

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

June 6, 2018 at 10:00 a.m.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

1. Matters resolved without oral argument:

Unless otherwise stated, the court will prepare a civil minute order on each matter listed. If the moving party wants a more specific order, it should submit a proposed amended order to the court. In the event a party wishes to submit such an Order it needs to be titled 'Amended Civil Minute Order.'

If the moving party has received a response or is aware of any reason, such as a settlement, that a response may not have been filed, the moving party must contact Nancy Williams, the Courtroom Deputy, at (916) 930-4580 at least one hour prior to the scheduled hearing.

- 2. The court will not continue any short cause evidentiary hearings scheduled below.**
- 3. If a matter is denied or overruled without prejudice, the moving party may file a new motion or objection to claim with a new docket control number. The moving party may not simply re-notice the original motion.**
- 4. If no disposition is set forth below, the matter will be heard as scheduled.**

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|----|------------------------|-------------------------------------|---|
| 1. | 11-31916-D-7
HCS-4 | ELSIDDIG ELHINDI AND
ROBIN JONES | MOTION FOR COMPENSATION BY THE
LAW OFFICE OF
HERUM\CRABTREE\SUNTAG FOR DANA
A. SUNTAG, TRUSTEE'S
ATTORNEY(S)
5-9-18 [75] |
| 2. | 14-25816-D-7
DNL-69 | DEEPAL WANNAKUWATTE | MOTION TO SELL
5-9-18 [1262] |

3. 18-21324-D-7 MICHAEL DERBY AND BELINDA MOTION FOR RELIEF FROM
JHW-1 CAIRD-DERBY AUTOMATIC STAY
AMERICREDIT FINANCIAL 4-23-18 [16]
SERVICES, INC. VS.

Final ruling:

This matter is resolved without oral argument. This is Americredit Financial Services, Inc.'s motion for relief from automatic stay. The court's records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and debtor is not making post petition payments. The court finds there is cause for relief from stay, including lack of adequate protection of the moving party's interest. As the debtors are not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). Accordingly, the court will grant relief from stay and waive FRBP 4001(a)(3) by minute order. There will be no further relief afforded. No appearance is necessary.

4. 17-20731-D-11 CS360 TOWERS, LLC MOTION FOR COMPENSATION BY THE
DB-20 LAW OFFICE OF DOWNEY BRAND, LLP
FOR JAMIE P. DREHER, TRUSTEE'S
ATTORNEY(S)
5-8-18 [405]

Tentative ruling:

This is the first interim application for approval of fees and reimbursement of expenses filed by Downey Brand, LLP for services rendered to Bradley Sharp, Chapter 11 Trustee for the estate of CS360 Towers, LLC. As this case is not complete, the court is unable to make the various determinations that are necessary under 11 U.S.C. paragraph 330 for a final award of compensation. Accordingly, at this time the court will approve an interim award of 85% of the fees requested plus costs incurred. This interim award is subject to final approval and the court will consider any and all objection to the interim award at the time the court considers applicant's final fee request. The court will hear the matter.

5. 18-22135-D-7 GAYLE GRUBER MOTION FOR RELIEF FROM
RMP-1 AUTOMATIC STAY
AJX MORTGAGE TRUST II VS. 4-26-18 [15]

Final ruling:

This matter is resolved without oral argument. This is AJX Mortgage Trust II's motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

6. 18-22540-D-7 KENDALL SHERMAN
DRJ-1
CEDAR/SHEPHERD LIMITED
PARTNERSHIP VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-8-18 [19]

7. 17-24444-D-11 RAMON LOPEZ

CONTINUED STATUS CONFERENCE RE:
VOLUNTARY PETITION
7-5-17 [1]

8. 10-42050-D-7 VINCENT/MALANIE SINGH
12-2433 GJH-1
BURKART V. SINGH

MOTION TO VACATE DISMISSAL OF
CASE
5-9-18 [181]

**ADVERSARY PROCEEDING
DISMISSED: 05/03/2018**

9. 16-24067-D-7 BUTTACAVOLI INDUSTRIES,
DNL-4 INC.

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF DESMOND, NOLAN,
LIVAICH, AND CUNNINGHAM FOR J.
RUSSELL CUNNINGHAM, TRUSTEE'S
ATTORNEY(S)
5-7-18 [43]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed. The record establishes, and the court finds, that the fees and costs requested are reasonable compensation for actual, necessary, and beneficial services under Bankruptcy Code § 330(a). As such, the court will grant the motion. Moving party is to submit an appropriate order. No appearance is necessary.

