



**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

Chief Judge Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 7th Floor
Courtroom 28, Department A
Sacramento, California

DAY: MONDAY
DATE: APRIL 3, 2023
CALENDAR: 10:30 A.M. CHAPTER 7 CASES

Unless otherwise ordered, all matters before Chief Judge Fredrick E. Clement shall be heard simultaneously: (1) **IN PERSON** in Courtroom 28, (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**.

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PRE-HEARING DISPOSITION

RULINGS

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

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. However, non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [22-22020](#)-A-7 **IN RE: RICHARD SAUER**
[DB-2](#)

MOTION TO AMEND
3-13-2023 [[65](#)]

RICK MORIN/ATTY. FOR DBT.
JAMIE DREHER/ATTY. FOR MV.

No Ruling

2. [21-23522](#)-A-7 **IN RE: JOSEPH SMITH**
[DNL-7](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH DIANE M. BENDER
2-28-2023 [[149](#)]

MARK WOLFF/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.
DEBTORS DISCHARGED: 1/24/22

Final Ruling

Motion: Approve Compromise of Controversy

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Parties: Diane M. Bender and J. Michael Hopper

Settlement: Bender to pay \$140,000.00 to bankruptcy estate as follows: (a) \$135,000.00 on or before February 10, 2023; and (b) \$5,000.00 on or before March 6, 2023; allowance of Claim No. 8 in the amount of \$1,155,000.00 as a *general unsecured claim*; dismissal of the estate's adversary proceeding (22-0213-A) against Diane Bender

Subject Property: 2518 U Street, Sacramento, California

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

J. Michael Hopper, Chapter 7 trustee, seeks an order approving the compromise and settlement reached with Diane M. Bender (Bender). The settlement, achieved through mediation through the court's BDRP, relates to Bender's claim of ownership interest in the subject property and resolves litigation regarding the prepetition transfer of title of the subject property to Ms. Bender.

Bender has agreed to pay the estate \$140,000.00 in exchange for allowance of Bender's claim, Claim No. 8 in the amount of \$1,155,000.00 as a *general unsecured claim*, and dismissal of the adversary proceeding, 22-0213-A, filed against Bender by the Chapter 7 trustee.

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1986). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise. The compromise is reflected in the settlement agreement filed concurrently with the motion as an exhibit, ECF No. 152. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

J. Michael Hopper's motion to approve a compromise has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The court hereby approves the compromise that is reflected in the settlement agreement filed concurrently with the motion as Exhibit B and filed at docket no. 152.

3. [22-22934](#)-A-7 **IN RE: WESLEY HARLAN**
[UST-1](#)

CONTINUED AMENDED MOTION TO EXTEND TIME TO FILE A MOTION TO
DISMISS OR CONVERT CASE UNDER SEC. 707(B) .
3-6-2023 [\[35\]](#)

JORGE GAITAN/ATTY. FOR MV.

Tentative Ruling

Motion: Extend U.S. Trustee's Deadlines to File a Motion to Dismiss

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).a

The United States Trustee seeks an order extending the time to file a motion to dismiss the debtor's case to March 6, 2023. The hearing on this motion was continued to allow for proper service of the Amended Notice of Hearing. To avoid confusion the UST has filed a further notice of hearing, motion to extend deadlines, and certificate of service which advised the debtor of the hearing on April 3, 2023. A certificate of service was filed on March 7, 2023, evidencing service of the notice of hearing, and motion for extension of deadlines. See Notice of Hearing, Motion to Extend Deadlines and Certificate of Service, ECF Nos. 35, 36, 37.

EXTENSION OF DEADLINE FOR FILING MOTION TO DISMISS

Under Rule 1017(e)(1), a motion to dismiss a chapter 7 case for abuse under § 707(b) and (c) must be filed within 60 days after the first date set for the § 341(a) creditors' meeting. Fed. R. Bankr. P. 1017(e)(1). The court may extend this period for cause if the request for such extension is made before the original period expires.

