

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
Chief Bankruptcy Judge  
Modesto, California

**September 8, 2022 at 10:30 a.m.**

---

1. <a href="#"><u>22-90199-E-7</u></a> <a href="#"><u>CLH-1</u></a>	<b>ERIC WILSON</b> <b>Charles Hastings</b>	<b>MOTION TO AVOID LIEN OF OPERATING ENGINEERS' HEALTH AND WELFARE TRUST FUND, ET AL.</b> <b>8-11-22 [16]</b>
--	---	--

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

-----

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice **Not** Provided. The Proof of Service states that the Motion and supporting pleadings were served on Creditor on August 11, 2022. Pursuant to Federal Rules of Bankruptcy Procedure 9013(a), the moving party shall serve the trustee on all requests for an order:

Rule 9013. Motions: Form and Service

**A request for an order**, except when an application is authorized by the rules, shall be **by written motion**, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion, other than one which may be considered **ex parte**, shall be served by the moving party within the time determined under Rule 9006(d). The moving party shall serve the motion on:

(a) the **trustee** or debtor in possession and on those entities specified by these rules; or

(b) the entities the court directs if these rules do not require service or specify the entities to be served.

Federal Rule of Bankruptcy Procedure 4003(d) states that the relief may be sought by motion, Fed. R. Bank. P. 9014, rather than an adversary proceeding. This ties back to Federal Rule of Bankruptcy Procedure 9013.

The Certificate of Service (Dckt. 20) states that there was only service by U.S. Mail, with none of the recipients being the Chapter 7 Trustee.

Though back in the 90's there was only personal service and by U.S. Mail, in the 21<sup>st</sup> Century one might think there are 36 ways from Sunday to serve pleadings beyond personal or U.S. Mail Service.

At the hearing, ~~XXXXXXXXXX~~

~~By the court's calculation, 28 days' notice was provided. 28 days' notice is required.~~

~~————— The Motion to Avoid Judicial Lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. See *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.~~

<b>The Motion to Avoid Judicial Lien is denied.</b>
---

This Motion requests an order avoiding the judicial lien of Operating Engineers' Health and Welfare Trust Fund, et. al. ("Creditor") against property of the debtor, Eric Norman Wilson ("Debtor") commonly known as 33 Neighbors Road, Valley Springs, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$57,575.85. Exhibit A, Dckt. 19. An abstract of judgment was recorded with Calaveras County on November 10, 2021, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$520,000.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$402,828.00 as of the commencement of this case are stated on Debtor's Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$59,596.15 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is equity to support the lien:

Value of Property.....\$520,000.00  
Schedule A, Dckt. 1.

Consensual Lien of Rocket Mortgage.....\$402,828.00  
Schedule D, Dckt. 1.

Claimed Exemption.....\$59,596.15  
Schedule C, Dckt. 1.

**Remaining Equity.....\$57,575.85**

Therefore, the fixing of the judicial lien impairs Debtor's exemption in the real property to the extent the secured claim exceed \$57,575.85.

With respect to the lien of Rocket Mortgage, Debtor states under penalty of perjury on Schedule D that the amount of that secured obligation is \$402,828.00. However, in his Declaration filed in support of the present Motion, Debtor makes a conflicting statement under penalty of perjury that the Rocket Mortgage secured debt is \$460,403.85. Clearly, one of these statements under penalty of perjury is a false statement under penalty perjury.

In reviewing Debtor's Schedule C, it states that Debtor is claiming his exemption in this real property under California Code of Civil Procedure § 704.730 (Homestead Exemption). Dckt. 1 at 17. As stated above, the dollar amount claimed as the homestead exemption is \$59,596.15.

California Code of Civil Procedure § 704.730 states the amount of a homestead exemption, not the right to a homestead exemption. With respect to the amount a debtor may claim for a homestead exemption (as provided by another provision of the California Code of Civil Procedure), it states:

§ 704.730. Amount of homestead exemption

(a) The amount of the homestead exemption is the greater of the following:

(1) The countywide median sale price for a single-family home in the calendar year prior to the calendar year in which the judgment debtor claims the exemption, not to exceed six hundred thousand dollars (\$600,000).

