mortgages against the Property total \$527,243.24.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$683,693.00 as of the date of the petition. After deducting the forgoing liens from the gross value of the Property, Debtor's equity in the residence is \$156,449.76.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$175,000.00 on Schedule C. Debtor's basis for claiming this exemption is

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that he is over 65 years old.

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 is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court will enter an appropriate minute order.

2. [17-27572](#)-B-13 JOHN WHITE CONTINUED MOTION TO AVOID LIEN  
[DJC](#)-1 Diana J. Cavanaugh OF AMERICAN EXPRESS BANK, FSB  
1-1-18 [[23](#)]

**Final Ruling:** No appearance at the March 19, 2018, hearing is required.

This matter was continued from January 23, 2018, in light of creditor 1357 N. Main Street, LLC's oral objection at the January 23, 2018, hearing to Debtor's motion to avoid Creditor's judicial lien. See dkt. 67. The court had ordered 1357 N. Main Street, LLC to file an opposition on or before February 20, 2018, which it failed to do. Additionally, 1357 N. Main Street, LLC and Debtor failed to submit any evidence with the court on or before March 12, 2018, as provided in Local Bankruptcy Rule 9017-1. See dkt. 81.

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

Debtor requests an order avoiding the judicial lien of American Express Bank, FSB ("Creditor") against the Debtor's property commonly known as 616 E. N. Street, Benicia, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$16,977.01. An abstract of judgment was recorded with Solano County on December 12, 2012, which encumbers the Property. The first and second mortgages against the Property total \$527,243.24.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$683,693.00 as of the date of the petition. After deducting the forgoing liens from the gross value of the Property, Debtor's equity in the residence is \$156,449.76.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$175,000.00 on Schedule C. Debtor's basis for claiming this exemption is that he is over 65 years old.

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 is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court will enter an appropriate minute order.

3. [17-27572](#)-B-13 JOHN WHITE CONTINUED MOTION TO AVOID LIEN  
[DJC](#)-2 Diana J. Cavanaugh OF AMERICAN EXPRESS CENTURION  
BANK  
1-1-18 [[31](#)]

**Final Ruling:** No appearance at the March 19, 2018, hearing is required.

This matter was continued from January 23, 2018, in light of creditor 1357 N. Main

Street, LLC's oral objection at the January 23, 2018, hearing to Debtor's motion to avoid Creditor's judicial lien. See dkt. 67. The court had ordered 1357 N. Main Street, LLC to file an opposition on or before February 20, 2018, which it failed to do. Additionally, 1357 N. Main Street, LLC and Debtor failed to submit any evidence with the court on or before March 12, 2018, as provided in Local Bankruptcy Rule 9017-1. See dkt. 81.

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

Debtor requests an order avoiding the judicial lien of American Express Centurion Bank ("Creditor") against the Debtor's property commonly known as 616 E. N. Street, Benicia, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$25,558.58. An abstract of judgment was recorded with Solano County on January 25, 2013, which encumbers the Property. The first and second mortgages against the Property total \$527,243.24.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$683,693.00 as of the date of the petition. After deducting the forgoing liens from the gross value of the Property, Debtor's equity in the residence is \$156,449.76.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$175,000.00 on Schedule C. Debtor's basis for claiming this exemption is that he is over 65 years old.

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 is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court will enter an appropriate minute order.

4. [17-27572](#)-B-13 JOHN WHITE CONTINUED MOTION TO AVOID LIEN  
[DJC](#)-3 Diana J. Cavanaugh OF AMERICAN EXPRESS BANK, FSB  
1-2-18 [\[39\]](#)

**Final Ruling:** No appearance at the March 19, 2018, hearing is required.

This matter was continued from January 23, 2018, in light of creditor 1357 N. Main Street, LLC's oral objection at the January 23, 2018, hearing to Debtor's motion to avoid Creditor's judicial lien. See dkt. 67. The court had ordered 1357 N. Main Street, LLC to file an opposition on or before February 20, 2018, which it failed to do. Additionally, 1357 N. Main Street, LLC and Debtor failed to submit any evidence with the court on or before March 12, 2018, as provided in Local Bankruptcy Rule 9017-1. See dkt. 81.