Based on the motion and supporting papers, the court finds that cause exists to extend the deadline for the trustee and the U.S. Trustee to file a motion to dismiss under § 707(b) and (c). This deadline to file a motion to dismiss will be extended through March 6, 2023.

4. [22-22934](#)-A-7 **IN RE: WESLEY HARLAN**
[UST-2](#)

MOTION TO DISMISS CASE PURSUANT TO 11 U.S.C. SECTION 707(B)
3-6-2023 [\[27\]](#)

JORGE GAITAN/ATTY. FOR MV.

Tentative Ruling

Motion: Dismiss Chapter 7 Case under § 707(b)(1)-(2) [Presumption of Abuse]

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The United States Trustee seeks an order dismissing this case under 11 U.S.C. § 707(b)(1), (2). The UST alternatively seeks dismissal under § 707(b)(3).

DISMISSAL

A motion to dismiss a chapter 7 bankruptcy case is decided under the standards in § 707(b), which offers creditors or the United States Trustee two grounds of showing that a particular chapter 7 case is abusive: § 707(b)(2), which creates a presumption of abuse, and § 707(b)(3), which allows abuse to be shown based on the totality of the circumstances or bad faith. Section 707(b)(2) and (3) are applicable only to cases in which the debts are primarily consumer debt. 11 U.S.C. § 101(8) (defining consumer debt). And the means test of § 707(b)(2) is triggered only as to above-median income debtors. *See id.* § 707(b)(7)(A).

The presumption of § 707(b)(2) is triggered when the debtor's current monthly income (CMI) less specified expenses ("disposable income"), § 707(b)(2)(A)(ii)-(iv), multiplied by 60 is greater than or equal to the lesser of the following: (1) 25% of the debtor's non-priority unsecured debt or \$7,700.00, whichever is greater, or (2) \$12,850.00. *Id.* § 707(b)(2)(A)(i)(I)-(II). The presumption may be rebutted by demonstrating special circumstances, including serious medical condition or call to duty in the Armed Forces. *Id.* § 707(b)(2)(B)(I).

This case involves a debtor who has above-median income and whose debts are primarily consumer debts.

After adjusting for any improperly claimed deductions from income, the debtor's monthly disposable income for purposes of Form 122A-2, multiplied by 60, exceeds the applicable statutory limit under § 707(b)(2)(A)(i) as follows.

The debtor indicated in his Form 122A-2 that the presumption of abuse arises under 11 U.S.C. § 707(b)(2). See ECF No 1. The debtor has claimed a household size of 1. See Schedule J, *id.* The court finds that the debtor's monthly disposable income over 60 months is \$56,400, which amount exceeds the \$15,150 amount under 11 U.S.C. § 707(b)(2)(B)(iv) and which amount also exceeds 25% of the debtor's See Form 122A-2, *id.* Moreover, the debtor has not indicated any "special circumstance" to rebut the presumption.

Based on the motion's well-pleaded facts, the presumption of abuse arises under § 707(b)(2). No opposition has been filed. There is no indication that special circumstances exist.

Since the matter has been resolved under § 707(b)(2), the court makes no findings under § 707(b)(3). 11 U.S.C. § 707(b)(2)-(3). The motion will be granted, and the case dismissed.

5. [21-21537](#)-A-7 **IN RE: NELYA FEYGIN**
[DNL-2](#)

OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
2-17-2023 [\[35\]](#)

MARK SHMORGON/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.
DEBTORS DISCHARGED: 8/2/21

Final Ruling

Objection: Objection to Claim of Exemptions
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Sustained
Order: Civil minute order

Petition Date: April 27, 2021

Unopposed objections are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c); LBR 9001-1(d), (n) (contested matters include objections). Written opposition to the sustaining of this objection was required not less than 14 days before the hearing on this motion. None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

BACKGROUND

Applicable Exemption Law

In determining the scope or validity of an exemption claimed under state law, the court applies state law in effect on the date of the petition. 11 U.S.C. § 522(b)(3)(A); *Wolfe*, 676 F.3d at 1199 (“[B]ankruptcy exemptions are fixed at the time of the bankruptcy petition.”); accord *In re Anderson*, 824 F.2d 754, 756 (9th Cir. 1987).

