



UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

August 8, 2023 at 1:30 p.m.

Unless otherwise ordered, all matters before the Honorable Christopher M. Klein shall be simultaneously: (1) **In Person** at Sacramento Courtroom #35, (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**.

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1. Review the [Pre-Hearing Dispositions](#) prior to appearing at the hearing.
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UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

August 8, 2023 at 1:30 p.m.

1. [23-21723](#)-C-13 BARBARA MYERS
Peter Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY U.S. BANK TRUST
NATIONAL ASSOCIATION
7-20-23 [[35](#)]

Thru #2

No 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 19 days' notice was provided. Dkt. 37.

The Objection to Confirmation of Plan is ~~xxxxxxxxxx~~

Creditor, U.S. Bank Trust National Association, as Trustee of the Bungalow Series IV Trust ("Creditor"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan does not fully provide for prepetition arrears.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on July 25, 2023. Dkt. 38. Debtor is proposing raising the monthly dividend on prepetition arrears from \$1,250 to \$1,312 and increase the overall plan payment to \$3,960.

DISCUSSION

The plan at Section 3.02 provides that Creditor's Proof of Claim, *and not the plan*, determines the amount and classification of a claim.

Notwithstanding whether the plan provides for the prepetition arrearage as Creditor argues, the debtor has not carried his burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

Increasing the monthly dividend to \$1,312 on prepetition arrears appears to fully provide for the prepetition mortgage arrears and satisfies Creditor's objection.

At the hearing

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 U.S. Bank Trust National Association, as Trustee of the Bungalow Series IV Trust , 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 ~~xxxxxxxxxx~~

2. [23-21723](#)-C-13 BARBARA MYERS
[RDG](#)-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
7-17-23 [[19](#)]

No 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 22 days' notice was provided. Dkt. 22.

The Objection to Confirmation of Plan is ~~xxxxxxxxxx~~

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

1. Debtor has not filed her 2022 income tax returns;
2. Plan fails to meet the liquidation test;
3. Debtor has failed to provide documentation related to rental income;
4. Debtor has failed to amend her schedules relating to debtor's assets and income and expenses.
5. The plan is not feasible.

DEBTOR'S OPPOSITION

The debtor filed an Opposition on July 20, 2023. Dkt. 32. Debtor represents her 2022 income tax returns have been filed and emailed copies to the Trustee. Debtor further represents she has amended her Schedules A/B, C and Statement of Financial Affairs. Debtor has also sent copies of the lease agreements and tenant payments of the rental income.

Finally, debtor states that the attorney fees in the plan are to be reduced by \$50.00 per month, which would lower the required monthly plan payment. Debtor's amended expenses have been lowered correcting debtor's disposable income.

DISCUSSION

At the hearing

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 **xxxxxxxxxx**

3. [20-23327](#)-C-13 DOUGLAS BRAUNER
[WW-8](#) Mark Wolff

MOTION TO SELL
6-29-23 [[98](#)]

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 40 days' notice was provided. Dkt. 102.

The Motion to Sell is granted.

Debtor, Douglas Brauner, filed this Motion pursuant to 11 U.S.C. §§ 363 and 1303 seeking to sell property commonly known as 2301 El Camino Avenue, Sacramento, CA ("Property").

The proposed purchaser of the Property is Safa Marwah, LLC, and the proposed purchase price is \$671,000.00.

TRUSTEE OPPOSITION

The Chapter 13 Trustee has filed an opposition on July 17, 2023. Dkt. 106. The trustee contends that the debtor has not filed an estimated closing statement and is not able to determine if the sale will result in sufficient proceeds to fully pay off the plan at 100% to general unsecured creditors.

The debtor filed an estimated closing statement on August 3, 2023. Dkt. 109.

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 the sale will complete the debtor's plan with a lump sum payment.

Broker's Commission

Movant has estimated that a six percent broker's commission from the sale of the Property will equal approximately \$40,260.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than six percent commission.

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 Douglas Brauner ("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 the Motion is granted. The debtor's counsel shall prepare an appropriate order granting the Motion, transmit the proposed order to the Chapter 13 trustee for approval as to form, and if so approved submit the proposed order to the court.

IT IS FURTHER ORDERED that Movant is authorized to pay a real estate broker's commission in an amount not more than six percent of the actual purchase price upon consummation of the sale.

