

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 7th Floor
Courtroom 28, Department A
Sacramento, California

DAY: MONDAY
DATE: JULY 19, 2021
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

RULINGS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling.

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: "**[Since posting its original rulings, the court has changed its intended ruling on this matter]**".

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [21-22311](#)-A-7 **IN RE: MICHAEL BORCHERT AND RACHEL ROHAN-BORCHERT**

ORDER TO SHOW CAUSE - FAILURE TO PAY FEES
6-28-2021 [\[12\]](#)

7/6/21 INSTALLMENT FEE PAID \$338

Final Ruling

The fee having been paid in full, the order to show cause is discharged. The case will remain pending.

2. [19-20617](#)-A-7 **IN RE: DAISY CUARESMA**
[HSM-9](#)

MOTION TO EXTEND TIME
7-2-2021 [\[104\]](#)

MARK HANNON/ATTY. FOR DBT.
AARON AVERY/ATTY. FOR MV.

Tentative Ruling

Motion: Extend Deadline to File Objection to Claim of Exemptions

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

Disposition: Granted

Order: Prepared by moving party pursuant to the instructions below

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).

"A party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension." Fed. R. Bankr. Proc. 4003(b)(1).

Here the trustee filed a motion to extend the deadline to object to the debtor's amended claims of exemptions within 30 days after the debtor filed an Amended Schedule C, ECF No. 85. The trustee had timely moved to extend the deadline under Fed. R. Bankr. Proc. 4003(b). The extended deadline to object to claims of exemptions has been July 20, 2021.

Now the trustee moves the court again to extend the deadline to object to the amended claims of exemptions. The trustee filed the

motion prior to the extended deadline. The court may extend the deadline to object for cause, Fed. R. Bankr. Proc. 4003(b).

The court finds cause under Rule 4003(b) to extend time for filing objections. The debtor listed in Amended Schedules A/B (ECF No. 43) and exempted in Amended Schedule C (ECF No. 85), "Investment with Trust Investment & Crypto Company." The court stayed the trustee's adversary proceeding against the debtor (20-02003-A) per the parties' stipulation that the debtor will cooperate with respect to investigation/administration of the estate's interest in the CryptoCurrency asset, Adversary Proceeding 20-02003-A, ECF No. 11.

Also, the CryptoCurrency Asset and numerous other assets (e.g. 401(k) with Lodi Memorial Hospital, Lincoln Benefit life insurance policy, National Life Group insurance policy) were scheduled on the debtor's Amended Schedules A/B 7 months after filing, ECF No. 43, and are now exempted for the first time on Amended Schedule C over a year after filing, ECF No. 85. The trustee states, and the court agrees, that it is in the best interests of the estate to extend the deadline to object to exemptions until it is clear what assets will be recovered, rather than litigating potential objections for any of the newly listed assets in Amended Schedule C.

Based on the motion and supporting papers, the court finds that cause exists to extend the deadline for objecting to exemptions under Fed. R. Bankr. Proc. 4003(b). This deadline to object to the amended claims of exemptions will be extended to July 20, 2022.

3. [21-20460](#)-A-7 **IN RE: PATRICK BUSSEY**
[WW-1](#)

MOTION TO COMPEL ABANDONMENT
6-16-2021 [\[19\]](#)

PAULDEEP BAINS/ATTY. FOR DBT.
MARK WOLFF/ATTY. FOR MV.
DEBTORS DISCHARGED: 05/17/2021
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Compel Abandonment of Property of the Estate

Notice: LBR 9014-1(f)(1); trustee's non-opposition filed

Disposition: Granted

Order: Prepared by moving party pursuant to the instructions below

Subject: 5728 Balfor Rd, Rocklin, CA 95765

Value: \$532,662.28

1st Trust Deed: \$493,104.93 (U.S. Bank Trust N.A.)

Exemption: \$528,000.00

Non-Exempt Equity: (-\$488,442.65)

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).

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). 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 real property described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment is warranted.

4. [21-22191](#)-A-7 **IN RE: FERNANDO RICO**
[ETW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
6-23-2021 [\[15\]](#)

EDWARD WEBER/ATTY. FOR MV.
GANNON CAPITAL LLC VS.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

These minutes constitute the court's findings of fact and conclusions of law required by Fed. R. Civ. P. 52(a), *incorporated* by Fed. R. Bankr. P. 7052, 9014(c). The findings of fact are as set forth above; the conclusions of law are as set forth below.

DEFAULT OF RESPONDENT

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).

STAY RELIEF

"[A]fter notice and a hearing," the court may terminate, annul, modify or condition the stay: (1) "for cause, including the lack of adequate protection"; or (2) "with respect to a stay of an act against property [of the estate]" if the debtor lacks "equity" in that property and if that "property is not necessary for an effective reorganization." 11 U.S.C. § 362(d); *see also* Fed. R. Bankr. P. 4001(a)(1). The party seeking stay relief bears the burden of proof as to "the debtor's equity in the property" and on the validity and perfection of its security interest, as well as the amount of its debt. 11 U.S.C. § 362(g)(1); *In re Dahlquist*, 34 B.R. 476, 481 (Bankr. S.D. 1983). The party opposing stay relief, e.g., the debtor or Chapter 7 trustee, bears the burden of proof on all other issues. 11 U.S.C. § 362(g)(2).

Here, prior to filing bankruptcy, the debtor entered into an agreement whereby the subject real property is secured by a deed of trust in the principal amount of \$153,000.00. ECF No. 18. Subsequently, the debtor defaulted in payments. The movant commenced a foreclosure proceeding with the recording of the Notice of Default. *Id.* The debtor filed this chapter 7 case on the day of the foreclosure sale. The creditor was not accounted for in the debtor's schedules, ECF No. 1. The debtor remains in default pursuant to

terms of the agreement in the amount of \$20,643.57. This constitutes cause to terminate the stay.

The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

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.

Gannon Capital LLC's motion for relief from the automatic stay 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 automatic stay is vacated with respect to the property described in the motion, commonly known as 4635 East 4th Street, Stockton, CA 95215, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

5. [12-32596](#)-A-7 **IN RE: MARISABEL JIMENEZ**
[CYB-1](#)

MOTION TO AVOID LIEN OF PROFESSIONAL COLLECTION CONSULTANTS
7-1-2021 [\[27\]](#)

CANDACE BROOKS/ATTY. FOR DBT.
DEBTORS DISCHARGED: 10/22/2012

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Judicial Lien Avoided: \$11,107.50 (Professional Collection Consultants)

All Other Liens:

-\$339,131.00 (Bank of America, California - First Deed of Trust)

-\$84,750.00 (Bank of America, North Carolina - Second Deed of Trust)

Exemption: \$1.00 (ECF No. 25)

Value of Property: \$250,000.00

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).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the responding party's judicial lien will be avoided entirely.