

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Robert S. Bardwil
Bankruptcy Judge
Sacramento, California

Wednesday, July 1, 2015

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.

1.	15-20600-D-11	SAEED ZARAKANI	MOTION TO AVOID LIEN OF VAN DE
	MHK-3		POL ENTERPRISES, INC.
			6-3-15 [78]

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 debtor is entitled. As a result, the court will grant the debtor's motion to avoid the lien. Moving party is to submit an appropriate order. No appearance is necessary.

2. 15-20106-D-12 TOMMY/LINDA THOMAS
BLG-1

CONTINUED MOTION TO CONFIRM
CHAPTER 12 PLAN
4-1-15 [18]

3. 15-20106-D-12 TOMMY/LINDA THOMAS
BLG-3

CONTINUED MOTION TO VALUE
COLLATERAL OF HFC BENEFICIAL
4-2-15 [30]

Tentative ruling:

This is the debtors' motion to value collateral of HFC Beneficial; namely, a first position deed of trust on the real property at 3338 Houghton Ave., Corning, California, at \$218,000. Household Fin. Corp. of California ("Household") has filed opposition. For the following reasons the court will grant the motion in part and value the collateral at \$245,000.

In support of the motion, the debtors submitted their own declaration, in which they testify as follows concerning the value of the property: "In our opinion, the ASSET has a value of no more than \$218,000.00. Our valuation of the ASSET is based on our knowledge of the surrounding home area and values and a search on Zillow.com." Debtors' Decl., filed April 2, 2015, at 2:7-10.

An owner of property may testify to his or her opinion of the value of that property, with limitations:

If testifying under [Fed. R. Evid.] 701, the owner may merely give his opinion based on his personal familiarity [with] the property, often based to a great extent on what he paid for the property. On the other hand, if he is truly an expert qualified under the terms of Rule 702 "by knowledge, skill, experience, training or education . . .," then he may also rely on and testify as to facts "of a type reasonably relied upon by experts in the particular field in forming opinions or inferences upon the subject . . ." pursuant to Rule 703. For example, the average debtor-homeowner who testifies in opposition to a motion for relief from the § 362 automatic stay should be limited to giving his opinion as to the value of his home, but should not be allowed to testify concerning what others have told him concerning the value of his or comparable properties unless the debtor truly qualifies as an expert under Rule 702 such as being a real estate broker, etc.

2 Russell, Bankruptcy Evidence Manual § 701:2, pp. 784-85 (West 2012-2013 ed.).

Here, the debtors have based their opinion on "their knowledge of the surrounding home area and values"; that is, on the type of specialized knowledge reasonably relied on by experts in the field of real estate, with no evidence the debtors have any qualifications in that field. Their testimony that their opinion is based on a zillow.com search is hearsay. Thus, in essence, the debtors'

testimony is inadmissible. In any event, the court affords it little, if any, weight.

For its part, Household has submitted the declaration of a licensed real estate appraiser with 11 years of experience, who testifies he conducted an interior evaluation of the property and prepared an appraisal report, including an analysis of four comparable sales and one listing, a copy of which is filed as an exhibit. He has concluded that the fair market value of the property is \$245,000. Based on that evidence and the absence of any significantly probative evidence in support of the debtors' position, the court finds the value of the collateral securing Household's claim to be \$245,000. Accordingly, the court will grant the motion in part and value Household's secured claim at \$245,000. Household has filed a proof of claim for \$256,251.95, to which the debtors have not objected. Valuing the secured claim at \$245,000 would result in Household having an unsecured claim of \$11,251.95.

The court will hear the matter.

4.	14-28017-D-7	JANET COPELAND-NOVAK	MOTION FOR COMPENSATION FOR
	BHS-3		BARRY H. SPITZER, TRUSTEE'S
			ATTORNEY
			6-1-15 [32]

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 by minute order. No appearance is necessary.

5.	15-23727-D-7	HEATHER CASTLEBERRY	MOTION FOR RELIEF FROM
	VVF-1		AUTOMATIC STAY AND/OR MOTION
	HONDA LEASE TRUST VS.		FOR ADEQUATE PROTECTION
			6-1-15 [13]

Final ruling:

This matter is resolved without oral argument. This is Honda Lease Trust'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. Accordingly, the court will grant relief from stay by minute order. As the debtor is not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). There will be no further relief afforded. No appearance is necessary.

6. 11-49741-D-7 WAGDI/NATALYA WAHBA MOTION FOR COMPENSATION FOR J.
JMH-3 MICHAEL HOPPER, CHAPTER 7
TRUSTEE
Final ruling: 6-3-15 [307]

This is the trustee's application for final compensation. No party-in-interest has filed opposition; however, the court is not prepared to consider the application at this time because the moving party failed to serve the debtors at their address of record. The court will continue the hearing to August 12, 2015 at 10:00 a.m. to permit the moving party to file a notice of continued hearing and serve it and the motion on the debtors at their address of record. Accordingly, the hearing on this motion is continued to August 12, 2015 at 10:00 a.m. No appearance is necessary on July 1, 2015.