The bankruptcy petition was filed on April 27, 2021. The debtor received a discharge on August 2, 2021, and the case was closed. The case was reopened on December 29, 2022, to allow the debtor to disclose an asset, e.g. the legal proceedings described in the debtor’s Amended Schedules A/B and C, and Amended Statement of Financial Affairs, ECF Nos. 22, 27.

The court notes that effective January 1, 2023, C.C.P. § 703.140(b)(11)(D) is amended, as is C.C.P. § 703.140(a) regarding spousal waivers. However, the applicable exemption laws are those in effect when the debtor filed the petition. Thus, despite the recent amendments to Cal. Civ. Proc. Code §§ 703.140(a), (b) including § 703.140(b)(11)(D) the debtor is limited to the exemptions available to her on the date of the petition.

OBJECTION

Burden of Proof

Section 703.580 of the California Code of Civil Procedure allocates the burden of proof in state-law exemption proceedings. Cal. Civ. Proc. Code § 703.580(b). The bankruptcy appellate panel in this circuit has concluded that “where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation.” *In re Diaz*, 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016). In this exemption proceeding in bankruptcy, therefore, the debtor bears the burden of proof.

Further, the preponderance-of-the-evidence standard applies. See *In re Pashenee*, 531 B.R. 834, 839 (Bankr. E.D. Cal. 2015).

Discussion

Chapter 7 trustee, J. Michael Hopper, objects to the debtor’s claim of exemptions in the debtor’s Amended Schedule C filed on January 20, 2023, as follows. The debtor has listed an interest in a legal proceeding, *Laher Pour ET AL v. City of Los Angeles ET AL*, with an unknown value and claimed it exempt in the amount of \$29,275.00 under former Cal. Civ. Proc. Code § 703.140(b)(11)(D). Amended Schedule C, ECF No. 27. At the time the debtor filed the petition this section provided that the debtor may claim as exempt:

(11) The debtor's right to receive, or property that is traceable to, any of the following:

. . .
A payment, not to exceed twenty-nine thousand two hundred seventy-five dollars (\$29,275) on account of *personal bodily injury* of the debtor or an individual of whom the debtor is a dependent.

Cal. Civ. Proc. Code § 703.140(b) (11) (D) (emphasis added).

The trustee has examined the complaint and found that the complaint stems from a rent increase at the residential real property located at 5809 Reseda Boulevard, Tarzana, California, and alleges the following causes of action: (1) Petition for Writ of Mandate for Violation of Cal. Civ. Code §§ 3513 and 1598-99 and the Los Angeles Rent Stabilization Ordinance ("LARSO"), LAMC § 151.00 et seq., Pursuant to Code Civ. P. § 1085; (2) Declaratory Relief ; (3) Violation of the City of Los Angeles' Los Angeles Municipal Code § 151.04(A); (4) Intentional Infliction of Emotional Distress; (5) Negligent Infliction of Emotional Distress; (6) Breach of Common Law Duty of Care: Tortious Negligence and Negligence Per Se; and (7) Violation of Unfair Business Practices Act, Business & Professions Code §§ 17200, et seq. See Declaration of J. Michael Hopper, 2:9-21, ECF No. 37.

"In order to qualify for the exemption, a Debtor must demonstrate that a cognizable physical injury has been suffered." *In re Ciotta*, 222 B.R. 626, 631 (Bankr. C.D. Cal. 1998). The trustee contends that the debtor has not proven that her right to exempt any amount in the legal proceedings stems from any personal bodily injury as required.

The debtor has not responded to the trustee's objection and neither the Amended Schedules nor the Amended Statement of Financial Affairs provides any information relating to personal bodily injury, if any, sustained by the debtor as a result of the allegations in the lawsuit.

The court will sustain the trustee's objections and disallow in its entirety the exemption claimed under C.C.P. § 703.140(b) (11) (D).

