

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: MAY 25, 2016
CALENDAR: 1:30 P.M. CHAPTER 11 AND 9 CASES

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

COURT'S ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [10-12709](#)-A-11 ENNIS COMMERCIAL
LRP-47 PROPERTIES, LLC
DAVID STAPLETON/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH ENNIS COMMERCIAL
PROPERTIES, LLC, ENNIS
PROPERTIES, LLC, BEN ENNIS,
ORVILLE ALLEN ENNIS, SUSAN E.
ENNIS
4-27-16 [[1638](#)]

PETER FEAR/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

No tentative ruling.

2. [10-62315](#)-A-11 BEN ENNIS
LRP-59
DAVID STAPLETON/MV

MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH ENNIS COMMERCIAL
PROPERTIES, LLC, ENNIS
PROPERTIES, LLC, ORVILLE ALLEN
ENNIS, AND SUSAN E. ENNIS
4-27-16 [[2056](#)]

RILEY WALTER/Atty. for dbt.
MICHAEL GOMEZ/Atty. for mv.

No tentative ruling.

3. [15-12827](#)-A-11 BLUEGREENPISTA
TGM-9 ENTERPRISES, INC.
RANDELL PARKER/MV

MOTION TO EMPLOY MERRIMAN HURST
& ASSOCIATES, INC. AS
APPRAISER(S) AND/OR MOTION TO
PAY
5-4-16 [[275](#)]

DAVID JENKINS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Tentative Ruling

Application: Approval of Employment

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Approved

Order: Prepared by moving party

Unopposed applications are subject to the rules of default. Fed. R. Civ. P. 55, incorporated by Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The court may approve a trustee's employment of "a professional person under section 327 or 1103 of [Title 11] . . . on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed or percentage fee basis, or on a contingent fee basis." 11 U.S.C. § 328(a). Employment under § 328(a) must also meet the requirements of § 327 by the express terms of § 328(a). Section 327(a) authorizes employment of only professional persons who "do not

hold or represent an interest adverse to the estate, and that are disinterested persons." 11 U.S.C. § 327(a); see also *id.* § 101(14) (defining "disinterested person").

Federal Rule of Bankruptcy Procedure 6005, moreover, requires the court to "fix the amount or rate of compensation" whenever the court authorizes the employment of an appraiser or auctioneer.

From the factual information provided in the motion and supporting papers, the court will approve the employment. The court further authorizes payment of the amount specified in the application without further hearing or order.

4. [15-14327](#)-A-11 ABATECO, A CALIFORNIA CORPORATION
LKW-12 CORPORATION
ABATECO, A CALIFORNIA CORPORATION/MV
LEONARD WELSH/Atty. for dbt. MOTION TO SELL FREE AND CLEAR OF LIENS
4-25-16 [[141](#)]

No tentative ruling.

5. [16-10954](#)-A-11 RST CRANES, INC.
AKA-2
PEOPLE'S UNITED EQUIPMENT FINANCE CORP./MV
LEONARD WELSH/Atty. for dbt. MOTION FOR RELIEF FROM AUTOMATIC STAY
4-19-16 [[31](#)]
ANDREW ALPER/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

The case dismissed, the motion is denied as moot.

6. [16-10954](#)-A-11 RST CRANES, INC.
AKA-3
PEOPLE'S UNITED EQUIPMENT FINANCE CORP./MV
LEONARD WELSH/Atty. for dbt. MOTION TO DISMISS CASE AND/OR MOTION TO CONVERT CASE FROM CHAPTER 11 TO CHAPTER 7
4-19-16 [[39](#)]
ANDREW ALPER/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

The case dismissed, the motion is denied as moot.

7. [16-10954](#)-A-11 RST CRANES, INC.
AKA-4
PEOPLE'S UNITED EQUIPMENT
FINANCE CORP./MV
MOTION FOR ORDER PROHIBITING
DEBTOR'S USE OF CASH COLLATERAL
AND/OR MOTION FOR TURNOVER OF
CASH COLLATERAL , MOTION
DISGORGEMENT AND TURNOVER OF
MONEY
4-19-16 [[46](#)]

LEONARD WELSH/Atty. for dbt.
ANDREW ALPER/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

The case dismissed, the motion is denied as moot.

8. [16-10954](#)-A-11 RST CRANES, INC.
HRH-1
BMO HARRIS BANK, N.A./MV
LEONARD WELSH/Atty. for dbt.
RAFFI KHATCHADOURIAN/Atty. for mv.
MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-10-16 [[87](#)]

Final Ruling

The case dismissed, the motion is denied as moot.

9. [15-12885](#)-A-11 ARS INVESTMENT GROUP,
JKB-1 LLC
RODNEY AMEN/MV
JULIAN BACH/Atty. for mv.
MOTION FOR RELIEF FROM
AUTOMATIC STAY
4-27-16 [[123](#)]

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Subject: 3904 Avenue 400, Kingsburg, CA

Unopposed motions are subject to the rules of default. Fed. R. Civ. P.55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

STAY RELIEF

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2).

In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. Further, no reorganization is in prospect in this case: the case was filed July 22, 2015, about 10 months ago. No plan or disclosure statement is on file. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Peter Miao MD, Sole Proprietor Retirement Trust, and Rodney J. Amen's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 3904 Avenue 400, Kingsburg, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

10.	15-12885 -A-11 ARS INVESTMENT GROUP, LMK-1 LLC ROBERT AND ROSINA KORDA LIVING TRUST/MV BRIAN TRAN/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 4-19-16 [111]
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Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Subject: 18931 Via Sereno, Yorba Linda, CA

Unopposed motions are subject to the rules of default. Fed. R. Civ. P.55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

STAY RELIEF

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2).

In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. Further, no reorganization is in prospect in this case: the case was filed July 22, 2015, about 10 months ago. No plan or disclosure statement is on file. The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Robert and Rosina Korda Living Trust's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 18931 Via Sereno, Yorba Linda, CA, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.