

**UNITED STATES BANKRUPTCY COURT
Eastern District of California**

Honorable Christopher D. Jaime
1200 I Street, Suite 200
Modesto, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: August 18, 2020

CALENDAR: 1:00 P.M. CHAPTER 13

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

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called. The court may continue the hearing on the matter, set a briefing schedule, or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters and no appearance is necessary. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Modesto, California

August 18, 2020 at 1:00 p.m.

1. [19-91121](#)-B-13 DIANE VARGAS MOTION TO CONFIRM PLAN
[BSH](#)-2 Brian S. Haddix 7-6-20 [[61](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. Counsel for the Debtor 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 Chapter 13 Trustee will submit the proposed order to the court.

The court will issue an order.

August 18, 2020 at 1:00 p.m.

2. [15-90436](#)-B-13 JUSTINE TUDOR CONTINUED MOTION TO INCUR DEBT
 [JCK](#)-3 Gregory J. Smith 7-17-20 [[41](#)]

Final Ruling

This matter was continued from August 4, 2020, to allow opposition or response to be filed by any party in interest. No opposition or response was filed. Therefore, the court's conditional ruling at docket 47 shall be the court's final decision.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issues an order.

Final Ruling

The motion has been set for hearing on less than 28-days notice. Local Bankruptcy Rule 9014-1(f)(2). Nevertheless, for the reasons explained below, the motion is well-founded and further briefing is unnecessary. See Local Bankr. R. 9014(f)(2)(C).

The court's decision is to grant the motion and approve the sale subject to the conditions stated below.

The Bankruptcy Code permits Chapter 13 debtors to sell property of the estate after a noticed hearing. 11 U.S.C. §§ 363(b) and 1303. Debtors Jason Elliot and Debra Elliot ("Debtors") propose to sell property described as 14901 Foxboro Drive, Truckee, California ("Property"). Debtors have decided to sell their Property since their income has changed and their ongoing income is uncertain due to the effects of the COVID-19 pandemic.

The proposed purchasers have agreed to purchase the Property in cash for \$285,000.00. This Property is not the Debtors' primary residence; therefore, the Debtors will owe capital gains taxes in the amount of \$23,000.00. Debtors propose that these taxes be paid directly from the sale of the Property to the taxing agency, and any proceeds over Debtors' claimed exemption of \$17,605.34 shall be turned over to the Chapter 13 Trustee.

Separately, Debtors currently have a modified plan scheduled to be heard on September 1, 2020. However, the Debtors plan to file a new modified plan and amended schedules to adjust for what is left to be paid in their case after the sale of the Property. Debtors will have a better idea of their ongoing income after the sale and once the Trustee has the proceeds from the sale.

U.S. National Association ("Creditor"), holder of the note secured by a recorded deed of trust encumbering the Property, has filed a conditional non-opposition to the motion. Creditor requests that its deed of trust be paid in full or in accordance with any sale approved by Creditor, that it retain its lien in the full amount due under the subject loan in the event that the sale of the Property does not take place, that it reserves the right to require an updated payoff demand prior to any close of escrow, that it shall not be surcharged in any way with the cost of the sale or other administrative claims in connection with the sale of the Property, and that it shall be entitled to its full rights as a loss payee with respect to insurance proceeds and shall retain its security interest in such proceeds up to the entire balance due on the deed of trust in the event the property is destroyed or damaged prior to the close of escrow.

Based on the evidence before the court, the court is inclined to grant the motion. The proposed sale appears to be in the best interest of the estate. The motion is therefore granted and the sale is approved.

The Chapter 13 Trustee shall submit an order granting the motion and approving the sale on its standard form of sale order. The Debtors' request to pay taxing authorities directly from the sale proceeds is denied. Creditor's request to include additional terms in the Trustee's standard form sale order is denied.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

5. [20-90262](#)-B-13 KATHY HARDISTY
[BRL](#)-2 Charles L. Hastings
Thru #7

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY LAGUNA
GOLD MORTGAGE, INC.
5-23-20 [[28](#)]

Final Ruling

Introduction

There are three matters before the court all of which relate to the April 8, 2020, Chapter 13 plan filed by Debtor Kathy Deanne Hardisty ("Debtor"): (i) an objection to confirmation of the plan filed by Laguna Gold Mortgage, Inc. ("LGM"); an objection to confirmation of the plan filed by the Chapter 13 Trustee ("Trustee"); and (iii) a motion by the Debtor to approve a post-petition agreement with Gold Country Haven, LLC ("GCH") regarding real property located 556 Toyon Drive, San Andreas, California ("Property").

