

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

July 23, 2020 at 10:30 a.m.

1.	<u>20-21850-E-7</u> <u>BLF-2</u>	ERIC/SUSIE TARGOWSKI Ryan Keenan	MOTION TO SELL 6-18-20 <u>[21]</u>
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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.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors, parties requesting special notice, and Office of the United States Trustee on June 18, 2020. By the court's calculation, 35 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(2) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion to Sell Property 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). The defaults of the non-responding parties and other parties in interest are entered.

<p>The Motion to Sell Property is granted.</p>

The Bankruptcy Code permits Gary Farrar, the Chapter 7 Trustee, ("Movant") to sell property of the estate after a noticed hearing. 11 U.S.C. § 363. Here, Movant proposes to sell the personal property identified as a 2018 Hyundai Tucson, VIN ending in #6198 and a 2005 Hummer H2, VIN ending in #2683 (collectively, "Property").

The complete terms of the sale can be found in the Purchase and Sale Agreement

("Agreement") in Exhibit A, Dckt. 24. The proposed purchaser of the Property is Nationwide Fleet ("Buyer"), and the terms of the sale are summarized below:

- A. Buyer will purchase the estate's interest in the Property for \$14,800.00 in the form of a cashier's check payable to Movant at the time of signing the agreement.
- B. Buyer is purchasing the Property "as-is." No warranties or representations from Movant.
- C. Buyer will pay all costs and fees incurred in connection with the transactions described in the Agreement.
- D. Buyer will release Movant from any and all claims related to or arising under the sale.
- E. Movant is not responsible for any taxes arising under or related to the sale.
- F. In the event of a breach of the Agreement, the breaching party will pay reasonable attorney's fees and costs to the non-breaching party incurred by reason of said breach.
- G. The sale is conditional upon approval of the court.
- H. The bankruptcy court shall have exclusive jurisdiction over any disputes relating to or arising from the agreement.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were presented in open court: XXXXXXXXXXXXXXXXXX.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because in the alternative to the sale, Movant would need to employ an auctioneer to sell the Property at a public auction, and the gross proceeds of sale would be reduced by approximately \$3,000.00 after deducting the auctioneer's commission, buyer's premium, and costs of sale.

The court shall issue a minute 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 Sell Property filed by Gary Farrar, the Chapter 7 Trustee, ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Gary Farrar, the Chapter 7 Trustee, (“Movant”), is authorized to sell pursuant to 11 U.S.C. § 363(b) to Nationwide Fleet or nominee (“Buyer”), the Property identified as a 2018 Hyundai Tucson, VIN ending in #6198 and a 2005 Hummer H2, VIN ending in #2683 (collectively, “Property”), on the following terms:

- A. The Property shall be sold to Buyer for \$14,800.00, on the terms and conditions set forth in the Purchase Agreement, Exhibit A, Dckt. 24, and as further provided in this Order.
- B. The Chapter 7 Trustee is authorized to execute any and all documents reasonably necessary to effectuate the sale.

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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee and Office of the United States Trustee on June 23, 2020. By the court's calculation, 30 days' notice was provided. The court set the hearing for July 23, 2020. Dckt. 36.

The Motion to Convert Case from Chapter 7 to Chapter 13 was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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 -----.

<p>The Motion to Convert the Chapter 7 Bankruptcy Case to a Case under Chapter 13 is XXXXXXX.</p>

Antranick Harrentsian ("Debtor") seeks to convert this case from one under Chapter 7 to one under Chapter 13. The Bankruptcy Code authorizes a one-time, near-absolute right of conversion from Chapter 7 to Chapter 13. 11 U.S.C. § 706(a); *see also Marrama v. Citizens Bank of Mass.*, 549 U.S. 365 (2007).

Debtor asserts that the case should be converted because this case has not been previously converted under § 1112 or § 1307.

