UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Thomas C. Holman
Bankruptcy Judge
Sacramento, California

August 6, 2013 at 9:32 A.M.

1.	09-46575-B-13 13-2106 BANAKH V. BANK OF AMERICA, N.A.	ROMAN BANAKH LDD-1	MOTION FOR ENTRY OF DEFAULT JUDGMENT 7-10-13 [19]

Tentative Ruling: The motion is denied without prejudice.

The motion is denied without prejudice because the motion is filed in connection with an adversary proceeding and set under the procedures of LBR 9014-1(f)(2). However, this alternative procedure shall not be used for a motion filed in connection with an adversary proceeding. LBR 9014-1(f)(2)(i).

Alternatively, the motion is denied on the merits because the plaintiff has not shown the court that it is entitled to judgment as a matter of law in this case. "[E]ntry of default does not entitle a plaintiff to judgment as a matter of right or as a matter of law." In re Meyer, 373 B.R. 84, 88 (B.A.P. 9th Cir. 2007). Here, the plaintiff seeks a reconveyance of the second deed of trust in his residence, based on a "lien stripping" process begun with the granting of the debtor's motion to value the collateral of Bank of America, N.A., in connection with his chapter 13 plan. The process of "lien-stripping" or "Lam stripping" pursuant to In re Lam, 211 B.R. 36 (B.A.P. 9th Cir. 1997) involves multiple steps. The valuation of collateral is the first step. That establishes the amount of the creditor's secured claim and unsecured claim for the purposes of the chapter 13 plan. The second step is the completion of the plan and the receipt of a discharge. Completion of the plan satisfies the secured claim, and the discharge eliminates the debtors' liability on the unsecured claim. Therefore, upon completion of the plan and receipt of the discharge, the debtor is entitled to a reconveyance of the second deed of trust. The court takes judicial notice in this case that while the debtor may have completed his chapter 13 plan, he has yet to obtain a discharge. Accordingly, the motion is denied without prejudice on the merits as it is premature.

The court will issue a minute order.

2. 12-34592-B-7 KHUNG NIM — MOTION FOR JOINDER
12-2544 DL-1 — 7-8-13 [35]
SACRAMENTO MUNICIPAL UTILITY DISTRICT V. NIM

Tentative Ruling: This motion is unopposed. In this instance, the court issues the following tentative ruling.

The motion is continued to August 20, 2013 at 9:32 a.m. On or before August 13, 2013, the plaintiff shall file and serve a memorandum of points and authorities addressing the court's subject matter jurisdiction over a claim against Dong Hon Chong. See 4 Richard D. Freer, Moore's Federal Practice ¶20.02[1][e] (3d ed. 1997) (Joinder under Fed. R. Civ. P. 20 "provides only a procedural mechanism...[t]he court must have personal jurisdiction over the defendants, venue must be proper, and most importantly, the claims asserted between the parties must satisfy a basis of federal subject matter jurisdiction.").

The court will issue a minute order.

3. 12-34592-B-7 KHUNG NIM — MOTION FOR ENTRY OF JUDGMENT PURSUANT TO STIPULATION
12-2544 DL-2 — 7-8-13 [40]
SACRAMENTO MUNICIPAL UTILITY DISTRICT V. NIM

Tentative Ruling: This motion is unopposed. In this instance, the court issues the following tentative ruling.

The motion is continued to August 20, 2013 at 9:32 a.m.

The court will issue a minute order.

4. 12-28734-B-7 MICHAEL/CHERYL MELLOW — MOTION TO DISMISS ADVERSARY PROCEEDING
12-2350 RSK-1 — 7-18-13 [61]
FORD MOTOR CREDIT COMPANY LLC V. MELLOW

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. This adversary proceeding is dismissed without prejudice pursuant Fed. R. Civ. P. 41(a)(2), made applicable to this proceeding by Fed. R. Bankr. P. 7041.

The court will issue a minute order.

5. 12-35706-B-7 JOSEPH/CARMELITA PEREZ — MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA), N.A.
DVD-1 — 7-9-13 [33]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The judicial lien in favor of CitiBank (South Dakota) N.A., recorded in the official records of San Joaquin County, Document No. 2010-036848, is avoided as against the real property located at 426 Vincente Way, Stockton, CA 95207.

The subject real property has a value of $99,000.00 as of the date of the petition. The unavoidable liens total $303,292.00. The debtors claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(5), under which they exempted $100.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. 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.

The court will issue a minute order.

6. 12-35706-B-7 JOSEPH/CARMELITA PEREZ — MOTION TO AVOID LIEN OF TARGET NATIONAL BANK
DVD-2 — 7-9-13 [38]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The judicial lien in favor of Target National Bank recorded in the official records of San Joaquin County, Document No. 2010-139048, is avoided as against the real property located at 426 Vincente Way, Stockton, CA 95207.

The subject real property has a value of $99,000.00 as of the date of the petition. The unavoidable liens total $303,292.00. The debtors claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(5), under which they exempted $100.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. 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.

The court will issue a minute order.

7. 13-27008-B-11 ALBERTO GONZALEZ — MOTION TO DISMISS CASE
UST-1 — 7-8-13 [40]

Tentative Ruling: The motion is conditionally denied, the conditions being that on August __, 2013, ___ a.m., the debtor and his counsel (Gilbert E. Maines) attend and participate meaningfully in the re-scheduled meeting of creditors, failing with the case will be dismissed without further notice or hearing with a 180-day bar to re-filing.

The court will issue a minute order.

8. 13-22124-B-7 MARIE WALDO — MOTION TO APPROVE REAFFIRMATION AGREEMENT BETWEEN DEBTOR AND CREDITOR WELLS FARGO HOME MORTGAGE
CAH-2 — 7-3-13 [29]

Tentative Ruling: The motion is dismissed without prejudice.

The motion is moot. By order entered July 18, 2013 (Dkt. 37), the court disapproved the reaffirmation the reaffirmation agreement that is the subject of this motion.

The court will issue a minute order.

9. 13-28824-B-7 CHRISTOPHER/TYRA TROY — MOTION TO COMPEL ABANDONMENT
DED-1 — 7-19-13 [9]

Tentative Ruling: This is a properly filed motion under LBR 9014-1(f)(2). Opposition may be presented at the hearing. Therefore, the court issues no tentative ruling on the merits of the motion.

