UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

April 30, 2018 at 1:30 p.m.

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1. 17-25004-A-11 SARINA BRYSON — MOTION FOR RELIEF FROM AUTOMATIC STAY
BDA-1 — 3-22-18 [79]
BMW BANK OF NORTH AMERICA VS.

Tentative Ruling: The motion will be dismissed as moot.

The movant, BMW Bank of North America, seeks relief from the automatic stay as to a 2016 Mini Cooper vehicle.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 (13 or 11) after dismissal under section 707(b), the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case. Section 362(c)(3)(B) allows any party in interest to file a motion requesting the continuation of the stay.

On February 1, 2017, the debtor filed a chapter 13 case (case no. 17-20673). But, the court dismissed that case on June 21, 2017 due to the debtor's failure to timely obtain chapter 13 plan confirmation. The debtor filed the instant case on July 31, 2018. The chapter 13 case then was pending within one year of the filing of the instant case. The court has reviewed the docket of the instant case and no motions for continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) have been timely filed.

Hence, the motion will be dismissed as moot because the automatic stay in the instant case expired in its entirety as to the subject property on August 30, 2017, 30 days after the debtor filed the present case. See 11 U.S.C. § 362(c)(3)(A); see also Reswick v. Reswick (In re Reswick), 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011) (holding that when a debtor commences a second bankruptcy case within a year of the earlier case's dismissal, the automatic stay terminates *in its entirety* on the 30th day after the second petition date).

Nevertheless, the court will confirm that the automatic stay in the instant case expired in its entirety with respect to the subject property on August 30, 2017, 30 days after the debtor filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

2. 17-25004-A-11 SARINA BRYSON
MRL-5

MOTION TO APPROVE DISCLOSURE STATEMENT
3-12-18 [75]

Tentative Ruling: The motion will be denied.

The debtor asks the court to approve the disclosure statement filed on March 12, 2018. It accompanies an amended chapter 11 plan filed also on March 12, 2018. Dockets 75 & 76.

The motion will be denied for the following reasons:

(1) The disclosure statement indicates the debtor will spend $150 a month for life insurance. However, it also indicates life insurance is deducte from his salary. This appears to be duplicative.

(2) The debtor is budgeting $295.52 a month for "Telephone, Cell phone, Internet, Cable." The debtor does not disclose, however, the number of these accounts. On its face, $295.52 appears excessive for a household of two.

(3) The debtor is budgeting $300 a month for "Entertainment, Clubs, Recreation, Newspapers, Magazines, and Books." On its face, the $300 amount appears to be excessive for the debtor's household size.

(4) The disclosure statement provides expenses of $224 a month for "Entertainment, Clubs, Recreation, Newspapers, Magazines, and Books." On its face, the $224 amount appears to be excessive for the debtor's household. The expense amount should be changed or further explained.

(5) The disclosure statement says that the claim of BMW will be paid in full, with interest, under the plan. However, the plan provides for surrender of the collateral vehicle in satisfaction of the claim. Docket 75 at 12.

(6) The disclosure statement does not include an actual calculations of what unsecured creditors would receive in a chapter 7 liquidation. It states a conclusion only: general unsecured claims would receive receive approximately $43,100 in a chapter 7 liquidation. Docket 75 at 15. The debtor does not explain this conclusion.

(7) The disclosure statement says that the claim of Equiant ($16,200) will be satisfied in full by the surrender of collateral, a timeshare (valued at $300). This is misleading because it omits reference to a deficiency claim.

3. 12-31313-A-11 ADINA SBINGU
GEL-2

MOTION FOR ENTRY OF DISCHARGE
4-16-18 [173]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition,

the court may reconsider this tentative ruling.

The motion will be granted.

The debtor asks the court to enter a discharge pursuant to 11 U.S.C. § 1141(d)(5), which provides that:

"*In a case in which the debtor is an individual—*

"*(A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan;*

"*(B) at any time after the confirmation of the plan, and after notice and a hearing, the court may grant a discharge to the debtor who has not completed payments under the plan if —*

"*(I) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 on such date; and*

"*(ii) modification of the plan under section 1127 is not practicable; and*

"*(C) unless after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge, the court finds that there is no reasonable cause to believe that —*

"*(I) section 522(q)(1) may be applicable to the debtor; and*

"*(ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).*"

This case was filed on June 14, 2012. The order confirming the debtor's chapter 11 plan was entered on January 24, 2013. Docket 149.

