

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Fredrick E. Clement
Bankruptcy Judge

2500 Tulare Street
Department A, Courtroom 11
Fresno, California

WEDNESDAY

JUNE 17, 2015

9:00 A.M. CHAPTER 7 CASES

PRE-HEARING DISPOSITIONS

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.

MATTERS RESOLVED BEFORE HEARING

If the court has issued a final ruling on a matter and the parties directly affected by a matter have resolved the matter by stipulation or withdrawal of the motion before the hearing, then the moving party 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 to be dropped from calendar 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.

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 52(b), 59(e) or 60, as incorporated by Federal Rules of Bankruptcy Procedure, 7052, 9023 and 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. [15-11903](#)-A-7 HECTOR VILLAREAL ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-26-15 [[17](#)]

DISMISSED

Final Ruling

The case dismissed, the order to show cause is discharged.

2. [15-10310](#)-A-7 CHARLES/MARY EWING MOTION TO SELL
TMT-2 5-15-15 [[50](#)]
TRUDI MANFREDO/MV
GLEN GATES/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 2 Vehicles described below

Buyer: Debtors

Sale Price:

-2010 Ford Ranger: \$10,200.00 (\$3350.00 cash
plus \$6850.00 exemption credit)

-2002 Honda CRV: \$2975.00 (\$2075.00 cash
plus \$900.00 exemption credit)

Sale Type: Private sale subject to overbid opportunity

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).

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. *See* 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

3. [15-11514](#)-A-7 BERTHA PABLO
DRJ-1
BERTHA PABLO/MV
DAVID JENKINS/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT
5-29-15 [[11](#)]

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

Disposition: Granted only as to the business and such business assets described in the motion

Order: Prepared by moving party pursuant to the instructions below

Business Description: Pablo's Maintenance Cleaning Service, a sole proprietorship

Unopposed motions 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).

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b); Fed. R. Bankr. P. 6007(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The business described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business is warranted.

The order will compel abandonment of the business and the assets of such business only to the extent described in the motion. The order shall state that any exemptions claimed in the abandoned business or the assets of such business may not be amended without leave of court given upon request made by motion noticed under Local Bankruptcy Rule 9014-1(f)(1).

4. [13-13848](#)-A-7 PARDEEP DHESI AND
RJI-1 SUMANJIT KAUR
SUMANJIT KAUR/MV

MOTION FOR CONSENT TO ENTER
INTO LOAN MODIFICATION
AGREEMENT
5-12-15 [[32](#)]

RAYMOND ISLEIB/Atty. for dbt.
DEBTOR DISMISSED:
08/15/2013
JT DEBTOR DISCHARGED:
10/11/13

Final Ruling

Motion: Approval of Mortgage Loan Modification in Chapter 7 Case

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

Disposition: Granted

Order: Civil minute order

LOAN MODIFICATION

Mortgage loan modifications made before the granting of a bankruptcy discharge are essentially reaffirmations to the extent that they affect a debtor's personal liability. *See In re Roderick*, 425 B.R. 556, 563-65 (Bankr. E.D. Cal. 2010). Unless the debt secured by a mortgage is nonrecourse, "[a] mortgage modified before the discharge preserves the personal liability of the debtor. A mortgage modified after the discharge is entered can only modify the terms under which the lien will be released." *Id.* at 565.

Court approval is not required to reaffirm a consumer debt secured by real property. 11 U.S.C. § 524(c)(6)(B). Nevertheless, "compliance with the other five essential elements of an enforceable reaffirmation agreement" is not excused. *See Roderick*, 425 B.R. at 566; 11 U.S.C. § 524(c)(1)-(5).

Here, the debtor represents that the agreement to be authorized is not a reaffirmation agreement. The debtor represents that authorization is sought only as to a modification of the secured debt attached to her home—i.e., a non-recourse debt. The court will authorize such a modification between the debtor and Wells Fargo.

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.