(2) Three hundred thousand dollars (\$300,000).

(b) The amounts specified in this section shall adjust annually for inflation, beginning on January 1, 2022, based on the change in the annual California Consumer Price Index for All Urban Consumers for the prior fiscal year, published by the Department of Industrial Relations.

Cal Code Civ Proc § 704.730 (emphasis added). Thus, at a minimum, if Debtor may claim a homestead exemption under another provision of California Law, Debtor could have claimed an exemption of at least \$300,000.00.

However, under penalty of perjury on Schedule C Debtor has elected to waive any exemption in excess of \$59,596.15. If the lower amount of the secured obligation is the true amount as stated under penalty perjury, Debtor could have, but elected not to, claimed a larger exemption.

~~Based on the evidence presented by Debtor in Schedule D (which was not stated in contemplation of this litigation), Debtor waiving his homestead exemption for all amounts in excess of \$59,596.15; the Motion is granted and the lien of Creditor is avoided for all amounts in excess of \$57,575.85.~~

#### **~~ISSUANCE OF A COURT-DRAFTED ORDER~~**

~~An order substantially in the following form shall be prepared and issued by the court:~~

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

~~The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Eric Norman Wilson ("Debtor") 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 and judgment lien of Operating Engineers' Health and Welfare Trust Fund, et. al., United States District Court, Northern District of California Case No. 20-CV-01500-WHO, recorded on November 10, 2021, Document No. 2021-019230 with the Calaveras County Recorder, against the real property commonly known as 33 Neighbors Road, Valley Springs, California, is avoided for all amounts in excess of \$57,575.85.~~

2 thru 3

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

-----

Local Rule 9014-1(f)(1) Motion—Hearing Continued.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on April 8, 2021. By the court's calculation, 35 days' notice was provided. 28 days' notice is required.

The Motion to Abandon has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion to Abandon is <span style="color: red;">XXXXXXXXXXXXXX</span></b>
---

#### REVIEW OF MOTION

The Motion filed by Focus Management Group USA, Inc. ("the Plan Administrator") requests that the court authorize the Plan Administrator to abandon the following properties commonly known as:

1. the Arambel Business Park,
2. the Begun Ranch,
3. the Lismer Ranch,
4. the Carlilie Ranch,
5. the Judy Gail Ranch,
6. the Rogers Road property, and
7. the Gravel Pit property
8. the Murphy Ranch 756,
9. the Murphy 240 Rangeland,

(the "Properties").

The Declaration of Juanita Schwartzkopf has been filed in support of the Motion. Dckt. 1412. Ms. Schwartzkopf provides testimony that while the Properties have substantial market value, they are of inconsequential value as there is no realizable equity because the debt secured by the Properties exceeds the value of the real properties. *Id.*, ¶ 24. Moreover, according to the Plan Administrator, the properties are burdensome because the Estate does not have the funds to continue paying the costs of carrying the Properties including insurance, real property taxes, and other charges or the costs of administration of such properties. *Id.*, ¶36.

Ms. Schwartzkopf testifies that the Properties have been actively marketed by the Reorganizing Debtor and by the Plan Administrator for over 16 months during the Negotiated Period (Plan provision during which Debtor was to perform certain duties regarding plan assets) and for years prior to the Plan confirmation but that unfortunately they were not sold. *Id.*, ¶18. The Plan Administrator being unable to obtain offers in an amount that was sufficient to pay the secured claims on and tax liabilities related to the Properties. *Id.* Additionally, the Plan Administrator explains that SBN V Ag I LLC (“Summit”) as one of the primary sources of funds for the post-confirmation administration of the Estate has indicated they will no longer consent to further use of their cash collateral for pursuing short sales of its collateral. *Id.*, ¶ 37. Ms. Schwartzkopf also testifies that Summit has informed the Plan Administrator that it intends to proceed promptly with non-judicial foreclosure of the Properties. *Id.*, ¶35.

