

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

July 13, 2023 at 10:30 a.m.

1. [23-90111-E-11](#)
[23-9007](#)

MICHAEL HOFMANN
Brian Haddix

**ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES**

HOFMANN V. WAGNER

6-14-23 [10]

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter. If the court's tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Plaintiff-Debtor and Plaintiff-Debtor's Attorney as stated on the Certificate of Service on June 16, 2023. The court computes that 27 days' notice has been provided.

The court issued an Order to Show Cause based on Plaintiff-Debtor's failure to pay the required fees in this Adversary Proceeding: \$350.00 due on May 23, 2023.

<p>The Order to Show Cause is sustained, and the Adversary Proceeding is dismissed.</p>
--

The court's docket reflects that the default in payment that is the subjection of the Order to Show Cause has not been cured. The following filing fees are delinquent and unpaid by Plaintiff-Debtor: \$350.00.

The court shall issue an order substantially in the following form holding that:

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

IT IS ORDERED that the Order to Show Cause is sustained, the Amended Complaint is stricken and this Adversary Proceeding is dismissed without prejudice.

**MOTION TO EMPLOY COMPASS REAL
ESTATE - BEVERLY HILLS AS
BROKER(S) AND/OR MOTION TO
EMPLOY THE FRIDMAN GROUP
INTERNATIONAL AS BROKER(S)
6-15-23 [105]**

July 13, 2023 at 10:30 a.m.
Page 2 of 10

De Las Flores, Calabasas, CA 91302 (“Calabasas Property”) from May 9, 2023 through November 9, 2023.

During the period from May 9, 2023 through November 9, 2023, the terms upon which the employment will be compensated are stated as:

The Debtors have agreed that Applicant will be paid as follows:

- Exclusive right to lease/rent the Calabasas property from May 9, 2023 through November 9, 2023;
- Asking rent will be \$20,995/month for a one-year term, with a security deposit of \$41,990;
- Compensation shall be 5% of the total rent for the one-year term for a fixed term lease, or 5% of the lease term if the Debtors agree to a month-to-month rental. Applicant shall split the commission with the tenant’s broker/agent, if any; and
- If the Debtors later sell to a tenant secured by the Applicant, during the rental term or any extension thereof, the Debtors will pay Applicant 2.5% of the selling price as commission.

Motion, p. 5:18 -6:3.

The Declaration of Isidora Fridman, a real estate agent of The Fridman Group International, is provided in support of the Application. Dckt. 107. With respect to the Debtors and the Debtor in Possession, she testifies:

8. To the best of my knowledge, neither [COMPASS Real Estate] or I have any relationship or connection with the Debtor’s creditors or other parties in interest or respective attorneys or accountants except as set forth herein.

Dec., ¶ 8; Dckt. 107. She further testifies that to the best of her neither COMPASS Real Estate or Ms. Fridman have been an investment banker for Debtors; an attorney for such investment banker for securities offered by debtor; an insider, officer, or employee of Debtors; have an interest adverse to the bankruptcy estate; and do not hold any prepetition claim against the Estate. Dec., ¶¶ 10, 11, 12. 13.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee’s duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such

terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Broker, considering the declaration demonstrating that Broker does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ COMPASS Real Estate - Beverly Hills, Tomer Fridman and Isidora Fridman of The Fridman Group International as Broker for the Chapter 11 Estate on the terms and conditions set forth in the Listing Agreement filed as Exhibit A, Dckt. 109. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

The court shall issue an 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 Ramil Abalkhad and Melina Abalkhad (“Debtor in Possession”) 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 Employ is granted, and Debtor in Possession is authorized to employ Isidora Fridman and The Fridman Group International as Broker for Debtor in Possession on the terms and conditions as set forth in the Listing Agreement filed as Exhibit A, Dckt. 109.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

IT IS FURTHER ORDERED that the Debtor in Possession is authorized to make interim professional fee payments in an amount not to exceed the 5% of the actual rent paid, with the payments made monthly.

IT IS FURTHER ORDERED that the Isidora Fridman and The Fridman Group International shall file a final fee application on or before November 30, 2023. Additionally, any fee in the event of a sale of the property must be approved in the Order authorizing the sale or a subsequent separate order.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by Broker in connection with this matter, regardless of

whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

3. [19-90488-E-7](#)
[DCJ-3](#)

REYES RANGEL
David Johnston

MOTION TO AVOID LIEN OF ACCESS
CAPITAL SERVICES, INC.
6-27-23 [\[40\]](#)

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, and Office of the United States Trustee on June 27, 2023. By the court's calculation, 16 days' notice was provided. 14 days' notice is required.

The Motion to Avoid Judicial Lien was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----.