The debtor Sumanjit Kaur's Motion for Authority to Enter into Loan Modification Agreement with Wells Fargo Bank N.A. 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 debtor is authorized to enter into a loan modification, which is not a reaffirmation agreement. The loan modification will affect only the terms under which the lien on the debtor's real property will be released and not the debtor's personal liability.

5. [15-11848](#)-A-7 CHRISTINE RIPLEY

ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
5-27-15 [[16](#)]

RESPONSIVE PLEADING, ECF NO.
23

No tentative ruling.

6. [14-15260](#)-A-7 DAVID/CHRISTINA VARNELL
JES-1
JAMES SALVEN/MV
SHAWN GEORGE/Atty. for dbt.

MOTION TO SELL
5-8-15 [[22](#)]

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 25% interest in 688 Fig Lane, Newman, CA

Buyer: Debtors

Sale Price: \$21,562 (\$10,000 cash plus \$11,562 exemption credit)

Sale Type: Private sale subject to overbid opportunity

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).

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. *See* 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

Tentative Ruling

Motion: Dismiss Case and Extend Trustee's Deadlines

Notice: LBR 9014-1(f)(1); written opposition required or case dismissed without hearing

Disposition: Conditionally denied in part, granted in part

Order: Civil minute order

The Chapter 7 trustee has filed a Motion to Dismiss for Failure to Appear at the § 341(a) Meeting of Creditors and Motion to Extend Deadlines for Filing Objections to Discharge. The debtor opposes the motion.

DISMISSAL

Chapter 7 debtors shall attend the § 341(a) meeting of creditors. 11 U.S.C. § 343. A continuing failure to attend this meeting is cause for dismissal of the case. See 11 U.S.C. §§ 105(a), 343, 707(a); see also *In re Nordblad*, No. 2:13-bk-14562-RK, 2013 WL 3049227, at *2 (Bankr. C.D. Cal. June 17, 2013).

The court finds that the debtor has failed to appear at the first date set for the meeting of creditors. Because the debtor's failure to attend the required § 341 creditors' meeting has occurred only once, the court will not dismiss the case provided the debtor appears at the continued date of the creditor's meeting. This means that the court's denial of the motion to dismiss is subject to the condition that the debtor attend the continued meeting of creditors. But if the debtor does not appear at the continued meeting of creditors, the case will be dismissed on trustee's declaration without further notice or hearing.

EXTENSION OF DEADLINES

The court will grant the motion in part to the extent it requests extension of the trustee's deadlines to object to discharge and to dismiss the case for abuse, other than presumed abuse. Such deadlines will be extended so that they run from the next continued date of the § 341(a) meeting of creditors rather than the first date set for the meeting of creditors. The following deadlines are extended to 60 days after the next continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

CIVIL MINUTE ORDER

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

Findings of Fact and Conclusions of Law are stated in the Civil Minutes of the hearing.

The trustee's Motion to Dismiss for Failure to Appear at § 341(a) Meeting of Creditors and Motion to Extend the Deadlines for Filing Objections to Discharge and Motions to Dismiss 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 denied on the condition that the debtor attend the continued § 341(a) meeting of creditors scheduled for July 10, 2015, at 9:30 a.m. But if the debtor does not appear at this continued meeting, the case will be dismissed on trustee's declaration without further notice or hearing.

IT IS ALSO ORDERED that following deadlines shall be extended to 60 days after the continued date of the creditors' meeting: (1) the trustee's deadline for objecting to discharge under § 727, see Fed. R. Bankr. P. 4004(a); and (2) the trustee's deadline for bringing a motion to dismiss under § 707(b) or (c) for abuse, other than presumed abuse, see Fed. R. Bankr. P. 1017(e).

8. [10-12576](#)-A-7 SHERMAN FUJIOKA MOTION FOR COMPENSATION FOR
JES-2 JAMES E. SALVEN, ACCOUNTANT(S)
JAMES SALVEN/MV 5-6-15 [[83](#)]
RICHARD HARRIS/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

Order: Civil minute order

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 application was required not less than 14 days before the hearing on the application. 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).