Final Ruling: No appearance at the August 8, 2023 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 43 days' notice was provided. Dkt. 29.

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 Confirm is granted.

The debtors filed this Motion seeking to confirm the Amended Chapter 13 Plan (Dkt. 25) filed on June 26.

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 and 1325(a). 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 Confirm filed by the debtors, Gene and Jennifer Felice, 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 debtor's Amended Chapter 13 Plan (Dkt. 25) meets the requirements of 11 U.S.C. §§ 1322 and 1325(a), 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. [23-20655](#)-C-13 JAMES FOX CONTINUED OBJECTION TO
[RDG](#)-1 Peter Macaluso CONFIRMATION OF PLAN BY RUSSELL
D. GREER
4-26-23 [[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 34 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. Debtor has failed to amend his schedules even though he has obtained new employment;
2. Plan is not feasible; and
3. Plan relies on Motion to Value that has not been granted.

DEBTOR'S OPPOSITION

The debtor filed an Opposition on May 16, 2023. Dkt. 35. Debtor replied that he has filed amended Schedules I & J. Debtor further states that the IRS and FTB proof of claims were based upon estimated returns, but that the timely filed returns resulted in a much lower amount to the IRS and a refund from FTB. Finally, debtor believes the motion to value, which is set to be heard above, will be granted. Therefore, debtor request the plan be confirmed.

DISCUSSION

A review of the docket shows that amended Schedules I & J were filed on May 8, 2023. Dkt. 31.

The Motion to Value has been resolved and granted. Dkts. 43 and 44.

At the prior hearing it was represented that the proof of claims of the IRS and FTB would be amended. At the time of review, the IRS's proof of claim was amended to a priority unsecured claim of \$5,594.41 and general unsecured claim of \$16,304.43. However, FTB's proof of claim has not been amended and still shows a priority claim of \$5,319.45. It appears that the plan is still not feasible.

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.

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 only 13 days' notice was provided. Dkt. 22.

The Motion to Extend the Automatic Stay is granted.

William James Watson, Sr. ("Debtor") seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(a) extended beyond thirty days in this case. This is Debtor's second bankruptcy petition pending in the past year. Debtor's prior bankruptcy case was dismissed on June 5, 2023, after Debtor failed to file all necessary documents including a plan and a motion to confirm plan. Order, Bankr. E.D. Cal. No. 23-21656, Dkt. 8. Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end as to Debtor thirty days after filing of the petition.

Here, Debtor states that the instant case was filed in good faith and explains that the previous case was dismissed because he failed to file a motion to confirm plan within the extension granted by the court.

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond thirty days if the filing of the subsequent petition was filed in good faith. 11 U.S.C. § 362(c)(3)(B). As this court has noted in other cases, Congress expressly provides in 11 U.S.C. § 362(c)(3)(A) that the automatic stay **terminates as to Debtor**, and nothing more. In 11 U.S.C. § 362(c)(4), Congress expressly provides that the automatic stay **never goes into effect in the bankruptcy case** when the conditions of that section are met. Congress clearly knows the difference between a debtor, the bankruptcy estate (for which there are separate express provisions under 11 U.S.C. § 362(a) to protect property of the bankruptcy estate) and the bankruptcy case. While terminated as to Debtor, the plain language of 11 U.S.C. § 362(c)(3) is limited to the automatic stay as to only Debtor. The subsequently filed case is presumed to be filed in bad faith if one or more of Debtor's cases was pending within the year preceding filing of the instant case. *Id.* § 362(c)(3)(C)(i)(I). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-10 (2008). An important indicator of good faith is a realistic prospect of success in the second case, contrary to the failure of the first case. See, e.g., *In re Jackola*, No. 11-01278, 2011 Bankr. LEXIS 2443, at *6 (Bankr. D. Haw. June 22, 2011)

(citing *In re Elliott-Cook*, 357 B.R. 811, 815-16 (Bankr. N.D. Cal. 2006)). Courts consider many factors—including those used to determine good faith under §§ 1307(c) and 1325(a)—but the two basic issues to determine good faith under § 362(c) (3) are:

- A. Why was the previous plan filed?
- B. What has changed so that the present plan is likely to succeed?

In re Elliot-Cook, 357 B.R. at 814-15.

Debtor has sufficiently rebutted the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

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

The court 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 Extend the Automatic Stay filed by William James Watson, Sr. 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 the automatic stay is extended pursuant to 11 U.S.C. § 362(c) (3) (B) for all purposes and parties, unless terminated by operation of law or further order of this court.

