

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Modesto, California

June 3, 2021 at 2:00 p.m.

1. [20-90692-E-7](#)
[GMW-2](#)

NAVDEEP BALI

MOTION TO DISMISS CASE O.S.T.
5-20-21 [\[39\]](#)

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, creditors, and Office of the United States Trustee on May 20, 2021. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Dismiss was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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 Dismiss is granted and the case is dismissed. Additionally, the court grants relief pursuant 11 U.S.C. § 303(k) ordering the consumer reporting agencies not to list the involuntary bankruptcy case on any reports issued.

The Chapter 7 Debtor, Navdeep Bali ("Trustee"), seeks dismissal of the case on the grounds that a settlement agreement has been reached with Ajay Sood, creditor who filed this involuntary bankruptcy, and Cary Hahn and Kanwal Minder Singh, the other two creditors who also hold junior liens secured by Debtor's property.

The Declaration of Navdeep Bali was filed in support of the Motion. Dckt. 41.

DISCUSSION

The Bankruptcy Code gives the court authority to dismiss an involuntary bankruptcy. It specifically provides that:

“Only after notice to all creditors and a hearing may the Court dismiss a petition filed under this section-

- (1) on the motion of a petitioner;
- (2) on consent of all petitioners and the debtor.”

Bankruptcy Code § 303(j).

As required by the Bankruptcy Code, Debtor has set this Motion for hearing and notice has been set to the known creditors. Debtor asserts that Ajay Sood, the creditor who filed the instant involuntary petition, consents to the dismissal of this bankruptcy.

Debtor owns the real property commonly known as 3312 Fleur De Lis Drive, Modesto, Stanislaus County, California (“Property”), encumbered by four deeds of trusts. The order of their priority is as follows:

1. HomeStreet Bank;
2. Cary Hahn (“Hahn”);
3. Kanwal Minder Singh (“Singh”); and
4. Ajay Sood (“Sood”).

Debtor requests dismissal of this involuntary bankruptcy case on the basis that the parties have settled their issues after submitting to the Bankruptcy Dispute Resolution Program. According to Debtor, on April 29, 2021 a mediation was held where the parties came to a settlement agreement. Declaration, ¶ 7.

The agreement provides that Debtor will pay certain sums to the creditors holding the junior liens in full and final satisfaction of their security interests in the Property. Debtor argues that in order to obtain the funds necessary to make these payments to the creditors, it is necessary that this involuntary bankruptcy be dismissed, and the foreclosure proceedings withdrawn.

Additionally, Debtor requests that the court enter an order prohibiting all consumer agencies from making any consumer reports that contain information relating to this involuntary bankruptcy case. Debtor turns the court to Bankruptcy Code § 303(k)(2).

The Bankruptcy Code authorizes the court to enter an order prohibiting consumer reporting agencies from making consumer reports containing any information relating to an involuntary petition.

“If the debtor is an individual and the court dismisses a petition under this section, the court may enter an order prohibiting all consumer reporting agencies (as defined in Section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f))) from making any consumer report (as defined in Section 603(d) of that Act) that contains any information relating to such petition or to the case commenced by filing of such petition.”

Bankruptcy Code § 303(k)(2).

In his Declaration, Debtor testifies that he has been negatively affected by the involuntary case. Specifically, Debtor testifies that his business dealings have been negatively impacted because it has been difficult to obtain financing or other resources to complete his obligation. Declaration, ¶ 8. Thus, Debtor requests that the court enter the order so that the involuntary case will no longer impact him now and in the future.

This involuntary case faced disputes from the start, but rather than devolving into the dispute, the parties and their counsel productively and responsibly addressed the underlying issues and were able to resolve this matter. The court has not been presented with the Stipulation, but it has been represented to the court that petitioning creditor Ajay Sood now agrees to the dismissal of this Involuntary Petition and bankruptcy case.

With respect to credit reporting and recognizing the impact that an involuntary petition could have even if dismissed, Congress provides in 11 U.S.C. § 303(k)(2):

(2) If the debtor is an individual and the court dismisses a petition under this section, the court may enter an order prohibiting all consumer reporting agencies (as defined in section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681a(f))) from making any consumer report (as defined in section 603(d) of that Act) that contains any information relating to such petition or to the case commenced by the filing of such petition.

The court is dismissing the Involuntary Petition under § 303 and concludes that it is proper to prohibit consumer reporting agencies from including them in any consumer reports.

Based on the foregoing, cause exists to dismiss this case. The Motion is granted, and the case is dismissed.

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 Dismiss the Chapter 7 case filed by the Chapter 7 Debtor, Navdeep Bali (“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 Dismiss is granted, and the Involuntary Bankruptcy Petition and this case are dismissed.

IT IS FURTHER ORDERED that all consumer reporting agencies (as defined in Section 603(f) of the Fair Credit Reporting Act (15 U.S.C. 1681(a)(f)) from making any consumer report (as defined in Section 603(d) of that Act) that contains any information relating to such petition or to the case commenced by the filing of such petition.