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

Debtor requests an order avoiding the judicial lien of American Express Bank, FSB ("Creditor") against the Debtor's property commonly known as 616 E. N. Street, Benicia, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$5,876.99. An abstract of judgment was recorded with Solano County on March 18, 2013, which encumbers the Property. The first and second mortgages against the Property total \$527,243.24.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$683,693.00 as of the date of the petition. After deducting the forgoing liens from the gross value of the Property, Debtor's equity in the residence is \$156,449.76.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$175,000.00 on Schedule C. Debtor's basis for claiming this exemption is that he is over 65 years old.

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 is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court will enter an appropriate minute order.

5. [17-27572](#)-B-13 JOHN WHITE CONTINUED MOTION TO AVOID LIEN  
[DJC](#)-4 Diana J. Cavanaugh OF AMERICAN EXPRESS CENTURION  
BANK  
1-2-18 [[47](#)]

**Final Ruling:** No appearance at the March 19, 2018, hearing is required.

This matter was continued from January 23, 2018, in light of creditor 1357 N. Main Street, LLC's oral objection at the January 23, 2018, hearing to Debtor's motion to avoid Creditor's judicial lien. See dkt. 67. The court had ordered 1357 N. Main Street, LLC to file an opposition on or before February 20, 2018, which it failed to do. Additionally, 1357 N. Main Street, LLC and Debtor failed to submit any evidence with the court on or before March 12, 2018, as provided in Local Bankruptcy Rule 9017-1. See dkt. 81.

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

Debtor requests an order avoiding the judicial lien of American Express Centurion Bank ("Creditor") against the Debtor's property commonly known as 616 E. N. Street, Benicia, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$14,113.62. An abstract of judgment was recorded with Solano County on March 26, 2013, which encumbers the Property. The first and second mortgages against the Property total \$527,243.24.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$683,693.00 as of the date of the petition. After deducting the forgoing liens from the gross value of the Property, Debtor's equity in the residence is \$156,449.76.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$175,000.00 on Schedule C. Debtor's basis for claiming this exemption is that he is over 65 years old.

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 is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court will enter an appropriate minute order.

6. [17-27572](#)-B-13 JOHN WHITE  
[DJC](#)-5 Diana J. Cavanaugh

CONTINUED MOTION TO AVOID LIEN  
OF NEGHERBON CAPITAL  
MANAGEMENT, LLC  
1-6-18 [[59](#)]

**Final Ruling:** No appearance at the March 19, 2018, hearing is required.

This matter was continued from January 23, 2018, in light of creditor 1357 N. Main Street, LLC's oral objection at the January 23, 2018, hearing to Debtor's motion to avoid Creditor's judicial lien. See dkt. 67. The court had ordered 1357 N. Main Street, LLC to file an opposition on or before February 20, 2018, which it failed to do. Additionally, 1357 N. Main Street, LLC and Debtor failed to submit any evidence with the court on or before March 12, 2018, as provided in Local Bankruptcy Rule 9017-1. See dkt. 81.

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

Debtor requests an order avoiding the judicial lien of Negherbon Capital Management, LLC ("Creditor") against the Debtor's property commonly known as 616 E. N. Street, Benicia, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$46,061.15. An abstract of judgment was recorded with Solano County on July 7, 2015, which encumbers the Property. The first and second mortgages against the Property total \$527,243.24.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$683,693.00 as of the date of the petition. After deducting the forgoing liens from the gross value of the Property, Debtor's equity in the residence is \$156,449.76.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$175,000.00 on Schedule C. Debtor's basis for claiming this exemption is that he is over 65 years old.

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 is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court will enter an appropriate minute order.