



**UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, April 19, 2023
Department A – Courtroom #11
Fresno, California**

Unless otherwise ordered, all hearings before Judge Niemann are simultaneously: (1) **IN PERSON** in Courtroom #11 (Fresno hearings only), (2) via **ZOOMGOV VIDEO**, (3) via **ZOOMGOV TELEPHONE**, and (4) via **COURTCALL**. You may choose any of these options unless otherwise ordered.

To appear via zoom gov video or zoom gov telephone for law and motion or status conference proceedings, you must comply with the following new guidelines and procedures:

1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
2. Review the court's [Zoom Policies and Procedures](#) for these and additional instructions.
3. Parties appearing through CourtCall are encouraged to review the [CourtCall Appearance Information](#).

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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, and all parties will need to appear at the hearing unless otherwise ordered. 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. [22-12016](#)-A-11 **IN RE: FUTURE VALUE CONSTRUCTION, INC.**
[CAE-1](#)

CONTINUED STATUS CONFERENCE RE: CHAPTER 11 VOLUNTARY PETITION
11-28-2022 [[1](#)]

D. GARDNER/ATTY. FOR DBT.

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

DISPOSITION: Continued to May 10, 2023 at 9:30 a.m.

ORDER: The court will issue an order.

This chapter 11 status conference will be continued to May 10, 2023 at 9:30 a.m. to be heard in connection with the debtor's motion to approve its disclosure statement. Doc. ##136-140.

2. [23-10325](#)-A-11 **IN RE: ROBERT CHAMPAGNE**
[CAE-1](#)

STATUS CONFERENCE RE: CHAPTER 11 SUBCHAPTER V VOLUNTARY PETITION
2-23-2023 [[1](#)]

PETER SAUER/ATTY. FOR DBT.

NO RULING.

1. [23-10388](#)-A-7 **IN RE: ESMERALDA RANGEL**

PRO SE REAFFIRMATION AGREEMENT WITH ONEMAIN FINANCIAL GROUP, LLC
3-30-2023 [\[16\]](#)

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

DISPOSITION: Dropped.

ORDER: The court will issue an order.

The court is not approving or denying approval of the reaffirmation agreement for two reasons. First, the reaffirmation agreement is not signed by the debtor. Doc. #16. Local Rule of Practice ("LBR") 9004-1(c) requires that the reaffirmation be signed by a pro per debtor with the name of the debtor typed underneath the signature. Here, the debtor has not signed the reaffirmation agreement. Rather, the debtor's name is typewritten in the places where the debtor's signature should be. A typewritten name does not satisfy the requirements of LBR 9004-1(c). Second, the filed reaffirmation agreement is missing the top part of the first page. Doc. #16.

The debtor shall have 14 days to refile a reaffirmation agreement properly signed by the debtor and including all pages.

1. [23-10228](#)-A-7 **IN RE: MARIVEL ARAIZA**
[JES-1](#)

TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO APPEAR AT SEC. 341(A) MEETING
OF CREDITORS
3-17-2023 [[13](#)]

DAVID BOONE/ATTY. FOR DBT.
OPPOSITION

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

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

The chapter 7 trustee's motion to dismiss is CONDITIONALLY DENIED.

The debtor shall attend the meeting of creditors rescheduled for May 11, 2023 at 3:00 p.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Federal Rules of Bankruptcy Procedure 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtor's discharge or file motions for abuse, other than presumed abuse, under § 707, is extended to 60 days after the conclusion of the meeting of creditors.

2. [15-11835](#)-A-7 **IN RE: JAMES/JAMIE CANNON**
[LNH-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT WITH
ROBERT S. WILLIAMS AND WILLIAMS AND WILLIAMS, INC. AND/OR MOTION TO SELL
3-22-2023 [[779](#)]

PETER FEAR/MV
PHILLIP GILLET/ATTY. FOR DBT.
LISA HOLDER/ATTY. FOR MV.
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Continued to May 4, 2023 at 10:00 a.m.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the hearing.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). Doc. #780. However, a certificate of service showing proof of service of the motion and supporting documents was not filed within three days after the motion and supporting documents were served on March 22, 2023, as required by LBR 9014-1(e)(2). The certificate of service

showing proof of service of the motion and supporting documents was filed on April 18, 2023. Doc. #794.

