

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

June 15, 2017, at 11:00 a.m.

1.	<u>16-26043-E-13</u> TAG-5	SUSAN GEDNEY Aubrey Jacobsen	CONTINUED MOTION TO EMPLOY JCL REALTY, INC. AS REALTOR(S) 4-11-17 [99]
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Final Ruling: No appearance at the June 15, 2017 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on April 11, 2017. By the court's calculation, 28 days' notice was provided. 28 days' notice is required.

The Motion to Employ has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen 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) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The hearing on the Motion to Employ is continued to 3:00 p.m. on June 27, 2017.
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Susan Gedney ("Debtor") seeks to employ realtor Dawn Robinson of JCL Realty, Inc., pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor seeks the employment of a realtor to assist with short selling her property.

Debtor argues that the realtor's appointment and retention is necessary because the Chapter 13 Plan contemplates the short sale of her property.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on April 25, 2017. Dckt. 105. The Trustee states that there is a pending adversary proceeding (No. 17-02006) dealing with a prior real estate listing agreement between Debtor and realtor Sarah Wright and broker Gabriel Witkin.

The Trustee notes that JCL Realty, Inc. is owned by Ted Greene who is also the owner of Law office of Ted A. Greene, Inc., who represents Debtor in this Chapter 13 case.

The Trustee does not oppose the Motion.

MAY 9, 2017 HEARING

At the hearing, the court continued the matter to 10:00 a.m. on May 31, 2017, specially set with the court's Chapter 13 dismissal calendar. Dckt. 119. The court ordered Ted Greene, Aubrey Jacobsen, Susan Gedney, and Dawn Robinson to appear personally at the continued hearing. The court suspended the application of Federal Rule of Civil Procedure 41(a)(1) and Federal Rule of Bankruptcy Procedure 7041 as made applicable to contested matters by Federal Rule of Bankruptcy Procedure 9014(c), with dismissal of the Motion only by court order.

ORDER CONTINUING HEARING

On May 9, 2017, the court granted Debtor's *ex parte* request for the hearing to be continued, and the court continued the hearing to 3:00 p.m. on June 6, 2017. Dckt. 116.

MAY 31, 2017 HEARING

Due to a mistake, the continued hearing was set for the May 31, 2017 calendar and the June 6, 2017 calendar. At the May 31, 2017 hearing, the court announced that the matter would be heard on June 6, 2017, and the court reissued its order to appear and reannounced suspension of Federal Rule of Civil Procedure 41(a)(1) and Federal Rule of Bankruptcy Procedure 7041. Dckt. 129.

ORDER CONTINUING HEARING

On June 2, 2017, the court granted Debtor's *ex parte* request for the hearing to be continued, and the court continued the hearing to 11:00 a.m. on June 15, 2017. Dckt. 126.

JUNE 6, 2017 HEARING

At the hearing, the court continued the hearing to 3:00 p.m. on June 27, 2017, pursuant to granting the *ex parte* request to continue the hearing. Dckt. 136.

DISCUSSION

Dawn Robinson, realtor with JCL Realty, Inc., testifies that she and the company do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with the debtors, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. She testifies that her fee for selling Debtor's property will be 3.5% of the purchase price.

This case has had an interesting dynamic in which the real estate broker that Debtor hired pre-petition was determined post-petition to "not be qualified." No mention was made during the long, multiple hearings that the new, better realtor was one owned by Debtor's attorney, Ted Greene. Though Mr. Greene has a new, young associate appearing as attorney of record in this case, it is his law firm that has Debtor as the client. Mr. Greene's name appears on all the pleadings.

The court is concerned whether Mr. Greene and his firm can fulfill their duties as counsel to the Debtor, who is the fiduciary to the bankruptcy estate and will be the fiduciary under a Chapter 13 Plan (if one can be confirmed). The court is unsure how Mr. Greene and his firm can represent Debtor and advise Debtor as to the performance by Mr. Greene's real estate company, advocating for her with Mr. Greene's real estate company.

The pleadings also do not contain evidence showing compliance with California Rule of Professional Conduct 3-300.

Debtor filed a Motion to Sell Property on May 30, 2017, with JCL Realty, Inc., included as the listing agent. Dckt. 120; Exhibit A, Dckt. 124. Debtor states in that Motion that she has withdrawn the Motion to Employ JCL Realty, Inc., however, and will be filing a new motion to employ another realtor. Despite Debtor stating that she has withdrawn the present Motion, the court has suspended the use of Federal Rule of Civil Procedure 41(a)(1), and Debtor will not be able to withdraw this Motion without court approval.

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 Employ filed by 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 hearing on the Motion to Employ is continued to 3:00 p.m. on June 27, 2017.