

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: July 20, 2021

CALENDAR: 1:00 P.M. CHAPTER 13

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

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

July 20, 2021 at 1:00 p.m.

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1. [21-21810](#)-B-13 ANTHONY/KAMIE GAMBINI ORDER TO SHOW CAUSE - FAILURE
 Yasha Rahimzadeh TO PAY FEES
 6-22-21 [[16](#)]

Final Ruling

The Order to Show Cause will be discharged and the case will remain pending but the court will modify the terms of its order permitting the Debtors to pay the filing fee in installments.

The court granted the Debtors permission to pay the filing fee in installments. The Debtors failed to pay the \$1.00 installment when due on June 17, 2021. While the delinquent installment was paid on June 23, 2021, the fact remains that the court was required to issue an order to show cause to compel the payment. Therefore, as a sanction for the late payment, the court will modify its prior order allowing installment payments to provide that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

The order to show cause is ORDERED DISCHARGED for reasons stated in the minutes and the case SHALL REMAIN PENDING.

IT IS FURTHER ORDERED that if a future installment is not received by its due date, the case will be dismissed without further notice or hearing.

The court will issue an order.

July 20, 2021 at 1:00 p.m.

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Parties in interest were not required to file a written response or opposition, and may appear at the hearing to offer oral argument.

The court's decision is to conditionally grant the motion to dismiss case and **continue the matter to August 10, 2021, at 1:00 p.m.**

The Debtor's confirmed plan is for a term of 60 months paying 100% to general unsecured creditors, and a monthly plan payment of \$655.00. However, the plan will take approximately 51 months to complete due to the over-extension caused by a discrepancy in general unsecured claims. Section 7.01 of Debtor's plan provides for \$13,318.00 in non-educational general unsecured claims; however, the non-educational general unsecured claims as filed are in the sum of \$23,759.74. The Debtor has completed 35 months of his 60-month plan. No objection to the claim or modified plan has been filed by the Debtor.

Cause exists to dismiss this case. The motion is conditionally granted and the case will be dismissed.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, July 23, 2021, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on August 10, 2021, at 1:00 p.m. will be vacated. The moving party may submit an order granting the motion and vacating the continued hearing on or after Monday, July 26, 2021.

If an opposition or response is timely filed and served, the court will hear the motion on August 10, 2021, at 1:00 p.m.

The court will issue an order consistent with this conditional ruling.

3. [21-21966](#)-B-13 EDSON/GENEALYN DELSOCORA MOTION TO AVOID LIEN OF MIDLAND
[JAD](#)-1 Jessica A. Dorn FUNDING LLC
6-29-21 [[17](#)]

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to conditionally grant the motion to avoid lien and to **continue the matter to August 10, 2021, at 1:00 p.m.**

This is a request for an order avoiding the judicial lien of Midland Funding, LLC ("Creditor") against the Debtors' property commonly known as 1513 Artese Lane, Stockton, California ("Property").

A judgment was entered against Joint Debtor in favor of Creditor in the amount of \$2,357.29. An abstract of judgment was recorded with San Joaquin County on September 26, 2018, which encumbers the Property.

Pursuant to the Debtors' schedules, the Property has an approximate value of \$352,500.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$149,085.48 on Schedule C. All other liens recorded against the Property total \$201,057.23.

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 this judicial lien impairs the Debtors' exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, July 23, 2021, to file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Debtors' attorney, Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on August 10, 2021, at 1:00 p.m. will be vacated. The moving party may submit an order granting the motion and vacating the continued hearing on or after Monday, July 26, 2021.

If an opposition or response is timely filed and served, the court will hear the motion on August 10, 2021, at 1:00 p.m.

The court will issue an order consistent with this conditional ruling.

4. [20-25678](#)-B-13 JOSE GRACIA
[RDG](#)-1 Grace S. Johnson

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
6-28-21 [[45](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to sustain the objection and deny confirmation of the plan.

First, Debtor's plan provides for a 12% distribution to general unsecured creditors. However, based on Debtor's Form 22C (Statement of Current Monthly Income), general unsecured creditors would receive a 44.9% dividend. The Debtor's plan does not comply with 11 U.S.C. § 1325(b)(1)(B) and is not confirmable.

Second, the Money Source Inc. has filed a secured claim in the amount of \$378,536.38. Debtors' plan does not provide for this secured claim. Debtor's plan is not feasible under 11 U.S.C. §1325(a)(6).

The plan filed March 12, 2021, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

5. [21-21681](#)-B-13 SAMUEL ROSAS
[RDG](#)-1 Jessica A. Dorn

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
6-28-21 [[16](#)]

Final Ruling

The Chapter 13 Trustee having filed a notice of dismissal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

There being no other objection to confirmation, the plan filed May 6, 2021, will be confirmed.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED and counsel for the Debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 Trustee for approval as to form, and if so approved, the Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

ROCKY TOP RENTALS, LLC VS.