Here, Debtor's case has not been converted previously, and Debtor qualifies for relief under Chapter 13. Notice was provided to the Chapter 7 Trustee, Office of the United States Trustee, and other interested parties. No opposition has been filed.

Pursuant to this court's July 8, 2020 Order (Dckt. 36), the instant Motion was set for hearing on the grounds that the court cannot identify what basis exists for Debtor being able to prosecute a Chapter 13 case.

The Chapter 7 Trustee filed her Opposition on July 16, 2020. Dckt. 45. In it, the Trustee identifies the following assets the Trustee is intending to administer:

- A. The real property identified as 8065 Dorian Way, Fair Oaks, California, which the Debtor states has a value of \$340,000, is subject to the secured claim of Wells Fargo Mortgage in the amount of (\$142,266), and in which Debtor has claimed a homestead exemption of (\$100,000). After taking into account the secured claim and the exemption, there is approximately \$100,000 of equity for the Estate (which the Trustee believes will actually be higher).
- B. The bankruptcy estate includes a judgment in the amount of \$838,578.03 against Sarah Correa (which Debtor did not disclosed on Schedule A/B). The Debtor has been obtaining payments on this obligation via a wage garnishment, which the Trustee projects will continue.

In her Declaration, the Trustee testifies that the Debtor has not cooperated with the Trustee to have access to the real property for Trustee's real estate professional. Dckt. 47. Filed as Exhibit D is a copy of an Interim Return from the Ada County Sheriff's Office for recoveries on the wage garnishment, which shows that so far \$65,227.47 has been recovered by the Sheriff's office on the judgment. Dckt. 46 at 15.

Further, the Chapter 7 Trustee indicates that there are nonexempt assets to be administered in the bankruptcy estate. *Id.* After a review of Schedules A/B, the court cannot identify any assets disclosed by Debtor in which there is non-exempt equity.

Taking Debtor's statements of financial information under penalty of perjury as accurate, Debtor has little income with which to fund a Chapter 13 Plan. Schedule I lists Debtor having only \$1,220 a month in Social Security income, is receiving \$194 in Cal Fresh Benefits, and \$840.00 from the wage garnishment (but no judgment asset listed on Schedule A/B). Dckt. 1 at 30-31.

On Schedule J Debtor lists having \$2,120 a month in expenses, which includes \$1,400 for a mortgage payment. *Id.* at 33-34. Schedule J includes the note that the monthly mortgage payment is anticipated to increase. *Id.* at 34. Debtor's expenses listed on Schedule J do not appear reasonable for a family of two persons (Debtor and a minor child). Questionable amounts include: (1) \$0.00 for home maintenance and repairs; (2) \$70.00 for food for the two people; (3) \$0.00 for medical and dental expenses; and (4) \$150.00 for transportation (gas, repairs, maintenance, and registration for Debtor's 18 year old Mercedes Benz).

On Schedule E/F, Debtor lists having unsecured debts of only \$2,454. The only secured claim listed is that of Wells Fargo Mortgage in the amount of \$142,266.

At the hearing, xxxxxxxxxxxxxx.

The court shall issue a minute 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 Convert filed by Antranick Harrentsian (“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 Motion to Convert is **xxxxxxx**.

FINAL RULINGS

3. [20-20175-E-11](#) **HERBERT MILLER** **CONTINUED ORDER TO SHOW CAUSE**
Judson Henry **FAILURE TO PAY FEES**
3-18-20 [58]

Final Ruling: No appearance at the July 23, 2020 Hearing is required.

The Order to Show Cause was served by the Clerk of the Court on Debtor and Debtor's Attorney as stated on the Certificate of Service on March 20, 2020. The court computes that 20 days' notice has been provided.

The court issued an Order to Show Cause based on Debtor's failure to pay the required fees in this case: \$430.00 due on March 18, 2020.

The Order to Show Cause is discharged, and the bankruptcy case shall proceed in this court.

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 Debtor: \$430.00.