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

J. Michael Hopper's Objection to the Debtor's Claim of Exemptions has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the objection,

IT IS ORDERED that the objection is sustained. The exemption claimed under C.C.P. § 703.140(b)(11)(D) is disallowed in its entirety.

6. [23-20146](#)-A-7 **IN RE: JEFFREY GRECH**
[AP-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-27-2023 [\[12\]](#)

DAVID VAN DYKE/ATTY. FOR DBT.
WENDY LOCKE/ATTY. FOR MV.
FIRST TECH FEDERAL CREDIT UNION VS.

Final Ruling

Motion: Stay Relief; Annulment of Stay
Notice: LBR 9014-1(f)(1); written opposition required
Disposition: Granted
Order: Civil minute order

Subject: 2020 Dodge Charger
Petition Filed: January 18, 2023

Creditor, First Tech Federal Credit Union, seeks an order annulling the automatic stay of 11 U.S.C. § 362(a) as follows.

DEFAULT OF RESPONDENT

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

FACTS

The debtor filed this Chapter 7 bankruptcy petition on January 18, 2023, and listed in his Schedule E/F a contract with the movant, regarding the subject vehicle, as an unsecured claim in the amount of \$56,583.00. Schedule E/F also states the subject vehicle was impounded by the CHP. See Schedule E/F, ECF No. 1. The debtor has failed to include the obligation to the movant in the Statement of Intentions, ECF No. 1.

Prior to the filing of the petition and in response to the debtor's contractual default in payments the movant obtained a judgment against the debtor in Nevada State Court. The Default Judgment awarded Movant a total judgment of \$63,694.49, plus post judgment

interest, and possession of the subject vehicle. See Motion, 2:17-21, ECF No. 12.

On or about January 4, 2023, Movant received a Notice of Stored Vehicle from Delta Valley Towing Inc., stating that the subject vehicle had been placed in storage as of December 26, 2022. *Id.*, 2:24-26.

The subject vehicle remained unclaimed by the debtor. As a result, on or about February 7, 2023, Movant took possession of the subject vehicle from Delta Valley Towing Inc., to avoid losing its security interest in the subject vehicle through a lien sale and to limit the storage fees that were accruing daily. Movant paid \$4,833.00 to obtain possession of the Vehicle. See Declaration in Support of Motion for Relief from the Automatic Stay, 2:27-28, 3:1-5, ECF No. 14.

RETROACTIVE STAY RELIEF

"[S]ection 362 gives the bankruptcy court wide latitude in crafting relief from the automatic stay, including the power to grant retroactive relief from the stay." *In re Schwartz*, 954 F.2d 569, 572 (9th Cir. 1992). Furthermore, "[i]f a creditor obtains retroactive relief under section 362(d), there is no violation of the automatic stay" *Id.* at 573.

"In deciding whether 'cause' exists to annul the stay, a bankruptcy court should examine the circumstances of the specific case and balance the equities of the parties' respective positions. Under this approach, the bankruptcy court considers (1) whether the creditor was aware of the bankruptcy petition and automatic stay and (2) whether the debtor engaged in unreasonable or inequitable conduct." *In re Cruz*, 516 B.R. 594, 603 (B.A.P. 9th Cir. 2014).

In deciding whether to annul the stay retroactively, the court should consider the following factors:

1. Number of filings;
2. Whether, in a repeat filing case, the circumstances indicate an intention to delay and hinder creditors;
3. A weighing of the extent of prejudice to creditors or third parties if the stay relief is not made retroactive, including whether harm exists to a bona fide purchaser;
4. The Debtor's overall good faith (totality of circumstances test);
5. Whether creditors knew of stay but nonetheless took action, thus compounding the problem;
6. Whether the debtor has complied, and is otherwise complying, with the Bankruptcy Code and Rules;
7. The relative ease of restoring parties to the status quo ante;
8. The costs of annulment to debtors and creditors;
9. How quickly creditors moved for annulment, or how quickly debtors moved to set aside the sale or violative conduct;

10. Whether, after learning of the bankruptcy, creditors proceeded to take steps in continued violation of the stay, or whether they moved expeditiously to gain relief;
11. Whether annulment of the stay will cause irreparable injury to the debtor;
12. Whether stay relief will promote judicial economy or other efficiencies.

