

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

August 21, 2018 at 1:00 p.m.

1. [18-23609](#)-B-13 LISA GEE MOTION TO CONFIRM PLAN
[SLE](#)-1 Steele Lanphier 7-12-18 [[31](#)]
Thru #2

Tentative Ruling: The Motion to Confirm 1st Amended Chapter 13 Plan Dated July 11, 2018, has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 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). Opposition was filed by creditor Global Lending Services LLC and the Chapter 13 Trustee.

The court's decision is to not confirm the first amended plan.

First, although the Debtor did not appear at the meeting of creditors set for July 19, 2018, the Debtor did appear at the continued meeting of creditors held August 9, 2018, as required pursuant to 11 U.S.C. § 343. The meeting of creditors was concluded as to Debtor.

Second, the Debtor is delinquent to the Chapter 13 Trustee in the amount of \$4,000.00, which represents approximately 1 plan payment. The Debtor does not appear to be able to make plan payments proposed and has not carried the burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the Debtor has not provided the Trustee with a completed Class 1 Checklist for Mountain West Financial. The Debtor has not complied with 11 U.S.C. § 521(a)(3) and Local Bankr. R. 3015-1(b)(6).

Fourth, feasibility of the plan depends on the granting of a motions to value collateral of Global Lending Services LLC and GM Financial. To date, the Debtor has not filed, served, or set for hearing a valuation motion pursuant to Local Bankr. R. 3015-1(j).

Fifth, the plan cannot be effectively administered because it is impossible for the Trustee to pay the claims of Global Lending Services and GM Financial with negative monthly dividends. The plan specifies monthly dividends of (\$338.85) to Global Lending Services and (\$886.19) to GM Financial. The plan does not comply with 11 U.S.C. § 1325(a)(1).

Sixth, feasibility of the plan depends on the granting of a motion to avoid lien held by RC Willey Home Furnishing. To date, the Debtor has not filed, served, or set for hearing a motion to avoid lien pursuant to Local Bankr. R. 3015-1(I).

Seventh, the plan does not comply with 11 U.S.C. § 1325(b)(1)(B) since the Debtor's projected disposable income is not being applied to make payments to unsecured creditors. Form 122C-2, Line #16, lists an expense of \$3,515.00 but it appears that the Debtor's combined tax withholdings should be approximately \$2,125.46 based on the Debtor's pay advices and 2017 income tax returns. When the overstated expenses of Line #16 in the amount of \$1,389.54 are added, the Debtor's monthly disposable income

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The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

2. [18-23609](#)-B-13 LISA GEE COUNTER MOTION TO DISMISS CASE
[SLE](#)-1 Steele Lanphier 8-6-18 [[41](#)]

Because the plan proposed by the Debtor is not confirmable, the Debtor will be given a further opportunity to confirm a plan. But, if the Debtor is unable to confirm a plan within a reasonable period of time, the court concludes that the prejudice to creditors will be substantial and that there will then be cause for dismissal. If the Debtor is not confirmed a plan within 60 days, the case will be dismissed on the Trustee's ex parte application.

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Tentative Ruling: The matter will be determined at the scheduled hearing.

The court entered an order requiring Debtor's attorney Michael Benavides to show cause in writing by August 15, 2018, why his representation of the Debtor in this case is not sanctionable and/or why fees he received from the Debtor should not be disgorged under 11 U.S.C. § 329. Dkt. 46.

Mr. Benavides filed an opposition on August 2, 2018, stating that he provided adequate representation throughout each step of the bankruptcy filing and does not believe disgorgement or sanctions is warranted.

According to Mr. Benavides, he informed Debtor via text on June 28, 2018, of the modification of the order granting installment payments and provided the Debtor with the phone number of the clerk to check payment status and balance. Mr. Benavides states that the Debtor told him, "Just called and they said we are good 'cause we are paid over." Dkt. 49, p. 2, ln. 2-3.

On July 10, 2018, Mr. Benavides believed that there were three plan payments due, presumably the June 8, July 9, and August 7 payments. Dkt. 49, p. 2, ln. 4-5. However, Mr. Benavides is incorrect since by July 10, 2018, the Debtor had already made two installments: \$160.00 on June 7, 2018, and \$60.00 on July 9, 2018. In other words, by July 10, 2018, Debtor had already made a total of \$220.00 in payments and had a remaining filing fee balance of only \$90.00.

On July 17, 2018, Mr. Benavides states that the Debtor informed him that the payments were taken care of and that he was talking with another attorney. Up until that point, Mr. Benavides was anticipating Debtor to visit his office to sign an amended plan and states that the Debtor can still sign the amended plan assuming the Debtor hasn't retained new counsel.

The matter will be determined at the scheduled hearing.

4. [17-27416](#)-B-13 NORMAN/DOROTHY FELTON MOTION TO MODIFY PLAN
[MRL](#)-1 Mikalah R. Liviakis 7-9-18 [[26](#)]

Final Ruling: No appearance at the August 21, 2018, hearing is required.

The Motion to Confirm Debtor's [sic] Chapter 13 Plan has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument.

The court's decision is to permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtors have filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan filed on July 9, 2018, complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The court will enter an appropriate minute order.

5. [15-28729](#)-B-13 CHARLES EVANS
[SDB](#)-1 Mary Ellen Terranella

MOTION BY W. SCOTT DE BIE TO
WITHDRAW AS ATTORNEY
7-24-18 [[40](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the August 21, 2018, hearing is required.