All payments under the plan have been completed. And, the debtor has produced evidence indicating that 11 U.S.C. § 522(q)(1) is not applicable. Docket 175. There is no pending proceeding where the debtor may be found guilty of a felony demonstrating that the filing of this case was an abuse of the Bankruptcy Code (section 522(q)(1)(A)) or the debtor may be found liable for a debt of the kind specified in section 522(q)(1)(B). Docket 175. Accordingly, discharge will be entered pursuant to section 1141(d)(5)(A). The motion will be granted.

Therefore, no earlier than 10 days after the hearing on this motion, the clerk shall enter the debtor's discharge. See 11 U.S.C. § 1141(d)(5)(C).

4. 17-26125-A-11 FIRST CAPITAL RETAIL, L.L.C. — MOTION FOR RELIEF FROM AUTOMATIC STAY
GL-1 5060 MONTCLAIR PLAZA LANE OWNER, L.L.C. VS. — 10-17-17 [62]

Tentative Ruling: The motion will be dismissed without prejudice as moot. The parties have reached an agreement to revive the lease referred to in the motion and to allow the buyer to assume the lease.

5. 17-23968-A-7 PATRICK/MICHELE PITTS MOTION TO
17-2135 DBJ-2 AMEND
ENGLAND ET AL V. PITTS ET AL 3-21-18 [52]

Tentative Ruling: The motion will be granted.

The plaintiffs seek leave to file a second amended complaint, adding an additional paragraph to allege the commission of waste on the property.

The initial complaint, filed July 24, 2017, seeks to determine the nondischargeability of a debt pursuant to 11 U.S.C. § 523(a) arising from the unapproved installation of solar panels on property rented by the debtor/defendants from the plaintiffs. The plaintiffs filed a first amended complaint, as of right, on August 3, 2017. Docket 7. The defendants filed an answer on September 5, 2017. Docket 11.

Fed. R. Civ. Proc. 15(a)(1), as incorporated by Bankruptcy Rule 7015, provides that "[a] party may amend its pleading once as a matter of course within: (A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier."

Rule 15(a)(2) provides that "[i]n all other cases, a party may amend its pleading only with the opposing party's written consent or the court's leave. The court should freely give leave when justice so requires."

Absent undue delay, bad faith, dilatory motive, or prejudice to the opposing party, a presumption exists in favor of granting leave to amend. Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1051-52 (9th Cir. 2003) (citing Foman v. Davis, 371 U.S. 178, 182 (1962)).

Rule 15(a)(3) provides that "[u]nless the court order otherwise, any required response to an amended pleading must be made within the time remaining to respond to the original pleading or within 14 days after service of the amended pleading, whichever is later."

The specific language included in the proposed second amended complaint states: "Defendants vacated the property in the fall of 2017. Upon doing so, they removed appliances, cabinets, countertops, doors, baseboards, trim, etc. causing great waste and damage to the property." Docket 54 at ¶ 11, Ex. A.

The motion contends that the purpose of the amended language is to allege that the defendants caused more property damage than was known when the complaint was originally drafted. Docket 52 at 2. The defendants filed a chapter 7 petition on June 14, 2017. The plaintiffs' original complaint seeks nondischargeability of a debt for property damage that occurred in 2015. The amended language pertains to property damage that took place in the fall of 2017. It therefore appears that the plaintiffs wish to amend the complaint to seek a determination that a debt is nondischargeable even though the debt arose after the defendants filed their chapter 7 case. Section 523(a), however, applies to the nondischargeability of pre-petition debts. Accordingly, this proceeding is not the proper action to seek recovery for the alleged post-petition property damage. The motion is therefore denied.

FINAL RULINGS BEGIN HERE

6. 17-28292-A-7 JESSICA KEMPKER — ORDER TO SHOW CAUSE
18-2040 — 4-12-18 [11]
WAGNER V. KEMPKER

Final Ruling: The order to show cause will be discharged and this proceeding will remain pending.

The plaintiff did not pay the filing fee an adversary proceeding. The fee was due on March 29, 2018. Although late, the plaintiff paid the fee on April 13, 2018. No prejudice resulted from the late payment.