

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 7th Floor
Courtroom 28, Department A
Sacramento, California

DAY: MONDAY
DATE: AUGUST 17, 2020
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

RULINGS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling.

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g. nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [15-24202](#)-A-7 **IN RE: CHERYL MCNEIL**
[ASF-4](#)

MOTION FOR COMPENSATION FOR ALAN S. FUKUSHIMA, CHAPTER 7
TRUSTEE(S)
7-10-2020 [\[147\]](#)

J. HENDRIX/ATTY. FOR MV.
DEBTOR DISCHARGED: 09/21/2015; JOINT DEBTOR DISCHARGED:
09/21/2015

Final Ruling

Application: Allowance of Compensation and Expense Reimbursement

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Approved

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this application was required not less than 14 days before the hearing on the application. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

COMPENSATION AND EXPENSES

A trustee's compensation is considered in accordance with §§ 326(a) and 330(a). In 2005, "Congress removed Chapter 7 trustees from the list of professionals subject to the Section 330(a)(3) factors. . . . [and] introduced a new provision to Section 330 requiring courts to treat the reasonable compensation awarded to trustees as a 'commission, based on Section 326.'" *Matter of JFK Capital Holdings, L.L.C.*, 880 F.3d 747, 752 (5th Cir. 2018) (quoting 11 U.S.C. § 330(a)(7)). "[A] trustee's request for compensation should be presumed reasonable as long as the amount requested does not exceed the statutory maximum calculated pursuant to § 326. [A]bsent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review. If the court has found that extraordinary circumstances are present, only then does it become appropriate to conduct a further inquiry to determine whether there exists a rational relationship between the compensation requested and the services rendered." *In re Ruiz*, 541 B.R. 892, 896 (B.A.P. 9th Cir. 2015) (second alteration in original) (citations omitted) (internal quotation marks omitted).

In short, § 330(a)(7) "treats the commission as a fixed percentage, using Section 326 not only as a maximum but as a baseline presumption for reasonableness in each case." *Matter of JFK Capital Holdings*, 880 F.3d at 755. This provision "is best understood as a directive to simply apply the formula of § 362 in every case." *Id.* at 753-54. The "reduction or denial of compensation . . . should be a rare event" occurring only when truly exceptional circumstances are present. *Id.* at 756.

In this Chapter 7 case, the trustee has applied for an allowance of compensation and reimbursement of expenses. The court finds (1) that the compensation requested by the trustee is consistent with 11 U.S.C. § 326(a); (2) that no extraordinary circumstances are present in this case, see *In re Salgado-Nava*, 473 B.R. 911 (B.A.P. 9th Cir. 2012); and (3) that expenses for which reimbursement is sought are actual and necessary.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The chapter 7 trustee's application for allowance of compensation and reimbursement of expenses has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is approved on a final basis. The court allows to the trustee compensation in the amount of \$30,225.25 and reimbursement of expenses in the amount of \$0.00.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

2. [20-22305](#)-A-7 **IN RE: BENJAMIN/MICHELLE DAVID**
[UST-1](#)

MOTION TO APPROVE STIPULATION TO DISMISS CHAPTER 7 WITHOUT
ENTRY OF DISCHARGE
7-2-2020 [[15](#)]

ALIA KHAN/ATTY. FOR DBT.
JARED DAY/ATTY. FOR MV.

Final Ruling

The stipulation is approved. The U.S. Trustee will upload an order approving the stipulation.

3. [20-23013](#)-A-7 **IN RE: ROSALIA LOPEZ**
[CJK-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-27-2020 [[32](#)]

CHRISTINA KHIL/ATTY. FOR MV.
NEW YORK MELLON TRUST COMPANY, N.A. VS.

Tentative Ruling

Motion: Relief from Stay

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted

Order: Civil minute order

Subject: 421 Fellowship Rd., Santa Barbara, CA 93109

The moving party requests relief from stay under § 362(d)(1), for cause, and under § 362(d)(4) on grounds that the subject real property securing its loan was transferred by a third-party borrower to the debtor in this case as part of a scheme to delay, hinder or defraud the moving party. The court will grant the motion in part and deny the motion in part.

SECTION 362(d)(4) RELIEF

Section 362(d)(4) authorizes binding, in rem relief from stay with respect to real property "if the court finds that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either-(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or (B) multiple bankruptcy filings affecting such real property." 11 U.S.C. § 362(d)(4).

