

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

May 11, 2015 at 10:00 a.m.

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| 1. 13-35329-A-12 KELLY/DEBORA HEISER
SJS-5 | MOTION TO
CONFIRM CHAPTER 12 PLAN
3-19-15 [63] |
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Tentative Ruling: The motion will be denied without prejudice.

The debtors are asking the court to confirm their first amended chapter 12 plan filed on March 19, 2015.

The chapter 12 trustee opposes the motion.

The motion will be denied for several reasons. First, the motion violates 11 U.S.C. § 1224, which requires: "Except for cause, the hearing shall be concluded not later than 45 days after the filing of the plan."

The subject plan was filed on March 19, 2015, 53 days prior to the May 11 hearing on this motion. Docket 67. And, there is no order extending the 45-day deadline.

Second, as asserted by the trustee, the proposed plan payments are not sufficient to cover all dividends and expense payments. The \$1,125 plan payment will not cover \$1,469.83 in payments, including Select Portfolio Servicing (\$859.39), Tom Schweepe (\$406.08), compensation for the debtor's attorney (\$100), and the chapter 13 trustee fee (\$104.36).

Third, based on the trustee's calculation, it will take 77 months to complete the proposed plan. This violates section 1222(c), which fixes 60 months as the maximum plan duration.

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| 2. 14-30833-A-11 SHASTA ENTERPRISES
DL-2
REDDING BANK OF COMMERCE VS. | MOTION FOR
RELIEF FROM AUTOMATIC STAY
12-8-14 [75] |
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Tentative Ruling: The hearing on the motion will be continued for a final hearing.

The movant, Redding Bank of Commerce, seeks relief from stay as to 381, 391, 393 and 401 Hemsted Drive Redding, California. Given that the court appointed a chapter 11 trustee in this case only on December 23, 2014, the court will continue the hearing on the motion to provide the trustee with time to evaluate and respond to the motion. Dockets 142 & 143.

3. 13-21454-A-11 TRAINING TOWARD SELF MOTION TO
CAH-35 RELIANCE, A CALIFORNIA CONFIRM PLAN
1-22-15 [332]

Tentative Ruling: The motion will be granted.

The debtor asks the court to confirm its chapter 11 plan filed on January 22, 2015.

Subject to reviewing the tabulation of ballots at the hearing, the court is prepared to confirm the plan.

4. 14-28468-A-11 BUALAI WHITE MOTION TO
MRL-6 VALUE COLLATERAL
VS. GSAA HOME EQUITY TRUST 2007-1 2-15-15 [74]

Tentative Ruling: The motion will be denied without prejudice.

The hearing on this motion was continued from April 13, 2015. The court's ruling for April 13 follows:

"Debtor Response due 4/27/15

"Tentative Ruling: The hearing on the motion will be continued to allow the debtor to amend the motion and the respondent creditor to obtain an appraisal.

"The debtor is asking the court to strip down the \$456,032.49 only mortgage held by GSAA Home Equity Trust et al., of which U.S. Bank is a trustee, on a rental real property on Gratia Avenue in Sacramento, California. The property is also subject to a statutory lien held by Sacramento County in the amount of \$3,148.74. See Docket 127, Amended Schedule D.

"The debtor requests that the court value the property, based on her opinion as owner, at \$220,000. The debtor is seeking to strip down the mortgage to \$216,851.26 (\$220,000 minus \$3,148.74).

"GSAA has filed a response, seeking an opportunity to obtain its own appraisal of the property.

"The court will continue the hearing for two reasons, to allow the debtor to amend the motion, given discrepancies with the debtor's latest amendment of Schedule D, and to allow GSAA to obtain its own appraisal.

"The motion states that GSAA's claim totals \$456,032.49, whereas the debtor amended Schedule D on March 17, 2015, indicating that GSAA's claim is \$327,996.71. This discrepancy in the record must be corrected. As the court continued the hearing on the motion once already - for 42 days - the court is not inclined to continue the hearing for longer than 30 days."

Docket 140.

As the debtor has not amended his motion, the motion will be denied without prejudice.

5. 15-21575-A-11 BR ENTERPRISES, A MOTION TO
HLC-6 CALIFORNIA PARTNERSHIP EMPLOY AND TO APPROVE COMPENSATION
OF APPRAISER
4-24-15 [58]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, 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 in part and dismissed without prejudice in part.

The debtor in possession seeks to employ Western Agricultural Services as the estate's real estate appraiser. WAS will appraise the estate's 3,100 acre cattle ranch, which includes numerous structures, residences (2), irrigated land, grazing land, and an approximately 48-acre planned subdivision that is in different entitlement stages.

The proposed compensation for WAS is an hourly rate of \$135 but not exceeding \$14,500, \$5,500 for appraisal of the Cottonwood Creek Ranch and \$9,000 for appraisal of the Sunset Hills Properties. The debtor paid \$14,500 to WAS one day before the petition date.

The debtor also asks the court to ratify payment of the fee. WAS has provided over 107 hours of services already and does not anticipate any refund to the debtor.

11 U.S.C. § 1107(a) provides that a debtor in possession shall have all rights, powers, and shall perform all functions and duties, subject to certain exceptions, of a trustee, "[s]ubject to any limitations on [that] trustee."

This includes the trustee's right to employ professional persons under section 327(a) and authority to compensate such persons under section 330. Section 327(a) states that, subject to court approval, a trustee may employ professionals to assist the trustee in the administration of the estate. Such professional must "not hold or represent an interest adverse to the estate, and [must be a] disinterested [person]."

Section 328(a) allows for such employment "on any reasonable terms and conditions . . . including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis."

Section 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

The court concludes that the terms of employment and compensation are reasonable. WAS is a disinterested person within the meaning of section 327(a) and does not hold an interest adverse to the estate. The employment will be approved.

Although WAS was paid pre-petition for its appraiser services, its fee had not been earned as of the petition date. WAS was paid a flat fee of \$14,500 for its yet-unprovided services on February 26, 2015, one day before the instant bankruptcy case was filed on February 27. As of the petition date WAS had not earned its compensation. The court deems WAS' pre-paid compensation to be akin to an unearned retainer.

The court cannot hold a hearing on the compensation aspect of the motion because the motion has been brought on only 17 days' notice, in violation of Fed. R. Bankr. P. 2002(a)(6), which requires at least 21 days' notice of the hearing on the motion. The instant motion was filed and served on April 24, 2015. Docket 62. Accordingly, the compensation aspect of the motion will be dismissed without prejudice.

6. 14-31890-A-11 SHAINA LISNAWATI STATUS CONFERENCE
12-6-14 [1]

Tentative Ruling: None.