

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

August 8, 2016 at 10:00 a.m.

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1. 16-20912-A-11 SEAN SUH'S CARE HOMES, MOTION FOR
CLH-1 INC. RELIEF FROM AUTOMATIC STAY
ALEJANDRO DELA CRUZ VS. 7-7-16 [60]

Final Ruling: The court continued the hearing on the motion to September 6, 2016 at 10:00 a.m. Docket 74. The record on this motion has closed.

2. 15-26214-A-7 SHARON WILSON MOTION TO
15-2225 GMW-3 SET ASIDE DISMISSAL OF CASE
WILSON V. WILSON 7-8-16 [44]

Tentative Ruling: The motion will be granted.

The plaintiff, Kenneth Wilson, requests the court to vacate the May 16, 2016 dismissal of this adversary proceeding, arguing that it was done on ex parte basis and that he never received the declaration filed by the defendant, Sharon Wilson, seeking dismissal. Docket 40.

The court was under the impression that the parties were proceeding with a settlement. The court also understood the parties to agree that their dispute will proceed in the pending state court action. The minutes from the April 13, 2016 status conference hearing specifically mention the "[p]arties to proceed with settlement." Docket 36.

The court entered the order dismissing the case on May 18, 2016, in conjunction with a declaration the defendant filed on May 12, 2016, stating that the plaintiff had been unresponsive to attempts by the defendant to confer. Docket 38. The declaration was served on the plaintiff's counsel, but it was served at an incorrect address. The zip code where it was served is 95207, whereas the plaintiff's zip code on file with the court is 95267. Docket 39.

Given the foregoing, the court will vacate the May 18 dismissal. But, it will also issue an order to show cause for why the court should not abstain as to the remaining claim in this action – declaratory relief as to whether the Epstein credits in favor of the plaintiff against the defendant were discharged in the defendant's underlying bankruptcy case.

The hearing on the order to show cause shall be held on August 29, 2016 at 10:00 a.m. The plaintiff shall file his brief on abstention no later than August 15, 2016. The defendant shall file her brief on abstention no later than August 22, 2016.

August 8, 2016 at 10:00 a.m.

3. 16-23827-A-11 LOBBY BAR, L.L.C. MOTION TO
TBS-2 DISMISS CASE
7-7-16 [26]

Tentative Ruling: The motion will be granted.

The debtor moves for dismissal pursuant to 11 U.S.C. § 1112(b), arguing that it has reached an agreement with its landlord, the only creditor the debtor was not paying on the petition date. The agreement is conditioned on the dismissal of the case. The debtor's other principal creditor, Lucca Builders, holding a \$200,000 claim for tenant improvements, also consents to dismissal. The other creditors of the estate are vendors with claims no larger than \$3,700. The debtor was current on the vendor claims as of the petition date. This case was filed on June 13, 2016.

11 U.S.C. § 1112(b)(1) provides that "on request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate."

Given the agreement with the landlord and the consent to dismissal of the estate's other principal creditor, dismissal is in the best interest of the estate and the creditors. Dismissal will permit the debtor to continue operating its business and pay its creditors. The case will be dismissed. No further relief will be granted.

4. 16-23827-A-11 LOBBY BAR, L.L.C. STATUS CONFERENCE
6-13-16 [1]

Tentative Ruling: None.

5. 16-20774-A-12 TIMOTHY/JILL PEDROZO MOTION TO
DBL-10 VALUE COLLATERAL
VS. USDA FARM SERVICE AGENCY 7-11-16 [90]

Final Ruling: The motion will be dismissed without prejudice because it was not served in accordance with Fed. R. Bankr. P. 7004(b)(5), which requires that the matters be served on the "civil process clerk at the office of the United States attorney for the district in which the action is brought." Fed. R. Bankr. P. 7004(b)(4). The notice on the United States attorney was not addressed to the civil process clerk in that office. It was addressed to Bruce Emard, Assistant United States Attorney. Docket 94.

6. 16-20774-A-12 TIMOTHY/JILL PEDROZO MOTION TO
DBL-11 VALUE COLLATERAL
VS. USDA FARM SERVICE AGENCY 7-11-16 [95]

Final Ruling: The motion will be dismissed without prejudice because it was not served in accordance with Fed. R. Bankr. P. 7004(b)(5), which requires that the matters be served on the "civil process clerk at the office of the United States attorney for the district in which the action is brought." Fed. R. Bankr. P. 7004(b)(4). The notice on the United States attorney was not addressed to the civil process clerk in that office. It was addressed to Bruce Emard, Assistant United States Attorney. Docket 99.

7. 16-20774-A-12 TIMOTHY/JILL PEDROZO MOTION TO
DBL-12 VALUE COLLATERAL
VS. COUNTY OF GLENN 7-11-16 [100]

Tentative Ruling: The motion will be denied without prejudice.

The debtors move for an order valuing their primary residence in Orland, California, equipment/farm implements on the property and farm animals, in an effort to strip off four claims (\$117,889.30, \$15,699.79, \$60,517.52, \$54,000) secured by the assets, held by Glenn County. The motion contends that the value of the real and personal property totals approximately \$411,360.

The motion will be denied. The four claims held by the County and listed in Schedule D are secured solely by the real property. The Schedule D attached to the motion by the debtors identifies only the real property as collateral for the County's four claims. The personal property items are not listed as collateral.

Further, the motion only vaguely describes the personal property items that are allegedly collateral for the County's claims. The motion does not specifically identify each personal property item as listed in Schedule B. Dockets 100 & 102. Thus, even if the County's claims are secured by personal property items, the court will not speculate about which specific items in Schedule B are collateral for the County's claims.

Finally, although the motion refers to the "superior" lien of the U.S.D.A. Farm Service Agency, the attached Schedule D does not list that claim. Docket 103, Schedule D. The motion will be denied.

8. 16-20774-A-12 TIMOTHY/JILL PEDROZO MOTION TO
DBL-14 VALUE COLLATERAL
VS. ROBERT PARKER 7-11-16 [110]

Tentative Ruling: The motion will be denied without prejudice.

The debtors move for an order valuing their primary residence in Orland, California, equipment/farm implements on the property and farm animals, in an effort to strip off a \$6,000 claim secured by the assets, held by Robert Parker.

The motion will be denied. According to the debtors' Schedule D, Mr. Parker's claim is not secured by any collateral. The value for the collateral of that claim is listed as \$0.00. Docket 10 at 23. The motion then contradicts the schedules.

Further, the motion only vaguely describes the personal property items that are allegedly collateral for Mr. Parker's claim. The motion does not specifically identify each personal property item as listed in Schedule B. Dockets 110 & 112. Thus, even if Mr. Parker's claim is secured by personal property items, the court will not speculate about which specific items in Schedule B are collateral for his claim.

Finally, the motion contains contradictory information. In one place, it states that the value of the real and personal property totals approximately \$411,360, whereas in another place it states that the value of these assets is \$379,300. Docket 110 at 2. The motion will be denied.

9. 16-21585-A-11 AIAD/HODA SAMUEL

ORDER TO
SHOW CAUSE
7-18-16 [169]

Final Ruling: The order to show cause will be discharged and the petition will remain pending.

The debtors' estate was given permission to pay the petition filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The final installment fee in the amount of \$429 due on July 13, 2016 was not paid. However, the installment fee was paid on July 21, 2016. No prejudice has resulted from the delay.