

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Fredrick E. Clement
Hearing Date: Wednesday, September 4, 2019
Place: Department B – 510 19th Street
Bakersfield, California

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

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

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

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

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

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

9:45 AM

1. [18-15206](#)-A-7 **IN RE: MINERAL TITLE SERVICES, INC**

MOTION TO COMPEL
8-2-2019 [\[37\]](#)

BRUCE PELKEY/MV
VINCENT GORSKI
RESPONSIVE PLEADING

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue the order.

This motion is DENIED WITHOUT PREJUDICE.

It appears that this motion was not served on the debtor or Mr. Donald S. Olsson, the president of the debtor whom Mr. Pelkey wishes to have brought by the U.S. Marshals to court for a 2004 examination at the address for the debtor listed on the petition, which is also Mr. Olsson's residence. The motion was only served care of counsel for the debtor. There is no evidence that debtor's counsel has ever agreed to accept service on behalf of the debtor or Mr. Olsson.

The order granting the application for a 2004 examination of Mr. Olsson to appear required that the movant comply with Federal Rule of Bankruptcy Procedure 9016 as to compel his attendance and production of documents. It does not appear that movant complied with that rule. The court has not been shown any summons or service of such.

The attorney for the debtor filed a declaration in opposition. Doc. #41. Without proper service of the motion the court can not grant the motion. It also appears that the motion is not well grounded in that the movant did not follow the proper procedures for compelling Mr. Olsson to attend a 2004 examination.

2. [19-12309](#)-A-7 **IN RE: MELINDA STOWELL**
[APN-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-12-2019 [\[11\]](#)

CAB WEST LLC/MV
NEIL SCHWARTZ
AUSTIN NAGEL/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied as moot.

ORDER: The Moving Party shall submit a proposed order in
conformance with the ruling below.

This motion relates to an executory contract or lease of personal property. The case was filed on May 31, 2019 and the lease was not assumed by the chapter 7 trustee within the time prescribed in 11 U.S.C. § 365(d)(1). Pursuant to § 365 (p)(1), the leased property is no longer property of the estate and the automatic stay under § 362(a) has already terminated by operation of law. The trustee has also filed a no asset report thus confirming he has no intent to administer any assets in this case.

Movant may submit an order denying the motion and confirming that the automatic stay has already terminated on the grounds set forth above. No other relief is granted.

3. [19-12713](#)-A-7 **IN RE: JOVANA CALVILLO**
[JHW-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-26-2019 [\[11\]](#)

SANTANDER CONSUMER USA INC./MV
NICHOLAS WAJDA
JENNIFER WANG/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in
conformance with the ruling below.

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtor's and the trustee's defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates. The collateral is a 2015 Dodge Charger. Doc. #16. The collateral has a value of \$18,775.00 and debtor owes \$27,126.29. *Id.*

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral is a depreciating asset.

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available in an adversary proceeding then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

4. [16-14329](#)-A-7 **IN RE: ROGELIO ARELLANO**
[VG-2](#)

MOTION TO AVOID LIEN OF CITIBANK, N.A.
7-18-2019 [\[40\]](#)

ROGELIO ARELLANO/MV
VINCENT GORSKI

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on 28 days' notice as required by Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of the creditors, the debtor, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014- 1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. 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 Boone v. Burk (In re Eliapo), 468 F.3d 592 (9th Cir. 2006). Therefore, the defaults of the above-mentioned parties in interest are entered and the matter will be resolved without oral argument. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires that a plaintiff make a prima facie showing that they are entitled to the relief sought, which the movant has done here.

This motion is GRANTED. In order to avoid a lien under 11 U.S.C. § 522(f)(1) the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtor's schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase

money security interest in personal property listed in § 522(f)(1)(B). § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (9th Cir. BAP 2003), quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992), aff'd 24 F.3d 247 (9th Cir. 1994).

A judgment was entered against the debtor in favor of Citibank, NA in the sum of \$10,164.50 on June 23, 2016. Doc. #44. The abstract of judgment was recorded with Kern County on August 5, 2016. Id. That lien attached to the debtor's interest in a residential real property in Bakersfield, CA. The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property had an approximate value of \$276,961.00 as of the petition date. Doc. #1. The unavoidable liens totaled \$208,643.00 on that same date, consisting of a first deed of trust in favor of Prov/new Amer Funding. Doc. #1, Schedule D. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(1) in the amount of \$68,318.00. Doc. #1, Schedule C.

Movant has established the four elements necessary to avoid a lien under § 522(f)(1). 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 will be avoided subject to 11 U.S.C. § 349(b)(1)(B).

5. [19-12938](#)-A-7 **IN RE: JOHN/ARIADNA ESPARZA**
[NFS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
8-7-2019 [\[10\]](#)

CONSUMER PORTFOLIO SERVICES, INC./MV
NEIL SCHWARTZ
NATHAN SMITH/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtors' and the trustee's defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates. The collateral is a 2008 GMC Acadia. Doc. #12. The collateral has a value of \$8,350.00 and debtor owes \$13,706.45. *Id.*

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral is a depreciating asset.

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available in an adversary proceeding then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).

6. [19-10950](#)-A-7 **IN RE: CARLOS/GLORIA TORRES**
[NFS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-31-2019 [\[24\]](#)

CALIBER HOME LOANS, INC./MV
WILLIAM EDWARDS
NATHAN SMITH/ATTY. FOR MV.
DISMISSED 8/15/19

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied as moot.

ORDER: The court will issue an order.

The case was dismissed on August 15, 2019. Doc. #31. Therefore, the motion will be DENIED AS MOOT.

7. [19-12871](#)-A-7 **IN RE: RICKEY/GALE AJOOTIAN**
[CAS-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
7-23-2019 [\[12\]](#)

BMW BANK OF NORTH AMERICA/MV
D. GARDNER
CHERYL SKIGIN/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion for relief from stay was fully noticed in compliance with the Local Rules of Practice and there was no opposition. The debtors' and the trustee's defaults will be entered. The automatic stay is terminated as it applies to the movant's right to enforce its remedies against the subject property under applicable

nonbankruptcy law. The record shows that cause exists to terminate the automatic stay.

The proposed order shall specifically describe the property or action to which the order relates. The collateral is a 2013 BMW 3 Series 328i Sedan 4D. Doc. #15. The collateral has a value of \$7,701.00 and debtor owes \$12,336.17. *Id.*

The waiver of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be granted. The moving papers show the collateral is a depreciating asset.

If an award of attorney fees has been requested, it will be denied without prejudice. A motion for attorney fees pursuant to 11 U.S.C. §506(b), or applicable nonbankruptcy law, must be separately noticed and separately briefed with appropriate legal authority and supporting documentation. In addition, any future request for an award of attorney's fees will be denied unless the movant can prove there is equity in the collateral. 11 U.S.C. §506(b).

Unless the court expressly orders otherwise, the proposed order shall not include any other relief. If the proposed order includes extraneous or procedurally incorrect relief that is only available in an adversary proceeding then the order will be rejected. See *In re Van Ness*, 399 B.R. 897 (Bankr. E.D. Cal. 2009).