On April 5, 2023, Jared Walder filed a declaration in opposition to the motion. Doc. #789. The notice of hearing required that written opposition be both filed with the court and served on eight parties listed in the notice. Doc. #780. There is no certificate of service filed with this court showing that the declaration filed in opposition to the motion was served on any of the parties listed in the notice of hearing in compliance with LBR 9014-1(f)(1)(B). Thus, it is unclear to the court whether the moving party and other parties listed in the notice of hearing received the opposition in time to file a reply in the time period permitted by LBR 9014-1(f)(1)(C).

Due to (a) the delay by the moving party to file the certificate of service with respect to the motion, (b) the failure of Mr. Walder to file a certificate of service with respect to his declaration in opposition to the motion, and (c) the fact that a related motion is set for hearing on May 4, 2023 at 10:00 a.m., the court is inclined to continue the hearing on this motion to May 4, 2023 at 10:00 a.m. and permit the moving party until April 27, 2023 to file and serve a reply to Mr. Walder's declaration in opposition to the motion.

3. [22-11095](#)-A-7 **IN RE: SEAN/KRISTINA MOSS**
[FW-4](#)

MOTION TO SELL FREE AND CLEAR OF LIENS AND/OR MOTION TO PAY
3-21-2023 [\[93\]](#)

PETER FEAR/MV
SCOTT LYONS/ATTY. FOR DBT.
GABRIEL WADDELL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled for higher and better offers.

DISPOSITION: Granted.

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

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the debtors, 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. This matter will proceed as scheduled for higher and better offers.

Peter L. Fear ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Sean Michael Moss and Kristina Jenine Moss (together, "Debtors"), moves the court pursuant to 11 U.S.C. § 363 for an order authorizing the sale of real property located at 1609 W. Evergreen Court, Visalia, CA 93277-6303 (the "Property") to Leda Inchcliff ("Buyer") for the purchase price of \$346,500.00, subject to higher and better bids at the hearing. Doc. #93. Trustee states that the Property is subject to a deed of trust in favor of Mortgage Electronic Registration System, Inc., solely as a nominee for Freedom Mortgage

Corporation, and subsequently assigned to Freedom Mortgage Company, and subsequently assigned to Nestor Trustee Services, LLC ("MERS"), with an approximate principal balance of \$313,726.68, and this deed of trust will be paid in full through escrow. Doc. #93; Decl. of Peter L. Fear, Doc. #95. Trustee states a preliminary title report shows that there are real property taxes currently owed or in default on the Property, and these taxes will be paid through escrow. Fear Decl., Doc. #95, Ex. B, Doc. #97.

Additionally, Trustee states a preliminary title report shows a solar energy production lease, and Buyer has acknowledged that the sale of the Property does not include any solar contract or solar system(s). Fear Decl., Doc. #95. Buyer is responsible for negotiating a new contract with the solar company or face removal of the solar system(s). Id. Trustee states that a previous court-authorized sale of the Property to another purchaser (Doc. #84) fell through because a company named Spruce Power, who was responsible for installing the leased solar production equipment on the Property, claimed a lien on the Property and demanded payment from escrow or the new purchaser. Fear Decl., Doc. #95. Trustee has investigated Spruce Power's claims and believes that Spruce Power does not have a lien on the Property. Id. Trustee believes Spruce Power only has a lien on its personal property solar production equipment. Id. During escrow for the previous sale, Trustee sent a demand to Spruce Power informing Spruce Power that its claims violated the automatic stay and demanding that Spruce Power's claims be withdrawn. Id. However, Spruce Power did not withdraw its claim in a timely manner, causing the previous sale to fall through. Id. Since then, Spruce Power has not communicated with Trustee at all. Id. Buyer is concerned by the existence of the claims of Spruce Power and has requested that the sale be free and clear of any such claim against the Property. Id.

