

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

Honorable Fredrick E. Clement
Bakersfield Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: SEPTEMBER 2, 2015
CALENDAR: 10:00 A.M. CHAPTER 7 CASES

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

COURT'S ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [14-13305](#)-A-7 TRICIA JONES
MKK-2
M. KLEIN/MV
FRANK SAMPLES/Atty. for dbt.

MOTION FOR COMPENSATION FOR M.
KATHLEEN KLEIN, ACCOUNTANT(S)
7-24-15 [[66](#)]

Final Ruling

Application: Allowance of Final 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

In this Chapter 7 case, M. Kathleen Klein, accountant for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$626.50 and reimbursement of expenses in the amount of \$102.50.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

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.

M. Kathleen Klein's application for allowance of final 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 final compensation in the amount of \$626.50 and reimbursement of expenses in the amount of \$102.50.

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. [13-12812](#)-A-7 ANTHONY CONTRERAS
NES-2
ANTHONY CONTRERAS/MV
NEIL SCHWARTZ/Atty. for dbt.
RESPONSIVE PLEADING

MOTION TO AVOID LIEN OF WELLS
FARGO BANK, N.A.
7-31-15 [[25](#)]

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Denied without prejudice

Order: Civil minute order

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).

A judicial lien or nonpossessory, nonpurchase-money security interest that does not impair an exemption cannot be avoided under § 522(f). See *Goswami*, 304 B.R. at 390-91 (quoting *In re Mohring*, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)); cf. *In re Nelson*, 197 B.R. 665, 672 (B.A.P. 9th Cir. 1996) (lien not impairing exemption cannot be avoided under 11 U.S.C. § 522(f)). 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).

In this case, the responding party's judicial lien does not impair the exemption claimed in the property subject to the responding party's lien. The total amount of the responding party's lien as asserted by the debtor (\$103,235.11), plus all other liens asserted higher in priority (\$0.00), and the exemption amount (\$1.00), does not exceed the property's alleged value (\$103,235.11). By the debtor's own admissions, relief is not warranted and the debtor's exemption is not impaired. A prima facie case has not been made for relief under § 522(f).

3. [10-16017](#)-A-7 LAURA WILLIAMS
JMV-1
JEFFREY VETTER/MV

CONTINUED MOTION FOR
COMPENSATION FOR JEFFREY M.
VETTER, CHAPTER 7 TRUSTEE(S)
6-4-15 [[227](#)]

LEONARD WELSH/Atty. for dbt.
RENE LASTRETO/Atty. for mv.

Tentative 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

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. The court approves the application and allows compensation in the amount of \$10,750 and reimbursement of expenses in the amount of \$142.85.

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 Jeffrey M. Vetter'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 \$10,750.00 and reimbursement of expenses in the amount of \$142.85.

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.

4. [10-16017](#)-A-7 LAURA WILLIAMS
JTW-2
JANZEN, TAMBERI AND WONG/MV

MOTION FOR COMPENSATION FOR
JANZEN, TAMBERI AND WONG,
ACCOUNTANT(S), FEE: \$1674.00,
EXPENSES: \$0.00
10-22-13 [[141](#)]

LEONARD WELSH/Atty. for dbt.

Final Ruling

Application: Compensation and Expenses

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

Disposition: Disapproved without prejudice

Order: Civil minute order

APPLICATION

The applicant, Janzen, Tamberi & Wong, filed an application for allowance of compensation and reimbursement of expenses on October 22, 2013. Final Appl. for Allowance of Prof'l Fees & Expenses, ECF No. 141. This application had docket control number JTW-2. A notice of hearing for this application was filed on June 29, 2015. The application was denied without prejudice. ECF No. 243. All creditors and parties in interest had not received sufficient notice—the proof of service for the notice of the compensation application had not been signed.

The applicant then filed a new notice of hearing seeking to revive the original application that had been denied. This new notice of hearing has docket control number JTW-2 (as the original application had.) Once a motion on the docket is denied or an application is disapproved, that motion or application is not revived by a new notice of hearing. When the denial or disapproval is without prejudice, it is without prejudice to the filing of a new motion or application. Here, the court requires that a new application have been filed. The new application must be given a new docket control number as provided in the court's local rules.