Fjeldsted v. Lien (In re Fjeldsted), 293 B.R. 12, 25 (B.A.P. 9th Cir. 2003) (citation omitted).

These factors should not be construed as a "scorecard" for arithmetic reasoning. *Id.* The court is aware that "[t]hese factors merely present a framework for analysis and [i]n any given case, one factor may so outweigh the others as to be dispositive." *In re Cruz*, 516 B.R. at 604 (internal quotation marks omitted).

The court has considered the pertinent factors for deciding whether to grant retroactive relief from stay. There is no harm to the debtor or the estate in granting the relief requested. There is considerable potential harm and expense to the movant absent this relief. Additionally, the debtor has failed to respond to the motion.

The court finds that the factors discussed are dispositive on the question whether to grant retroactive relief from stay. Retroactive stay relief will be granted to the date of the petition.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

First Tech Federal Credit Union's motion for annulment of the automatic stay has been presented to the court. Having entered the default of respondents for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is annulled retroactively to the date of the petition with respect to the property described in the motion, commonly known as a 2020 Dodge Charger, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

7. [22-22949](#)-A-7 **IN RE: ZOE BURTON-ROSAL**
[DNL-2](#)

CONTINUED OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
2-13-2023 [\[28\]](#)

GARY FRALEY/ATTY. FOR DBT.
J. CUNNINGHAM/ATTY. FOR MV.
DEBTOR DISCHARGED: 02/22/2023

Tentative Ruling

Objection: Objection to Claim of Exemptions

Notice: Continued from March 20, 2023

Disposition: Sustained in part

Order: Civil minute order

Petition Filed: November 14, 2022

Chapter 7 trustee, J. Michael Hopper, objects to the debtor's claim of exemption in real property located at 432 Parker Drive, Folsom, California.

FACTS

On November 14, 2022, the debtor filed a Chapter 7 bankruptcy. In the bankruptcy schedules the debtor listed her interests in two parcels of real property each of which were purchased prior to the filing of the case.

Addison Property

The debtor purchased the real property located at 577 Addison Court, Folsom, California, on May 12, 2015, over 7 years prior to the filing of the bankruptcy petition. The Addison property was the debtor's personal residence until September 9, 2022. Declaration of Zoe Burton-Rosal, 2:1-2, ECF No. 36.

Parker Property

On September 9, 2022, the debtor borrowed money secured by a second deed of trust in the Addison property. The amount borrowed was \$140,000, and resulted in net funds of \$135,149.43 to the debtor. See Final Closing Statement, Exhibit 1, ECF No. 37.

Also on September 9, 2022, the debtor used the \$135,149.43 in funds from the Addison property second mortgage to purchase the Parker property. See Final Closing Statement, Exhibit 2, *id.*

On September 9, 2022, the debtor purchased and then moved into the property located at 432 Parker Drive, Folsom, California. This was approximately 66 days prior to the filing of the petition. The Parker property was the debtor's residence on the date the petition was filed. *Id.*, 2:2-3. The debtor has claimed an exemption in the Parker property in the amount of \$508,500.00 under C.C.P. § 704.730. See Schedule C, ECF No. 1.

The Chapter 7 trustee objects to the debtor's claim of exemption in the Parker property contending that the debtor is limited to an exemption of \$189,050.00 under 11 U.S.C. § 522(p)(1)(D).

The debtor contends that she qualifies for the exception to the exemption limitations of § 522(p)(1)(D) pursuant to 11 U.S.C. § 522(p)(2)(B). The debtor contends that the transfer of the \$135,149.43 interest from Addison entitles her to claim the equity in the Parker property as exempt under the California exemption statute.

ISSUE

What amount of exemption in the Parker property, if any, has the debtor proven she is entitled to claim?

