

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

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: May 14, 2024

CALENDAR: 1:00 P.M. CHAPTER 13

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. 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 and no appearance is necessary. 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 seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

May 14, 2024 at 1:00 p.m.

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1. [22-22612](#)-B-13 LAWRENCE/JENNY BOLDON MOTION FOR RELIEF FROM
[KPC](#)-1 Brian S. Haddix AUTOMATIC STAY
4-11-24 [[190](#)]
ROCKY TOP RENTALS, LLC VS.

Final Ruling

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion for relief from automatic stay.

Rocky Top Rentals, LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a portable storage building ("Personal Property") located at 1968 Chardon Way, Manteca, California. Debtor Lawrence Boldon entered into the lease agreement on April 24, 2019, which required thirty-six monthly payments of \$221.34. The lease expired pre-petition on April 24, 2022, under its terms. The moving party has provided the Declaration of Marquis Summers to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Summers Declaration states that the pre-petition default on the lease of the Personal Property is \$11,819.53 while the post-petition default is \$1,752.19. In total, the lease is in default in the amount of \$13,571.72. Debtors did not disclose the lease or the Personal Property in their bankruptcy schedules and Movant is not provided for in the confirmed fifth amended plan filed November 3, 2023.

Discussion

The Bankruptcy code provides that the automatic stay is automatically terminated when a debtor is a lessee with respect to personal property and does not assume the lease the confirmed plan. 11 U.S.C. § 365(p)(3). Here, Debtor Lawrence Boldon was the lessee of the portable storage building. The plan did not account for the lease. Accordingly, the lease has been rejected as a matter of law and the automatic stay is terminated.

Separately, the court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtors and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the

May 14, 2024 at 1:00 p.m.

collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Personal Property for either the Debtors or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtors or the Trustee, the court determines that the Personal Property is not necessary for any effective reorganization in this Chapter 13 case. Indeed, Debtors failed to list the Personal Property in their schedules and confirmed plan filed November 3, 2023.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Personal Property, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

2. [23-24454](#)-B-13 JEROME CHAPEL AND AMIE MOTION TO CONFIRM PLAN
[JCK](#)-3 DENNER 3-20-24 [[42](#)]
Kathleen H. Crist

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

3. [20-20763](#)-B-13 DAVID/WILLIETTE THOMAS MOTION FOR RELIEF FROM
[CAS](#)-1 Gregory J. Smith AUTOMATIC STAY
4-9-24 [[82](#)]

CAPITAL ONE AUTO FINANCE VS.

Final Ruling

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 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). Opposition was filed.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to deny without prejudice the motion for relief from automatic stay.

Capital One Auto Finance ("Creditor") seeks relief from the automatic stay as to a 2011 Nissan Altima. The servicer for Creditor sent a letter to joint debtor's attorney Kathleen Crist on April 9, 2021, stating that the debtor(s) had decided to voluntarily surrender the vehicle. Ms. Crist signed off on this letter. See *dk. 85, exh. D*. Creditor states that on April 21, 2021, it repossessed the vehicle and has been storing and protecting it over the years.

However, the Chapter 13 Trustee ("Trustee") filed a response stating that a modified plan confirmed on December 17, 2020, provided for Creditor and the vehicle as a Class 2 claim in the amount of \$3,704.00 to be paid a 5% monthly dividend of \$114.55.

Creditor had filed a claim listing the secured portion of \$3,704.00 and an unsecured portion of \$88.52 (Claim No. 8-1). Trustee has disbursed \$3,873.04 to the secured portion of the claim, representing \$3,704.00 to principal and \$169.04 to interest. The most recent payment in the amount of \$96.98 was processed on June 30, 2022 and cleared the bank on July 14, 2022. There is zero balance remaining on the secured portion of the claim. To date, the Trustee has disbursed \$881.52 to the unsecured portion of the claim. The most recent disbursement in the amount of \$725.63 was processed on August 31, 2023 and cleared the bank on September 20, 2023. The current balance due on the unsecured claim is \$0.00.

It appears that Creditor's claim has been fully satisfied. If Creditor elects to re-file the motion it shall explain why it would not be unjustly enriched by both repossessing the vehicle and collecting payments in full on its proof of claim from the Trustee from 2020 to 2023.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.

4. [24-20635](#)-B-13 PERLA ONG CONTINUED OBJECTION TO
[LGT](#)-1 Eric J. Gravel CONFIRMATION OF PLAN BY LILIAN
G. TSANG
4-11-24 [[16](#)]

Final Ruling

This matter was continued from May 7, 2024, to allow a party in interest to file a response by 5:00 p.m. Friday, May 10, 2024. Counsel for debtor filed a response stating that an amended Form 122C-2 was filed that accurately reflects debtor's retirement contributions and an amended Schedule I/J was filed that accurately reflects debtor's current budget. This resolves the objections raised by the Chapter 13 Trustee.

Therefore, the court's conditional ruling at dkt. 23 and the continued hearing on May 14, 2024, at 1:00 p.m. are vacated. The objection to confirmation of plan is overruled.

The objection is ORDERED OVERRULED for reasons stated in the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED for reasons stated in the minutes. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

5. [24-20592](#)-B-13 GRACIELLE LEE CONTINUED OBJECTION TO
[LGT](#)-1 Mohammad M. Mokarram CONFIRMATION OF PLAN BY LILIAN
G. TSANG
4-8-24 [[15](#)]

Final Ruling

This matter was continued from May 7, 2024, to allow a party in interest to file a response by 5:00 p.m. Friday, May 10, 2024. Debtor filed a declaration stating that she will be able to afford an increased plan payment to cover the Internal Revenue Service's claim because she will have an income increase of at least \$500 per month by month 31, her non-filing spouse's employment will allow for an increase in plan payment, and her 401k loan is ending at month 31 and will free up \$300.

The Chapter 13 Trustee also filed a supplemental ex parte motion to dismiss its objection to confirmation.

Therefore, the court's conditional ruling at dkt. 24 and the continued hearing on May 14, 2024, at 1:00 p.m. are vacated. The objection to confirmation of plan is dismissed without prejudice.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED for reasons stated in the minutes. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.