CIVIL MINUTE ORDER

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

Janzen, Tamberi & Wong's application has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the application is disapproved without prejudice.

5. [15-11018](#)-A-7 REGINA MARSHALL
KAZ-1
WELLS FARGO BANK, NA/MV
KRISTIN ZILBERSTEIN/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
7-13-15 [[18](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Prepared by moving party

Subject: 34569 Poso Heights Road, Bakersfield, CA

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).

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

"Where the property is declining in value or accruing interest and taxes eat up the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form of adequate protection." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2011). However, "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." See *id.* ¶ 8:1065.1 (rev. 2012) (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)). Further, when a creditor is oversecured, an existing equity cushion may adequately protect the creditor's security interest against a decline in the collateral's value while the stay remains in effect. See *id.* ¶ 8:1072 (citing cases). In calculating the amount of the movant creditor's equity cushion, the court ignores the debt secured by junior liens. See *id.* ¶ 8:1076 (citing *In re Mellor*, 734 F.2d 1396, 1400-01 (9th Cir. 1984)).

The debtor has missed 4 post-petition payments due on the debt secured by the moving party's lien. This constitutes cause for stay relief. The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1). 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.

6. [15-12838](#)-A-7 KULDIP SINGH AND AMARJIT ORDER TO SHOW CAUSE - FAILURE
KAUR TO PAY FEES
8-3-15 [[11](#)]
INSTALLMENT ORDER, ECF NO.
14

Final Ruling

An installment order issued, the order to show cause is discharged.

7. [12-60043](#)-A-7 KURTIS/LINDA EAST MOTION TO AVOID LIEN OF
NES-2 COMMERCIAL TRADE, INC.
KURTIS EAST/MV 7-14-15 [[26](#)]
NEIL SCHWARTZ/Atty. for dbt.

Tentative Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted in part, denied in part

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 GENERALLY

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).

AVOIDING LIENS ON CO-OWNED PROPERTY

If a debtor who co-owns a fractional interest in property moves to avoid the judicial lien on the property under § 522(f), then the court applies a common sense approach that varies somewhat from a strict

mechanical application of the formula under § 522(f)(2)(A). "Under this approach, one nets out consensual liens against the entire fee in co-owned property before determining the value of a debtor's fractional interest and excludes those liens from the calculation of 'all other liens on the property' under § 522(f)(2)(A)(ii)." *All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 90 (B.A.P. 9th Cir. 2007).

In this case, the responding party holds a judicial lien on the moving party's real property for which an exemption has been claimed. The moving party co-owns the real property with a non-debtor party and holds a fractional 33% interest in the property.

The jointly owned value of the entire fee interest in the property equals \$30,000. To calculate the value of the moving party's fractional interest in the property in the absence of liens, the court first deducts consensual lien debt of \$0.00 from the jointly owned value of the entire fee interest in the property, which yields a net co-owned equity of \$30,000. Multiplying this net co-owned equity by .33 (33%) shows that the value of the moving party's fractional interest in the absence of liens is \$9,900.

Adding together the judicial lien (\$42,382.17), plus all other liens (\$0.00), plus the exemption amount (\$1.00) equals a sum of \$42,383.17. Subtracting from this sum the value of the moving party's fractional interest in the property in the absence of liens equals \$32,483.17.

The motion is granted in part and denied in part because the responding party's judicial lien, all other liens except consensual liens, and the exemption amount together do not exceed the value of the moving party's fractional interest in the property by an amount equal to the entire debt secured by the responding party's lien. The extent of the responding party's lien not avoided is \$9,900. The extent of the responding party's lien that is avoided is \$32,483.17.

8. [12-60043](#)-A-7 KURTIS/LINDA EAST
NES-3
KURTIS EAST/MV
NEIL SCHWARTZ/Atty. for dbt.

MOTION TO AVOID LIEN OF
COMMERCIAL TRADE, INC.
7-14-15 [[32](#)]

Final Ruling

Motion: Avoid Lien that Impairs 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 GENERALLY

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).