10. 18-20967-D-7 CHRISTINE RUSSAK CONTINUED MOTION FOR RELIEF
AP-1 FROM AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. 3-14-18 [10]

Final ruling:

Motion withdrawn by moving party. Matter removed from calendar.

11. 18-20071-D-7 BRIAN PULEO MOTION TO COMPEL ABANDONMENT
KH-2 5-7-18 [30]

12. 18-21576-D-7 DAVID CURRIE AND TOSHIO MOTION TO AVOID LIEN OF
DNP-1 HILL AMERICAN EXPRESS CENTURION BANK
5-3-18 [19]

Final ruling:

The matter is resolved without oral argument. The court's records indicate that no timely opposition has been filed and the relief requested in the motion is supported by the record. The court finds the judicial lien described in the motion impairs an exemption to which the debtors are entitled. As a result, the court will grant the debtors' motion to avoid the lien. Moving party is to submit an appropriate order, which order shall specifically identify the real property subject to the lien and specifically identify the lien to be avoided. No appearance is necessary.

13. 18-21978-D-7 MICHELLE JOHNSON MOTION TO COMPEL ABANDONMENT
CLH-1 5-8-18 [10]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the debtor's motion to compel the trustee to abandon property and the debtor has demonstrated the property to be abandoned is of inconsequential value to the estate. Accordingly, the motion will be granted and the property that is the subject of the motion will be deemed abandoned. Moving party is to submit an appropriate order. No appearance is necessary.

14. 17-20981-D-7 ALEX/PATRICIA FRANCOIS MOTION TO COMPEL ABANDONMENT
TAG-1 5-1-18 [31]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the debtor's motion to compel the trustee to abandon property and the debtors have demonstrated the property to be abandoned is of inconsequential value to the estate. Accordingly, the motion will be granted and the property that is the subject of the motion will be deemed abandoned. Moving party is to submit an appropriate order. No appearance is necessary.

15. 17-25882-D-7 JENNIFER RIFFE MOTION FOR ABSTENTION AND/OR
17-2230 ARF-1 MOTION FOR REMAND
RIFFE V. RIFFE 4-25-18 [38]

Tentative ruling:

This is the defendant's motion "for abstention from matters involving this adversary proceeding and for remand of these matters" to the Sacramento County Superior Court. The plaintiff has filed opposition. For the following reasons, the court will deny the requests for abstention and remand but will sua sponte lift the automatic stay so the parties may proceed with pending litigation in the family court division of the superior court (the "state court").¹

The issues in this adversary proceeding are of the type that are routinely determined by family court judges, who are likely to have a better grasp of the considerations applicable in determining them. See In re Mac Donald, 755 F.2d 715, 717 (9th Cir. 1985) (citations omitted) ["It is appropriate for bankruptcy courts to avoid incursions into family law matters 'out of consideration of court economy, judicial restraint, and deference to our state court brethren and their established expertise in such matters.'"]. The plaintiff's primary concerns in opposition to the motion are (1) to prevent the defendant from asserting that claims between them have been discharged in her bankruptcy case; and (2) to bind the defendant to a stipulation signed earlier in this adversary proceeding and to the values of certain assets listed by the defendant in her bankruptcy schedules.

As to the former - the question of dischargeability, the plaintiff believes the "State Court does not have the power to make such a determination." Plaintiff's Opp., DN 47, at 3:10-11. That is incorrect. Whereas the bankruptcy court has exclusive jurisdiction over challenges to dischargeability under § 523(a)(2), (4), and (6), it has concurrent jurisdiction over challenges under all the other subsections of § 523(a). Ackerman v. Eber (In re Eber), 687 F.3d 1123, 1128 (9th Cir. 2012). As to the plaintiff's second concern, this court denied the plaintiff's motion for approval of the stipulation as a compromise, under Fed. R. Bankr. P. 9019, and at this stage of the proceeding, the effect to be given the stipulation in the division of the parties' assets and liabilities is a matter that should be left to the state court.