10. 13-24827-B-7 MARILYN SCHMIDT — MOTION TO AVOID LIEN OF GCFS, INC.
MOH-1 — 7-3-13 [18]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The judicial lien in favor of GCFS, Inc., recorded in the official records of Butte County, Document No. 2012-0041523, is avoided as against the real property located at 1131 Stewart Avenue, Chico, California.

The subject real property has a value of $140,000.00 as of the date of the petition. The unavoidable liens total $141,347.00. The debtor claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(1), under which she exempted $1,000.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property.

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 debtor's exemption of the real property and its fixing is avoided.

The court will issue a minute order.

11. 13-27562-B-7 MC-1 — AHMED CHOUDRY AND SHASLIN KHAN — MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA), N.A. 7-7-13 [10]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The judicial lien in favor of CitiBank (South Dakota), N.A., recorded in the official records of Sacamento County, Book 20101202, Page 1060, is avoided as against the real property located at 1630 Charm Way, Sacramento, CA 95838.

The subject real property has a value of $260,000.00 as of the date of the petition. The unavoidable liens total $263,875.00. The debtors claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(1), under which they exempted $1.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. 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.

The court will issue a minute order.

12. 11-47470-B-7 DRG-2 — SCOTT/BARBARA WIDDER — MOTION FOR ADMINISTRATIVE EXPENSES 6-24-13 [54]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted. Scott Lincoln Widder and Barbara Christa Monika Widder are allowed a chapter 7 administrative expense claim in this case in the amount of $572.00 pursuant to 11 U.S.C. § 503(b)(1)(A). Except as so ordered, the motion is denied.

The court finds that the allowed expense is an actual and necessary cost of preserving the estate.

The court will issue a minute order.

13. 12-30834-B-7 GILBERT MAINES
12-2695
MAINES V. AURORA BANK FSB ET AL

CONTINUED MOTION TO DISMISS ADVERSARY PROCEEDING
5-13-13 [47]

Tentative Ruling: The motion is granted. All claims for relief alleged in the Second Amended Adversary Complaint (the "SAC") filed in this adversary proceeding on April 16, 2013 (Dkt. 33) are dismissed as to all named defendants without leave to amend.

By this motion moving defendants Nationstar Mortgage, LLC, Aurora Bank, FSB and Aurora Loan Services, LLC (collectively, the "Moving Defendants") seek dismissal of this adversary proceeding pursuant to Fed. R. Civ. P. 12(b)(6), made applicable to this adversary proceeding by Fed. R. Bankr. P. 7012.

The SAC contains six claims for relief for: 1.) Violation of the automatic stay, 2.) Declaratory relief for a determination of the nature, extent and validity of a lien, 3.) Quiet title, 4.) Wrongful foreclosure, 5.) Cancellation of instrument, and 6.) Injunctive relief. The gravamen of the SAC concerns the validity of a promissory note and deed of trust obligation executed by the plaintiff debtor and secured by his residence and subsequent attempts by one or more of the named defendants to foreclose non-judicially under the deed of trust.

The following sets forth the legal standard for dismissal of a complaint where the complaint fails to state a claim on which relief may be granted:

> The purpose of a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure, made applicable here under Fed. R. Bankr. P. 7012, is to test the legal sufficiency of a plaintiff's claims for relief. In determining whether a plaintiff has advanced potentially viable claims, the complaint is to be construed in a light most favorable to the plaintiff and its allegations taken as true. Scheuer v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683, 40 L.Ed.2d 90 (1974); Church of Scientology of Cal. v. Flynn, 744 F.2d 694, 696 (9th Cir.1984). . .

Quad-Cities Constr., Inc. v. Advanta Bus. Servs. Corp. (In re Quad-Cities Constr., Inc.), 254 B.R. 459, 465 (Bankr. D. Idaho 2000). In addition, under the Supreme Court's most recent formulation of Rule 12(b)(6), a plaintiff cannot "plead the bare elements of his cause of action, affix the label 'general allegation,' and expect his complaint to survive a motion to dismiss." Ashcroft v. Iqbal,129 S .Ct 1937, 1954 (2009). Instead, a complaint must set forth enough factual matter to establish plausible grounds for the relief sought. See Bell Atl. Corp. v. Twombly, 127 S.Ct. 1955, 1964-66 (2007). ("[A] plaintiff's obligation to provide 'grounds' of his 'entitle[ment] to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do."). Factual allegations must be enough to raise a right to relief above the speculative level. Id., citing to 5 C. Wright & A. Miller, Fed. Practice and Procedure § 1216, at 235-36 (3d ed. 2004) ("[T]he pleading must contain something more. . . than . . . a statement of facts that merely creates a suspicion [of] a legally cognizable right of action").

In addition, the court notes the following:

> A dismissal under Rule 12(b)(6) may be based on the lack of a cognizable legal theory or on the absence of sufficient facts alleged under a cognizable legal theory. Navarro v. Block, 250 F.3d 729, 732 (9th Cir. 2001); Balistreri v. Pacifica Police Dep't., 901 F.2d 696, 699 (9th Cir. 1988). . . the Court is not required "to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001). Courts will not "assume the truth of legal conclusions merely because they are cast in the form of factual allegations." Warren v. Fox Family Worldwide, Inc., 328 F.3d 1136, 1139 (9th Cir. 2003); accord W. Mining Council v. Watt, 643 F.2d 618, 624 (9th Cir. 1981). Furthermore, courts will not assume that plaintiffs "can prove facts which [they have] not alleged, or that the defendants have violated . . . laws in ways that have not been alleged." Assoc. Gen. Contractors of Cal., Inc. v. Cal. State Council of Carpenters, 459 U.S. 519, 526; 103 S. Ct. 897, 74 L. Ed. 2d 723 (1983). . .

Toscano v. Ameriquest Mortg. Co., 2007 U.S. Dist. LEXIS 81884 (E.D. Cal. 2007).