AVOIDING LIENS ON CO-OWNED PROPERTY

If a debtor who co-owns a fractional interest in property moves to avoid the judicial lien on the property under § 522(f), then the court applies a common sense approach that varies somewhat from a strict mechanical application of the formula under § 522(f)(2)(A). "Under this approach, one nets out consensual liens against the entire fee in co-owned property before determining the value of a debtor's fractional interest and excludes those liens from the calculation of 'all other liens on the property' under § 522(f)(2)(A)(ii)." *All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 90 (B.A.P. 9th Cir. 2007).

In this case, the responding party holds a judicial lien on the moving party's real property for which an exemption has been claimed. The moving party co-owns the real property with a non-debtor party and holds a fractional 67% interest in the property.

The jointly owned value of the entire fee interest in the property equals \$45,000. To calculate the value of the moving party's fractional interest in the property in the absence of liens, the court first deducts consensual lien debt of \$127,000 from the jointly owned value of the entire fee interest in the property, which yields a net co-owned equity of \$0.00. Multiplying this net co-owned equity by .67 shows that the value of the moving party's fractional interest in the absence of liens is \$0.00.

Adding together the judicial lien, plus all other liens excluding the consensual liens already deducted from the property's value, plus the exemption amount equals a sum of \$42,383.17. Subtracting from this sum the value of the moving party's fractional interest in the property in the absence of liens equals \$42,383.17.

The responding party's judicial lien may be avoided in its entirety because the judicial lien, all other liens except consensual liens, and the exemption amount together exceed the value of the moving party's fractional interest in the property by an amount greater than or equal to the debt secured by the responding party's lien.

9. [12-60043](#)-A-7 KURTIS/LINDA EAST
NES-4
KURTIS EAST/MV
NEIL SCHWARTZ/Atty. for dbt.

MOTION TO AVOID LIEN OF
COMMERCIAL TRADE, INC.
7-14-15 [[38](#)]

Final Ruling

Motion: Avoid Lien that Impairs 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 GENERALLY

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).

AVOIDING LIENS ON CO-OWNED PROPERTY

If a debtor who co-owns a fractional interest in property moves to avoid the judicial lien on the property under § 522(f), then the court applies a common sense approach that varies somewhat from a strict mechanical application of the formula under § 522(f)(2)(A). "Under this approach, one nets out consensual liens against the entire fee in co-owned property before determining the value of a debtor's fractional interest and excludes those liens from the calculation of 'all other liens on the property' under § 522(f)(2)(A)(ii)." *All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 90 (B.A.P. 9th Cir. 2007).

In this case, the responding party holds a judicial lien on the moving party's real property for which an exemption has been claimed. The moving party co-owns the real property with a non-debtor party and holds a fractional 50% interest in the property.

The jointly owned value of the entire fee interest in the property equals \$45,000. To calculate the value of the moving party's fractional interest in the property in the absence of liens, the court first deducts consensual lien debt of \$65,000 from the jointly owned value of the entire fee interest in the property, which yields a net co-owned equity of \$0.00. Multiplying this net co-owned equity by .50 shows that the value of the moving party's fractional interest in the absence of liens is \$0.00.

Adding together the judicial lien, plus all other liens excluding the consensual liens already deducted from the property's value, plus the exemption amount equals a sum of \$42,383.17. Subtracting from this sum the value of the moving party's fractional interest in the property in the absence of liens equals \$42,383.17.

The responding party's judicial lien may be avoided in its entirety because the judicial lien, all other liens except consensual liens, and the exemption amount together exceed the value of the moving party's fractional interest in the property by an amount greater than or equal to the debt secured by the responding party's lien.

10. [12-60043](#)-A-7 KURTIS/LINDA EAST
NES-5
KURTIS EAST/MV
NEIL SCHWARTZ/Atty. for dbt.

MOTION TO AVOID LIEN OF
COMMERCIAL TRADE, INC.
7-14-15 [[44](#)]

Final Ruling

Motion: Avoid Lien that Impairs 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 GENERALLY

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).