The B.A.P. has specified the elements for relief under this subsection of § 362. "To obtain relief under § 362(d)(4), the court must find three elements to be present. [1] First, debtor's bankruptcy filing must have been part of a scheme. [2] Second, the object of the scheme must be to delay, hinder, or defraud creditors. [3] Third, the scheme must involve either (a) the transfer of some interest in the real property without the secured creditor's consent or court approval, or (b) multiple bankruptcy filings affecting the property." *In re First Yorkshire Holdings, Inc.*, 470 B.R. 864, 870-71 (B.A.P. 9th Cir. 2012) (footnote omitted). [4] Fourth, the movant creditor must be a creditor whose claim is secured by real property. *In re Ellis*, 523 B.R. 673, 678 (B.A.P. 9th Cir. 2014) ("Applying its plain meaning, this provision of the Code authorizes a bankruptcy court to grant the extraordinary remedy of in rem stay relief only upon the request of a creditor whose claim is secured by an interest in the subject property.").

An order entered under this subsection must be recorded in compliance with state law to "be binding in any other case under this title purporting to affect such real property filed not later

than 2 years after the date of the entry of such order." § 362(d)(4).

The creditor is the assignee of the deed of trust encumbering the subject property. Exhibit 3, ECF 35. There have been four transfers of interest in the subject property without knowledge or consent of the movant in the past two years. The movant received notice of this bankruptcy and of three past Chapter 7 bankruptcies affecting the subject property. The three past bankruptcies were filed and dismissed within the last 9 months. As a result of the four bankruptcies affecting the property, the trustee, who had a Notice of Default on the mortgage and Election to Sell the subject property, had to postpone the sale four times. ECF 32.

The court finds that the movant has pled enough facts to show a transfer scheme to delay, hinder, or defraud creditors under § 362(d)(4). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

SECTION 362(d)(1) RELIEF

Given that some uncertainty exists about whether the stay applies, the court will grant stay relief under § 362(d)(1). The property is not estate property and because the property's transfer was unauthorized. Also, the movant holds a reverse mortgage on the property, and \$966,066.41 is due to the movant. This property has not been listed in the debtor's schedules. The court grants stay relief for cause under § 362(d)(1).

CIVIL MINUTE ORDER

Bank of New York Mellon Trust Company, N.A.'s motion for relief from the automatic stay under § 362(d)(4) has been presented to the court. Having rendered findings of fact and conclusions of law orally on the record pursuant to Fed. R. Civ. P. 52, as incorporated by Fed. R. Bankr. P. 7052:

IT IS ORDERED that the motion is granted in part as to relief under 11 U.S.C. § 362(d)(1). The automatic stay is vacated for cause under § 362(d)(1) with respect to the property described in the motion, commonly known as 421 Fellowship Rd., Santa Barbara, CA 93109, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED, under 11 U.S.C. § 362(d)(4), that the filing of the petition was part of a scheme to delay, hinder, or defraud creditors that involved either transfer of all or part ownership of, or other interest in, the aforesaid real property without the consent of the secured creditor or court approval; or multiple bankruptcy filing affecting such real property.

4. [20-23122](#)-A-7 **IN RE: THE MASTERS OF BEVERAGES, LLC**
[HSM-2](#)

MOTION TO ABANDON
7-24-2020 [\[14\]](#)

THOMAS WILLOUGHBY/ATTY. FOR DBT.
HOWARD NEVINS/ATTY. FOR MV.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted only as to the property described in the motion
Order: Prepared by moving party pursuant to the instructions below

Business Description: tangible personal property of the debtor (other than cash assets, books, and records of the debtor), located in i) Hydra Warehouse, 4601 Florin Perkins Road, Suite 200 Sacramento, CA 95826; ii) NorCal Beverage, 9155 Cebrian Street, West Sacramento, CA 95691; and iii) Cold Spring Brewing Company, 219 Red River Ave N., Cold Spring, MN 56320

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b); Fed. R. Bankr. P. 6007(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The personal property described above are either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such property is warranted. The order will compel abandonment of only the property that is described in the motion.

5. [20-23533](#)-A-7 **IN RE: JOSEPH/VALERIE CLARK**
[MS-1](#)

MOTION TO AVOID LIEN OF CAPITAL ONE BANK (USA), N.A.
7-18-2020 [\[5\]](#)

MARK SHMORGON/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Multiple Liens that Impair Exemption

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

LIEN-AVOIDANCE STANDARDS

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

REVERSE-PRIORITY ANALYSIS

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. *See In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B).

