

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

August 25, 2022 at 1:30 p.m.

- | | | | |
|----|--------------------------------|---------------|-------------------------------|
| 1. | 22-21413 -C-13 | CHYRENA BROWN | OBJECTION TO CONFIRMATION OF |
| | TJS -1 | Thomas Amberg | PLAN BY ALLY BANK |
| | | | 7-7-22 [18] |

Final Ruling: No appearance at the August 25, 2022 hearing is required.

The movant having filed a Notice of Dismissal, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion was dismissed without a court order, and the matter is removed from the calendar.**

2. [22-21135](#)-C-13 ROBERT KOEHLER
Eric Schwab

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
7-20-22 [[22](#)]

Thru #4

No Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f) (1) procedure which requires 28 days' notice. The Proof of Service shows that 36 days' notice was provided. Dkt. 27.

The Objection to Claimed Exemptions is xxxxxxx.

Creditors, Drew and Elizabeth Prinz, filed this Objection objecting to the debtor's claimed exemptions pursuant to C.C.C.P § § 704.730 & 704.225 because the debtors cash and savings are not necessary for the debtor's support. The movants further contend that their equitable lien is superior to the debtor's claimed homestead exemption because the debtor used the funds from his client-trust account to pay off the first and second mortgages on the property and to pay state and federal taxes.

Debtor filed an opposition (dkt. 43) representing that the state court specifically found that the movants did not prove fraud in the state court case and a constructive trust was not imposed against the debtor's residence. Debtor further argues that he supports his modest living from social security and what he draws from his savings account.

A claimed exemption is presumptively valid. *In re Carter*, 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); See also 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

At the hearing xxxxxxx

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 Claimed Exemptions filed by Drew and Elizabeth Prinz having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and

good cause appearing,

IT IS ORDERED that Objection is **xxxxxxx**

3. [22-21135](#)-C-13 ROBERT KOEHLER
[DNL](#)-2 Eric Schwab

OBJECTION TO CONFIRMATION OF
PLAN BY DREW AND ELIZABETH
PRINZ
7-21-22 [[28](#)]

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(1) notice which requires 28 days' notice. The Proof of Service shows that 34 days' notice was provided. Dkt. 33.

The Objection to Confirmation of Plan is sustained.

Creditors, Drew and Elizabeth Prinz ("Creditors"), opposes confirmation of the Chapter 13 plan on the basis that the debtor has not proposed his plan in good faith. Creditors contend that the plan has not been proposed in good faith for the following reasons:

1. Debtor falsely represented in state court that he was indigent;
2. Debtor manipulated the bankruptcy code by dismissing his first bankruptcy case after the parties incurred substantial attorney fees on 2 pending contested matters and an adversary proceeding;
3. Debtor purpose for filing the bankruptcy is to defeat the state court litigation; and
4. Debtor acted egregiously by failing to return wrongfully converted funds of an elderly client.

DEBTOR'S RESPONSE

Debtor filed an response on August 11, 2022. Dkt. 39. Debtor represented he does not oppose the motion and will be filing an amended plan.

DISCUSSION

Creditor having filed an objection to confirmation and the debtor not opposing, confirmation is denied.

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

Creditors, Drew and Elizabeth Prinz, 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.

4. [22-21135](#)-C-13 ROBERT KOEHLER
[DNL](#)-3 Eric Schwab

MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 7
7-28-22 [[34](#)]

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 28 days' notice was provided. Dkt. 38.

The Motion to Convert Case to Chapter 7 is ~~xxxxxx~~.

This Motion to Convert the Chapter 13 bankruptcy case of Robert Francis Koehler ("Debtor") has been filed by Drew and Elizabeth Prinz ("Movant"), a creditor. Movant asserts that the case should be dismissed or converted based on the following grounds:

- A. Debtor filed the current bankruptcy case in an inequitable manner and unfairly manipulated the Bankruptcy Code because he dismissed his first bankruptcy case after substantial time and expense was devoted to an Adversary Proceeding and contested matters to decide an exception to discharge, conversion of case to Chapter 7 and objections to claims of exemption.
- B. The debtor filed in bad faith because his second case was filed 23 days after the first bankruptcy case was voluntarily dismissed.
- C. The debtor's intent was to only defeat the state court litigation because both the first and second bankruptcy cases were filed within hours of adverse rulings by the state court.
- D. The debtor's behavior is egregious because he is using the bankruptcy system to avoid paying a judgment to an elderly client.