If a Fed. R. Civ. P. 12(b)(6) motion to dismiss is granted, "[the] court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts." Lopez v. Smith, 203 F.3d 1122, 1127 (9th Cir. 2000) (en banc), quoting Doe v. United States, 58 F.3d 494, 497 (9th Cir. 1995). In other words, the court is not required to grant leave to amend when an amendment would be futile. See Toscano, 2007 U.S. Dist. LEXIS 81884 (citing Gompper v. VISX, Inc., 298 F.3d 893, 898 (9th Cir. 2002)). Similarly, a court may also grant leave to amend in response to a Rule 12(c) motion "if the pleadings can be cured by further factual enhancement." Technology Licensing Corp., 2010 WL 4070208 at *3.

In this case, the plaintiff's second through sixth claims for relief alleged in the SAC are dismissed because the plaintiff lacks standing to prosecute them. The plaintiff's parent bankruptcy case is a chapter 7 case that was commenced on June 7, 2012. The second through sixth claims for relief in the SAC are all based on events which are alleged to have occurred prior to the date of filing of the petition. Therefore, any claims of the plaintiff arising out of those events existed on the date of the filing of the petition and became property of the plaintiff's bankruptcy estate. 11 U.S.C. § 541(a)(1)(property of the estate includes "all legal or equitable interests of the debtor in property as of the commencement of the case"). In this case the court notes that the plaintiff's claims against the named defendants were not scheduled as property of the estate on his originally filed Schedule B or on any amended copy of Schedule B filed in the parent case, but the plaintiff's failure to schedule the claims does not prevent them from becoming property of the bankruptcy estate.

As property of the plaintiff's bankruptcy estate, the claims are under the control of the chapter 7 trustee. The claims have not been abandoned by the trustee, nor have they revested in the plaintiff as a result of dismissal or closure of the parent bankruptcy case. Only the chapter 7 trustee has prudential standing to prosecute the second through sixth claims for relief. Accordingly, the second through sixth claims for

relief are dismissed. Because standing is jurisdictional, the court declines to address the substance of the allegations pertaining to each of those claims.

The first claim for relief seeking damages for an alleged violation of the automatic stay of 11 U.S.C. § 362(a) does not state a claim upon which relief may be granted. The relevant allegations in the SAC pertaining to this claim for relief are as follows:

1.) Defendant Aurora Loan Services caused a Notice of Trustee Sale (the "First Notice of Sale") to be recorded on May 18, 2011, prior to the date of the filing of the petition in the plaintiff's parent bank to case.

2.) A trustee's sale was not conducted pursuant to the First Notice of Sale, and as a result the First Notice of Sale "expired" on May 18, 2012.

3.) On June 14, 2012 named defendant Quality Loan Services ("Quality") caused another notice of trustee's sale (the "Second Notice of Sale") to be recorded on or about June 14, 2012, after the commencement of the plaintiff's bankruptcy case on June 7, 2012. The Second Notice of Sale was also posted on the plaintiff's residence.

4.) During the pendency of the plaintiff's bankruptcy case the named defendants have caused a non-judicial foreclosure sale to be held on the steps of the El Dorado County courthouse every 30 days, each time announcing that the date of the sale was being continued for an additional 30 days due to the pendency of the bankruptcy case.

5.) As a result of the foregoing alleged facts plaintiff has been "subjected to continuing public embarrassment and humiliation at his workplace and before his fellow attorneys."

The case authority in this circuit is clear that the postponement of a foreclosure sale due to the filing of a bankruptcy case and during the pendency of the bankruptcy case does not constitute a violation of the automatic stay, even if notices of postponement the foreclosure sale are recorded or posted during the pendency of the bankruptcy case. See In re Roach, 660 F.2d 1316, 1318-19 (9th Cir. 1981)("Notices of postponement of sale do not constitute violations of the automatic stay. . . . The Bank merely maintained the status quo, and did not harass, interfere or gain any advantage."); In re Peters, 101 F.3d 618, 619-20 (9th Cir. 1996). The United States District Court for the Central District of California in Barry v. BA Properites, Inc. (In re Barry), 201 B.R. 820 (C.D. Cal. 1996), addressing the issue of whether postponements of a foreclosure sale following confirmation of a chapter 13 plan constituted a violation of the automatic stay described the key characteristic of the "status quo" referenced in the Roach as relating to the relative positions of the debtor and creditor: "[T]he positions of the debtor and creditor are fundamentally the same pre- and post-petition. The debtor continues to be in default until it pays the arrearage. . . . [P]ostponements merely continue to maintain the status quo." Id. at 620. The foregoing analysis in Barry was adopted by the Ninth Circuit in Peters, cited above.

The plaintiff argues that in this case the defendants did not merely "maintain the status quo" by publishing the Second Notice of Sale and by postponing a foreclosure sale during the pendency of the bankruptcy case because the First Notice of Sale "expired," pursuant to Cal. Civ. Code §

2924g, on May 18, 2012, or one year after it was first recorded. The plaintiff argues that as a result there was no status quo to maintain.

The plaintiff is incorrect in his assertion that Cal. Civ. Code § 2924g provides for the "expiration" of a notice of sale after a period of one year from the date of its recording. Section 2924g does not provide for such an expiration.

California law requires that at least 20 days' notice of a sale must be given before the sale is conducted. Cal. Civ. Code. § 2924f(b)(1). Once the 20-day notice period passes, "there is no statutory limitation on the time within which the sale must be conducted after notice is properly given." 4 Miller and Starr California Real Estate, § 10:199 (3d Ed. 2012). A foreclosure sale noticed pursuant to a notice of sale may be postponed in accordance with, inter alia, an order of any court of competent jurisdiction or an operation of law stays the sale. Cal. Civ. Code § 2924g(c)(1). For a period of 365 days following the date of the initially scheduled sale the sale may be postponed by public declaration by the trustee at the time and place last appointed for the sale pursuant to § 2924g(d) and need not be recorded, published or posted. Cal. Civ. Code § 2924g(c)(1). If a postponement of sale will result in a new sale date beyond 365 days following the date of the originally noticed sale, § 2924g(c)(2) provides that "the scheduling of any further sale proceedings shall be preceded by giving a new notice of sale in the manner prescribed in Section 2924f," which governs the content and manner of posting and publication of a notice of sale. Nowhere does § 2924g state that postponements exceeding 365 days constitute an "expiration" of the foreclosing party's opportunity to foreclose. The 365-day time period described in § 2924g(c) governs the manner in which a postponement of sale must be noticed. It does not impose a deadline by which the foreclosing party must foreclose. Under the facts alleged by the plaintiff, the recording of the Second Notice of Sale maintained the same positions that the debtor and one or more of the named defendants occupied prior to the date of the filing of the petition. The plaintiff has not alleged a violation of the automatic stay.

