

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

August 25, 2020 at 1:30 P.M.

1. **20-20992-E-7** **SARA/CHARLES GRESHAM** **CONTINUED STATUS CONFERENCE**
20-2108 **LARKINS V. GRESHAM ET AL** **RE: COMPLAINT**
 5-29-20 [1]

Plaintiff's Atty: Pro Se
Defendant's Atty: Pro Se

Adv. Filed: 5/29/20
Answer: 6/25/20

Notes:

Continued from 8/5/20 to allow the Parties the opportunity to exchange written settlement proposals (oral if the Parties believe that they can present and respond to the economic settlement proposal).
Specially set date and time for the convenience of the Parties.

Order Denying Fee Waiver and Addressing Settlement Issues filed 8/10/20 [Dckt 15]

Order Approving Payment of Filing Fee in Installments filed 8/11/20 [Dckt 16]

| |
|---|
| The Status Conference is XXXXXXXXXX |
|---|

AUGUST 25, 2020 CONTINUED STATUS CONFERENCE

Nothing further has been filed by the Parties as of the Court's August 22, 2020 review of the Docket. At the Status Conference, XXXXXXXXXX

AUGUST 5, 2020 STATUS CONFERENCE

On May 29, 2020, Amanda Larkins, Plaintiff, sent a letter to the Bankruptcy Court, in which she stated that she objected to having her debt included in the Sara Gresham and Charles Gresham

bankruptcy case. Plaintiff stated that the Greshams rented a room in her home, defaulted on the rent, and Plaintiff prosecuted an unlawful detainer action to have them evicted from her home. There is \$3,500.00 owed from the unlawful detainer proceeding.

Sara Gresham (“Defendant- Sara”) and Charles Gresham (“Defendant-Charles”) have filed a pro se form Answer (Dckt. 11), which admits the debt and denies the rest of the allegations of the complaint other than the filing of the bankruptcy petition.

At the Status Conference, the court had an extended, productive discussion with the respective parties. Clearly, each party “knows” that they are correct and the other party is incorrect. Each party “knows” that the other party has acted unethically.

A state court judgment has been obtained by Plaintiff, and while Defendants seek to argue the merits of that state court judgment, the judgment exists and is given full faith and credit as required by statute.

Plaintiff has the hurdles of prosecuting this action and not merely presenting her beliefs as to what is “right” to the court.

At issue is a modest amount in dispute, less than \$4,000. Neither party is able to justify (in their minds) hiring counsel for this amount in dispute.

The court discussed with the parties the economics of settlement and the value of their time, as well as the impact of this battle continuing in this court.

The court continues the Status Conference to allow the parties to exchange written settlement proposals.

The Order to Show Cause XXXXXXXXXX

On June 25, 2020, this court entered its order approving the settlement on the terms and conditions as stated in the Settlement Agreement between the Parties. Order, Dckt. 610; Settlement Agreement, Dckt. 605. In issuing the order, the court did not take into account that it provides for the disbursement of monies in an interpleader adversary proceeding (Adv. No. 18-2030) being held by the Clerk of the Court.

The Clerk of the Court advises that a Request for Payment Form AO 213P in which a recipient of monies disbursed by the Clerk of the Court discloses his/her/its Tax ID Number which is used for reporting the disbursement must be provided. The check to disburse the monies is actually issued by the Administrative Office of the Court in Washington, D.C., and the check disbursing the monies will be made payable to the person providing the Form AO 213P.

The Clerk of the Court also advises the court that the order directing the disbursement of monies not only needs to identify to whom specific amounts are to be disbursed, but also must instruct the Clerk of the Court how any interest is to be disbursed.

The Settlement Agreement provides that there is \$203,176.55 of the Interpleader monies on deposit with the Clerk of the Court. Those monies are to be disbursed as follows:

- A. Kimberly Husted, the Chapter 7 Trustee\$15,000.00
- B. MCA Recovery.....\$56,850.00
- C. 13TH Floor/Pilot, LLC.....\$131,150.00, plus all
interest on the Interpleader monies held by the Clerk of the Court

Stipulation, ¶ 1(a); Dckt. 605 at 6.