The court finds it unnecessary to apply the reverse-priority analysis individually to each of the respondents' liens. *See In re Meyer*, 373 B.R. at 88 ("[O]ne must approach lien avoidance from the

back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight.").

Under the reverse-priority analysis, Operating Engineers FCU's judicial lien would be the last judicial lien to be avoided because of its higher priority than the other judicial liens (but it remains subject to any senior consensual lien). In determining whether Operating Engineers FCU's lien may be avoided, the court must exclude all junior judicial liens that would already have been avoided under such analysis. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

The senior judicial lien, plus all other liens (excluding junior judicial liens lower in priority), plus the exemption amount together equal \$436,322.41. This sum exceeds the property's value by an amount greater than or equal to the senior judicial lien. As a result, Operating Engineers FCU's judicial lien may be avoided entirely. Therefore, Capital One Bank, N.A.'s junior judicial lien will also be avoided entirely.

Because the highest-priority judicial lien is avoidable, all other junior judicial liens are also avoidable, and the reverse-priority analysis is unnecessary to apply to each judicial lien. Stated differently, the sum of the debt secured by the consensual liens plus the debtor's exemption amount equals or exceeds the fair market value of the real property, so all judicial liens on the debtor's property are avoidable under § 522(f).

6. [20-23533](#)-A-7 **IN RE: JOSEPH/VALERIE CLARK**
[MS-2](#)

MOTION TO AVOID LIEN OF CITIBANK, N.A.
7-18-2020 [\[10\]](#)

MARK SHMORGON/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Multiple Liens that Impair Exemption

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

LIEN-AVOIDANCE STANDARDS

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

REVERSE-PRIORITY ANALYSIS

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C § 522(f)(2)(B).

The court finds it unnecessary to apply the reverse-priority analysis individually to each of the respondents' liens. See *In re Meyer*, 373 B.R. at 88 ("[O]ne must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight.").

Under the reverse-priority analysis, Operating Engineers FCU's judicial lien would be the last judicial lien to be avoided because of its higher priority than the other judicial liens (but it remains subject to any senior consensual lien). In determining whether Operating Engineers FCU's lien may be avoided, the court must exclude all junior judicial liens that would already have been avoided under such analysis. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

The senior judicial lien, plus all other liens (excluding junior judicial liens lower in priority), plus the exemption amount together equal \$436,322.41. This sum exceeds the property's value by an amount greater than or equal to the senior judicial lien. As a result, Operating Engineers FCU's judicial lien may be avoided entirely. Therefore, Citibank, N.A.'s junior judicial lien will also be avoided entirely.

Because the highest-priority judicial lien is avoidable, all other junior judicial liens are also avoidable, and the reverse-priority analysis is unnecessary to apply to each judicial lien. Stated differently, the sum of the debt secured by the consensual liens plus the debtor's exemption amount equals or exceeds the fair market

value of the real property, so all judicial liens on the debtor's property are avoidable under § 522(f).

7. [20-23533](#)-A-7 **IN RE: JOSEPH/VALERIE CLARK**
[MS-3](#)

MOTION TO AVOID LIEN OF OPERATING ENGINEERS FEDERAL CREDIT UNION
7-18-2020 [[15](#)]

MARK SHMORGON/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Multiple Liens that Impair Exemption

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

LIEN-AVOIDANCE STANDARDS

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

REVERSE-PRIORITY ANALYSIS

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already

avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C. § 522(f)(2)(B).

The court finds it unnecessary to apply the reverse-priority analysis individually to each of the respondents' liens. See *In re Meyer*, 373 B.R. at 88 ("[O]ne must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight.").

Under the reverse-priority analysis, Operating Engineers FCU's judicial lien would be the last judicial lien to be avoided because of its higher priority than the other judicial liens (but it remains subject to any senior consensual lien). In determining whether Operating Engineers FCU's lien may be avoided, the court must exclude all junior judicial liens that would already have been avoided under such analysis. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

The senior judicial lien, plus all other liens (excluding junior judicial liens lower in priority), plus the exemption amount together equal \$436,322.41. This sum exceeds the property's value by an amount greater than or equal to the senior judicial lien. As a result, Operating Engineers FCU's judicial lien may be avoided entirely.