W. Scott de Bie having filed a Notice of Withdrawal of Motion to Withdraw as Attorney of Record, the motion is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(I) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The court will enter an appropriate minute order.

VISTE TORRE, LLC VS.

Final Ruling: No appearance at the August 21, 2018, hearing is required.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The court's decision is to grant the motion for relief from stay.

Viste Torre, LLC ("Movant") seeks relief from the automatic stay in order to allow *Viste Torre, LLC v. BBC Services, Inc., et al.*, Sacramento County Superior Court, case no. 34-2017-00213428, and *BBC Services, Inc. v. Viste Torre, LLC, et al.*, Sacramento County Superior Court, case no. 34-2017-00216097 (collectively, the "State Court Litigation") to be continue. A 10-day jury trial is scheduled to commence on October 16, 2018. The moving party has provided the Declaration of Douglas Kirkman to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Kirkman Declaration states that Movant commenced the State Court Litigation in the Sacramento County Superior Court pre-petition on June 2, 2017, against BBC, the Debtor as president of BBC, and BBC's chief financial officer by filing a complaint to declare void a mechanic's lien certified by Debtor on behalf of BBC based in part on Debtor's false certification. Movant had engaged BBC to perform renovation construction work on an apartment complex in Carmichael, California. Movant believes the Debtor was in control of and responsible for the management of BBC with respect to the construction contract.

No parties have filed opposition to the motion to date.

The court finds that the nature of the State Court Litigation case warrants relief from stay for cause. The parties appear to have engaged in extensive discovery including depositions and requests for production of documents. Additionally, multiple non-debtor parties are involved. Therefore, judicial economy dictates that the State Court Litigation be allowed to continue after considerable time and resources have already been put forth in the matter.

The court shall issue a minute order modifying the automatic stay as it applies to the Debtor to allow the Movant to continue the State Court Litigation.

The automatic stay is not modified with respect to the enforcement of the judgment against the Debtor, Trustee, or property of the bankruptcy estate. Any judgment obtained shall be brought back to this court for the proper treatment of any claims under the Bankruptcy Code.

The automatic stay shall be binding and effective despite any conversion of this bankruptcy case to a case under any other chapter of the Bankruptcy Code.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

7. [14-24739](#)-B-13 AERON WALLACE
[SDE](#)-3 W. Scott de Bie

MOTION BY W. SCOTT DE BIE TO
WITHDRAW AS ATTORNEY
7-24-18 [[75](#)]

DEBTOR DISMISSED: 08/01/2018

Final Ruling: No appearance at the August 21, 2018, hearing is required.

The case having been dismissed on August 1, 2018, the motion is dismissed as moot.

The court will enter an appropriate minute order.

8. [18-23475](#)-B-13 MARCOS FLORES
[JPJ](#)-1 Robert L. Goldstein

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY JAN P.
JOHNSON AND/OR MOTION TO
DISMISS CASE
7-12-18 [[14](#)]

Tentative Ruling: The Trustee's Objection to Confirmation of the Chapter 13 Plan and Conditional Motion to Dismiss Case was originally filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). The Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankruptcy Rule 9014-1(f)(1)(C). No written reply has been filed to the objection.

The matter will be determined at the scheduled hearing.

This matter was continued from August 7, 2018, to provide the Debtor additional time to resolve the Trustee's objections as noted below.

First, the Debtor has not provided the Trustee with a copy of his 2016 income tax return for the most recent tax year a return was filed. The Debtor has not complied with 11 U.S.C. § 521(e)(2)(A)(1).

Second, the Debtor has not filed an amended Schedule J to list all of his expenses as requested at the meeting of creditors. The Debtor has not carried his burden of showing that the plan complies with 11 U.S.C. § 1325(a)(6).

Third, the maximum fee that may be charged in a nonbusiness case is \$4,000.00 pursuant to Local Bankr. R. 2016-1. Debtor's attorney's fees exceed this amount.

The matter will be determined at the scheduled hearing.

9. [17-22286](#)-B-13 GERARDO CASTILLO
[TJW](#)-1 Timothy J. Walsh

MOTION TO AVOID LIEN OF GCFS,
INC.
8-6-18 [[56](#)]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. If there is opposition, the court may reconsider this tentative ruling.

The court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of Greater California Financial Services ("Creditor") against the Debtor's property commonly known as 603 Abbey Drive, Fairfield, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$6,394.40. An abstract of judgment was recorded with Solano County on December 6, 2011, which encumbers the Property. All other liens recorded against the Property total \$444,193.12.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of \$500,000.00 as of the date of the petition. Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of \$100,000.00 on Schedule C.

The total of the mortgage and claim of exemption is \$544,193.12. The mortgage and claim of exemption exceed the value of the home by \$44,193.12.

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 subject to 11 U.S.C. § 349(b)(1)(B).

The court will enter an appropriate minute order.

10. [16-27293](#)-B-13 ELLE RUBINGER
[MS-4](#) Mark Shmorgon

MOTION TO MODIFY PLAN
6-25-18 [[86](#)]

CONTINUED TO 8/28/18 AT 1:00 P.M. TO VERIFY THAT THE DEBTOR HAS TIMELY MADE HER PLAN PAYMENT.

Final Ruling: No appearance at the August 21, 2018, hearing is required. The court will enter an appropriate minute order.