The court has reviewed and considered all motions, oppositions, objections, responses, replies, and all related declarations and exhibits. The court has also reviewed and takes judicial notice of the docket and claims register. See Fed. R. Evid. 201(c)(1).

All three above-referenced matters are related and therefore all three matters are addressed in this Final Ruling. For the reasons explained below, LGM's objection to confirmation of the plan will be sustained, the Trustee's objection to confirmation of the plan will be overruled as moot, and the Debtor's motion to approve the post-petition agreement with GCH will be denied.

The court has determined this matter may be decided on the papers. See General Order No. 618 at p.3, ¶ 3 (E.D. Cal. May 13, 2020) (ordering courthouse closure "until further notice" due COVID-19 pandemic and further ordering that all civil matters are to be decided on the papers unless the presiding judge determines a hearing is necessary). The court has also determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f).

Findings of fact and conclusions of law are set forth below. See Fed. R. Civ. P. 52(a); Fed. R. Bankr. P. 7052.

Discussion

The Debtor filed the petition that commenced this case on April 8, 2020, and with it a proposed Chapter 13 plan.

LGM is a secured creditor in the case. It holds first and second deeds of trust on the Property. The plan proposes to pay those secured claims in Classes 1 and 4. The plan, however, is actually a conduit to facilitate GCH's payment of the Debtor's financial obligations associated with Property, taxes and LGM's secured debt included, because GCH assumes those financial obligations under the terms of the post-petition agreement. In exchange for the assumption of all of the Debtor's financial obligations associated with the Property, the post-petition agreement gives GCH the exclusive use, possession, and occupancy of the Property. GCH also gets an option to purchase the Property.

LGM objects to confirmation of the plan on two grounds: (i) good faith and (ii) feasibility. LGM contends the Debtor does not own the Property and therefore lacks the ability enter into the post-petition agreement.¹ LGM also questions the motives behind the post-petition agreement in the context of plan confirmation. LGM's objections have merit.

¹The Debtor produced a recorded quitclaim deed from the individual who LGM claims owns the Property. For purposes of this decision, the court assumes the quitclaim deed gives the Debtor authority to use, lease, or sell the Property under § 1303 of the Bankruptcy Code.

To the extent the post-petition agreement relieves the Debtor of all financial obligations associated with the Property, and at the same time gives GCH the exclusive right to use, occupy, and control the Property, the post-petition agreement operates as a de facto transfer of the Property from the Debtor to GCH. And if confirmed the plan would validate that de facto transfer and insulate the Property from creditors' reach, at least for the plan term. See e.g., *In re Hileman*, 451 B.R. 522, 524-25 (Bankr. C.D. Cal. 2011) (once confirmed creditor bound by plan and may not pursue collection or foreclose in the absence of a plan default). And therein lies the problem.

The post-petition agreement and the plan operate in tandem to impermissibly protect real property effectively transferred to and held by a non-debtor entity over the objection of a secured creditor. See *In re Jordan*, 330 B.R. 857, 860 (Bankr. M.D. Ga. 2005) (plan not proposed in good faith when sole purpose is to cram down secured debt and protect property used and occupied by non-dependent, non-debtor).² Perhaps even more troubling is that approval of the post-petition agreement and confirmation of the plan would effectively give GCH as a non-debtor entity the benefit of bankruptcy protection for itself and its newly-acquired property without the need for GCH to file its own petition and under a chapter of the Bankruptcy Code that Congress has limited exclusively to individuals.

Based on the foregoing, the post-petition agreement will not be approved because it is not in the best interest of the estate. See *In re Resource Technology Corp.*, 356 B.R. 435, 443 (Bankr. N.D. Ill. 2006) ("use" of property under § 363(b) must be in best interest of the estate). The plan will not be confirmed because, to the extent it relies on the post-petition agreement, it is not proposed in good faith as required by § 1325(a)(3). And because the post-petition agreement will not be approved, the plan is not feasible as required by § 1325(a)(6). Therefore,

IT IS ORDERED that the Debtor's motion to approve the post-petition agreement, dkt. 51, is denied.

IT IS FURTHER ORDERED that LGM's objection to confirmation of the Debtor's Chapter 13 plan, dkt. 28, is sustained.

IT IS FURTHER ORDERED that the Trustee's objection to confirmation of the Debtor's Chapter 13 plan, dkt. 28 as amended by dkt. 42, is overruled as moot.

The court will issue an order.