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to conditionally grant the motion and terminate the automatic stay, and **continue the hearing to August 10, 2021, at 1:00 p.m.**

Rocky Top Rentals, LLC ("Movant") seeks relief from the automatic stay with respect to an asset identified as a portable storage building ("Shed"). Movant is the owner of the Shed, which was rented by debtors Lawrence Boldon and Jenny Boldon ("Debtors"). The moving party has provided the Declaration of Rochelle Zelenka-Diatikar to introduce into evidence the documents upon which it bases the claim and the obligation owed by the Debtor.

The Zelenka-Diatikar Declaration states that there are 0 pre-petition payments in default and 4 post-petition payments in default totaling \$956.92. The declaration also states that Debtor's confirmed plan filed January 20, 2021, lists the Shed in Class 3 to be surrendered. However, this is inaccurate and the only collateral listed in Class 3 to be surrendered are solar panels of creditor Solar Mosaic.

Discussion

The court maintains the right to grant relief from stay for cause when a debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the Debtors and the estate have not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the Shed for either the Debtors or the Estate. 11 U.S.C. § 362(d)(2). And no opposition or showing having been made by the Debtors or the Trustee, the court determines that the Vehicle is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue an order terminating and vacating the automatic stay to allow creditor, its agents, representatives and successors, and all other creditors having lien rights against the Shed, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

Conditional Nature of this Ruling

Because the motion has been filed, set, and served under Local Bankruptcy Rule 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on Friday, July 23, 2021, to

file and serve an opposition or other response to the motion. See Local Bankr. R. 9014-1(f)(2)(C). Any opposition or response shall be served on the Debtor's attorney, Chapter 13 Trustee and the United States trustee by facsimile or email.

If no opposition or response is timely filed and served, the motion will be deemed granted for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on August 10, 2021, at 1:00 p.m. will be vacated. The moving party may submit an order granting the motion and vacating the continued hearing on or after Monday, July 26, 2021.

If an opposition or response is timely filed and served, the court will hear the motion on August 10, 2021, at 1:00 p.m.

The court will issue an order consistent with this ruling.

7. [21-21489](#)-B-13 ARTHUR MENDOZA AND OBJECTION TO DEBTOR'S CLAIM OF
[RDG-1](#) CONSUELO LEYVA MENDOZA EXEMPTIONS
Thru #8 Mikalah R. Liviakis 6-15-21 [[43](#)]

Final Ruling

The objection has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 4003(b). The failure of the respondent and other parties in interest to file written opposition at least 14 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). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to sustain the objection and disallow the exemption.

The Chapter 13 Trustee objects to the Debtor's use of California Code of Civil Procedure § 704.100(a) to exempt a Colonial Whole Life Policy in the amount of \$23,628.00 and a second Colonial Whole Life Policy in the amount of \$23,232.00. That code section exempts Debtors' interest in unmaturing life insurance policies but not the loan value of such policies.

The court agrees with the issue raised by the Trustee. The objection is sustained and the claimed exemption is disallowed.

The objection is ORDERED SUSTAINED and the claimed exemption DISALLOWED for reasons stated in the minutes.

The court will issue an order.

8. [21-21489](#)-B-13 ARTHUR MENDOZA AND CONTINUED OBJECTION TO
[RDG-2](#) CONSUELO LEYVA MENDOZA CONFIRMATION OF PLAN BY RUSSELL
Mikalah R. Liviakis D. GREER
6-15-21 [[47](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

Because the plan is not confirmable and the objection is not one that may be resolved in the confirmation order, further briefing is not necessary. See Local Bankr. R. 9014-1(f)(2)(C). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to sustain the objection and deny confirmation of the plan.

First, Debtors utilize an improper exemption for their interest in the loan value of unmaturing life insurance policies. See Item #7, RDG-1.

Second, Debtors propose a 0% dividend to unsecured creditors but have not taken an exemption on their interest in real property located at 558 Delhi Avenue, Stockton, California. Debtor's non-exempt equity totals \$98,550.78, which is primarily their interest in the real property. The plan fails the chapter 7 liquidation analysis under 11 U.S.C. § 1325(a)(4).

The plan filed April 23, 2021, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

The objection is ORDERED SUSTAINED for reasons stated in the minutes.

The court will issue an order.

9. [21-22497](#)-B-13 DONNIE LEA
[GSJ](#)-1 Grace S. Johnson

MOTION TO EXTEND AUTOMATIC STAY
O.S.T.
7-12-21 [[14](#)]

Final Ruling

The motion has been set for hearing on an order shortening time by Local Bankruptcy Rule 9014-1(f)(3). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to grant the motion to extend automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on June 15, 2021, for failure to make plan payments (case no. 18-26050, dkt. 67). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end in their entirety 30 days after filing of the petition. See e.g., *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011) (stay terminates in its entirety); accord *Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018).

Discussion

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtor asserts that he was unable to keep up with plan payments in his previous case but that his circumstances have changed in this case because he has put together a budget to stick to. Debtor also states that his plan payments in this case will be less than they were before. The extension is necessary to reorganize Debtor's car payments.

The Debtor has sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

The court will issue an order.