BURDEN OF PROOF

Section 703.580 of the California Code of Civil Procedure allocates the burden of proof in state-law exemption proceedings. Cal. Civ. Proc. Code § 703.580(b). The bankruptcy appellate panel in this circuit has concluded that "where a state law exemption statute specifically allocates the burden of proof to the debtor, Rule 4003(c) does not change that allocation." *In re Diaz*, 547 B.R. 329, 337 (B.A.P. 9th Cir. 2016). In this exemption proceeding in bankruptcy, therefore, the debtor bears the burden of proof.

Further, the preponderance-of-the-evidence standard applies. See *In re Pashenee*, 531 B.R. 834, 839 (Bankr. E.D. Cal. 2015).

DISCUSSION

Section 522(p)(1)(A)

Except as provided in paragraph (2) of this subsection and sections 544 and 548, as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate \$189,050 [originally "\$125,000", adjusted effective April 1, 2022] in value in--

(A) real or personal property that the debtor or a dependent of the debtor uses as a residence;

11 U.S.C. § 522(p) (1) (A) (emphasis added) .

It is undisputed that the debtor has not resided in the Parker property longer than 1215 days. The trustee does not appear to dispute the debtor's residence in the Parker property on the date the petition was filed. Thus, under this section the debtor may only claim \$189,050 exempt in the Parker property.

Section 522(p) (2) (B)

For purposes of paragraph (1), any amount of such interest does not include any interest transferred from a debtor's previous principal residence (which was acquired prior to the beginning of such 1215-day period) into the debtor's current principal residence, if the debtor's previous and current residences are located in the same State.

11 U.S.C. § 522(p) (2) (B) .

It is undisputed that both properties are located in the same state, they are located in the same city. It is also undisputed that the debtor acquired her interest in the Addison property more than 1215 days prior to the filing of the bankruptcy petition.

The court applies the analysis in *In re Summers*, 344 B.R. 108 (Bankr. Aris. 2006) in determining the appropriate amount of exemption under 11 U.S.C. § 522(p) (1), (2) as follows.

Under 11 U.S.C. § 522(p) (2) (B) the debtor may claim the \$135,149.43 transferred from the Addison property in addition to the \$189,050 allowed under § 522(p) (1) (A). The aggregate amount is \$324,199.43.

In his reply the trustee contends that the debtor may not claim the \$135,149.43, transferred from the Addison property to the Parker property because the transferred funds did not result from a sale of the Addison property, but rather the further encumbrance of the Addison property by the debtor. The court is unaware of any 9th Circuit authority requiring that the transfer of funds from one property to another be accomplished by the sale of the first property.

C.C.P. § 704.730

(a) The amount of the homestead exemption is the greater of the following:(1) *The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption*, not to exceed six hundred thousand dollars (\$600,000).(2) Three hundred thousand dollars (\$300,000).(b) The amounts specified in this section shall adjust annually for inflation, beginning on January 1, 2022, based on the change in the annual California Consumer Price Index for All Urban Consumers for the prior fiscal year, published by the Department of Industrial Relations.

Cal. Civ. Proc. Code § 704.730 (emphasis added).

Under this section the debtor is limited to an exemption of \$300,000 unless she proves the median sales price of a single-family home in Sacramento County was greater than \$300,000 during 2021.

INSUFFICIENT EVIDENTIARY RECORD

As indicated above in this ruling the debtor bears the burden of proving her entitlement to the claimed exemption. The debtor has failed to meet this burden of proof. The debtor claims an exemption of \$508,500.00. C.C.P. § 704.730 only allows the debtor to claim \$300,000 exempt without proving the median sale price for a single-family home in Sacramento County during 2021. The debtor has offered no admissible evidence supporting her contention that the median sale price for a single-family home in Sacramento County for the year preceding the filing of the petition is \$508,500.00.

To the extent the equity in the Parker property exceeds \$300,000.00 the exemption is disallowed.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The trustee's objection to the debtor's claim of exemptions has been presented to the court. Having considered the objection, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the objection is sustained. The debtor's exemption claimed under Cal. Civ. Proc. Code § 704.730 will be disallowed to the extent it exceeds \$300,000.