Further, Trustee states a preliminary title report shows a judgment for installment payments of spousal and/or child support owed to the County of Kings Department of Child Support Services ("DSO Judgment") with an approximate balance of \$6,788.10, which will be paid through escrow. Fear Decl., Doc. #95; Ex. B, Doc. #97. Additionally, a previous preliminary title report used in the prior approved sale of the Property showed a co-owner on the title to the Property named Aurora Cotta ("Ms. Cotta"). See Ex. B, Doc. #74. Ms. Cotta has been identified as the mother of debtor Kristina Moss. Doc. #93; Fear Decl., Doc. #95. In pursuing a previous sale, Trustee was able to arrange for the removal of Ms. Cotta from the preliminary title report because the removal was necessary for the previous sale to go through. Id. The cost to remove Ms. Cotta from the preliminary title report was \$210.90, and Trustee requests the approval of payment of these fees out of the deposit forfeited by the previous buyer. Id. Debtors have claimed an exemption in the Property pursuant to C.C.P. § 703.140(b)(5) in the amount of \$15,250.00. Doc. #93; Fear Decl., Doc. #95. Debtors have stipulated to limit their claimed exemption so that the bankruptcy estate will retain the first \$10,000 of the net proceeds of the sale, and any net proceeds above the first \$10,000 will be divided equally between Debtors and the bankruptcy estate, up to the total of Debtors' claimed exemption. Id. Trustee also seeks authorization to pay a commission for the sale to Berkshire Hathaway Homeservices California Realty ("Broker"). Doc. #93.

Selling Property of Estate under 11 U.S.C. § 363(b)(1) Permitted

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 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, 594 B.R. 883, 887

(Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (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. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Trustee believes that approval of the sale on the terms set forth in the motion is in the best interests of creditors and the estate. Fear Decl., Doc. #95. The sale is "as is, where is" with no warranties or representations of any nature. Id. Based upon estimates obtained from the preliminary title report, the sales contract, and charges common in the industry, Trustee estimates a benefit to the estate of \$11,590.57. Id. Property taxes will be paid through escrow, and there are liens or encumbrances that will also be paid through escrow. Id. Trustee expects to pay a \$11,860.00 commission to Broker and \$2,939.25 in costs of sale. Id.

The trustee may sell property under § 363(b) free and clear of any interest of an entity other than the estate only if: (1) applicable nonbankruptcy law permits the sale; (2) such entity consents; (3) the interest is a lien and the price at which the property is to be sold is greater than the aggregate value of all liens on the property; (4) the interest is in bona fide dispute; or (5) the entity could be compelled to accept a money satisfaction of the interest. 11 U.S.C. § 363(f). If seeking to sell free and clear under § 363(f)(4), the trustee has the burden of establishing the existence of a bona fide dispute, which can be accomplished if the trustee believes that a dispute exists. Sherer v. Fed. Nat'l Mortg. Ass'n (In re Terrace Chalet Apartments), 159 B.R. 821, 828 (Bankr. N.D. Ill. 1993).

The court finds the Property can be sold free and clear of the real property tax lien, the DSO Judgment, and a deed of trust in favor of MERS on the Property because all three liens will be paid in full through escrow. Trustee also requests that sale of the Property be free and clear of any such claims against the Property by Spruce Power, except that Spruce Power may remove the solar panels owned by Spruce Power without causing damage to the Property. Trustee states that Spruce Power claimed a lien against the Property causing the prior sale of the Property to fall through. Trustee has investigated Spruce Power's claim and believes that Spruce Power only has a lien on its personal property solar production equipment and does not have a lien on the Property. Moreover, the proposed sale of the Property to Buyer does not include any solar contract or solar system(s). The court finds that Trustee has met the burden of establishing the existence of a bona fide dispute between the bankruptcy estate and Spruce Power and authorizes the sale of the Property to Buyer free and clear of Spruce Power's lien pursuant to 11 U.S.C. § 363(f)(4).