Furthermore, in order to allege a claim for a violation of the automatic stay, the plaintiff must allege harm that is compensable by damages. Plaintiff has alleged that he suffered embarrassment as a result of the defendants' actions. More than that is required. For emotional harm to be compensable, it must be significant. See Dawson v. Washington Mutual Bank, F.A. (In re Dawson), 390 F.3d 1139, 1147, 1148 (9th Cir. 2004). Plaintiff has not alleged any significant emotional harm as a result of the alleged violation of the automatic stay.

The court will issue a minute order.

14. 11-21377-B-7 DANIEL SLOAN
12-2698 CDN-2
REGER V. SLOAN ET AL

MOTION FOR COURT TO ABSTAIN AND/OR MOTION TO DISMISS ADVERSARY PROCEEDING
7-2-13 [40]

Tentative Ruling: The plaintiff chapter 7 trustee's opposition is sustained. The motion is denied.

The defendant requests that the court abstain from deciding the claims in this adversary proceeding seeking a determination of the rights of the parties in funds in two trust accounts (the "Property") which were the proceeds of the sale of two pieces of real property acquired by the debtor and defendant during their marriage, or that it dismiss the adversary proceeding without prejudice to the trustee intervening in a state court family law dissolution proceeding. The defendant seeks the aforementioned relief on two grounds: 1.) This matter involves an interpretation of the meaning of a stipulated order (the "Order") filed in a state court dissolution proceeding and approved by the state court, meaning that the state court is the most appropriate entity to interpret the Order; and 2.) This adversary proceeding is a turnover action pursuant to 11 U.S.C. § 542, and turnover actions are unavailable where title to the property sought to be turned over is in bona fide dispute. Defendant argues that because title to the property at issue is in bona fide dispute that this adversary proceeding is necessarily a "non-core" proceeding.

The court disagrees with the defendant that this is a non-core proceeding. The defendant overlooks the fact that this adversary proceeding alleges three claims for relief. One of those claims is a claim for declaratory relief, seeking a determination that the property which the trustee seeks to have turned over is property of the estate. A proceeding seeking a determination of the nature and extent of property of the estate is a fundamental function of a bankruptcy court and is fundamental to the administration of a bankruptcy case. It is a core proceeding that "arises in" a bankruptcy case, as an action for a determination of the nature and extent of property of the estate would not exist but for a pending bankruptcy case. The two other claims for relief in this action, for turnover pursuant to 11 U.S.C. § 542 and for turnover and an accounting pursuant to 11 U.S.C. § 543 are dependent upon the claim for declaratory relief. If the trustee does not prevail on the claim for declaratory relief, he cannot prevail on the claims for turnover. If the trustee does prevail on the claim for declaratory relief, then the claims for turnover will clearly be appropriate, as the title to the property will no longer be in bona fide dispute. As the Ninth Circuit stated in In re Kincaid, 917 F.2d 1162, 1165 (9th Cir. 1990): "Since an action to obtain property of the estate would necessarily involve a determination regarding 'the nature and extent of property of the estate,' the action would also be a matter concerning the administration of the estate, and, therefore, a core proceeding." (citing In re Kincaid, 95 B.R. 1014, 1017 (9th Cir. BAP 1989); 28 U.S.C. § 157(b)(2)(A)).

The court disagrees with the defendant's argument that by this action the trustee is seeking to liquidate a contract claim for repayment of a debt. This action concerns a determination as to whether the debtor owned property at the commencement of the case, not whether property was owed to the debtor at the commencement of the case. See Kincaid, 917 F.2d at

1165.

The court also disagrees with the defendant's contention that the property at issue in this case was clearly placed in custodia legis of the state court, which divested the debtor of title in the property. The cases cited by the defendant, Davis v. Cox, 356 F.3d 76 (1st Cir. 2004) and In re Marion Haddad, 464 B.R. 501 (Bankr. D. Mass. 2011), are not binding on this court and are necessarily based on an application of Maine and Massachusetts law, respectively. Neither Maine nor Massachusetts state law is applicable in this case.

Furthermore, both of the aforementioned cases are based on facts in which the state court expressed a far more clear intent with respect to continuing jurisdiction over the disposition of property then is evident here. In Davis, a Maine district court presiding over a dissolution proceeding ordered the attorneys for each party to hold certain funds belonging to the parties in escrow as a result of one of the parties' successive attempts to dissipate the funds in violation of earlier court orders and that the funds were "not to be moved, used, or transferred absent a court order." Davis, 356 F.3d at 80. In Haddad, a Massachusetts Superior Court ordered that proceeds from a sale of real property be "impounded" and "held in escrow . . . pending a hearing and further order of" the Superior Court. Haddad, 464 B.R. at 504.

In this case, the copy of the Order which the defendant has submitted as an exhibit to this motion merely states that the debtor's family law attorney was to divide the property, which was held in a trust account, into two separate accounts: one account "for" the debtor, and the other account "for" the defendant. Those accounts were to be "held pending further order of a court of competent jurisdiction and/or agreement of the parties." The Order does not specify from which court such an order would come. The Order is not solely subject to the interpretation that the property in question was placed under the jurisdiction of the state court or in custodia legis of a person other than the debtor such that the debtor was divested of title. Accordingly, the motion is denied.

The court will issue a minute order.

15. 10-40553-B-7 ARVIND SETHI — MOTION TO ABANDON
DRG-1 — 6-24-13 [212]

Tentative Ruling: The motion is denied without prejudice.