Because the highest-priority judicial lien is avoidable, all other junior judicial liens are also avoidable, and the reverse-priority analysis is unnecessary to apply to each judicial lien. Stated differently, the sum of the debt secured by the consensual liens plus the debtor's exemption amount equals or exceeds the fair market value of the real property, so all judicial liens on the debtor's property are avoidable under § 522(f).

8. [20-23246](#)-A-7 **IN RE: SACRAMENTO I STEAKHOUSE, L.P.**
[DNL-2](#)

MOTION TO REJECT LEASE OR EXECUTORY CONTRACT
7-22-2020 [[26](#)]

MATTHEW OLSON/ATTY. FOR DBT.
SUSAN SMITH/ATTY. FOR MV.

No Ruling

9. [20-23246](#)-A-7 **IN RE: SACRAMENTO I STEAKHOUSE, L.P.**
[DNL-3](#)

MOTION TO ABANDON
7-22-2020 [[31](#)]

MATTHEW OLSON/ATTY. FOR DBT.
SUSAN SMITH/ATTY. FOR MV.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted only as to the business assets described in the motion

Order: Prepared by moving party pursuant to the instructions below

Business Description: Restaurant Property located at 2100 Golden Center Lane, Rancho Cordova, CA 95670

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b); Fed. R. Bankr. P. 6007(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The business assets described above are either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business assets is warranted. The order will compel abandonment of only the business assets that are described in the motion.

10. [17-23150](#)-A-7 **IN RE: EDWINA LEAVELL**

MOTION TO ENFORCE REAFFIRMATION AGREEMENT
7-27-2020 [[22](#)]

MARK BRIDEN/ATTY. FOR DBT.
BRADLEY ZAMCZYK/ATTY. FOR MV.
DEBTOR DISCHARGED: 09/11/2017; JOINT DEBTOR DISCHARGED:
09/11/2017;

Final Ruling

The motion is unsupported by a declaration. LBR 9014-1(d)(3)(D).
Until the movant does so, the court is unable to ascertain whether
the debtor has, in fact, made payments under the reaffirmation. The
motion will be denied without prejudice. A civil minute order will
issue.

11. [18-22453](#)-A-7 **IN RE: ECS REFINING, INC.**
[HSM-19](#)

CONTINUED MOTION FOR ADMINISTRATIVE EXPENSES
6-15-2020 [[1337](#)]

CHRISTOPHER BAYLEY/ATTY. FOR DBT.
HOWARD NEVINS/ATTY. FOR MV.

No Ruling

12. [20-20966](#)-A-7 **IN RE: JACK BOLLING**
[CPV-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-16-2020 [[24](#)]

CINDY HILL/ATTY. FOR DBT.
CRISTINA VAZQUEZ/ATTY. FOR MV.
CALIFORNIA LABOR COMMISSIONER VS.; RESPONSIVE PLEADING

No Ruling

13. [16-27672](#)-A-7 **IN RE: DAVID LIND**
[DNL-35](#)

MOTION TO ABANDON
7-22-2020 [\[843\]](#)

J. CUNNINGHAM/ATTY. FOR MV.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted
Order: Prepared by moving party

Real Property Description: 4258 W. Sargent Road, Lodi, CA, 95242,
San Joaquin County

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The real property described above is either burdensome to the estate or of inconsequential value to the estate. The property accrues taxes and insurance premiums and requires additional costs for maintenance. The trustee has paid off all secured and general unsecured claims on the property, and the bar date to post claims was two years ago. It is unlikely any additional claims will be filed in the debtor's case. The only matter to be resolved before the trustee closes the debtor's case is the debtor's pending appeal against the court's order granting sale of debtor's other property 23281 N. Davis Road, Lodi, CA. The appeal can go on into 2021. The trustee stated he has sufficient cash reserves to cover costs of the appeal. ECF 843. An order compelling abandonment is warranted.

14. [18-20177](#)-A-7 **IN RE: DAVID BENJAMIN**
[DNL-10](#)

CONTINUED MOTION FOR COMPENSATION FOR BACHECKI, CROM & CO.,
LLP, ACCOUNTANT(S)
6-22-2020 [[123](#)]

DAVID MEEGAN/ATTY. FOR DBT.
WITHDRAWN BY M.P.; DEBTOR DISCHARGED: 04/16/2018; JOINT DEBTOR
DISCHARGED: 04/16/2018

Final Ruling

The motion having been withdrawn, the matter is dropped as moot.