The Motion to Avoid Judicial Lien is granted.
--

This Motion requests an order avoiding the judicial lien of Access Capital Services, Inc. ("Creditor") against property of the debtor, Reyes Flores Rangel III ("Debtor") commonly known as 2704 Villa Ramon Drive, Ceres, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$310,730.00. Exhibit 4, Dckt. 42. An abstract of judgment was recorded with Stanislaus County on May 30, 2017, that encumbers the Property. *Id.*

Debtor received their discharge on September 30, 2019. Discharge Order, Dckt. 25. The bankruptcy case was closed on October 4, 2019. Order Closing Case, Dckt. 27. Debtor reopened the case on March 25, 2021, for the purpose of avoiding a judgment lien against the Debtor. Motion, Dckt. 29;

Order, Dckt. 32. The case was then closed again on May 6, 2021, without a lien avoidance action being filed. Order, Dckt. 34. On May, 30 2023, Debtor reopened the case for a second time for the purpose of avoiding a judgment lien. Motion, Dckt. 35; Order, Dckt. 38.

Absent prejudicial delay, an avoidance action may be brought at any time. *In re Chabot*, 992 F.2d 891, 893 (9th Cir. 1993) (citing *In re Yazzie*, 24 B.R. 576, 577-78 (B.A.P. 9th Cir. 1982)). A bankruptcy case can be reopened to decide a lien avoidance issue. *Id.* A Debtor waiting too long to bring an avoidance action is not sufficient to show prejudice. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$220,000.00 as of the petition date with Debtor holding a 50% interest. Schedule A/B, Dckt. 20. Thus, the value of Debtor's 50% interest is \$110,000. The unavoidable consensual liens that total \$47,000.00 as of the commencement of this case are stated on Debtor's Schedule D. Schedule D, Dckt. 20. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.950 in the amount of \$100,000.00 on Schedule C. Schedule C, Dckt. 20.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Reyes Flores Rangel ("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 judgment lien of Access Capital Services, Inc., California Superior Court for San Joaquin County Case No. 39-2015-00322212-CU-BC-STK, recorded on May 30, 2017, Document No. 2017-0038525-00, in Stanislaus County, CA, against the real property commonly known as 2704 Villa Ramon Drive, Ceres, California, is avoided in its pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

FINAL RULINGS

4. [23-90088-E-7](#) **JEFFERY/HEATHER EKSTROM** **MOTION TO AVOID LIEN OF TD BANK**
[ELS-1](#) **Eric Seyvertsen** **USA, N.A.**
5-24-23 [\[23\]](#)

Final Ruling: No appearance at the July 13, 2023 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 Chapter 7 and Office of the United States Trustee on May 25, 2023. By the court’s calculation, 49 days’ notice was provided. 28 days’ notice is required.

The Motion to Avoid Judicial Lien 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Avoid Judicial Lien is granted.

This Motion requests an order avoiding the judicial lien of TD Bank USA, N.A. (“Creditor”) against property of the debtor, Jeffery Ekstrom and Heather Ekstrom (“Debtor”) commonly known as 2315 Gallery Drive, Riverbank, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$2,789.97. Exhibit A, Dckt. 25. An abstract of judgment was recorded with Stanislaus County on November 16, 2020, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$421,400.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$321,936.00 as of the commencement of this case are stated on Debtor’s Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$99,464.00 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Jeffery Ekstrom and Heather Ekstrom ("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 judgment lien of TD Bank USA, N.A., California Superior Court for Stanislaus County Case No. CV-19-007717, recorded on November 16, 2020, with the Stanislaus County Recorder, against the real property commonly known as 2315 Gallery Drive, Riverbank, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

Final Ruling: No appearance at the July 13, 2023 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 Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on June 1, 2023. By the court’s calculation, 42 days’ notice was provided. 28 days’ notice is required.

The Motion to Avoid Judicial Lien 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Motion to Avoid Judicial Lien is granted.</p>

This Motion requests an order avoiding the judicial lien of JPMorgan Chase Bank, NA (“Creditor”) against property of the debtor, Mark William Smith and Amanda Marie Smith (“Debtor”) commonly known as 13716 Channel Lane, Waterford, California (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$13,420.37. Exhibit D, Dckt. 19. An abstract of judgment was recorded with Stanislaus County on October 4, 2022, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$524,050.00 as of the petition date. Dckt. 16. The unavoidable consensual liens that total \$375,620.00 as of the commencement of this case are stated on Debtor’s Schedule D. Dckt. 16. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730(a) in the amount of \$460,000.00 on Schedule C. Dckt. 16.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor’s exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Mark William Smith and Amanda Marie Smith (“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 judgment lien of JPMorgan Chase Bank, NA, California Superior Court for Stanislaus County Case No. CV-21-004122, recorded on October 4, 2022, with the Stanislaus County Recorder, against the real property commonly known as 13716 Channel Lane, Waterford, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.