By this motion the chapter 7 trustee seeks abandonment of "an order awarding the Debtor sanctions in the amount of $2600.00, entered on March 4, 2009, by the Family Law Court in an action between the debtor and her former spouse, along with any subsequent awards the may flow from the Debtor's efforts to enforce the [sanctions award]." (Dkt. 212 at 1).

11 U.S.C. § 554(a) allows the trustee to abandon "property of the estate." In this case, neither the amended to Schedule B filed on February 18, 2011, referenced by the trustee in the motion nor the most recent amended Schedule be filed by the debtor on July 17, 2011, lists a sanctions award of the type described in the motion. Both of the affirmation to amended schedules do list as an asset of the estate a "potential claim" against the debtor's former spouse Ravdeep Bhasin for

"invasion of privacy and disclosure of medical records," but there is no evidence submitted by the trustee that the sanctions award he seeks to have abandoned is in any way connected to the "potential claim." The court will only authorize abandonment of property that is property of the estate.

The court will issue a minute order.

16. 13-20644-B-7 PERRY YUEN — OBJECTION TO DEBTOR'S CLAIM OF EXEMPTIONS
RTD-2 — 7-8-13 [334]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

The objection is continued to August 20, 2013, at 9:32 a.m.

17. 10-51746-B-7 US LOAN AUDITORS, INC., A CALIFORNIA CORPORATION — MOTION FOR AUTHORITY TO DISPOSE OF DEBTOR RECORDS AND CUSTOMER FILES
DNL-21 — 7-9-13 [367]

Tentative Ruling: None.

18. 10-51746-B-7 US LOAN AUDITORS, INC., A CALIFORNIA CORPORATION — MOTION FOR COMPENSATION FOR ACCOUNTANT FOR TRUSTEE FEES: $9,855.00, EXPENSES: $495.85
DNL-22 — 7-9-13 [362]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. The application is approved on a final basis in the amount of $2,429.27 in fees and $202.63 in costs for services rendered during the period May 11, 2012 through and including June 28, 2013, and is approved on a final basis in the amount of $9,855.00 in fees and $495.85 in costs for all services rendered during this case during the period February 15, 2011 through and including June 28, 2013. The chapter 7 trustee is authorized to pay the foregoing amount as a chapter 7 administrative expense to the extent not already paid. Except as so ordered, the motion is denied.

On December 2, 2010, the debtor filed a chapter 7 petition. By order entered on May 4, 2011 (Dkt. 181) (the "Order"), the court authorized employment of Gerald D. Muto ("Applicant") as accountant for the estate. The Order further approved Applicant's employment with an effective date of February 15, 2011. Applicant now seeks final approval of compensation for services for the period of February 15, 2011 through June 28, 2013. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

19. 10-51746-B-7 DNL-23 — US LOAN AUDITORS, INC., A CALIFORNIA CORPORATION — MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH AND CUNNINGHAM FOR J. RUSSELL CUNNINGHAM, TRUSTEE'S ATTORNEY(S), FEES: $45,178.00, EXPENSES: $6,970.38
7-9-13 [357]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved in the amount of $11,557.50 in fees and $4,030.24 in costs, for a total of $15,587.74 for services performed during the period April 24, 2012, through and including June 25, 2013, and is approved on a final basis in the amount of $45,178.00 in fees and $6,970.38 in costs for all services rendered during the pendency of this case. The chapter 7 trustee is authorized to pay the foregoing amount as a chapter 7 administrative expense to the extent not already paid. Except as so ordered, the motion is denied.

On December 2, 2010, the debtor filed a chapter 7 petition. By amended order entered on May 4, 2011 (Dkt. 182), the court authorized the chapter 7 trustee to retain applicant as counsel, effective as of December 2, 2010. Applicant now seeks final approval of compensation for services rendered and costs incurred during the period December 20, 2010 through June 25, 2013. The court finds that the allowed fees and costs are reasonable compensation for actual, necessary and beneficial services. 11 U.S.C. § 330(a)(1).

The court will issue a minute order.

20. 10-51750-B-7 DNL-19 — MY US LEGAL SERVICES, INC., A CALIFORNIA — MOTION FOR AUTHORITY TO DISPOSE OF DEBTOR RECORDS AND CLIENT FILES
7-9-13 [477]

Tentative Ruling: None.

21. 10-51750-B-7 DNL-20 — MY US LEGAL SERVICES, INC., A CALIFORNIA — MOTION FOR COMPENSATION FOR GERALD D. MUTO, ACCOUNTANT(S), FEES: $3,802.50, EXPENSES: $206.65
7-9-13 [467]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved in the amount of $3,507.01 in fees and $206.65 in costs for services

rendered during the period March 9, 2012, through and including June 28, 2013, and is approved on a final basis in the amount of $12,584.64 in fees and costs for all services rendered during this case during the period February 15, 2011, through and including June 28, 2013. The chapter 7 trustee is authorized to pay the foregoing amount as a chapter 7 administrative expense to the extent not already paid. Except as so ordered, the motion is denied.

On December 2, 2010, the debtor filed a chapter 7 petition. By order entered on May 4, 2011 (Dkt. 168) (the "Order"), the court authorized employment of Gerald D. Muto ("Applicant") as accountant for the estate, effective as of February 15, 2011. Applicant now seeks final approval of compensation for services for the period of February 15, 2011 through June 28, 2013. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

22.	10-51750-B-7 DNL-21	MY US LEGAL SERVICES, INC., A CALIFORNIA	MOTION FOR COMPENSATION BY THE LAW OFFICE OF DESMOND, NOLAN, LIVAICH & CUNNINGHAM FOR J. RUSSELL CUNNINGHAM, TRUSTEE'S ATTORNEY(S), FEES: $13,043.52, EXPENSES: $0.00 7-9-13 [472]

Tentative Ruling: The oppositions filed by creditor Judy and Sam Brown (the "Browns") and by creditor Susanne Kolnas ("Kolnas,") and Rosa Cortez ("Cortez" and, collectively with the Browns and Kolans, the "Creditors")) are overruled. The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved in the amount of $10,621.00 in fees and $2422.52 in costs for a total of $13,043.52 for services rendered during the period January 31, 2013 through and including June 28, 2013, and is approved on a final basis in the amount of $154,890 in fees and $10,091.65 in costs for a total of $164,981.65 for all services rendered during the pendency of this case. The chapter 7 trustee is authorized to pay the foregoing amount as a chapter 7 administrative expense to the extent not already paid. Except as so ordered, the motion is denied.