In an effort to streamline the process for the Parties, counsel for 13TH Floor/Pilot, LLC was enlisted to be the disbursing agent who would receive the funds from the Clerk and distribute them to the Parties. Unfortunately, under the requirements imposed for the issuance of checks to disburse the monies, a distribution to counsel would require counsel or his firm to personally provide a Form AO 213P, provide a Tax ID Number, and personally deal with any tax reporting issues. Clearly, such is not what is intended.

Though the Parties have attempted to make the distribution easier, the process they have

proposed will not be possible.

To address this issue, the court sets a Post-Judgment Distribution Status Conference to address the form of the amended order to get these monies disbursed from the Clerk of the Court to the Parties identified above. The court envisions entering an amended order substantially in the following form:

**AMENDED ORDER AUTHORIZING SETTLEMENT
AND
DISTRIBUTION OF MONIES BY CLERK OF THE COURT**

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Approve Compromise filed by Kimberly J. Husted, the Chapter 7 Trustee, 13th Floor/Pilot, LLC, MCA Recovery, LLC, and West Coast Business Capital, LLC (“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 Motion for Approval of Compromise between Chapter 7 Trustee and 13TH Floor/Pilot, LLC, MCA Recovery, LLC, and West Coast Business Capital, LLC (“Settlor”) is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 605).

IT IS FURTHER ORDERED that the Clerk of the Court shall disburse the monies held by the Clerk in the Interpleader Adversary Proceeding First Data Merchant Services, LLC v. MCA Recovery, et al., 18-2030, to the following parties:

1. Kimberly Husted, the Chapter 7 Trustee\$15,000.00
2. MCA Recovery.....\$56,850.00
3. 13TH Floor/Pilot, LLC.....\$131,150.00, plus all
interest on the Interpleader monies held by the Clerk of the Court

Each of the above-named parties shall provide to the Clerk of the Bankruptcy Court for the Eastern District of California a completed Form AO 213P as a required condition of obtaining disbursement of the above monies.

This Amended Order is issued to provide the necessary authorizations for the Clerk of the Court to disbursement the monies pursuant to the authorized Settlement Agreement. This Amended Order replaces in its entirety the prior order, Dckt. 610, authorizing the Settlement and is deemed effective from June 25, 2020, the date of the filing of the prior order.

August 25, 2020 Status Conference and Order to Show Cause Hearing

To afford the respective parties and their counsel to address this distribution issue before an amended order is issued, the court conducted a Status Conference and hearing on the Order to Show Cause for the issuance of an amended order.

At the Status Conference and hearing on the Order to Show Cause, **XXXXXXXXXX**

3. [20-20992-E-7](#) SARA/CHARLES GRESHAM CONTINUED STATUS CONFERENCE
[20-2108](#) LARKINS V. GRESHAM ET AL RE: COMPLAINT
5-29-20 [\[1\]](#)

**ATTENDANCE AT THE STATUS CONFERENCE NECESSARY
ONLY IF A PARTY SEEKS TO ADDRESS CHANGES TO THE
COURT'S PROPOSED DRAFT OF THE ORDER**

Debtor's Atty: Peter G. Macaluso

Notes:

Set by order of the court filed 8/14/20 [Dckt 106]

| |
|---|
| The Status Conference is XXXXXXXXXX |
|---|

On August 7, 2020, Deborah Watson, the Debtor Movant, and U.S. Bank, N.A., as Trustee, of Towd Point Mortgage Trust 2018-6, filed a Stipulation resolving all issues in this Contested Matter. Stipulation, Dckt. 97. An Evidentiary Hearing for this Contested Matter is set for August 26, 2020. This Motion is a Contested Matter seeking relief in the form of valuing Creditor's secured claim as provided in 11 U.S.C. § 506(a).

The Parties have lodged a proposed order to be entered for this Contested Matter with the court based on the Stipulation. The relief ordered by the court is stated to be that the Stipulation is "approved" and the Stipulation itself is "made an order of the court." While the court will on a limited basis enter orders stating that a stipulation is approved based on the terms and conditions stated therein when it addresses only two party issues, the court does not enter orders which make the parties stipulation the "order" itself, subjecting the parties to possible contempt sanctions for not complying with the stipulation.

Review of Stipulation

The Stipulation begins with bifurcating Creditor's claim into a \$22,820.00 secured claim and a

\$27,872.17 unsecured claim. Such is consistent with the court granting relief pursuant to 11 U.S.C. § 506(a).