On April 1, 2020, the Debtor in Possession filed a Response. Dckt. 61. The Debtor in Possession requests that the installment payment schedule be extended in light of the Debtor's source of income, being employed with Windsor Diamonds, being grossly impacted by the COVID-19 restrictions. Debtor provides his declaration in support of this request. Dckt. 62.

Though not mentioned in the Response or Declaration, when the court saw the reference to "Windsor Diamonds," a memory of repeated prior filed bankruptcy cases was triggered.

Chapter 11 Bankruptcy Case No. 19-23392 was filed by Debtor on May 29, 2019 and dismissed on July 15, 2019. That case was dismissed due to Debtor's failure to pay the filings fees in that case. 19-23392; Civil Minutes and Order, Dckts. 33, 35, respectively. Debtor was represented by a different attorney

Chapter 13 bankruptcy Case No. 18-26373 was filed on October 9, 2018, and dismissed on November 7, 2018. Debtor was represented in the Chapter 13 case by the same counsel as in the current Chapter 11 case. That case was dismissed due to the failure of Debtor to file the required documents, as well as the information provided by Debtor showing that he was not eligible for relief under Chapter 13.

**Review of Financial Information
Provided Under Penalty of Perjury**

On Schedule I filed by Debtor, he states under penalty of perjury that his occupation is a “real property owner and manager, being self-employed.” Dckt. 22 at 32-33. His monthly net income from this self-employment is \$1,500.00. Debtor further states under penalty of perjury that his only other income is \$1,400 a month in Social Security benefits. *Id.* Debtor states that his total gross monthly income is \$2,900.00.

Schedule I includes the following information concerning anticipated changes in income:

By March 15, 2020, Debtor will have additional monthly income of between \$6,000 and \$10,000 per month, as an independent jewelry contractor, working for Windsor Diamonds, of Folsom, CA.

Id. at 33.

On Schedule J, Debtor states under penalty of perjury that his expenses are only (\$1,510) a month. *Id.* at 34-35. For this, Debtor states under penalty of perjury that he has:

- (1) no rent or mortgage expense;
- (2) no homeowner’s or renter’s insurance;
- (3) no home upkeep expenses;
- (4) only \$300 for food and housekeeping supplies (which, after allowing \$50 a month for housekeeping supplies, is \$2.77 for food per meal in a 30 day month);
- (5) \$0.00 for clothing and laundry;
- (6) \$250 for transportation (gas, registration, repairs, maintenance of a 2017 Honda Accord and a 2018 Nissan Pathfinder);
- (7) \$0.00 vehicle insurance for the 2017 Honda Accord and the 2018 Nissan Pathfinder; and
- (8) \$0.00 for self-employment and income taxes; \$0.00 for car payments.

These amounts do not appear to be facially reasonable or credible statements under penalty of perjury.

On the Statement of Financial Affairs, Debtor states under penalty of perjury that his gross income has been:

2020 (1 month)
.....\$1,500 from business
.....\$1,400 Social Security

2019

.....\$0.00 from business
.....\$14,000 Social Security (stated in 3/2019)

2018

.....\$0.00 from business
..... No Social Security

Statement of Financial Affairs Questions 4, 5; *Id.* at 39.

In looking back at Schedule I filed by Debtor in Case No. 18-26373 on October 24, 2018, the court notes that Debtor states under penalty of perjury that his self-employed “salary” was \$10,000 a month. 18-26373; Dckt. 14 at 21-22.

On the Statement of Financial Affairs, filed on October 23, 2018, in Case No. 18-26373, Debtor states under penalty of perjury that his income from employment or operation of business is \$100,000 (not specifying the amounts for the current and two prior years, indicating that it is \$100,000 for each of those years). 18-26373; Statement of Financial Affairs Question 1, Dckt. 13 at 15. This stands in stark contrast to Debtor stating under penalty of perjury in this case that his 2018 income from business or wages was \$0.00.