### **Creditor’s Opposition**

Creditor with secured claim, American AgCredit does not object in its entirety to the abandonment of the Properties, instead Creditor American AgCredit objects specifically as to the timing of the abandonment of the Murphy Ranch Property. Dckt. 14216. American AgCredit explains that for the last five months they have been engaged in the Lot Line Adjustment (“Adjustment”) process with the County of Stanislaus related to the Murphy Ranch 756 and the Murphy 240 Rangeland. Thus, American AgCredit requests that the abandonment not occur until the County of Stanislaus approves the adjustment, the adjustment is fully recorded and the appropriate quitclaim deeds by and between the Plan Administrator and American AgCredit are approved by the parties’ title companies and successfully recorded..

### **Plan Administrator’s Reply**

The Plan Administrator filed a Reply indicating they are amenable to deferring the effective date of the abandonment of the Murphy Ranches for a reasonable time during which the Adjustment may be and should be completed; but asks the court for the authority to effectuate the abandonment of the Murphy Ranches at such future time as the Plan Administrator determines in its business judgment that the abandonment should be effective, even if the Adjustment has not been fully completed. Dckt. 1434..

The Plan Administrator believes this a reasonable request on the basis that the Plan Administrator seeks to avoid capital gains taxes in the event that Summit proceeds with foreclosure remedies; the Plan Administrator will continue to work diligently with Creditor to get the Adjustment resolved; and even after abandonment, the Adjustment process may still continue after the abandonment where Debtor has pledged to continue working with Creditor to complete the Adjustment process.

### **SBN V Ag I LLC (“Summit”) Response**

Summit filed a Response in support of the Motion on May 7, 2021 stating that they support the abandonment of the Properties and the Plan Administrator’s proposal of temporary deferral of the Murphy

Properties to a later date to as to allow for the Adjustment process but they continue to reserve their right to commence non-judicial foreclosure proceedings and request that any order approving the abandonment make it clear that any delay in abandonment is without prejudice to Summit's rights to provide notice of relief from stay and commence its foreclosure rights and remedies. Dckt. 1438.

## **DISCUSSION**

After notice and hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(a). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The court finds that the Property secures claims that exceed the value of the Property, and there are negative financial consequences for the Estate if it retains the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and authorizes the Plan Administrator to immediately abandon the following properties:

1. the Arambel Business Park,
2. the Begun Ranch,
3. the Lismer Ranch,
4. the Carlilie Ranch,
5. the Judy Gail Ranch,
6. the Rogers Road property, and
7. the Gravel Pit property

With respect to the Murphy Ranch 756 and the Murphy 240 Rangeland, completion of the lot line adjustment to correct for the Debtor having recorded Certificates of Compliance, without Creditor's consent that negatively impact its collateral, which Creditor has now foreclosed on.

Rather than having a vague "the Plan Administrator can abandon at some point in the future, and then potentially having emergency motions to modify that authorization," the court bifurcates the orders on the relief requested and issues a final order for abandonment of seven properties above, and continues the hearing on the request to abandon the Murphy Ranch 756 and the Murphy 240 Rangeland properties to 10:30 a.m. on August 12, 2021.

In addition to helping the parties avoid "abandonment anxiety," the properties being in the Plan Estate, this federal court has jurisdiction to address the issue of the adjustments by Debtor to the property that is currently in the Plan Estate through an adversary proceeding that Creditor may believe necessary with third-parties (not the Plan Administrator) to correctly identify the property foreclosed on through these bankruptcy proceedings.

### **August 12, 2021 Hearing**

The Plan Administrator filed an updated Status Report on August 10, 2021, Dckt. 1498, concerning this Motion. The Plan Administrator advises the court that additional time is needed and a continuance of this hearing is requested to late September 2021. A non-judicial foreclosure sale of the Murphy Ranches could be conducted in mid-October 2021, and the Plan Administrator wants to insure that the abandonment occurs before that time.

