

Eastern District of California

Sacramento, California

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Debtor filed a Chapter 7 bankruptcy case on May 25, 2011. Case No. 11-33068. Debtor received a discharge on September 20, 2011. Case No. 11-33068, Dckt. 18.

The instant case was filed under Chapter 7 on March 2, 2016.

11 U.S.C. § 727(a)(8) provides that a court shall not grant a discharge if a debtor has received a discharge in a case filed under chapter 7 or 11 within eight years before the filing date of the instant case. 11 U.S.C. § 727(a)(8).

Here, the Debtor received a discharge under 11 U.S.C. § 727 on September 20, 2011, which is less than eight years preceding the date of the filing of the instant case. Case No. 11-33068, Dckt. 18. Therefore, pursuant to 11 U.S.C. § 727(a)(8), Debtor is not eligible for a discharge in the instant case.

Therefore, the Motion is granted. Upon successful completion of the instant case (Case No. 16-21305), the case shall be closed without the entry of a discharge, and Debtor shall receive no discharge in the instant case.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Denial of Discharge filed by Tracy Hope Davis, the United States Trustee, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Motion is granted, and upon successful completion of the instant case, Case No. 16-21305, the case shall be closed without the entry of a discharge.

Final Ruling: No appearance at the May 11, 2017 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, creditors, and Office of the United States Trustee on April 12, 2017. By the court's calculation, 29 days' notice was provided. 28 days' notice is required.

The Motion to Compel Abandonment has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Compel Abandonment is granted.

After notice and a hearing, the court may order the Trustee to abandon property of the Estate that is burdensome to the Estate or is of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Wilfred Doray ("Debtor") requests the court to order the Trustee to abandon property commonly known as a 2002 Fleetwood/Sunset manufactured home located at 35 Catalpa Street, Vallejo, California ("Property"). The Property is exempted on Schedule C in the amount of \$50,000.00. Debtor's Declaration has been filed in support of the Motion and values the Property at \$50,000.00 at the time of filing.

The court finds that the Property's value is fully exempted on Schedule C and that there is no financial benefit to the Estate gained by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Trustee to abandon the property.

CHAMBERS PREPARED ORDER

The court shall issue an Order (not a minute order) substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Compel Abandonment filed by Wilfred Doray (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Compel Abandonment is granted, and the Property identified as 2002 Fleetwood/Sunset manufactured home located at 35 Catalpa Street, Vallejo, California and listed on Schedule B by Debtor is abandoned by Geoffrey Richards, the Chapter 7 Trustee to Wilfred Doray by this order, with no further act of the Trustee required.

3. [16-25899-E-7](#) **JUDITH ACERETO**
SLC-2 **Stephen Murphy**

**MOTION TO SELL AND FOR
COMPENSATION FOR COLDWELL
BANKER, REALTOR(S), MOTION FOR
WAIVER OF 14 DAY STAY
4-19-17 [58]**

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, and Office of the United States Trustee on April 19, 2017. By the court's calculation, 22 days' notice was provided. 21 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice).

The Motion to Sell Property was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Trustee, 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. At the hearing, -----.

The Motion to Sell Property is denied without prejudice.

The Bankruptcy Code permits Sheri Carello, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363. Here, Movant proposes to sell the real property commonly known as 7715 Greenly Drive, Oakland, California ("Property").

INSUFFICIENT EVIDENCE PROVIDED

Movant has not provided an actual purchase agreement for the court's review. Additionally, Movant has not identified the parties who comprise TSS Property Management, LLC. Without knowing who the parties are, the court cannot determine that there is no conflict of interest from the proposed sale. The Motion is denied without prejudice.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Sell Property filed by Sheri Carello, the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice.