An amended Statement of Financial Affairs was filed March 19, 2019 in Case No. 18-26373, in which he then stated under penalty of perjury that his income from wages or business were: \$4,500 in 2018, \$17,500 in 2017, and \$17,500 in 2016. *Id.*, Statement of Financial Affairs Question 4; Dckt. 58 at 2.

In looking back at Debtor’s prior statements under penalty of perjury, the court notes the following concerning Debtor’s jewelry income from his Declaration more than a year ago in Case No. 18-26373:

8. As of today's date, I have a real property, commonly described as 18414 NE 391st Street, Amboy, WA 98601 on the market and listed on the MLS. I own a 75% interest in this property and am informed and believe it has approximately \$300,000 equity, such that even after costs, I reasonably anticipate to realized approximately \$200,000 this spring or summer. **I am furthermore in the start-up phase of a jewelry business, which specifically will purchase raw jadeite and smooth and polish it for resale. At present, we have the purchase of a \$1,000,000 batch of raw jadeite (to be funded by an investor).** I have an extensive background and experience as a custom jeweler, and based on this **I reasonably anticipate realizing from \$5,000,000 to \$100,000,000, over time, upon sale of cut and polished and then appraised stones.** We anticipate marketing cut and polished stones at either Sotheby's or Christie's. Based upon both of the above, I am very confident that in all likelihood I will be able to propose and confirm a feasible chapter 11 plan that lawfully provides for all of my creditors, and then I will be fully able to fully perform upon my plan all the way to its completion.

18-26373; Declaration ¶ 8, Dckt. 49 (emphasis added). As shown by the Statement of Financial Affairs

in this case, there was \$0.00 in income from such jewelry business.

April 9, 2020 Hearing

At the April 9, 2020 hearing, the court continued the hearing on the Order to Show Cause to July 23, 2020 at 10:30 a.m.

Further, the period to make all filing fee installment payments was extended to July 10, 2020. a.m.

July 6, 2020 Payment

On July 6, 2020, Debtor made a Final Installment payment for \$1,277.00. July 6, 2020 Docket Entry.

The court's docket reflecting that the default in payment that is the subjection of the Order to Show Cause having been cured, the Order to Show Cause is discharged and the case shall proceed.

The court shall issue a minute 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 Order to Show Cause 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 Order to Show Cause is discharged, no sanctions ordered, and the bankruptcy case shall proceed in this court.

LARNED V. ROTTEVEEL

Final Ruling: No appearance at the July 23, 2020 Hearing is required.

Pursuant to this court's Order (Dckt. 79), the Order to Appear for Examination of Hubert Rotteveel, the Judgment Debtor, is vacated.

On April 4, 2020, Plaintiff Doug Larned filed an Application and Order for Appearance for Examination of Judgment Debtor, Hubert Rotteveel. Dckt. 67. Plaintiff seeks to examine Judgment Debtor for purposes of obtaining information to aid in enforcement of a money judgment against Judgment Debtor. *Id.* The court granted this application, and Judgment Debtor has been ordered to appear for examination on May 21, 2020 at 11:00 a.m.

On May 18, 2020, Plaintiff filed an *Ex Parte* Motion to continue the Examination. Dckt. 70. Two grounds were stated. *Id.* The first is that an examination cannot be held at the Courthouse because it is closed to the public. The second is that there are ongoing settlement discussions.

That the Courthouse is closed to these parties renders an examination at the Courthouse impossible.

The Judgment Debtor has filed an Objection and Request that the court strike the examination as improper. Dckt. 60. Judgment Debtor directs the court to the fact that the judgment to be enforced is one issued by the Superior Court for the County of Solano in light of California Code of Civil Procedure § 491.150(b) which provides that a debtor's examination is to be conducted in a court in the county in which the person, whose examination is being taken, resides or has a place of business unless the place in which the examination is to be taken is less than 150 miles from the judgment debtor's residence.

A review of California Code of Civil Procedure § 491.150 identifies the examination to one when a "writ of attachment" has been issued. This is for the examination of a third party who may be holding an asset that is subject to the writ of attachment.