COMPENSATION AND EXPENSES

In this Chapter 7 case, James E. Salven, accountant for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$2250.00 and reimbursement of expenses in the amount of \$224.90.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

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.

James E. Salven's application for allowance of final compensation and reimbursement of expenses 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 application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$2250.00 and reimbursement of expenses in the amount of \$224.90.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

9. [15-10791](#)-A-7 MONICA CORTEZ
EAT-1
PHH MORTGAGE CORPORATION/MV
JOEL WINTER/Atty. for dbt.
DARLENE VIGIL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-13-15 [[15](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 2062 University Ave., Madera, California

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).

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). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. The motion will be granted, and Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

10. [15-11796](#)-A-7 JESSE RODRIGUEZ
CJO-1
THE BANK OF NEW YORK MELLON/MV
CHRISTINA O/Atty. for mv.
DEBTOR DISMISSED:
05/19/2015

MOTION FOR RELIEF FROM
AUTOMATIC STAY
5-28-15 [[14](#)]

Final Ruling

The case dismissed, the motion is denied as moot.

11. [14-15699](#)-A-7 JASPAL/DALJEET DHESI
TMT-1
TRUDI MANFREDO/MV
JERRY LOWE/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.

MOTION TO EMPLOY TANVIR JOSHI
AS ATTORNEY(S)
5-14-15 [[19](#)]

Final Ruling

Application: Approval of Employment of Special Counsel

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

Disposition: Approved

Order: Civil minute order

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).

EMPLOYMENT OF SPECIAL COUNSEL

"Employment may be for a general or limited, specific purpose." *In re Hummer Transp., Inc.*, No. 11-60663, 2013 WL 8013588, at *2-3 (Bankr. E.D. Cal. Sept. 12, 2013) (citing 11 U.S.C. § 327(a), (c), (e) and cases), *aff'd sub nom.* *In re Hummer Transp.*, No. CV F 13-1640 LJO, 2014 WL 412534 (E.D. Cal. Feb. 3, 2014).

"A creditor's attorney may be employed by the trustee provided the attorney is 'disinterested,' 'do[es] not hold or represent an interest adverse to the estate,' and, if an objection is made, does not have an 'actual conflict of interest.'" *Id.* (alteration in original) (quoting 11 U.S.C. § 327(a),(c)). "When applied to employment of a creditor's attorney by the trustee as special counsel for a specific matter, the conflicts and eligibility analysis under § 327 is limited to the specific matter for which the attorney is to be employed." *Id.* (citing *Stoumbos v. Kilimnik*, 988 F.2d 949, 964 (9th Cir.1993)).

"Section 327 is implemented by Federal Rule of Bankruptcy Procedure 2014(a), which requires an applicant to disclose all connections with the debtor, creditors, parties in interest, and their respective attorneys and accountants. The disclosure must be full, candid, and complete." *Id.* (citing *Tevis v. Wilke, Fleury, Hoffelt, Gould &*

ANALYSIS

From the factual information provided in the motion and supporting papers, the court will approve the employment of THE JOSHI LAW FIRM, a law firm that also represents a creditor that is pursuing a nondischargeability action. This firm will render services to the trustee on a specific matter involving avoidance of a fraudulent transfer of real property. The transfer was from the debtors to their son.

No objection has been made by a creditor, so the court need not engage in the § 327(c) analysis of whether an actual conflict exists. From the motion and supporting declaration, the court concludes that the interests of the creditor represented by counsel to be employed has interests that are aligned with the estate's interests with respect to the matter for which counsel is to be employed.

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.

The trustee Trudi G. Manfredo's application to employ special counsel 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 application,

IT IS ORDERED that the application is approved. THE JOSHI LAW FIRM is hereby authorized to provide professional services to the trustee for the specific matter of the trustee's avoidance of a fraudulent transfer of real property made by the debtors to their son. By this order, the court does not approve an hourly rate or compensation. The court will issue a decision concerning compensation and expenses only upon a proper application filed in accordance with the Bankruptcy Code and Rules.