### **September 30, 2021 Hearing**

No further documents have been filed in this Contested Matter as of the court's September 28, 2021 review of the Docket. At the hearing, counsel for the Plan Administrator reported that the lot line adjustments have not yet been completed, and the Parties agreed to a further continuance of this hearing.

### **October 21, 2021 Hearing**

At the hearing, the Parties requested a continuance to allow for all of the preliminary steps to be taken so that the abandonment may occur.

### **November 16, 2021 Status Report**

The Plan Administrator filed an updated Status Report on November 16, 2021, reporting that the abandonment cannot be completed at this time and a further continuance was necessary. Dckt. 1585.

### **December 16, 2021 Hearing**

Attorneys for the Plan Administrator filed a Status Report requesting a further continuance as further negotiations were conducted.

### **March 10, 2022 Hearing**

At the hearing counsel for the Plan Administrator reported that all documents have been received for the lot line adjustment and it may now be completed. There still remain some quit claim deeds required, but the parties are waiting on information from the County as to what, if any, quit claims will be required.

### **April 18, 2022 Status Report**

On April 18, 2022, the Plan Administrator filed a status report requesting the Abandonment Motion be further continued to May 26, 2022. Dckt. 1672. The Plan Administrator states there are final steps needed to complete the lot line adjustment while preserving the potential abandonment prior to the foreclosure sale.

### **CONTINUANCE OF MAY 26, 2022 HEARING**

The Plan Administrator filed a Status Report requesting that the hearing be continued to June 30, 2022. Dckt. 1692. The proposed lot line adjustment is to be presented to the Board of Supervisors on May 24, 2022, and the parties continue in their significant good faith efforts to conclude this matter.

The court continues the hearing, first as requested by the Plan Administrator and American AgCredit (Status Report, Dckt. 1690); and second, the judge to whom this case is assigned not being available (due to disrupted travel plans by Midwestern storms) to conduct a hearing on May 26, 2022.



## **CONTINUANCE OF JUNE 30, 2022 HEARING**

Focus Management Group, the Plan Administrator, and American AgCredit have filed Updated Status Reports (Dckts. 1707, 1709) information the court that the parties are now working of the deeds for the lot line adjustments that have been approved, and a further continuance is requested.

The Hearing is continued to 10:30 a.m. on August 4, 2022.

### **July 29, 2022 Status Report**

On July 29, 2022, American AgCredit filed a Status Report stating documents for the lot-line are currently being circulated and signed for recording but the process has not concluded. Dckt. 1723. American requests the matter be continued for 30-45 days for the process to continue.

### **August 4, 2022 Hearing**

As of the court's review of the Docket, the Plan Administrator had not filed a concurrence in the request for a continuance, so the court posted this as a tentative ruling. Though the court could assume that the Plan Administrator concurs, there may be some administrative "tweaks" that the Parties want to address at the hearing.

At the hearing, the Parties agreed that this should be further continued in light of the advances being made on getting the issues resolved with the County.

### **September 8, 2022 Hearing**

At the hearing, **XXXXXXXXXXXX**

The court shall issue an 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 Abandon filed by Focus Management Group USA, Inc., the Plan Administrator, 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 Abandon is **XXXXXXXXXXXXXXXXXX**

<p>The Status Conference is continued to <b>XXXXXXX</b></p>
---

**SEPTEMBER 8, 2022 STATUS CONFERENCE**

**XXXXXXX**

**August 4, 2022 Status Conference**

At the Status Conference, counsel for the Plan Administrator reported that the partial reconveyance of Summit's lien has been recorded.

The Plan Administrator has approximately \$1.5 Million dollar in tax refunds on hand. These monies are subject to Summit's liens. Some properties subject to Summit's liens have been abandoned to Mr. Arambel, who is reported to trying to sell them.

.