8. [23-20183](#)-A-7 **IN RE: JEREMY MCINTYRE**
[RDW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
3-14-2023 [[16](#)]

MARK SHMORGON/ATTY. FOR DBT.
REILLY WILKINSON/ATTY. FOR MV.
STRIKE ACCEPTANCE, INC. VS.

Tentative Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f) (2); no written opposition required

Disposition: Granted

Order: Civil minute order

Subject: 2015 Chrysler 300

Cause: delinquent installment payments 13 months/\$8,123.89

These minutes constitute the court's findings of fact and conclusions of law required by Fed. R. Civ. P. 52(a), *incorporated* by Fed. R. Bankr. P. 7052, 9014(c). The findings of fact are as set forth above; the conclusions of law are as set forth below.

Creditor, Strike Acceptance, Inc., seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a).

DEFAULT OF RESPONDENT

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated* by Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f) (1) (B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

STAY RELIEF

"[A]fter notice and a hearing," the court may terminate, annul, modify or condition the stay: (1) "for cause, including the lack of adequate protection"; or (2) "with respect to a stay of an act against property [of the estate]" if the debtor lacks "equity" in that property and if that "property is not necessary for an effective reorganization." 11 U.S.C. § 362(d); *see also* Fed. R. Bankr. P. 4001(a) (1). The party seeking stay relief bears the burden of proof as to "the debtor's equity in the property" and on the validity and perfection of its security interest, as well as the amount of its debt. 11 U.S.C. § 362(g) (1); *In re Dahlquist*, 34 B.R. 476, 481 (Bankr. S.D. 1983). The party opposing stay relief, e.g., the debtor or Chapter 7 trustee, bears the burden of proof on all other issues. 11 U.S.C. § 362(g) (2).

Subsection (d) (1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d) (1). The debtor bears the burden of proof. 11 U.S.C. § 362(g) (2). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1). "An undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value after the bankruptcy filing." See Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1065.1 (rev. 2019) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)); see also *In re Weinstein*, 227 BR 284, 296 (9th Cir. BAP 1998) ("Adequate protection is provided to safeguard the creditor against depreciation in the value of its collateral during the reorganization process"); *In re Deico Electronics, Inc.*, 139 BR 945, 947 (9th Cir. BAP 1992) ("Adequate protection payments compensate undersecured creditors for the delay bankruptcy imposes upon the exercise of their state law remedies").

The debtor is obligated to make debt payments to the moving party pursuant to a loan contract that is secured by a security interest in the debtor's vehicle described above. The debtor has defaulted on such loan with the moving party, and postpetition payments are past due. Vehicles depreciate over time and with usage. As a consequence, the moving party's interest in the vehicle is not being adequately protected due to the debtor's ongoing postpetition default.

Cause exists to grant relief under § 362(d) (1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a) (3) will be waived. No other relief will be awarded.

SERVICE AND NOTICE

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3, 9036-1 and 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding.

In this case service of the motion was proper, however the memorialization of the service is incorrect.

Incorrect Chapter Designation

The certificate of service incorrectly identifies this Chapter 7 bankruptcy case as one filed under Chapter 12 or 13. See Certificate of Service, Item 3, ECF No. 21.

Rule 7004 Service

Service of the motion on the debtor and debtor's counsel is governed by Fed. R. Bankr. 4001(a), which provides that Rule 9014 is applicable in motions for relief from stay. Rule 9014(b) requires service in accordance with Rule 7004. While service on the debtor and counsel is accomplished by first class mail under both Fed. R. Civ. P. 5 and Fed. R. Bankr. P. 7004, the Certificate of Service in this matter should indicate that service is made on the debtor and counsel pursuant to Rule 7004. Part 6 is incorrectly completed. Here the certificate only indicates service under Fed. R. Civ. P. 5, which is appropriate for other parties such as the special notice creditors, and the United States Trustee.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Strike Acceptance, Inc.'s motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2015 Chrysler 300, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

9. [22-21692](#)-A-7 **IN RE: EVERGREEN ARBORISTS, INC.**
[RPM-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
2-21-2023 [\[241\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
RANDALL MROCZYNSKI/ATTY. FOR MV.
FORD MOTOR CREDIT COMPANY, LLC VS.