Movant's also contend that conversion, rather than dismissal, is in the best interest of creditors because dismissal will require the movants to seek satisfaction of their claims through alternative means, whereas Chapter 7 will provide payment to the Movants as quickly as reasonably possible. Movants further argue that liquidation is the better alternative because the Debtor has a significant amount of non-exempt assets available to pay movants.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on August 11, 2022. Dkt. 41. Debtor

states that movants and debtor agreed to stay the associated adversary proceeding until the cross appeals in state court have been resolved and there is no prejudice to creditors - who are the only creditors in the case - because there is sufficient equity beyond the debtor's claimed homestead exemption to pay creditors' judgement in full with interest and attorney fees. The debtor further contends that conversion could cause irreparable harm to debtor if liquidation occurs before the appeals are resolved in state court.

APPLICABLE LAW

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[;] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" Nelson v. Meyer (In re Nelson), 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing Ho v. Dowell (In re Ho), 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 7 of this title, or may dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause

11 U.S.C. § 1307(c). The court engages in a "totality of circumstances" test, weighing facts on a case-by-case basis and determining whether cause exists, and if so, whether conversion or dismissal is proper. Drummond v. Welsh (In re Welsh), 711 F.3d 1120, 1123 (9th Cir. 2013) (citing Leavitt v. Soto (In re Leavitt), 171 F.3d 1219 (9th Cir. 1999)). Bad faith is one of the enumerated "for cause" grounds under 11 U.S.C. § 1307. Nady v. DeFrantz (In re DeFrantz), 454 B.R. 108, 112 n.4 (B.A.P. 9th Cir. 2011) (citing In re Leavitt, 171 F.3d at 1224).

DISCUSSION

At the hearing xxxxxxxxxx

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 Convert the Chapter 13 case filed by Drew and Elizabeth Prinz ("a creditor") 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 to Convert is **xxxxxxx**.

5. [17-23949](#)-C-13 MINNIE DAWSON
[ETW](#)-2 Peter Macaluso

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-18-22 [[96](#)]

LIL WAVE FINANCIAL INC. 401K
PLAN VS.

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 38 days' notice was provided. Dkt. 101.

The Motion for Relief from the Automatic Stay is Granted.
--

Lil Wave Financial Inc. 401K Plan ("Movant") filed this Motion seeking relief from the automatic stay as to the debtor's property commonly known as 5650 Martin Luther King Blvd., Sacramento, California (the "Property").

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtors is delinquent \$9,500 postpetition payments and \$40,413.97 in property taxes. Declaration, Dkt. 98. Movant also argues cause exists because the debtor has failed to provide current insurance on the property.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on August 9, 2022. Dkt. 102. Debtor asserts that he is prepared to pay the arrears and be current on plan payments. Debtor further represents that all postpetition taxes have been paid and all prepetition taxes are being paid as part of the plan. Finally, debtor asserts that the property is insured by Identity Insurance Services, account #65-75090, presented by Tangram Insurance Services, which expires 7/25/2023.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee filed a response on August 11, 2022. Dkt. 106. The Trustee represents that the debtor is delinquent with plan payments in the amount of \$9,500. Trustee further represents that payments to creditor Lil Wave Financial are delinquent in the amount of \$5,799.99.

DISCUSSION

Upon review of the record, the court finds cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtor is delinquent \$9,500 postpetition payments.

Language vacating stay

Based on the foregoing, the Motion is granted. The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, and all other creditors having lien rights against the Property, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

No other or additional relief is granted by the 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 for Relief from the Automatic Stay filed by Lil Wave Financial Inc. 401K Plan ("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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 5650 Martin Luther King Blvd., Sacramento, California, ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.

August 25, 2022 at 1:30 p.m.

Page 9 of 16

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 45 days' notice was provided. Dkt. 83.

The Motion to Modify Plan is denied.

The debtor filed this Motion seeking to confirm the Modified Chapter 13 Plan (Dkt. 78) filed on July 11, 2022.

The Chapter 13 Trustee filed an Opposition (Dkt. 84) on August 4, 2022, opposing confirmation on the following grounds:

1. The debtor is delinquent \$2,700 in plan payments; and
2. The plan is not feasible because it does not provide for the correct amount of postpetition arrears.

