

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

July 26, 2022 at 1:30 p.m.

1.	20-22719 -C-13	LUCY PATTEN	ORDER TO SHOW CAUSE
		Alan Frumkin	7-5-22 [105]

Tentative Ruling:

The court issued this Order to Show Cause because a creditor reported that the debtor was deceased. Dkt. 103.

A review of the docket shows that the a notice of death and a motion for substitution has been filed for the debtor. Dkt. 108. Therefore, the Order to Show Cause is discharged.

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.

2. [20-22719](#)-C-13 LUCY PATTEN
Alan Frumkin

MOTION TO CONTINUE CASE
ADMINISTRATION, SUBSTITUTE
PARTY, AS TO DEBTOR
7-12-22 [[108](#)]

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 12 days' notice was provided. Dkt. 109.

The Motion to Substitute is Granted.

Counsel for debtor, filed this Motion (1) offering a suggestion of death of the debtor, Lucy Ann Patten; and (2) seeking authority to substitute as a representative.

The movant argues the Motion should be granted because (1) the movant is knowledgeable of the debtor's financial affairs, and (2) the movant is capable of making the plan payments.

The movant filed as an Exhibit, a copy of a Certificate of Death showing the debtor passed away on March 29, 2022. Dkt. 108.

DISCUSSION

Federal Rule of Bankruptcy Procedure 1016 provides that a Chapter 13 case where the debtor dies or becomes incompetent may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred, if further administration is possible and in the best interest of the parties.

Based on the evidence provided, and no party in interest having proffered opposition, the court determines that further administration of this Chapter 13 case is in the best interests of all parties, and that the movant may continue to administer the case on behalf of the deceased debtor. Additionally, the court finds good cause to waive the 11 U.S.C. § 1328 certification requirement.

Therefore, the Motion is granted.

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 for Substitute After Death filed by 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 is granted, and Shelle Blue is substituted as the successor-in-interest to Lucy Ann Patten and is allowed to continue the administration of this Chapter 13 case pursuant to Federal Rule of Bankruptcy Procedure 1016.

IT IS FURTHER ORDERED that the 11 U.S.C. § 1328 certification requirement is waived.

3. [22-21253](#)-C-13 BONITA MELENDEZ
[RDG](#)-1 Mohammad M. Mokarram

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
6-28-22 [[23](#)]

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 28 days' notice was provided. Dkt. 26.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The debtor has not filed the previous 4 years of income tax returns;
2. The debtors plan is not feasible.

DISCUSSION

The plan mathematically requires a payment of \$2,459 per month, which is greater than the proposed \$2,450 payment.

The debtor has not demonstrated the plan is feasible because the plan terms require a higher payment than what is proposed. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

The debtor has not filed all required tax returns. 11 U.S.C. §§ 1308, 1325(a)(9). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

That is reason to deny confirmation. Therefore, the Objection is sustained.

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 Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, 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 Objection is sustained.

Final Ruling: No appearance at the July 26, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 47 days' notice was provided. Dkt. 54.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Modify Plan is granted.

The debtors filed this Motion seeking to modify the terms of the confirmed plan pursuant to 11 U.S.C. § 1329.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is granted, and the plan is confirmed.

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 Modify filed by the debtors, Soledad and Brian Ash, 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 is granted, the Modified Chapter 13 Plan (Dkt. 52) meets the requirements of 11 U.S.C. §§ 1322, 1325(a), and 1329, and the plan is confirmed. Counsel for the debtors 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 trustee will submit the proposed order to the court.

5. [22-20367](#)-C-13 GREGORIO TOSTADO
[RDG](#)-2 Mikalah R. Liviakis

OBJECTION TO CLAIM OF HERITAGE
COMMUNITY CU, CLAIM NUMBER 7
6-21-22 [[26](#)]

Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b) (2) procedure which requires 30 days' notice. The Proof of Service shows that 35 days' notice was provided. Dkt. 28.

The Objection to Proof of Claim is sustained, and the claim is disallowed in its entirety.

The Chapter 13 trustee filed this Objection arguing that Proof of Claim, No. 7-1, filed by Heritage Community CU was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is March 4, 2022. Notice of Bankruptcy Filing and Deadlines, Dkt. 11. The Proof of Claim subject to this Objection was filed May 3.

Based on the evidence before the court, the court finds the creditor's claim was filed untimely. The Objection to the Proof of Claim is sustained, and the claim is disallowed in its entirety.

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 Objection to Claim filed in this case by the Chapter 13 trustee, Russell D. Greer, 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 Objection to Proof of Claim Number 7-1 of Heritage Community CU is sustained, and the claim is disallowed in its entirety.

Thru #7

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 71 days' notice was provided. Dkt. 59.

The Motion to Confirm is denied.

The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 51) filed on May 16, 2022.

