



Condo 184 for sale.

The Property has long been in the possession of Michael Pechbrenner, a holdover tenant who argued he needed to remain in possession of the Property to retain a construction lien for repairs made to the Property. Now, Pechbrenner has abandoned his possession. Declaration, Dckt. 473.

However, there are unpaid electricity bills totaling \$1,000.00, HOA dues exceeding \$5,000.00. *Id.* Furthermore, the Property needs an estimated \$10,000.00 in repairs to prepare for sale. *Id.*

Movant reports the Estate has on-hand \$300,000.00 in unencumbered funds. Declaration, Dckt. 474.

## **DISCUSSION**

The Chapter 7 Trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate. 11 U.S.C. § 363; *See also* 11 U.S.C. § 1303. The proposed use of \$20,000.00 in Estate funds is in the best interest of creditors and the Estate because it will allow for the sale of the Property at its fair market value.

The Motion is granted.

The court shall issue a minute order substantially in the following form holding that:

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

The Motion For Authority To Use Estate Funds filed by Chapter 7 Trustee, Kimberly Husted ("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 Movant is authorized to use pursuant to 11 U.S.C. § 363(b) Estate funds, not to exceed \$20,000.00, to bring the Estate's real property commonly known as 184 Los Delfines, Tambor, Costa Rica ("Property") into saleable condition as determined in the exercise of business discretion by the Movant Chapter 7 Trustee..

**Final Ruling:** No appearance at the September 17, 2019, hearing is required.

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Local Rule 9014-1(f)(1) Motion—Hearing not Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, parties requesting special notice, and Office of the United States Trustee on July 14, 2019.

The Continued 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.

**The Motion to Avoid Judicial Lien is granted.**

This Motion requests an order avoiding the judicial lien of First American Title Insurance Company ("Creditor") against property of the debtor, George Lincoln Ferdinand and Darshan Kaur Bajwa ("Debtor") commonly known as 1309 Eastern Ave, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$75,000.00. Exhibit A, Dckt. 27. An abstract of judgment was recorded with Sacramento County on April 15, 2010, that encumbers the Property. *Id.*

### **JULY 30, 2019 HEARING**

At the July 30, 2019 hearing counsel for Respondent First American Title Company appeared and requested a discovery and briefing schedule to assess the ability of Debtor to amend schedules after the case is closed and then reopened. Civil Minutes, Dckt. 30. Counsel for the Movant concurred, and the court continued the hearing. Order, Dckt. 31.

### **CREDITOR'S NON-OPPOSITION**

Creditor filed a non-opposition on August 22, 2019. Dckt. 33.

## **DISCUSSION**

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$250,000.00 as of the petition date. Dckt. 1. The unavoidable and senior liens that total \$318,239.00 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 § 703.140(b)(5) in the amount of \$14,350.00 on Amended Schedule C. Dckt. 29.

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 the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

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

An order (not a minute 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 George Lincoln Ferdinand and Darshan Kaur Bajwa ("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 judgment lien of First American Title Insurance Company, a California Corporation, California Superior Court for Sacramento County Case No. 34-2009-00058323, recorded on April 15, 2010, Book 20100415 and Page 0473, with the Sacramento County Recorder, against the real property commonly known as 1309 Eastern Ave, Sacramento, California, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.

**WELLS FARGO BANK, N.A. VS.  
(DEBTOR DISMISSED 8/26/19)**

**Final Ruling:** No appearance at the September 17, 2019, hearing is required.  
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The case having previously been dismissed and the Motion seeking relief only pursuant to 11 U.S.C. § 362(d)(1), the Motion is dismissed as moot.

The court shall issue a minute order substantially in the following form holding that:

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

The Motion For Relief having been presented to the court, the case having been previously dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Motion is dismissed as moot, the case having been dismissed.