On December 2, 2010, the debtor filed a chapter 11 petition. The case was converted to one under chapter 7 by order entered on January 21, 2011. By order entered on May 4, 2011 (the "Order"), the court authorized the trustee to retain the applicant as counsel for the chapter 7 trustee effective January 20, 2011. Applicant now seeks compensation for services rendered and costs incurred during the period January 20, 2011, through June 28, 2013. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The oppositions of the Browns, Kolnas and Cortez are overruled because the Creditors present no legal basis on which the application should be denied. The Creditors have presented no evidence that the applicant did not perform actual, necessary and beneficial services for the bankruptcy estate. The Creditors essentially oppose the application if payment for compensation will limit the Creditors from recovering the amount of money

that they lost to the debtor. The Creditors' position is understandable, and similar positions are sometimes taken in bankruptcy cases. However, as the court has previously stated in its rulings issued on June 12, 2012, in connection with the applicant's third interim application for approval of compensation (Dkt. 370) and in its ruling issued on March 19, 2013, in connection with the applicant's fourth interim application for approval of compensation (Dkt. 455), the Creditors' position is not consistent with the law.

A chapter 7 trustee's duties are outlined in 11 U.S.C. § 704, and in some cases, such as this one, the trustee, who may not be an attorney, requires the assistance of counsel to carry out those duties. In this case, the trustee required counsel to, among other things, assist her in state court litigation in which the debtor was a named party. Congress has recognized that there are costs associated with the administration of a bankruptcy case and that no one would administer the case if compensation for such administration were only paid after all creditors were paid. Congress has also determined that the cost of administering a bankruptcy case should be borne by the bankruptcy estate and that a system of priorities among unsecured claims against the estate is appropriate. Congress has codified that priority system in Sections 507 and 726 of the Bankruptcy Code. The second priority [11 U.S.C. § 507(a)(2)] includes "administrative expenses" of the case. General unsecured claims of creditors are not given any priority. Section 507(a)(7) does provide a priority in a limited amount for claims arising from an individual's deposit of money in connection with the purchase of services for the personal, family or household use of such individual if the services were not provided. However, the priority for administrative expenses is higher that the priority for unprovided consumer services. Thus, Congress has rejected the "first in time is first in right" concept in bankruptcy cases.

In addition, to the extent that Cortez objects that she has not had an opportunity to review records detailing the time spent by applicant on this case, the court notes that the certificate of service for the motion (Dkt. 476) shows that Cortez was served with the exhibits to the motion on July 9, 2013. The exhibits contain a detailed record of the time spent by the applicant on this case. In addition, as to Cortez's objection that she "suspects" that attorney's fees in this case were billed at the rate of $400.00 per hour, the detailed breakdown of fees for attorneys who worked on this case contained in the motion itself shows that of the 605.1 hours spent by attorneys on this case, 370.7 hours - more than half of the billed time - was spent by associate attorneys working at a rate of $175.00 to $210.00 per hour. Only 9.2 hours of attorney time was spent working at a rate of $400.00 per hour, which was time spent by two name partners of the firm with a combined 63 years of practice experience. The court finds that $400.00 per hour is not an unreasonable rate for experienced counsel in this case.

The court will issue a minute order.

23. 10-51750-B-7 11-2155 SMITH V. BARKER ET AL — MY US LEGAL SERVICES, INC., A CALIFORNIA — DNL-2

MOTION FOR ENTRY OF JUDGMENT AGAINST US CAPITAL INVESTMENTS, INC. AND/OR MOTION TO DISMISS SHANE BARKER AND JEFFREY ALLEN PULVINO
7-9-13 [90]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted.

The motion is granted for the reasons set forth in the motion.

The court will issue a minute order granting this motion. Counsel for the plaintiff chapter 7 trustee shall submit to the court 1.) a proposed judgment against defendant U.S. Capital Investment, Inc. and 2.) a proposed order dismissing all other named defendants.

24. 13-24055-B-11 KG-49 — JESUS/ANGELICA MEDINA

MOTION FOR COMPENSATION FOR KAYLA M. GRANT, DEBTOR'S ATTORNEY(S), FEES: $19,860, EXPENSES: $285.44
7-9-13 [331]

Tentative Ruling: The motion is denied without prejudice.

The motion is denied because in order approving the applicant's employment has yet to be entered on the docket. As reflected in civil minutes entered on June 7, 2013 (Dkt. 299), the court issued a ruling on its June 4, 2013 law and motion calendar granting the applicant's application for approval of employment as general bankruptcy counsel for the debtors, which ruling directed the applicant to submit a proposed order approving her employment to the court for signature.

The court received a proposed order from the applicant on June 18, 2013. However, the proposed order did not contain many of the customary provisions that this department includes in employment orders. The court's chambers staff returned the proposed order via United States Postal Service mail to the applicant on June 28, 2013 with a copy of a sample form of employment order that contained appropriate provisions. The court did not receive a new proposed order from the applicant.

Without an order approving employment of the applicant, the court will not approve compensation for the applicant at this time. See Shirley v. DeRonde (In re Shirley), 134 B.R. 940, 943 (9th Cir. BAP 1992)(" Court approval of the employment of counsel for a debtor in possession is sine qua non to counsel getting paid."). Accordingly, the motion is denied without prejudice to being re-filed at a later time once the applicant obtains an order approving her employment.

The court will issue a minute order.

25. 09-28058-B-7 GREGORY ABBETT
DNL-17

MOTION FOR COMPENSATION FOR DAHL AND DAHL, SPECIAL COUNSEL(S), FEES: $12,239.00, EXPENSES: $0.00
7-9-13 [558]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted to the extent set forth herein. Pursuant to 11 U.S.C. § 330 and Fed. R. Bankr. P. 2016, the application is approved on a first and final basis in the amount of $12,239.00 in fees and $0.00 in costs for services rendered during the period December 7, 2011, through and including July 13, 2012, for a total of $12,239.00 in fees and costs. The chapter 7 trustee is authorized to pay the foregoing amount as a chapter 7 administrative expense. Except as so ordered, the motion is denied.