The debtor filed a response on August 17, 2022. Dkt. 87. The debtor responded with the following:

1. The debtor represents the arrears have been cured; and
2. Debtor proposes increasing plan payments and disbursements.

DISCUSSION

Counsel argument is not evidence and no evidence has been presented that the arrears have been cured. The debtor is \$2,700 delinquent in plan payments. Declaration, Dkt. 85. Delinquency indicates that the plan is not feasible and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

Notwithstanding whether the plan provides for the postpetition arrearage as Trustee 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).

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, Tema Kay Robinson, 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.

7. [18-22164](#)-C-13 DAWN BARKLEY
[MJD](#)-7 Matthew DeCaminada

MOTION FOR APPROVAL TO ENTER
INTO TRIAL PERIOD PAYMENTS FOR
A LOAN MODIFICATION
7-20-22 [[101](#)]

Final Ruling: No appearance at the August 25, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 36 days' notice was provided. Dkt. 105.

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 Approve Trial Loan Modification is granted.

The debtor filed this Motion seeking authority to enter into a trial loan modification for the purpose of qualifying for a permanent loan modification.

The trial modification provides for three payments of \$1,413.06 to be made before a permanent loan modification is offered.

The court finds that the trial loan modification, which if successfully completed will allow the debtor to be considered for permanent modification, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the Motion is granted.

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 Approve Trial Loan Modification filed by Dawn Marie Barkley 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.

8. [22-21477](#)-C-13 VICTOR NAVARRO AND OBJECTION TO CONFIRMATION OF
[RDG](#)-1 KRISTINA ZAPATA NAVARRO PLAN BY RUSSELL D. GREER
Gary Fraley 7-27-22 [[19](#)]

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 58 days' notice was provided. Dkt. 22.

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. The plan is not feasible because the plan provides for a monthly plan payment of \$2,775, which is lower than the \$2,814 that is required;
2. Debtors have not provided a copy of their 2021 state income tax return to the Trustee;
3. Debtors schedules have not been amended with the co-debtors new income; and
4. Debtors plan is not proposed in good faith because they failed to list the debtors' prior Chapter 13 case filed on February 23, 2017.

DEBTORS' NON-OPPOSITION

The debtors filed a statement of non-opposition on August 3, 2022. Dkt. 31.

DISCUSSION

Given the debtors' non-opposition to the Trustee's objection and agreement that the plan is not confirmable, the plan is not confirmed.

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.

9. [22-21394](#)-C-13 KATHY JONES
[RDG](#)-1 Peter Macaluso

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
7-22-22 [[20](#)]

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. 23.

The Objection to Confirmation of Plan is overruled.

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

1. Trustee has requested, but has not received, documents from the debtor, including the option contract for the purchase of the property at Tortola Way, copy of the Kamlorom Irrevocable Trust, and a copy of the Debra Elaine Wilson Trust;
2. The plan does not meet the liquidation test because the debtor has non-exempt assets available for distribution and the plan must pay at least 19% to general unsecured creditors;
3. The debtor's schedules do not include the debtor's monthly payment of union dues; and
4. The debtor's have not provided requested declarations from Kaitlan Jones and Moddy Jones attesting to their willingness and ability to contribute monthly amounts for the life of the plan.

DEBTOR'S OPPOSITION

The debtor filed an Opposition on August 11, 2022. Dkt. 25. Debtor's opposition responded to the Trustee's objections as follows:

1. Debtor will provide the option contract for the Tortola Property (Dkt. 29, exhibit 1), Kamlorom Irrevocable Trust, and the 2021 federal income tax return for the Debra Elaine Trust.
2. Debtor acknowledges the plan must pay a 19% dividend, and proposes to increase the plan monthly plan payment to \$4,925.
3. Debtor has corrected her schedules to include her union dues in her monthly income calculation.
4. Debtor has provided declarations from Kaitlan Jones, Moddy Jones-Perry, and Debra Wilson. Dkts. 26, 27, & 28.

DISCUSSION

It appears the debtor has supplied sufficient information relating to the Trustee's request for information. The debtor's response and the declarations filed also address the Trustee's opposition and resolve the objection.

No other grounds for objection remaining, it appears the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Objection is overruled, 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 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 overruled, and the debtor's Chapter 13 Plan (Dkt. 13), is confirmed. 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.