FINAL RULINGS

2. [19-90151](#)-E-11 Y&M RENTAL PROPERTY CONTINUED STATUS CONFERENCE RE:
MANAGEMENT, LLC VOLUNTARY PETITION
2-21-19 [\[1\]](#)

Final Ruling: No appearance at the June 3, 2021 Status Conference is required.

Debtor's Atty: David C. Johnston
Trustee's Atty: Aaron A. Avery

Notes:

Continued from 3/25/21 to allow for the hearing on the administrative expenses motions, the final report addressed, and a motion to dismiss heard.

Operating Reports filed: 4/14/21; 5/10/21

[JES-2] Final Application for Allowance of Professional Fees and Expenses of Accountant filed 3/31/21 [Dckt 159]

[HSM-5] Second and Final Application for Allowance of Compensation and Reimbursement of Expenses to Counsel for the Chapter 11 Trustee filed 4/8/21 [Dckt 168]; Order granting filed 5/3/21 [Dckt 192]

[HSM-6] First and Final Application for Allowance of Compensation and Reimbursement of Expenses of Chapter 11 Trustee filed 4/8/21 [Dckt 174]; Order granting filed 5/3/21 [Dckt 193]

[HSM-7] Trustee's Motion to: 1) Authorize Pre-Dismissal Procedures; and 2) Dismiss Chapter 11 Case filed 4/8/21 [Dckt 179]; Order granting filed 5/3/21 [Dckt 195]

The court having entered an Order for a Conditional Dismissal of this case (Order, Dckt. 195), the conditional terms in the process of being performed, and the estate being administratively insolvent, **the Status Conference is continued to 2:00 p.m. on July 29, 2021**, to allow for the administration of this case to be concluded and the case dismissed.

Final Ruling: No appearance at the June 3, 2021 Status Conference is required.

Debtor's Atty: David C. Johnston

Notes:

Continued from 3/11/21

[DCJ-3] Order denying Motion to Confirm Chapter 12 Plan filed 3/17/21 [Dckt 99]

[JLG-2] Order granting Motion for Relief from Automatic Stay [by American Farm Mortgage Company, Inc.] filed 3/17/21 [Dckt 100]

[DCJ-5] Motion for Authority to Sell Real Property filed 4/15/21 [Dckt 101]; Order granting filed 5/21/21 [Dckt 115]

[DCJ-6] Debtor's Motion to Confirm Second Amended Chapter 12 Plan filed 4/15/21 [Dckt 106]; Order confirming Plan filed 5/21/21 [Dckt 116]

Amended Schedule I and Scheduled J filed 5/5/21 [Dckt 111]

The Motion to Chapter 12 Plan having been granted (May 25, 2021 Order, Dckt. 121) and the parties in interest having addressed the ongoing prosecution of this case in connection with the confirmation hearing on May 20, 2021, **the Status Conference is continued to 2:00 p.m. on August 19, 2021.**

Final Ruling: No appearance at the June 3, 2021 Status Conference is required.

Plaintiff's Atty: Shane Reich
Defendant's Atty: unknown

Adv. Filed: 7/26/19
Answer: none

Nature of Action:
Dischargeability - false pretenses, false representation, actual fraud
Dischargeability - willful and malicious injury
Dischargeability - fraud as fiduciary, embezzlement, larceny
Recovery of money/property - other

Notes:
Judgment filed 5/26/20 [Dckt 48]

Order Setting Post-Judgment Status Conference filed 9/21/20 [Dckt 51]

Post Judgment Status Conference Statement filed 5/24/21 [Dckt 53]

The Status Conference is continued to 2:00 p.m. on July 29, 2021.
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JUNE 3, 2021 POST-JUDGMENT STATUS CONFERENCE

By Judgment entered May 26, 2020, the court granted Plaintiff Tina Alvarez a nondischargeable monetary judgment for \$19,000.00 and a mandatory injunction for Defendant Tracy Smith and Defendant Sharp Corporation to transfer title to a mobile home, together with improvements to Plaintiff. Judgement, Dckt. 48. The court provided alternative relief in the form of a monetary judgment in the amount of \$93,643.84 which Plaintiff could request if the Defendants failed to comply with the mandatory injunction and Plaintiff believes that such injunctive relief cannot be consummated.

The court scheduled this Post-Judgment Status Conference as part of its file management to determine whether the file may be closed or that a party will be seeking further relief from the court.

Plaintiff filed a Status Report on May 24, 2021. Dckt. 53. Plaintiff advises the court that the Defendants have not complied with the mandatory injunction, nor have they paid the \$19,000 monetary damages awarded.

Plaintiff requests that the court continue the Status Conference 60 days, by which time Plaintiff will request an amended judgment or advise the court how Plaintiff is diligently prosecuting this judgment so the court can decide whether to keep this file open or close it.

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 court having reviewed Plaintiff Tina Alvarez's Post-Confirmation Status Report, Plaintiff requesting a modest continuance, and good cause appearing,

IT IS ORDERED that the Status Conference is continued to 2:00 p.m. on July 20, 2021, at which time the court will determine whether the file for this Adversary Proceeding shall remain open or that the file should be closed (the effect of which would just require Plaintiff to request that the file be reopened, and pay the corresponding fee, if Plaintiff determines that she wants to seek further relief from this court).