THE COURT HAS PREPARED THE FOLLOWING ALTERNATIVE RULING IF MOVANT PROVIDES A PURCHASE AGREEMENT AND IDENTIFIES THE PURCHASING PARTIES COMPRISING TSS PROPERTY MANAGEMENT, LLC

The proposed purchaser of the Property is TSS Property Management, LLC, and the terms of the sale are:

- A. Purchase price of \$380,000.00;
 - 1. \$5,000.00 deposit, and \$6,400.00 to be added to the deposit when contingencies are removed;
 - 2. Balance due prior to closing;
- B. Six percent broker's commission equaling, \$22,800.00;
- C. Escrow shall close within thirty days of court approval;
- D. Sale of the Property is "as is," "where is," and without any representation or warranty;
- E. The Chapter 7 Estate and the Buyer shall split equally all escrow fees and title insurance fees;
- F. The Estate shall pay all county and city transfer taxes or fees;
- G. Buyer shall remove any remaining personal property items after the close of escrow.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: XXXXXXXXXXXXXXXXXX.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because it exceeds Debtor's estimation of the Property's value by \$100,000.00, and the Trustee has not received higher or better offers.

Movant has estimated that a six percent broker's commission from the sale of the Property will equal approximately \$22,800.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker a six percent commission.

Additionally, Movant requests that the fourteen-day stay of enforcement from Federal Rule of Bankruptcy Procedure 6004(h) be waived because no opposition is anticipated. Movant has adequately pled that the stay be waived.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Sell Property filed by Sheri Carello, the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Sheri Carello, the Chapter 7 Trustee, is authorized to sell pursuant to 11 U.S.C. § 363(b) to TSS Property Management, LLC or nominee ("Buyer"), the Property commonly known as 7715 Greenly Drive, Oakland, California ("Property"), on the following terms:

- A. The Property shall be sold to Buyer for \$380,000.00, on the terms and conditions set forth in the Purchase Agreement, **Exhibit xx, Dckt. xx, and as further provided in this Order.**
- B. The sale proceeds shall first be applied to closing costs, real estate commissions, prorated real property taxes and assessments, liens, other customary and contractual costs and expenses incurred in order to effectuate the sale.
- C. The Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.
- D. The Trustee is authorized to pay a real estate broker's commission in an amount equal to six percent of the actual purchase price upon consummation of the sale. The six percent commission shall be paid to the Trustee's broker, Stephanie Davis of Coldwell Banker

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement from Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause shown.

4. [17-22916](#)-E-13 LILLIAN MUNSON
RDW-1 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
O.S.T.
5-3-17 [8]

CRATUS HOMES, LLC VS.

**APPEARANCE OF LILLIAN MUNSON REQUIRED AT THE
MAY 11, 2017 HEARING**

NO TELEPHONIC APPEARANCE PERMITTED

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on May 3, 2017. By the court's calculation, 8 days' notice was provided. The court required 7 days' notice. Dckt. 18.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, the Trustee, 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. At the hearing -----
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The Motion for Relief from the Automatic Stay is granted.

Cratus Homes, LLC (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 737 Raven Drive, Vacaville, California (“Property”). The moving party has provided the Declaration of Greg Owen to introduce evidence as a basis for Movant’s contention that Lillian Munson (“Debtor”) does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Movant asserts it purchased the Property at a pre-petition Trustee’s Sale on February 1, 2017. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Solano and received a judgment for possession, with a Writ of Possession having been issued by that court on April 17, 2017. Exhibit 3, Dckt. 10.

Movant has provided a properly authenticated copy of the recorded Trustee’s Deed Upon Sale to substantiate its claim of ownership and the Judgment and Writ of Possession. Based upon the evidence submitted, the court determines that there is no equity in the Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at *8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

The court shall issue an order terminating and vacating the automatic stay to allow Cratus Homes, LLC, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 737 Raven Drive, Vacaville, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court waive the fourteen-day stay to allow Movant to foreclose, instead of allowing Debtor to remain on the Property rent-free when eviction had been planned and announced for May 2, 2017.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is granted.

Movant has also requested that the court vacate the co-debtor stay provided in 11 U.S.C. § 1301, but Movant has not provided any evidence to the court that there is a co-debtor in this case. That portion of the requested relief is denied as moot.

No other or additional relief is granted by the court.

The court shall issue an order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief from the Automatic Stay filed by Cratus Homes, LLC (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Cratus Homes, LLC and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 737 Raven Drive, Vacaville, California.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.