When this court denied the plaintiff's motion to approve the compromise, it noted that certain aspects of the stipulation purported to affect property of the bankruptcy estate. As the defendant points out, however, the trustee has filed a report of no distribution and it does not appear the state court's determination as

to the division of assets and liabilities would affect the estate. The court therefore finds it appropriate to lift the automatic stay so the parties may proceed in the state court.² As indicated above, this court has jurisdiction concurrent with the state court to determine whether any debt imposed against the defendant in the state court proceeding is or is not covered her bankruptcy discharge. It seems likely the state court's determination will be made with sufficient clarity the dischargeability question will be readily resolved. Thus, the court will lift the automatic stay to allow the state court proceeding to go forward and will hear from the parties as to whether to dismiss the adversary proceeding such that the parties may seek a determination of dischargeability from the state court or whether the adversary proceeding should remain open for the parties to return to this court for such a determination.

The court will hear the matter.

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- 1 The court has the power under § 105(a) of the Code to lift the automatic stay sua sponte. Estate of Kempton v. Clark (In re Clark), 2014 Bankr. LEXIS 4633, *25, 26 (9th Cir. BAP 2014); In re Bellucci, 119 B.R. 763, 779 (Bankr. E.D. Cal. 1990).
- 2 A report of no distribution does not end the matter of the potential effect of the state court's ruling on the bankruptcy estate. See In re Reed, 940 F.2d 1317, 1321 (9th Cir. 1991) [a no-asset report "in and of itself cannot result in abandonment unless the court closes the case."]. However, the trustee's report is a strong indication she does not intend to administer any assets.
16. 18-21597-D-7 GARY DELFINO AND JAQUILINE MOTION FOR RELIEF FROM
NLL-1 NERUTSA AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. 5-7-18 [36]

Final ruling:

This matter is resolved without oral argument. This is Wells Fargo Bank, N.A.'s motion for relief from automatic stay. The court records indicate that no timely opposition has been filed. The motion along with the supporting pleadings demonstrate that there is no equity in the subject property and the property is not necessary for an effective reorganization. Accordingly, the court finds there is cause for granting relief from stay. The court will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

17. 18-21110-D-7 MARLEEN BERCIER TRUSTEE'S MOTION TO DISMISS FOR
FAILURE TO APPEAR AT SEC.
341(A) MEETING OF CREDITORS
4-26-18 [11]

18. 09-20822-D-7 DONALD WEEKS AND KHADIJAH MOTION FOR SANCTIONS FOR
DLF-2 MEALS VIOLATION OF THE DISCHARGE
INJUNCTION AND/OR MOTION FOR
CONTEMPT
4-6-18 [94]

Tentative ruling:

This is the debtors' motion for contempt damages for alleged violations of a bankruptcy discharge they received in this case in 2010. The respondents have filed opposition. For the following reasons, the motion will be denied.

The parties entered into a settlement agreement earlier this year in an action the debtors had brought against the respondents in the district court for the Southern District of California. The respondents have filed a redacted version of the agreement. The unredacted portions demonstrate the agreement was signed by both of the debtors and by their counsel -- one of the two attorneys who signed the present motion. The unredacted portions make clear the debtors unequivocally released the respondents from the claims that are the subject of the present motion.¹ The agreement contains certain exceptions from the release provisions; none applies to the claims asserted in this motion.

The court is quite dismayed that the debtors' attorneys, in the motion, and the debtors, in their declarations, did not even disclose the existence of the settlement agreement, let alone try to explain why it does not control here. In failing to do so, they have dealt a significant blow to their credibility. To the extent the debtors contend the redacted portions of the settlement agreement are relevant to the inquiry, the court will require those portions to be submitted.

For the reasons stated, the court intends to summarily deny the motion. The court will hear the matter.

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1. To the extent the debtors intend to argue they released only the claims they had made in the district court action, under the federal Fair Debt Collection Practices Act, the court draws their attention to these provisions in the agreement: (1) the agreement opens with the statement that its purpose was to "resolv[e] by compromise and settlement of all claims, controversies, alleged liabilities, and disputes between [the parties]"; (2) the debtors "unconditionally, irrevocably, forever and fully release[d], acquit[ed], and forever discharge[d] [the respondents] and their predecessors, [etc.] of and from any and all claims, demands, actions, causes of action, suits, liens, debts, obligations, promises, agreements, costs, damages, liabilities, and judgments of any kind, nature, or amount whether in law or equity, whether known or unknown, . . ."; (3) the agreement stated, "It is the intention and effect of this release to discharge all claims that the [debtors] have against the [respondents] up until and including the date of the execution of this Agreement"; (4) the release covered unknown claims and claims based on different or additional facts concerning the released claims; and (5) the agreement included the general release language of Cal. Civ. Code section 1542.