7. [22-22980](#)-C-13 VALERIE RAMIREZ
[CAS](#)-1 Peter Macaluso

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-5-23 [[86](#)]

WESTLAKE FINANCIAL SERVICES
VS.

Thru #9

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 34 days' notice was provided. Dkt. 91.

The Motion for Relief from the Automatic Stay is xxxxxx.

Westlake Financial Services ("Movant") filed this Motion seeking relief from the automatic stay as to the debtor's 2006 BMW 3 Series (the "Property").

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtor is delinquent 3 postpetition payments. Declaration, Dkt. 88. Movant also argues cause exists pursuant to 11 U.S.C. § 362(d)(2) because the total debt secured by the Property, \$5,319.85, exceeds the value of the Property, which is \$3,358.00. *Id.*

TRUSTEE'S RESPONSE

The Chapter 13 Trustee filed a response on July 13, 2023. Dkt. 92. The Trustee represents that the Property has not been included in Debtor's schedules, the creditor has not filed a proof of claim, and the bar date to file a proof of claim was January 25, 2023.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on July 25, 2023. Dkt. 94. Debtor asserts that a proof of claim has not been filed by the creditor, but is willing to file one on behalf of the creditor.

DISCUSSION

At the hearing xxxxxxxx

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 Relief from the Automatic Stay filed

by Westlake Financial Services ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are ~~xxxxxxx~~

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 56 days' notice was provided. Dkt. 70.

The Motion to Modify Plan is denied.

The debtor filed this Motion seeking to confirm the Modified Chapter 13 Plan (Dkt. 69) filed on May 4, 2023.

The Chapter 13 Trustee filed an Opposition (Dkt. 72) on June 5, 2023, opposing confirmation because the plan does not provide for the claim of the Franchise Tax Board (Proof of Claim No. 8-1).

RESPONSE

The debtor filed a response (dkt. 75) stating that she is not required to file a state income tax return and the numerous attempts to contact FTB have gone unanswered.

DISCUSSION

The plan at Section 3.02 provides that Creditor's Proof of Claim, *and not the plan*, determines the amount and classification of a claim.

Notwithstanding whether the debtor is required to file a state income tax return, the debtor has not carried her burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

Upon review of the record, the court finds the plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329. 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 Modify Plan filed by the debtor, Valerie Ramirez, 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.

Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b) (1) procedure which requires 48 days' notice. The Proof of Service shows that 55 days' notice was provided. Dkt. 81.

The Objection to Proof of Claim is overruled.

Debtor, Valerie Ann Ramirez, requests that the court disallow the claim of The State of California, Franchise Tax Board ("Creditor"), Proof of Claim No. 8 ("Claim"). The Claim is asserted to be priority in the amount of \$9,417.75 and \$2,354.44 in general unsecured debt. Debtor asserts that proof of claim improperly calculates a tax amount when the debtor's only source of income is non-taxable social security income.

Creditor filed an opposition on July 25, 2023. Dkt. 96. Creditor responds that it obtained information that debtor had income in 2020 of \$133,621.00 from Square, Inc. A notice of proposed assessment was issued to debtor on August 19, 2022 that the debtor failed to respond to or protest.

Section 502(a) provides that a claim supported by a Proof of Claim is allowed unless a party in interest objects. Once an objection has been filed, the court may determine the amount of the claim after a noticed hearing. 11 U.S.C. § 502(b). It is settled law in the Ninth Circuit that the party objecting to a proof of claim has the burden of presenting substantial factual basis to overcome the prima facie validity of a proof of claim and the evidence must be of probative force equal to that of the creditor's proof of claim. *Wright v. Holm (In re Holm)*, 931 F.2d 620, 623 (9th Cir. 1991); see also *United Student Funds, Inc. v. Wylie (In re Wylie)*, 349 B.R. 204, 210 (B.A.P. 9th Cir. 2006). The burden then shifts back to the claimant to produce evidence meeting the objection and establishing its claim. *Wylie*, 349 B.R. at 210.

The debtor filed a notice acknowledging the substantial difference in income for the debtor. Counsel for the debtor is requesting a 30 day continuance to work with the creditor to resolve the issue.

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 Debtor, Valerie Ann Ramirez, 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 8 of The State of California, Franchise Tax Board is overruled.