UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

June 5, 2017 at 1:30 p.m.

THIS CALENDAR IS DIVIDED INTO TWO PARTS. THEREFORE, TO FIND ALL MOTIONS AND OBJECTIONS SET FOR HEARING IN A PARTICULAR CASE, YOU MAY HAVE TO LOOK IN BOTH PARTS OF THE CALENDAR. WITHIN EACH PART, CASES ARE ARRANGED BY THE LAST TWO DIGITS OF THE CASE NUMBER.

THE COURT FIRST WILL HEAR ITEMS 1 THROUGH 6. A TENTATIVE RULING FOLLOWS EACH OF THESE ITEMS. THE COURT MAY AMEND OR CHANGE A TENTATIVE RULING BASED ON THE PARTIES' ORAL ARGUMENT. IF ALL PARTIES AGREE TO A TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS OF FACT AND CONCLUSIONS OF LAW.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING PURSUANT TO LOCAL BANKRUPTCY RULE 3015-1(c), (d) [eff. May 1, 2012], GENERAL ORDER 05-03, ¶ 3(c), LOCAL BANKRUPTCY RULE 3007-1(c)(2)[eff. through April 30, 2012], OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED TO DEVELOP THE WRITTEN RECORD FURTHER. IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE JULY 3, 2017 AT 1:30 P.M. OPPOSITION MUST BE FILED AND SERVED BY JUNE 19, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY JUNE 26, 2017. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THE DATE AND TIME OF THE CONTINUED HEARING DATE AND OF THESE DEADLINES.

THERE WILL BE NO HEARING ON ITEMS 7 THROUGH 9 IN THE SECOND PART OF THE CALENDAR. INSTEAD, THESE ITEMS HAVE BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS; IF IT IS, IT INCLUDES THE COURT'S FINDINGS AND CONCLUSIONS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

IF THE COURT CONCLUDES THAT FED. R. BANKR. P. 9014(d) REQUIRES AN EVIDENTIARY HEARING, UNLESS OTHERWISE ORDERED, IT WILL BE SET ON JUNE 15, 2017, AT 2:30 P.M.

Matters to be Called for Argument

1. 14-32316-A-13 ARLEANER COLLINS — MOTION FOR RELIEF FROM AUTOMATIC STAY
MSK-5 — 5-2-17 [55]
REVERSE MORTGAGE SOLUTIONS, INC. VS.

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be dismissed as moot.

The court confirmed a plan on February 23, 2015. That plan provides for the movant's claim in Class 4. Class 4 secured claims are long-term claims that are not modified by the plan and that were not in default prior to the filing of the petition. They are paid directly by the debtor or by a third party. The plan includes the following provision at section 2.11:

"Class 4 claims mature after the completion of this plan, are not in default, and are not modified by this plan. These claims shall be paid by Debtor or a third person whether or not the plan is confirmed. Upon confirmation of the plan, all bankruptcy stays are modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract."

Because the plan has been confirmed and because the case remains pending under chapter 13, the automatic stay has already been modified to permit the movant to proceed against its collateral.

2. 16-25935-A-13 DOUGLAS/KIM JACOBS — MOTION TO CONFIRM PLAN
SS-6 — 4-24-17 [115]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection sustained.

First, the debtor has failed to make $4,985 of payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Second, to pay the dividends required by the plan at the rate proposed by it will take 66 months which exceeds the maximum 5-year duration permitted by 11 U.S.C. § 1322(d).

3. 17-20539-A-13 SUZANNE HANEFIELD — MOTION TO CONFIRM PLAN
LBG-1 — 4-21-17 [51]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objections sustained.

First, in violation of 11 U.S.C. § 521(a)(1)(B)(iv) and Local Bankruptcy Rule 1007-1(c) the debtor has failed to provide the trustee with employer payment advices for the 60-day period preceding the filing of the petition. The

withholding of this financial information from the trustee is a breach of the duties imposed upon the debtor by 11 U.S.C. § 521(a)(3) & (a)(4) and the attempt to confirm a plan while withholding this relevant financial information is bad faith. See 11 U.S.C. § 1325(a)(3).

Second, 11 U.S.C. § 521(e)(2)(B) & (C) requires the court to dismiss a petition if an individual chapter 7 or 13 debtor fails to provide to the case trustee a copy of the debtor's federal income tax return for the most recent tax year ending before the filing of the petition. This return must be produced seven days prior to the date first set for the meeting of creditors. The failure to provide the return to the trustee justifies dismissal and denial of confirmation. In addition to the requirement of section 521(e)(2) that the petition be dismissed, an uncodified provision of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005 found at section 1228(a) of BAPCPA provides that in chapter 11 and 13 cases the court shall not confirm a plan of an individual debtor unless requested tax documents have been turned over. This has not been done.

Third, the debtor has failed to commence making plan payments and has not paid approximately $1,950 to the trustee as required by the proposed plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. This is cause to deny confirmation of the plan and for dismissal of the case. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Fourth, counsel for the debtor has opted to receive fees pursuant to Local Bankruptcy Rule 2016-1 rather than by making a motion in accordance with 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017. This means that counsel may receive a maximum fee of up to $4,000 for a consumer case (like this one) and have that fee approved in connection with the confirmation of the plan. In this case, however, counsel's proposed fee of $5,100 exceeds the maximum fee allowed by Local Bankruptcy Rule 2016-1. Therefore, he must apply for compensation pursuant to 11 U.S.C. §§ 329, 330 and Fed. R. Bankr. P. 2002, 2016, 2017. The provision in the plan for payment of compensation without the requisite application cannot be confirmed.