7. 14-29951-D-7 JAYNIE/WESLEY WISDOM MOTION TO COMPEL ABANDONMENT
CLH-1 6-2-15 [31]

Final ruling:

The matter is resolved without oral argument. There is no timely opposition to the debtors' 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 by minute order. No appearance is necessary.

8. 14-25186-D-7 DARRYL/LAURA WITT MOTION FOR RELIEF FROM
PD-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. 5-29-15 [20]

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 debtors received their discharge on September 2, 2014 and, as a result, the stay is no longer in effect as to the debtors (see 11 U.S.C. § 362(c)(3)). Accordingly, the motion will be denied as to the debtors as moot. The court will grant relief from stay as to the trustee and the estate, and will waive FRBP 4001(a)(3). This relief will be granted by minute order. There will be no further relief afforded. No appearance is necessary.

9. 15-23692-D-7 ALESIA GREEN MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
HYUNDAI MOTOR FINANCE VS. 6-1-15 [14]

Final ruling:

This matter is resolved without oral argument. This is Hyundai Motor Finance'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. Accordingly, the court will grant relief from stay by minute order. As the debtor is not making post-petition payments and the creditor's collateral is a depreciating asset, the court will also waive FRBP 4001(a)(3). There will be no further relief afforded. No appearance is necessary.

10. 15-20106-D-12 TOMMY/LINDA THOMAS CONTINUED MOTION TO EXTEND TIME
BLG-6 5-15-15 [65]
11. 15-21609-D-7 SARINA BOWEN MOTION TO PAY FILING FEE IN
15-2120 INSTALLMENTS
BOWEN V. BOWEN 6-8-15 [6]
12. 14-25820-D-11 INTERNATIONAL MOTION TO EXTEND STAY OF
15-2048 MANUFACTURING GROUP, INC. HNC-
MCFARLAND V. BRIDGE BANK, N.A. 3ADVERSARY PROCEEDING O.S.T.
6-17-15 [43]
13. 13-29030-D-7 WILLIAM/JANET CHENG MOTION TO RELEASE FUNDS FROM
HCS-8 COURT REGISTRY
6-17-15 [837]

Tentative ruling:

This is the trustee's motion for an order directing the Clerk of the Court to release to the trustee \$200,000 of the unclaimed funds being held in the court's registry in connection with this case. For the following reasons, the motion will be denied without prejudice.

The funds held in the registry in this case derive entirely from surplus funds; that is, funds remaining after all allowed claims against the estate were paid in full. Pursuant to § 726(a)(6) of the Bankruptcy Code, the funds in the registry, which were previously property of the bankruptcy estate, were to be distributed to the debtors. After the debtors failed to negotiate the check representing the surplus funds, the trustee deposited the funds into the court registry. Neither the debtors' failure to cash the check nor the trustee's deposit of the funds into the

registry changed the character of the funds from a distribution of excess funds back into property of the estate.

The legal authority cited by the trustee is off the mark as it does not support the proposition that excess funds remain property of the estate after they have been distributed to the debtors or after the debtors have rejected their distribution. In this case, the deposit of the funds into the registry was a substitute for a distribution to the debtors, who apparently rejected the distribution. The funds have retained their character as a distribution of excess funds; they are not estate funds. What the trustee is seeking appears to be in the nature of a surcharge of funds belonging to the debtors; he has provided no authority to support such relief.

The trustee refers several times to "defending the estate" and "protecting the estate." However, there is no bankruptcy estate left to defend or protect. The trustee's final report in this case stated that the estate had been fully administered; that fact has not changed simply because the debtors apparently refused to cash their check.

Finally, the court finds that the amount requested by the trustee is grossly disproportionate to the amount of time that might reasonably be required to review and respond, if necessary, to the debtors' various motions, and even their appeal, filed in the case thus far. The trustee has not responded to many of the motions, nor would a response have been necessary. As the trustee is aware, the court considers the motions carefully and rules on them on the merits regardless of the fact that no opposition is filed.

To conclude, the court is not persuaded it has the authority to grant the relief requested. Even if it were so convinced, the amount requested grossly misses the mark. Accordingly, the motion will be denied without prejudice.

The court will hear the matter.

- | | | |
|-----|------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 14. | 10-42050-D-7 VINCENT/MALANIE SINGH
12-2429 KBP-7
BURKART V. STEELE | MOTION BY KATHY B. PHELPS TO
WITHDRAW AS ATTORNEY
6-11-15 [162] |
| | | |
| 15. | 14-31685-D-7 CATHERINE PALPAL-LATOC
DNL-7 | MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH KRISTINE A.
LAUDER, IGNACIO LAUDER III,
DANA MARIE G. VERGARA AND
ANNABELLE G. MARINAC
6-10-15 [96] |