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

Subject: 8 vehicles more particularly described in the motion - 2019 Ford F750; 2019 Ford F350; 2018 Ford F350; 2017 Ford F350; 2017 Ford F550; 2019 Ford F350; 2019 Ford F750; 2019 Ford F250

Cause: delinquent installment payments - no payments on any vehicle since June 21, 2022

Aggregate Delinquency: \$89,236.12

These minutes constitute the court's findings of fact and conclusions of law required by Fed. R. Civ. P. 52(a), *incorporated* by Fed. R. Bankr. P. 7052, 9014(c). The findings of fact are as set forth above; the conclusions of law are as set forth below.

Ford Motor Credit Company, LLC, seeks an order for relief from the automatic stay of 11 U.S.C. § 362(a).

SERVICE AND NOTICE

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3, 9036-1, and 7005-1 which requires attorneys and trustees to use EDC 7-005 the form certificate of service.

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding.

While service has been accomplished correctly the memorialization of service is not correct. See Certificate of Service, ECF No. 247.

Rule 7004 Service

Service of the motion on the debtor and debtor's counsel is governed by Fed. R. Bankr. 4001(a), which provides that Rule 9014 is applicable in motions for relief from stay. Rule 9014(b) requires service in accordance with Rule 7004. While service on the debtor and counsel is accomplished by first class mail under both Fed. R. Civ. P. 5 and Fed. R. Bankr. P. 7004, the Certificate of Service in

this matter should indicate that service is made on the debtor and counsel pursuant to Rule 7004. Part 6 is incorrectly completed. Here the certificate only indicates service under Fed. R. Civ. P. 5, which is appropriate for other parties such as the special notice creditors, and the United States Trustee.

DEFAULT OF RESPONDENT

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

STAY RELIEF

"[A]fter notice and a hearing," the court may terminate, annul, modify or condition the stay: (1) "for cause, including the lack of adequate protection"; or (2) "with respect to a stay of an act against property [of the estate]" if the debtor lacks "equity" in that property and if that "property is not necessary for an effective reorganization." 11 U.S.C. § 362(d); *see also* Fed. R. Bankr. P. 4001(a)(1). The party seeking stay relief bears the burden of proof as to "the debtor's equity in the property" and on the validity and perfection of its security interest, as well as the amount of its debt. 11 U.S.C. § 362(g)(1); *In re Dahlquist*, 34 B.R. 476, 481 (Bankr. S.D. 1983). The party opposing stay relief, e.g., the debtor or Chapter 7 trustee, bears the burden of proof on all other issues. 11 U.S.C. § 362(g)(2).

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). The debtor bears the burden of proof. 11 U.S.C. § 362(g)(2). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1). "An undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." *See* Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1065.1 (rev. 2019) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)); *see also In re Weinstein*, 227 BR 284, 296 (9th Cir. BAP 1998) ("Adequate protection is provided to safeguard the creditor against depreciation in the value of its collateral during the reorganization process"); *In re Deico Electronics, Inc.*, 139 BR 945, 947 (9th Cir. BAP 1992) ("Adequate protection payments compensate undersecured creditors for the delay bankruptcy imposes upon the exercise of their state law remedies").

The debtor is obligated to make debt payments to the moving party pursuant to multiple loan contracts that are secured by security

interests in the debtor's vehicles described above. The debtor has defaulted on all such loans with the moving party, and post-petition payments are past due. Vehicles depreciate over time and with usage. Consequently, the moving party's interest in the vehicles is not being adequately protected due to the debtor's ongoing post-petition default.

Cause exists to grant relief under § 362(d)(1). The motion will be granted as to all parties in interest, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

The moving party shall prepare an order which conforms to this ruling, and which properly identifies each of the vehicles described in the motion.