The Chapter 13 Trustee filed an Opposition (Dkt. 82) on June 21, 2022, opposing confirmation on the following grounds:

1. Debtor has failed to provide copies of 2021 income tax returns;
2. Debtor has failed to provided requested profit and loss statements of debtor's business;
3. The plan relies on a motion to value collateral being granted, but which motion has not been heard or decided yet;
4. The plan relies on debtor's claimed exemptions, which have been objected to by the Trustee and if the exemptions are not allowed the plan fails the liquidation test.

Creditor, Jennine Banayat filed an Opposition (Dkt. 95) on July 12, 2022, opposing confirmation on the following grounds:

1. The plan is not feasible because the monthly payment is \$200 more than the debtor's disposable income;
2. The plan relies on a motion to value collateral being granted, but which motion has not been heard or decided yet;
3. The plan violates § 1325(a)(5)(B) by proposing to sell property five years after filing;
4. The creditor's secured interest in debtor's property is not adequately protected; and
5. The plan was not filed in good faith.

Debtor filed a response on July 12, 2022. Dkt. 95. Debtor

represents she will be filing a second amended plan surrendering the real property to the first deed of trust lien holder and paying the remaining debt by regular payments.

DISCUSSION

The plan proposes valuing the secured claim of Jennine Banayat. Before the court enters an order valuing that secured claim, the plan's feasibility is uncertain.

The debtor has not provided the trustee with all required tax returns. 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The debtor has not filed all business documents including six months of profit and loss statements. 11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1) & (a)(6).

Upon review of the record, the court finds the plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Motion is denied, and the plan is not confirmed.

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 Confirm filed by the debtor, Generosa Dizon, 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 is denied, and the plan is not confirmed.

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 22 days' notice was provided. Dkt. 60.

The Motion to Value is xxxxxx.

The debtor filed this Motion seeking to value the portion of Jennine Banayat's ("Creditor") claim secured by the debtor's property located at 8609 Banff Vista Dr., Elk Grove, CA (the "Property").

Creditor submitted a declaration from Amy L. Parker (dkt. 88), California certified residential appraiser, and exhibits including an Appraisal Report (Exhibit A), appraiser's licensee details and history page (Exhibit B), Appraiser's current resume (Exhibit C), and a list of legal cases the appraiser has provided expert appraisal reports (Exhibit D). Ms. Parkers estimate of current market value is \$613,000.

Debtor submitted a declaration from Jesus Medina (dkt. 91), California licensed real estate broker, and exhibits including Ms. Parker's appraisal report (Exhibit 1) and pictures of the subject property (Exhibits 2-13). Mr. Medina's broker's opinion of marketable value is \$450,000. Debtor then submitted another declaration from Jesus Medina (dkt. 103) stating that the real estate market has cooled, interest rates are now 6%, and that although his valuation of \$450,000 is still valid it will take longer to sell the property at that price.

DISCUSSION

Federal Rule of Bankruptcy Procedure 9014(d) provides that testimony of witnesses with respect to disputed material factual issues shall be taken in the same manner as testimony in an adversary proceeding. Because there is a disputed material fact, the Matter must be set for evidentiary hearing.

At the hearing, xxxxxxxxxxxxxxxx

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 Value Collateral and Secured Claim filed by the 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 pursuant to 11 U.S.C. § 506(a) is xxxxxx

Final Ruling: No appearance at the July 26, 2022 hearing is required.

The Objection has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 50 days' notice was provided. Dkt. 76.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Objection to Claimed Exemptions is sustained, and the exemptions are disallowed in their entirety.

The Chapter 13 trustee filed this Objection objects to the debtor's claimed exemptions pursuant to Cal. C. Civ. P. § 703.140(b) because the debtor has not filed an appropriately executed waiver.

A claimed exemption is presumptively valid. *In re Carter*, 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); See also 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

The trustee has provided a declaration from Linda Shields attesting to the fact that the debtor has not filed a properly executed waiver pursuant to C.C.C.P § 703.140(a)(2). The debtor has not submitted any documents to rebut the trustee's objection. Therefore, the trustee's Objection is sustained, and the claimed exemptions are disallowed.

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 Objection to Claimed Exemptions filed by the Chapter 13 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Objection is sustained, and the claimed exemptions for Generosa Dizon under California Code of Civil Procedure § 703.140(b) are disallowed in their entirety.

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 28 days' notice was provided. Dkt. 18.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan relies on a motion to value collateral that has not yet been decided;
2. The plan fails to provide payment to Class 2 claim;
3. Debtor has not filed page 2 of Schedule I;
4. Debtor failed to list his prior 3 cases.

DISCUSSION

The plan proposes valuing the secured claim of County of Sacramento. Before the court enters an order valuing that secured claim, the plan's feasibility is uncertain. Further, the debtor has not demonstrated the plan is feasible because claims filed in the case are greater than scheduled. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6). Finally, the debtor has not completed all forms or listed his prior three cases filed in the past three and one half years.

That is reason to deny confirmation. Therefore, the Objection is sustained.

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 Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, 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 Objection is sustained.