By order entered on October 15, 2012 (Dkt. 495) (the "Order"), the court authorized employment of Dahl & Dahl, Attorneys at Law ("Applicant") as special counsel to the estate, effective as of December 7, 2011. Applicant now seeks final approval of compensation for services for the period of December 7, 2011, through July 13, 2013. As set forth in the application, the approved fees are reasonable compensation for actual, necessary and beneficial services.

The court will issue a minute order.

26. 11-22237-B-7 MONTE WATSON
DNL-1

MOTION TO EMPLOY J. RUSSELL CUNNINGHAM AS SPECIAL COUNSEL
7-9-13 [20]

Tentative Ruling: None.

27. 13-24255-B-7 KEITH/KRISTIE STANDISH
SLH-2

MOTION TO AVOID LIEN OF CITIBANK (SOUTH DAKOTA), N.A.
6-24-13 [24]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The motion is granted pursuant to 11 U.S.C. § 522(f)(1)(A). The judicial lien in favor of Citibank (South Dakota) N.A., recorded in the official records of Placer County, Document No. 2011-0069408-00, is avoided as against the real property located at 1506 Alyssum Way, Roseville, California, 95747.

The subject real property has a value of $224,088.00 as of the date of the petition. The unavoidable liens total $187,034.00. The debtors claimed the property as exempt under California Code of Civil Procedure Section 703.140(b)(1), under which they exempted $50,000.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property.

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.

The court will issue a minute order.

28.	11-42576-B-11 MLG-29	ATMAN HOSPITALITY GROUP, INC.	OBJECTION TO CLAIM OF TRACY LEE, CLAIM NUMBER 20 6-10-13 [541]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim No. 20-1 filed on February 16, 2013 by the trustee on Tracy Lee's behalf (the "Claim"), is disallowed in the amount of $200,000.00. Except as so ordered, the objection is overruled.

The trustee seeks complete disallowance of the Claim because it was wrongfully scheduled on Debtor's Schedule F. A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure ("FRBP") constitutes prima facie evidence of the validity and amount of a claim. FRBP 3001(f). However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. Litton Loan Servicing, LP v. Garvida (In re Garvida), 347 B.R. 697 (9th Cir. BAP 2006).

The trustee makes the following assertions, without dispute: that the claim is really a debt owed by non-debtor third parties and former representatives of debtor, Wen-I Chang and Josie Chen, to Winvest Corporation ("Winvest"); that Tracy Lee is the principal of Winvest; that this debt is evidenced by a promissory note (the "Note") that shows Wen-I Chang and Josie Chen, as individuals, promised to pay $200,000.00 to Winvest and an additional $200,000.00 to Universal Trust (Dkt. 544 at 6); that the Note is secured by a deed of trust as to property located in San Mateo belonging to Wen-I Chang and Josie Chen (Dkt. 544 at 9). The trustee further asserts, without dispute, that Winvest, along with Universal Trust, previously filed a motion for relief from the automatic stay as to the debtor in order to foreclose on the real property securing the Note (Dkt. 544 at 3). However, the motion was denied because Winvest and Universal Trust did not assert that Debtor was a borrower on the Note (Dkt. 544 at 13). Winvest has not filed a proof of claim and Debtor did not schedule a claim for Winvest. The trustee concludes that the only logical explanation for the Claim is that it is really the debt owed by Wen-I Chang and Josie Chen, as individuals, to Winvest, rather than a debt owed by the debtor to Tracy Lee.

In many cases, simply presenting evidence in an objection that the Claim is not prima facie valid is insufficient to invalidate the Claim. See Heath v. American Express Travel Related Services Co., et al. (In re Heath), 331 B.R. 424, 434-35 (9th Cir. BAP 2005). However, the Bankruptcy Appellate Panel in Heath also recognized that "creditors have an obligation to respond to formal or informal requests for information. That request could even come in the form of a claims objection, if it is

sufficiently specific about the information required." Heath, 331 B.R. at 436. The claimant has failed, in response to the objection, to provide information regarding the validity of its claim as to the debtor and its estate. In this instance the claimant's failure to respond to the objection with evidence supporting the Claim justifies disallowance of the Claim.

The court will issue a minute order.

29. 11-42576-B-11 MLG-30 — ATMAN HOSPITALITY GROUP, INC. — OBJECTION TO CLAIM OF SUE JENG, CLAIM NUMBER 23 6-10-13 [546]

Disposition Without Oral Argument: This motion is unopposed. The court issues the following abbreviated ruling.

The trustee's objection is sustained, and claim No. 23-1 filed on February 16, 2013 by the trustee on Sue Jeng's behalf (the "Claim"), is disallowed in the amount of $200,000.00. Except as so ordered, the objection is overruled.

The trustee seeks complete disallowance of the Claim because it was wrongfully scheduled on Debtor's Schedule F. A proof of claim executed and filed in accordance with the Federal Rules of Bankruptcy Procedure ("FRBP") constitutes prima facie evidence of the validity and amount of a claim. FRBP 3001(f). However, when an objection is made and that objection is supported by evidence sufficient to rebut the prima facie evidence of the proof of claim, then the burden is on the creditor to prove the claim. Litton Loan Servicing, LP v. Garvida (In re Garvida), 347 B.R. 697 (9th Cir. BAP 2006).

The trustee makes the following assertions, without dispute: that the claim is really a debt owed by non-debtor third parties and former representatives of debtor, Wen-I Chang and Josie Chen, to Universal Trust ("Universal"); that Sue Jeng is the trustee of Universal; that this debt is evidenced by a promissory note (the "Note") that shows Wen-I Chang and Josie Chen, as individuals, promised to pay $200,000.00 to Universal and an additional $200,000.00 to Winvest Corporation (Dkt. 549 at 6); that the Note is secured by a deed of trust as to property located in San Mateo and belonging to Wen-I Chang and Josie Chen (Dkt. 549 at 9). The trustee further asserts, without dispute, that Universal, along with Winvest Corporation, previously filed a motion for relief from the automatic stay as to the debtor in order to foreclose on the real property securing the Note (Dkt. 549 at 3). However, the motion was denied because Universal and Winvest Corporation did not assert that Debtor was a borrower on the Note (Dkt. 549 at 13). Universal has not filed a proof of claim and Debtor did not schedule a claim for Universal. The trustee concludes that the only logical explanation for the Claim is that it is really the debt owed by Wen-I Chang and Josie Chen, as individuals, to Universal, rather than a debt owed by the debtor to Sue Jeng.