Trustee also requests that the court approve the following overbid procedures:

- (1) Deposit with counsel for Trustee certified monies in the amount of \$10,395.00 prior to the time of the sale motion hearing. Any unsuccessful bidder's deposit shall be returned at the conclusion of the hearing;
- (2) Provide proof in the form of a letter of credit, or some other written prequalification for any financing that may be required to

complete the purchase of the Property sufficient to cover the necessary overbid amount;

- (3) Provide proof that any successful overbidder can and will close the sale within 15 days of delivery of a certified copy of the court's order approving the sale and execute a purchase agreement for the Property;
- (4) Any successful overbid shall have the \$10,395.00 deposit applied to the successful overbid;
- (5) In the event a successful overbidder fails to close the sale within 15 days of delivery of a certified copy of the court's order approving the sale and execute a purchase agreement for the Property, the \$10,395.00 deposit shall become non-refundable, and the next highest bidder shall become the buyer;
- (6) Any party wishing to overbid may do so by making an appearance at the hearing or having an authorized representative with written proof of authority to bid on behalf of the prospective overbidder;
- (7) In the event the potential overbidder is not represented by a realtor, all overbids shall be in the minimum amount of \$1,000.00 cash such that the first of any overbid shall be in the minimum amount of \$347,500.00;
- (8) In the event the potential overbidder is represented by a realtor, the minimum overbid amount shall be \$357,000.00, to account for the additional broker's commission, and any further overbids shall be in the minimum amount of \$1,000.00; and
- (9) The sale of the Property does not include any solar energy system(s) and is for "as-is" condition with no warranty or representation, express, implied or otherwise by the bankruptcy estate, Debtors or their representatives.

Trustee further requests authorization of recording costs of \$210.90 required for removal of a co-owner who was previously on the preliminary title report. This removal was necessary for the sale to go through, and Trustee requests approval of payment of these fees out of the deposit forfeited by the previous buyer.

Finally, Trustee requests that the court waive the 14-day stay of Federal Bankruptcy Procedure 6004(h). This is the second attempted sale of the Property, so time is of the essence to allow Buyer to close the sale promptly as well as avoid further interest accruing on the mortgage. The court further notes that MERS has filed a motion for relief from the automatic stay on July 28, 2022, which has been continued on numerous occasions to permit Trustee to sell the Property. Doc. ##15, 55, 79, 90.

The Property will be sold at a price greater than the aggregate value of all liens on the Property. Based on the evidence before the court, it appears that the sale of the estate's interest in the Property is in the best interests of the estate, the Property will be sold for a fair and reasonable price, and the sale is supported by a valid business judgment and proposed in good faith.

Compensation to Broker

Trustee also seeks authorization to pay Broker a commission for the sale of the Property. This court has determined that employment of Broker is in the best

interests of the estate and has previously authorized a percentage commission payment structure pursuant to 11 U.S.C. § 328. Order, Doc. #62.

Trustee seeks to pay Broker a 4% commission on the sale of the Property as the real estate broker for the sale, with the commission to be split equally with Buyer's broker. Fear Decl., Doc. #95. In the event of an overbidder with a different broker, a six percent (6%) brokers' commission will be split evenly between Broker and the overbidder's agent. Trustee will analyze whether an overbid is actually higher and better. Id. The court finds the compensation sought is reasonable, actual, and necessary.

Conclusion

Accordingly, subject to overbid offers made at the hearing, the court will GRANT Trustee's motion and authorize the sale of the Property pursuant to 11 U.S.C. § 363(b)(1) and free and clear of liens pursuant to 11 U.S.C. § 363(f). The 14-day stay of Fed. R. Bankr. P. 6004(h) will be waived because this is the second attempt by Trustee to sell the Property and MERS filed a motion for relief from stay in late July 2022 so time is of the essence. Trustee is authorized to pay Broker and Buyer's or the overbidder's agent as set forth in the motion. Trustee is authorized pay from the deposit forfeited by the previous buyer recording costs of \$210.90 in order to remove Ms. Cotta from title.