AVOIDING LIENS ON CO-OWNED PROPERTY

If a debtor who co-owns a fractional interest in property moves to avoid the judicial lien on the property under § 522(f), then the court applies a common sense approach that varies somewhat from a strict mechanical application of the formula under § 522(f)(2)(A). "Under this approach, one nets out consensual liens against the entire fee in co-owned property before determining the value of a debtor's fractional interest and excludes those liens from the calculation of 'all other liens on the property' under § 522(f)(2)(A)(ii)." *All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 90 (B.A.P. 9th Cir. 2007).

In this case, the responding party holds a judicial lien on the moving party's real property for which an exemption has been claimed. The moving party co-owns the real property with a non-debtor party and holds a fractional one-half interest in the property.

The jointly owned value of the entire fee interest in the property equals \$45,000. To calculate the value of the moving party's fractional interest in the property in the absence of liens, the court first deducts consensual lien debt of \$45,000 from the jointly owned value of the entire fee interest in the property, which yields a net co-owned equity of \$0.00. Multiplying this net co-owned equity by one-half shows that the value of the moving party's fractional interest in the absence of liens is \$0.00.

Adding together the judicial lien, plus all other liens excluding the consensual liens already deducted from the property's value, plus the exemption amount equals a sum of \$42,383.17. Subtracting from this sum the value of the moving party's fractional interest in the property in the absence of liens equals \$42,383.17.

The responding party's judicial lien may be avoided in its entirety because the judicial lien, all other liens except consensual liens, and the exemption amount together exceed the value of the moving party's fractional interest in the property by an amount greater than or equal to the debt secured by the responding party's lien.

11. [12-60043](#)-A-7 KURTIS/LINDA EAST
NES-6
KURTIS EAST/MV
NEIL SCHWARTZ/Atty. for dbt.

MOTION TO AVOID LIEN OF
COMMERCIAL TRADE, INC.
7-14-15 [[50](#)]

Final Ruling

Motion: Avoid Lien that Impairs 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 GENERALLY

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).

AVOIDING LIENS ON CO-OWNED PROPERTY

If a debtor who co-owns a fractional interest in property moves to avoid the judicial lien on the property under § 522(f), then the court applies a common sense approach that varies somewhat from a strict mechanical application of the formula under § 522(f)(2)(A). "Under this approach, one nets out consensual liens against the entire fee in co-owned property before determining the value of a debtor's fractional interest and excludes those liens from the calculation of 'all other liens on the property' under § 522(f)(2)(A)(ii)." *All Points Capital Corp. v. Meyer (In re Meyer)*, 373 B.R. 84, 90 (B.A.P. 9th Cir. 2007).

In this case, the responding party holds a judicial lien on the moving party's real property for which an exemption has been claimed. The moving party co-owns the real property with a non-debtor party and holds a fractional one-half interest in the property.

The jointly owned value of the entire fee interest in the property equals \$38,000. To calculate the value of the moving party's fractional interest in the property in the absence of liens, the court first deducts consensual lien debt of \$65,000 from the jointly owned value of the entire fee interest in the property, which yields a net co-owned equity of \$0.00. Multiplying this net co-owned equity by one-half shows that the value of the moving party's fractional interest in the absence of liens is \$0.00.

Adding together the judicial lien, plus all other liens excluding the consensual liens already deducted from the property's value, plus the exemption amount equals a sum of \$42,383.17. Subtracting from this sum the value of the moving party's fractional interest in the property in the absence of liens equals \$42,383.17.

The responding party's judicial lien may be avoided in its entirety

because the judicial lien, all other liens except consensual liens, and the exemption amount together exceed the value of the moving party's fractional interest in the property by an amount greater than or equal to the debt secured by the responding party's lien.

12. [12-60043](#)-A-7 KURTIS/LINDA EAST MOTION TO AVOID LIEN OF
NES-7 COMMERCIAL TRADE, INC.
KURTIS EAST/MV 7-14-15 [[56](#)]
NEIL SCHWARTZ/Atty. for dbt.

Final Ruling

Motion: Avoid Lien that Impairs 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 GENERALLY

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).