19. 17-28024-D-7 ENRIQUE TORRES

MOTION FOR AN EXTENSION OF TIME
TO PAY THE UNPAID FILING FEE
AND ADMINISTRATIVE FEE
5-11-18 [20]

20. 15-24747-D-7 RAYMOND POQUETTE
GAR-2

CONTINUED MOTION TO COMPEL
ABANDONMENT
4-24-18 [147]

Tentative ruling:

This is the motion of interested party Paula Poquette to compel the trustee to abandon the estate's interest in certain real property. The hearing was continued by pre-hearing disposition to permit the moving party to serve the motion and a notice of continued hearing on all creditors. In response to the pre-hearing disposition, the moving party filed a notice of continued hearing and served it, together with the motion. However, if the proof of service is correct, the moving party served the same people who were served originally and failed to serve the creditors, of whom there are many, except for one. Thus, the moving party apparently failed to correct the service defect.

In addition, the notice of continued hearing stated that opposition must be filed 14 days prior to the hearing date and that without good cause, no party would be heard in opposition if written opposition had not been timely filed. That notice was contrary to LBR 9014-1(f)(2), as it gave only 16 days' notice of the hearing, and contrary to the court's instruction in the pre-hearing disposition. If the moving party brings a corrected proof of service to the hearing, ready for filing, the court will hear the matter and will entertain opposition, if any, at the hearing. If the moving party does not establish by sufficient proof that the motion and notice of continued hearing were in fact served on all creditors, the motion will be denied.

21. 17-20261-D-7 PAULA POQUETTE
GAR-1

CONTINUED MOTION TO COMPEL
ABANDONMENT
4-24-18 [90]

Tentative ruling:

This is the debtor's motion to compel the trustee to abandon the estate's interest in certain real property. The hearing was continued by pre-hearing disposition to permit the moving party to serve the motion and a notice of continued hearing on all creditors. In response to the pre-hearing disposition, the moving party filed a notice of continued hearing and served it, together with the motion, on all creditors. However, the notice of continued hearing stated that opposition must be filed 14 days prior to the hearing date and that without good cause, no party would be heard in opposition if written opposition had not been timely filed. That notice was contrary to LBR 9014-1(f)(2), as it gave only 16 days' notice of the hearing, and contrary to the court's instruction in the pre-hearing disposition. Therefore, the court will hear the matter and will entertain opposition, if any, at the hearing.

22. 18-22363-D-7 HAROLD SMITH
VVF-1
AMERICAN HONDA FINANCE
CORPORATION VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-19-18 [12]

Final ruling:

The matter is resolved without oral argument. This motion was noticed under LBR 9014-1(f)(2). However, the debtor's Statement of Intentions indicates he intends to surrender the collateral and the trustee has filed a statement of non-opposition. Accordingly, the court finds a hearing is not necessary and will grant relief from stay by minute order. There will be no further relief afforded. No appearance is necessary.

23. 18-20194-D-7 ARVINDER SANDHU AND
EGS-1 PALWINDER KAUR
BAYVIEW LOAN SERVICING, LLC
VS.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-23-18 [22]

24. 17-27397-D-7 GEVORG POLADYAN AND
GEL-1 ARMINE ASATRYAN

CONTINUED MOTION TO CONVERT
CASE TO CHAPTER 13
2-24-18 [16]

Tentative ruling:

This is the debtors' motion to convert this chapter 7 case to a case under chapter 13 of the Bankruptcy Code. The court continued the hearing to allow the debtors to attend the meeting of creditors, which they have done. The day before the last hearing, the creditor opposing the motion filed a supplemental opposition. The chapter 7 trustee has stated he does not oppose the motion.

Since the court prepared its initial tentative ruling, the debtors have taken steps that are persuasive in their favor. They have agreed to increase their plan payment from the \$1,000 per month originally proposed to \$4,405 per month, which represents all of their disposable income, attributable largely to the joint debtor's new job. They have also agreed they will propose a plan that will pay a 100% dividend to their general unsecured creditors. Although the debtors were not as forthcoming and candid in their statement of financial affairs as they should have been, that does not override the considerations that they are now proposing to devote all of their monthly disposable income to their plan and to propose a 100% plan. The court concludes the debtors have not forfeited their right to have the case converted to chapter 13; accordingly, the motion will be granted.

The court will hear the matter.