15. [18-20177](#)-A-7 **IN RE: DAVID BENJAMIN**
[DNL-11](#)

CONTINUED MOTION FOR COMPENSATION BY THE LAW OFFICE OF
DESMOND, NOLAN, LIVAICH & CUNNINGHAM FOR J. RUSSELL
CUNNINGHAM, TRUSTEES ATTORNEY(S)
6-22-2020 [[129](#)]

DAVID MEEGAN/ATTY. FOR DBT.
WITHDRAWN BY M.P.; DEBTOR DISCHARGED: 04/16/2018; JOINT DEBTOR
DISCHARGED: 04/16/2018

Final Ruling

The motion having been withdrawn, the matter is dropped as moot.

16. [18-20177](#)-A-7 **IN RE: DAVID BENJAMIN**
[DNL-12](#)

CONTINUED MOTION FOR COMPENSATION FOR J. MICHAEL HOPPER,
CHAPTER 7 TRUSTEE(S)
6-22-2020 [[135](#)]

DAVID MEEGAN/ATTY. FOR DBT.
WITHDRAWN BY M.P.; DEBTOR DISCHARGED: 04/16/2018; JOINT DEBTOR
DISCHARGED: 04/16/2018

Final Ruling

The motion having been withdrawn, the matter is dropped as moot.

17. [20-22986](#)-A-7 **IN RE: JESSICA EAGLESTON**
[KMM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-7-2020 [[12](#)]

GEORGE BURKE/ATTY. FOR DBT.
KIRSTEN MARTINEZ/ATTY. FOR MV.
TOYOTA MOTOR CREDIT CORPORATION VS.; NON-OPPOSITION

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Subject: 2016 Toyota Camry

Value of Collateral: \$8,000.00

Aggregate of Liens: \$16,383.49

These minutes constitute the court's findings of fact and conclusions of law required by Fed. R. Civ. P. 52(a), *incorporated* by Fed. R. Bankr. P. 7052, 9014(c). The findings of fact are as set forth above; the conclusions of law are as set forth below.

DEFAULT OF RESPONDENT

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

STAY RELIEF

"[A]fter notice and a hearing," the court may terminate, annul, modify or condition the stay: (1) "for cause, including the lack of adequate protection"; or (2) "with respect to a stay of an act against property [of the estate]" if the debtor lacks "equity" in that property and if that "property is not necessary for an effective reorganization." 11 U.S.C. § 362(d); *see also* Fed. R. Bankr. P. 4001(a)(1). The party seeking stay relief bears the burden of proof as to "the debtor's equity in the property" and on the validity and perfection of its security interest, as well as the amount of its debt. 11 U.S.C. § 362(g)(1); *In re Dahlquist*, 34 B.R. 476, 481 (Bankr. S.D. 1983). The party opposing stay relief, e.g., the debtor or Chapter 7 trustee, bears the burden of proof on all other issues. 11 U.S.C. § 362(g)(2).

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism

for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982).

In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. As a consequence, the motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Toyota Motor Credit Corporation's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as 2016 Toyota Camry, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

18. [20-21743](#)-A-7 **IN RE: PATH LABS, LLC, A DELAWARE LIMITED
LIABILITY COMPANY**
[HSM-6](#)

MOTION TO ABANDON
8-3-2020 [\[78\]](#)

ERIC SCHWAB/ATTY. FOR DBT.
AARON AVERY/ATTY. FOR MV.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate
Notice: LBR 9014-1(f)(2); no written opposition required
Disposition: Granted only as to the personal property described in the motion
Order: Prepared by moving party pursuant to the instructions below

Business Description: "all tangible personal property" located at:
i) 1166 National Drive, Suite 70-80, Sacramento, CA 95834; and ii)
Public Storage Unit 1424, at 4200 Northgate Blvd., Sacramento, CA

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b); Fed. R. Bankr. P. 6007(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The property described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such property is warranted. The order will compel abandonment of only the property that is described in the motion.

19. [20-21743](#)-A-7 **IN RE: PATH LABS, LLC, A DELAWARE LIMITED
LIABILITY COMPANY**
[HSM-5](#)

MOTION FOR ORDER AUTHORIZING RETURN OF FEDERAL STIMULUS
PAYMENT AND/OR MOTION TO ABANDON
8-3-2020 [\[82\]](#)

ERIC SCHWAB/ATTY. FOR DBT.
AARON AVERY/ATTY. FOR MV.

No Ruling