AVOIDING LIENS ON CO-OWNED PROPERTY

If a debtor who co-owns a fractional interest in property moves to avoid the judicial lien on the property under § 522(f), then the court applies a common sense approach that varies somewhat from a strict mechanical application of the formula under § 522(f)(2)(A). "Under this approach, one nets out consensual liens against the entire fee in co-owned property before determining the value of a debtor's fractional interest and excludes those liens from the calculation of 'all other liens on the property' under § 522(f)(2)(A)(ii)." *All*

Points Capital Corp. v. Meyer (In re Meyer), 373 B.R. 84, 90 (B.A.P. 9th Cir. 2007).

In this case, the responding party holds a judicial lien on the moving party's real property for which an exemption has been claimed. The moving party co-owns the real property with a non-debtor party and holds a fractional one-half interest in the property.

The jointly owned value of the entire fee interest in the property equals \$38,000. To calculate the value of the moving party's fractional interest in the property in the absence of liens, the court first deducts consensual lien debt of \$86,000 from the jointly owned value of the entire fee interest in the property, which yields a net co-owned equity of \$0.00. Multiplying this net co-owned equity by one-half shows that the value of the moving party's fractional interest in the absence of liens is \$0.00.

Adding together the judicial lien, plus all other liens excluding the consensual liens already deducted from the property's value, plus the exemption amount equals a sum of \$42,383.17. Subtracting from this sum the value of the moving party's fractional interest in the property in the absence of liens equals \$42,383.17.

The responding party's judicial lien may be avoided in its entirety because the judicial lien, all other liens except consensual liens, and the exemption amount together exceed the value of the moving party's fractional interest in the property by an amount greater than or equal to the debt secured by the responding party's lien.

13. [13-10752](#)-A-7 MARK/BARBARA SHIRES
RP-1
RANDELL PARKER/MV
VINCENT GORSKI/Atty. for dbt.
T. BELDEN/Atty. for mv.

MOTION FOR ADMINISTRATIVE
EXPENSES
8-6-15 [[71](#)]

Tentative Ruling

Motion: Allow Administrative Expense [Estate Taxes]

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

Disposition: Granted

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). 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).

PROCEDURAL ERROR

The motion was not filed 28 days before the hearing date. When a motion is noticed under LBR 9014-1(f)(1), the motion must be both filed and served no later than 28 days before the hearing date. Accordingly, the court will treat the motion as having been noticed under LBR 9014-1(f)(2).

ALLOWANCE OF ADMINISTRATIVE EXPENSE

"Subject to limited exceptions, a trustee must pay the taxes of the estate on or before the date they come due, 28 U.S.C. § 960(b), even if no request for administrative expenses is filed by the tax authorities, 11 U.S.C. § 503(b)(1)(D), and the trustee must insure that 'notice and a hearing' have been provided before doing so, see *id.* § 503(b)(1)(B). The hearing requirement insures that interested parties . . . have an opportunity to contest the amount of tax paid before the estate's funds are diminished, perhaps irretrievably." *In re Cloobek*, 788 F.3d 1243, 1246 (9th Cir. 2015). It is error to approve a trustee's final report without first holding a hearing, see 11 U.S.C. § 102(1), to allow creditors and parties in interest an opportunity to object to the allowance or amount of tax before it is paid. *Id.* 1245 n.1, 1246.

Creditors and parties in interest have had an opportunity to contest the allowance and amount of the estate taxes. No objection has been made. Accordingly, state and federal taxes in the amounts specified in the motion are allowed as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

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 motion for allowance of administrative expense 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 court allows state and federal taxes of \$578.00 (federal taxes) and \$53.00 (state taxes) as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

14. [13-16857](#)-A-7 MENDOZA FAMILY PRACTICE, MOTION FOR COMPENSATION FOR
RP-1 A MEDICAL CORPORATION RANDELL PARKER, CHAPTER 7
RANDELL PARKER/MV TRUSTEE(S)
8-6-15 [[58](#)]

CYNTHIA SCULLY/Atty. for dbt.
T. BELDEN/Atty. for mv.

Tentative Ruling

Application: Allowance of Compensation and Expense Reimbursement

Notice: LBR 9014-1(f)(2); no 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).