The present examination is a judgment debtor exam, pursuant to California Code of Civil Procedure § 708.110, which provides in pertinent part:

§ 708.110. Examination of judgment debtor

(a) The judgment creditor may apply to the proper court for an order requiring the judgment debtor to appear before the court, or before a referee appointed by the court, at a time and place specified in the order, to furnish information to aid in

enforcement of the money judgment.

The proper court for conducting an examination of a judgment debtor is specified in California Code of Civil Procedure § 708.160, which provides in pertinent part:

§ 708.160. Proper court for examination; Examination outside county where judgment entered

(a) Except as otherwise provided in this section, the **proper court for examination** of a person under this article is **the court in which the money judgment is entered**.

(b) A person sought to be examined **may not be required to attend an examination before a court located outside the county in which the person** resides or has a place of business unless the distance from the person's place of residence or place of business to the place of examination is less than 150 miles.

(c) If a person sought to be examined does not reside or have a place of business in the county where the judgment is entered, the superior court in the county where the person resides or has a place of business is a proper court for examination of the person.

(d) If the judgment creditor seeks an examination of a person before a court other than the court in which the judgment is entered, the judgment creditor shall file an application that shall include all of the following:

(1) An abstract of judgment in the form prescribed by Section 674.

(2) An affidavit in support of the application stating the place of residence or place of business of the person sought to be examined.

(3) Any necessary affidavit or showing for the examination as required by Section 708.110 or 708.120.

(4) The filing fee for a motion as provided in subdivision (a) of Section 70617 of the Government Code.

The judgment for which the examination is to be taken is identified as the judgment in this Adversary Proceeding. Application and Order, Dckt. 67.

The judgment in this Adversary Proceeding was entered on July 6, 2010. Dckt. 59. The Judgment consists of the following:

This court having required the parties to complete an arbitration proceeding, and having confirmed that arbitration award, now determines and declares that the First Amended Arbitration Award filed April 13, 2010 in this court, is not dischargeable in bankruptcy pursuant to 11 U.S.C. §§ 523(a)(2) and (a)(6). A copy of that Award is appended hereto.

No other relief was granted.

Judgment Debtor makes reference to a Solano Superior Court Action *Oregon Museum Science & Indus. v. Douglas Larned*, in which Mr. Larned obtained a judgment on a cross-complaint against the Judgment Debtor.

Attached to the judgment determining that the Arbitration Award is nondischargeable has a copy of that Award attached to it. Dckt. 59. The Arbitration Award makes reference to a cross complaint by the Plaintiff against the Judgment Debtor in a Solano County Action. The Arbitration Award states that it was being entered after leave for it to be completed had been ordered by the Bankruptcy Court.

The Judgment Debtor states that there is a judgment that has been obtained by Plaintiff in the Solano Court. It appears that obligation as determined in the arbitration has been determined nondischargeable by the Bankruptcy Court.

The court continues the Judgment Debtor Examination to 10:30 a.m. on July 23, 2020, in this court.

The court orders Plaintiff to file a status report identifying what judgment obligation is the subject of this Order of Examination and if there is a state court judgment as stated by the Debtor.

July 16, 2020 Order

On July 16, 2020, the court vacated the Order to Appear for Examination after reviewing the filed in this case and the Plaintiff requesting the adversary proceeding be re-closed. Dckt. 79. *See also* Dckt. 76 and 77.

It appears that Judgment Debtor's response was critically reviewed by Plaintiff and he intends to go to the court in which the monetary judgment has been entered.

The court shall issue a minute 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 Application and Order for Appearance for Examination of Judgment Debtor, Hubert Rotteveel by Doug Larned ("Plaintiff") 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 Order to Appear for Examination of Hubert Rotteveel, the Judgment Debtor is vacated.

The Clerk of the Court may re-close the file for this Adversary Proceeding, there being no remaining matters pending before the court.