6. [20-90262](#)-B-13 KATHY HARDISTY
[CLH](#)-2 Charles L. Hastings

CONTINUED MOTION FOR APPROVAL
OF POST PETITION CONTRACT FOR
THE USE OF PROPERTY OF THE
ESTATE, INCLUDING AN OPTION TO
PURCHASE
6-2-20 [[51](#)]

See *Final Ruling at Item #5*.

²That may also render the transfer fraudulent. And a plan cannot be confirmed based on a fraudulent transfer. *In re Chase*, 43 B.R. 739, 745 (D. Md. 1984) ("A plan predicated on prior fraudulent transfers constitutes an abuse of the provisions and perverts the spirit of Chapter 13.").

7. [20-90262](#)-B-13 KATHY HARDISTY
[RDG](#)-1 Charles L. Hastings

CONTINUED AMENDED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
6-1-20 [[42](#)]

See Final Ruling at Item #5.

8. [17-90564](#)-B-13 DANIEL/GERARDEE DONNAN CONTINUED MOTION TO DISMISS
[EGS](#)-3 Jessica A. Dorn CASE
Thru #9 8-12-19 [[125](#)]

Final Ruling

There are two matters before the court: (1) a motion to dismiss that creditor Bayview Loan Servicing ("Creditor") filed on **August 12, 2019**, dkt. 125; and (2) an objection to Creditor's proof of claim that debtors Daniel and Gerardee Donnan ("Debtors") filed on **February 16, 2018**. Dkt. 62.

Creditor moves to dismiss the case on grounds that the Debtors have failed to comply with the terms of the confirmed plan. Debtors' response states that they will file a modified plan. The court notes that the last order regarding a modified plan was filed on June 18, 2020, and it is an order denying the Debtors' motion to modify their plan. Dkt. 237. No further action was thereafter taken.

With regard to the claim objection, Debtors object to Claim No. 8 on the grounds that \$6,605.75 in pre-petition fees and costs is unwarranted. Debtors state that there is no explanation for what those fees and costs are for. Creditor states that it has provided Debtors with a breakdown of the pre-petition fees incurred. Creditor states that the Debtors have failed to meet their burden of overcoming the validity of the proof of claim.

At a hearing held on June 16, 2020, Creditor and Debtors stated that a loan modification is pending. The Debtors are apparently waiting to receive a copy of the terms of the loan modification in order to complete and file a modified plan. See dkt. 234 (court audio).

On July 21, 2020, the court issued a Final Ruling continuing both matters to August 18, 2020. And to better facilitate an understanding of developments that may have transpired since the motion to dismiss and claim objection were filed, and that may have an impact on the court's decision on both matters following the recent transfer of the case to Department B, the court ordered the attorneys for both parties to file a joint status report by August 11, 2020. See *dkts.* 243, 245. As of August 17, 2020, no joint status report was filed.

The absence of a timely-filed joint status report impedes the court's ability to manage its calendar and causes the court to expend limited judicial resources unnecessarily. And now the court must further continue both matters on its calendar and address the absence of a joint status report. Namely, the attorneys' failure to file a joint status report is a blatant disregard and disobedience of a court order. And under these circumstances, sanctions are warranted. Therefore,

IT IS ORDERED that the motion to dismiss, dkt. 125, and the objection to claim, dkt. 62, are further continued to **September 1, 2020, at 1:00 p.m.** Given the length of time both matters have been pending, no further continuances will be granted. If both matters are not resolved or withdrawn before the continued hearing, they will be decided on September 1, 2020.

IT IS FURTHER ORDERED that by **August 25, 2020**, the parties **shall file a detailed joint status report** which addresses the following: (i) the status of Creditor's one-year old motion to dismiss; (ii) the status of the Debtors' nearly one and one-half year old claim objection; (iii) the status of the pending loan modification; (iv) any settlement discussions or the potential for resolution of the motion to dismiss and claim objection; and (v) any other matter relevant to the disposition of both matters.

IT IS FURTHER ORDERED that Creditor's attorney, Edward G. Schloss, and Debtors' attorney, Jessica A. Dorn, are each sanctioned \$100.00, payable to the clerk of the court, for their disregard and disobedience of the court's order to timely file a joint status report by August 11, 2020. Payment shall be made within seven (7) days with proof of payment filed.

9. [17-90564](#)-B-13 DANIEL/GERARDEE DONNAN CONTINUED STATUS CONFERENCE RE:
[JAD](#)-5 Jessica A. Dorn OBJECTION TO CLAIM OF BAYVIEW
LOAN SERVICING, LLC, CLAIM
NUMBER 8
2-16-18 [[62](#)]

See Final Ruling at Item #8.