The Stipulation continues, having Debtor and Creditor agreeing to the following additional terms and conditions:

- A. The Plan term for treatment of Creditor's secured claim is that it shall be paid over the 60 month term of the Chapter 13 Plan with 4.25% interest. (Not an unreasonable term for the Court to confirm as part of a Chapter 13 plan.)
- B. Creditor's lien "can be reduced (crammed down) upon completion of Debtor's Chapter 13 Plan and the entry of Debtor's Chapter 13 Discharge."

On this term, the court is not clear on what a "reduced" lien is. In this Contested Matter, the court is determining the amount of the secured portion of Creditor's total claim. The secured portion is less than the total claim. Such 11 U.S.C. § 506(a) bifurcates the claim, but does not "reduce" (such as removing the lien from some of the collateral) the lien.

Additionally, as this court has previously addressed, confirmation of a Chapter 13 plan does not destroy a lien. The event commonly called "lien stripping" is the application of applicable federal and state law providing that once there is no longer an obligation for a lien to secure, the lien becomes void. The valuation of the secured claim pursuant to 11 U.S.C. § 506(a) is not final until the bankruptcy plan is completed. *In re Frazier*, 448 B.R. 803 (Bankr. ED Cal. 2011), *aff'd.*, 469 B.R. 803 (ED Cal. 2012) (discussion of "lien stripping" in Chapter 13 case).

- C. In the event the case is dismissed or converted, Creditor will "retain its lien for the full amount" (presumably full amount of the claim, not merely the 11 U.S.C. § 506(a) valued amount).
- D. Creditor retains its right to the insurance proceeds in the event of destruction or damage to the property securing the claim.

It is not clear if this is a waiver of the Debtor's State law right to apply insurance proceeds to repair the damaged collateral and thereby leave the estate with a damaged, liability inducing structure.

In reading the above section, it appears that Creditor may be clearly stating that it is not waiving or altering any of its contractual rights, as provided under State law, to the insurance proceeds. However, it could be read as qualifying the earlier statement that all rights are retained, except as expressly provided in the Stipulation, and that the only right being expressly retained is the right to insurance proceeds.

Draft Form of Order

The Parties have clearly, and the court appreciates their diligent actions, stated how they have resolved this Contested Matter and how the Parties have agreed to proceed with a Plan in this case. In effect, the Stipulation includes plan terms, which the court cannot "confirm" outside of the Plan confirmation process.

This court has in the past addressed such comprehensive work by parties and their counsel in the

context of an 11 U.S.C. § 506(a) ruling by including in the ruling the additional representations made and relief on by the parties. For this Contested Matter, the draft of the court's order is as follows:

On August 7, 2020, Deborah Watson, the Debtor Movant, and U.S. Bank, N.A., as Trustee, of Towd Point Mortgage Trust 2018-6, filed a Stipulation resolving all issues in this Contested Matter. Stipulation, Dckt. 97. The Stipulation also includes additional agreement for the terms of the repaying of the secure claim through the Plan, statements of law as to the validity of a lien upon the completion of a Chapter 13 Plan and payment in full of the secured claim as determined pursuant to 11 U.S.C. § 506(a), and the retention of rights by Creditor. Upon review of the Motion and Responsive Pleadings, the Stipulation, and the files in this case;

IT IS ORDERED that the Motion pursuant to 11 U.S.C. § 506(a) is granted, and the claim of U.S. Bank, N.A., as Trustee, of Towd Point Mortgage Trust 2018-6, ("Creditor") secured by a second in priority deed of trust recorded against the real property commonly known as 1800 59th Avenue, Sacramento, California, is determined to be a secured claim in the amount of \$22,820.00, and the balance of the claim of \$27,872.17 is a general unsecured claim to be paid through the confirmed bankruptcy plan.

The Stipulation of the Parties contains additional terms, conditions, and provisions akin to those which are terms of a bankruptcy plan or the subject of proceedings other than a motion to value a secured claim pursuant to 11 U.S.C. § 506(a). Though the additional terms of the Stipulation are not incorporated into an order issued pursuant to 11 U.S.C. § 506(a), the court is cognizant that such representations have been made between the respective parties and that each party has relied thereon. The court will consider such in further proceedings, including the good faith of the Debtor in prosecuting confirmation of a Chapter 13 plan in this case.

August 25, 2020 Status Conference

At the Status Conference, **XXXXXXXXXX**