Fifth, even though 11 U.S.C. § 1322(b)(2) prevents the proposed plan from modifying a claim secured only by the debtor's home, 11 U.S.C. § 1322(b)(2) & (b)(5) permit the plan to provide for the cure of any defaults on such a claim while ongoing installment payments are maintained. The proposed plan, however, does not provide for a cure of the pre-petition arrears owed to the Class 1 home loan owed to Wells Fargo Bank. By failing to provide for a cure, the debtor is, in effect, impermissibly modifying a home loan. Also, the failure to cure the default means that the Class 1 secured claim will not be paid in full as required by 11 U.S.C. § 1325(a)(5)(B).

The objection that the plan modifies the ongoing installment payment to Wells Fargo will be overruled. The plan provides that the plan does not modify the claim. Hence, if the installment amount varies from month to month, the plan makes no change.

4. 15-21845-A-13 JOSEPH BARNES
SS-9
VS. CROWNE EQUITIES, L.L.C.

MOTION TO
AVOID JUDICIAL LIEN
5-8-17 [163]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied without prejudice.

The motion asserts that the respondent holds a judicial lien that impairs the debtor's $150,000 exemption under Cal Civil Pro. Code § 704.730 of real property.

However, this exemption was claimed in an Amended Schedule C filed on May 8. Creditors and other parties in interest have 30 days from the service of the amended schedule to object to the amended exemption. The time to object has not expired. Therefore, this motion is premature because the debtor's exemption has not yet been allowed.

Also, there is no evidence with the motion establishing the debtor's right to an exemption of $150,000. The fact that it was claimed without objection (perhaps) is not good enough. The debtor must prove entitlement to the exemption. Morgan v. Fed. Deposit Ins. Corp. (In re Morgan), 149 B.R. 147, 151 (B.A.P. 9th Cir. 1993) (citing In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

5. 16-28572-A-13 SUKHVINDER DHOOT
TOG-3

MOTION TO
CONFIRM PLAN
4-24-17 [46]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be denied and the objection sustained.

First, the debtor has failed to make $45 of payments required by the plan. This has resulted in delay that is prejudicial to creditors and suggests that the plan is not feasible. See 11 U.S.C. §§ 1307(c)(1) & (c)(4), 1325(a)(6).

Second, the plan does not comply with 11 U.S.C. § 1325(b) because it neither pays unsecured creditors in full nor pays them all of the debtor's projected disposable income. The plan will pay $75,287.97 of unsecured claims a 9% dividend, approximately $6,775.92, even though Form 122C shows that the debtor will have $84,006.60 over the next five years.

6. 16-27489-A-13 PALMER COOKE
JPJ-1

MOTION TO
CONVERT OR TO DISMISS CASE
4-26-17 [74]

- ☐ Telephone Appearance
- ☐ Trustee Agrees with Ruling

Tentative Ruling: The motion will be granted and the case converted to one under chapter 7.

The debtor has failed to pay to the trustee approximately $5,118 as required by the confirmed plan. The foregoing has resulted in delay that is prejudicial to

creditors and suggests that the plan is not feasible. This is cause for dismissal or conversion, whichever is in the bests interests of creditors. See 11 U.S.C. § 1307(c)(1).

While the debtor has filed opposition to the motion, that opposition admits the debtor has failed to make the required plan payments and cannot now pay the amount in default. While the opposition seeks leave to cure the default in 30 days, there is no proof that the debtor will have the ability to make the cure plus another plan payment of $1,710. In the absence of an explanation as to why the debtor was unable to maintain plan payments as well as proof of an ability to cure the default, there is cause to grant the motion.

After a review of the schedules, the court concludes that conversion rather than dismissal is in the best interests of creditors because there is in excess of $147,000 of equity in unencumbered, nonexempt assets that will benefit creditors if liquidated by a trustee.

FINAL RULINGS BEGIN HERE

7. 17-20539-A-13 SUZANNE HANEFIELD — ORDER TO SHOW CAUSE 5-15-17 [71]

Final Ruling: The order to show cause will be discharged. The delinquent motion filing fee was paid on May 16.

8. 17-22564-A-13 ROBERT BISHOP — MOTION FOR RELIEF FROM AUTOMATIC STAY 5-1-17 [14]
ABG-1
VANDERBILT MORTGAGE AND FINANCE, INC. VS.

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) and 11 U.S.C. § 1301 to permit the movant to repossess and to obtain possession of its personal property security, to dispose of it in accordance with applicable nonbankruptcy law, and to pursue the nonfiling codebtor. The movant is secured by a manufactured home. The debtor has proposed a plan that will surrender the manufactured home satisfaction of the secured claim. That plan has not yet been confirmed. Nonetheless, the terms of the proposed plan makes two things clear: the movant's claim will not be paid and the manufactured home securing its claim is not necessary to the debtor's personal financial reorganization. This is cause to terminate the automatic stay.

Because the movant has not established that the value of its collateral exceeds the amount of its claim, the court awards no fees and costs. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived.

9. 13-22074-A-13 DAVID/CATHERINE CHERRY — MOTION TO INCUR DEBT 5-6-17 [48]
MET-3

Final Ruling: This motion to new credit has been set for hearing on the notice required by Local Bankruptcy Rules 3015-1(b) and 9014-1(f)(1), and Fed. R. Bankr. R. 2002(b). The failure of the trustee, the U.S. Trustee, creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the debtor, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the respondents' defaults are entered and the matter will be resolved without oral argument.

The motion to incur a purchase money loan to purchase a vehicle will be granted. The motion establishes a need for the vehicle and it does not appear that repayment of the loan will unduly jeopardize the debtor's performance of the plan.