PROCEDURAL ERROR

The motion was not filed 28 days before the hearing date. When a motion is noticed under LBR 9014-1(f)(1), the motion must be both filed and served no later than 28 days before the hearing date. Accordingly, the court will treat the motion as having been noticed under LBR 9014-1(f)(2).

COMPENSATION AND EXPENSES

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. The court approves the application and allows compensation in the amount of \$6990.45 and reimbursement of expenses in the amount of \$460.93.

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.

Chapter 7 trustee Randell Parker'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 \$6990.45 and reimbursement of expenses in the amount of \$460.93.

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.

15. [13-16857](#)-A-7 MENDOZA FAMILY PRACTICE, MOTION TO PAY
RP-2 A MEDICAL CORPORATION 8-6-15 [[64](#)]
RANDELL PARKER/MV
CYNTHIA SCULLY/Atty. for dbt.
T. BELDEN/Atty. for mv.

Tentative Ruling

Motion: Allow Administrative Expense [Estate Taxes]

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

Disposition: Granted

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 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).

PROCEDURAL ERROR

The motion was not filed 28 days before the hearing date. When a motion is noticed under LBR 9014-1(f)(1), the motion must be both filed and served no later than 28 days before the hearing date. Accordingly, the court will treat the motion as having been noticed under LBR 9014-1(f)(2).

ALLOWANCE OF ADMINISTRATIVE EXPENSE

"Subject to limited exceptions, a trustee must pay the taxes of the estate on or before the date they come due, 28 U.S.C. § 960(b), even if no request for administrative expenses is filed by the tax authorities, 11 U.S.C. § 503(b)(1)(D), and the trustee must insure that 'notice and a hearing' have been provided before doing so, see *id.* § 503(b)(1)(B). The hearing requirement insures that interested parties . . . have an opportunity to contest the amount of tax paid before the estate's funds are diminished, perhaps irretrievably." *In re Cloobek*, 788 F.3d 1243, 1246 (9th Cir. 2015). It is error to approve a trustee's final report without first holding a hearing, see 11 U.S.C. § 102(1), to allow creditors and parties in interest an opportunity to object to the allowance or amount of tax before it is paid. *Id.* 1245 n.1, 1246.

Creditors and parties in interest have had an opportunity to contest the allowance and amount of the estate taxes in this case. No objection has been made. Accordingly, taxes in the amounts specified in the motion are allowed as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

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 motion for allowance of administrative expense 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 court allows \$1097.00 for the 2013 S-Corp California taxes and \$820.00 for the 2014 Final S-Corp California taxes as an administrative expense under 11 U.S.C. § 503(b)(1)(B).

16. [13-16857](#)-A-7 MENDOZA FAMILY PRACTICE, MOTION FOR COMPENSATION FOR T.
TSB-4 A MEDICAL CORPORATION SCOTT BELDEN, TRUSTEES
ATTORNEY(S)
8-12-15 [[70](#)]

CYNTHIA SCULLY/Atty. for dbt.

Tentative Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

Notice: LBR 9014-1(f)(2); no 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). 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

In this Chapter 7 case, Law Office of T. Scott Belden, P.C., attorney for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$2962.50 and reimbursement of expenses in the amount of \$145.38.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

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.

Law Office of T. Scott Belden, P.C.'s application for allowance of final 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 final compensation in the amount of \$2962.50 and reimbursement of expenses in the amount of \$145.38.

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.

17. [15-12590](#)-A-7 CORA/ALFONSO ROA MOTION TO COMPEL ABANDONMENT
MS-1 8-17-15 [[22](#)]
CORA ROA/MV
DOUGLAS MILLER/Atty. for dbt.

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 and such business assets described in the motion

Order: Prepared by moving party pursuant to the instructions below

Business Description: a lawn or landscape care business (business type inferred from equipment listed on Schedule B)

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 described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business is warranted.

The order will compel abandonment of the business and the assets of such business only to the extent described in the motion. The order shall state that any exemptions claimed in the abandoned business or the assets of such business may not be amended without leave of court given upon request made by motion noticed under Local Bankruptcy Rule 9014-1(f)(1).