In many cases, simply presenting evidence in an objection that the Claim is not prima facie valid is insufficient to invalidate the Claim. See Heath v. American Express Travel Related Services Co., et al. (In re Heath), 331 B.R. 424, 434-35 (9th Cir. BAP 2005). However, the

Bankruptcy Appellate Panel in Heath also recognized that "creditors have an obligation to respond to formal or informal requests for information. That request could even come in the form of a claims objection, if it is sufficiently specific about the information required." Heath, 331 B.R. at 436. The claimant has failed, in response to the objection, to provide information regarding the validity of its claim as to the debtor and its estate. In this instance the claimant's failure to respond to the objection with evidence supporting the Claim justifies disallowance of the Claim.

The court will issue a minute order.

30. 13-24295-B-7 THEODORE/JUNE KATSINIS — MOTION TO SELL
ASF-2 — 6-24-13 [18]

Tentative Ruling: The motion is granted. Pursuant to 11 U.S.C. § 363(b)(1) and Fed. R. Bankr. P. 9019, the trustee is authorized to enter into and perform in accordance with the "Purchase and Sale Agreement" submitted as Exhibit "A" to the motion (Dkt. 21 at 2)(the "Agreement"). The proceeds of the sale shall be administered for the benefit of the estate. The trustee is authorized to execute all documents necessary to complete the approved sale and to effect the Agreement. Except as so ordered, the motion is denied.

The sale will be subject to overbidding on terms approved by the court at the hearing.

The trustee has made no request for a finding of good faith under 11 U.S.C. § 363(m), and the court makes no such finding.

The court will issue a minute order.

31. 13-23188-B-7 SHAWN/MARY PETERS — CONTINUED OBJECTION TO DEBTORS' CLAIM OF EXEMPTIONS
5-13-13 [28]

Tentative Ruling: The objections are overruled in part and sustained in part. The objection as to Debtor's claim of exemption under California Code of Civil Procedure ("CCP") Section 703.140(b)(10)(E) (identified on Schedule C as "Money Damages Claims against Richard McGreevy et al and Rights to Set-Off on Cross-Complaints," Dkt. 17 at 6) is sustained and this claim of exemption is disallowed. The remaining objections are overruled without prejudice.

Federal Rule of Bankruptcy Procedure 4003(c) places the burden of proof on the objecting party, Richard McGreevy, of proving that the exemptions are not properly claimed. Here, Mr. McGreevy, in general, objects to four items that Debtors have claimed as exempt on Schedule C which consist of: (1) a worker's compensation claim; (2) money damages claims against Mr. McGreevy/rights to set-off on cross-complaints regarding litigation outside of the bankruptcy court; (3) tools for concrete and brick work; and (4) an "AD&D" insurance policy.

Worker's Compensation Claim

Here, Mr. McGreevy's main objections focus on whether or not Debtors have sufficiently stated facts in their worker's compensation claim to support compensation that is covered by various exemptions under CCP 703.140. This argument is entirely dependent upon Mr. McGreevy's interpretation of Debtor's worker's compensation claim, a claim that is not presently before this court. CCP 703.140 allows for debtors to claim exemptions as to certain unemployment benefits, disability benefits, as well as other forms of compensation. Mere assertions - that the worker's compensation claim fails to state certain injuries - are an insufficient basis for disallowing this claim of exemption.

As to the issue of value for the claimed exemption, the court agrees with the Debtor that the statute allows for an "in-kind" exemption. Mr. McGreevy's argument that Debtor is claiming an amount that exceeds the value allowed under CCP 703.140(b)(11)(D) ($24,060.00) is incorrect. According to Debtors' Schedule C, the only numerical value provided for this claim is $22,075.00 (Dkt. 17 at 4).

Money Damages Claims Against Mr. McGreevy/Rights to Set-Off

Mr. McGreevy has carried his burden for disallowing this particular claim of exemption. Mr. McGreevy asserts, without dispute, that these claims are based upon state court litigation that Debtors voluntarily dismissed with prejudice. Debtors state in their reply that this exemption was claimed because of an "uncertainty" as to the unwinding of the Debtor/Movant relations. The debtors cannot claim an exemption in claims that they have dismissed with prejudice, thereby terminating the claims.

Tools

Mr. McGreevy has failed to carry his burden for disallowing this claim of exemption. Mr. McGreevy merely asserts that Debtors allegedly converted the tools from being corporate property to personal property. A mere assertion of this kind is an insufficient basis for disallowing this claim of exemption.

AD&D Insurance Policy

Mr. McGreevy has failed to carry his burden for disallowing this claim of exemption. Mr. McGreevy makes a conclusory argument that this insurance policy does not qualify under the cited CCP Section. A mere assertion of this kind is an insufficient basis for disallowing this claim of exemption.

The court will issue a minute order.

32. 12-36999-B-7 VIVIAN LILY
12-2717
OLICK V. LILY

CONTINUED MOTION TO DISMISS ADVERSARY PROCEEDING
6-19-13 [60]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

This matter is submitted on the papers.

33. 12-36599-B-7 BRANTLEY/ERIN GARRETT — CONTINUED MOTION TO DISMISS
12-2719 AMW-1 — FIRST AMENDED CROSS-CLAIM
DAILY ET AL V. GARRETT ET AL — 5-24-13 [42]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

This matter is submitted on the papers.

34. 12-36599-B-7 BRANTLEY/ERIN GARRETT — CONTINUED MOTION FOR LEAVE TO
12-2719 REL-1 — FILE FIRST AMENDED COMPLAINT
DAILY ET AL V. GARRETT ET AL — 6-25-13 [51]

Disposition Without Oral Argument: Oral argument will not aid the court in rendering a decision on this matter.

This matter is submitted on the papers