

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

September 21, 2016, at 3:00 p.m.

1.	15-28108-E-11	WILLARD BLANKENSHIP	CONTINUED STATUS CONFERENCE RE:
		Stephen Reynolds	VOLUNTARY PETITION
			10-17-15 [1]

Debtor's Atty: Stephen M. Reynolds

Notes:

Continued from 8/10/16 to be conducted in conjunction with the confirmation hearing.

Operating Reports filed: 8/30/16; 9/13/16

[RLC-7] Motion for Interim Allowance of Fees as Counsel for Debtor filed 8/29/16 [Dckt 134], set for hearing 10/6/16 at 10:30 a.m.

September 21, 2016, at 3:00 p.m.

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Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, parties requesting special notice, and Office of the United States Trustee on July 27, 2016. The court set August 10, 2016 as the deadline for service.

Tentative Ruling: The Motion to Confirm Amended Plan of Reorganization has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1).

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. If the court's tentative ruling becomes is final ruling, the court will make the following findings of fact and conclusions of law:

The court's tentative decision is to ~~xxxx~~ the Motion to Confirm.

The Plan Proponent has complied with the Service and Filing Requirements for Confirmation:

<u>August 10, 2016</u>	Plan, Disclosure Statement, Disc. Stmt. Order, and Ballots Mailed
<u>September 12, 2016</u>	Last Day for Submitting Written Acceptances or Rejections
<u>September 12, 2016</u>	Last Day to File Objections to Confirmation
<u>September 15, 2016</u>	Last Day to File Replies to Objections, Tabulation of Ballots, Proof of Service

AMENDED PLAN TERMS

The Amended Plan dated July 21, 2016 (Dckt. 123), contains the following terms:

- A. 11 U.S.C. § 507(a)(2) Allowed Administrative Expenses, to be paid on the effective date of the Plan

1.

Type	Estimated Amount Owed	Proposed Treatment
Expenses arising in the ordinary course of business after the petition date	Estimated current at confirmation	Paid in full on the effective date of the Plan, or according to terms of obligation, if later
Professional fees, as approved by the Court	Estimated to be \$30,000.00	Paid in full upon the refinance of Debtor's residence. Subject to allowance by the court; creditors may object to motion to approve.
Clerk's office fees	Estimate none	Paid in full on the effective date of the Plan
Other administrative expenses	Estimated to be \$3,821.73	Paid in full on the effective date of the Plan upon allowance by noticed motion or according to separate written agreement
Office of the U.S. Trustee fees	Estimated current at confirmation	Paid in full on the effective date of the Plan
Total	\$33,821.73	

B. 11 U.S.C. § 507(a)(8) Priority Tax Claim

1. Per 11 U.S.C. § 507(a)(8), priority tax claims are unsecured income, employment, and other taxes.
2. Unless the holder of a priority tax claim agrees otherwise, it must receive the present value of such claim in regular installments paid over a period not exceeding four years from the order of relief
3. The Internal Revenue Service ("IRS") has filed a proof of claim for 2012 taxes in the estimated amount of \$4,218.19.
4. The proof of claim alleges that no return was filed in 2012.
5. The IRS amended the proof of claim for 2012 taxes to \$0.00.

C. Other Priority Claims

1. Willard Blankenship ("Debtor") used an American Express card post-petition for ordinary course of business expenses, as well as the purchase of a

computer, payment of property taxes secured by his residence, and payment for flood insurance.

2. Debtor believed he was using accumulated frequent flyer points.
3. The total of those charges is \$3,821.73, which Debtor intends to file a motion for the allowance of such claim.

D. Classes of Claims and Interests and Plan Treatment

1. Class 1
 - a. Amerihome Mortgage Co. LLC
 - b. Unimpaired
 - c. First priority deed of trust claim secured by Debtor's residence, 1304 Aspen Place, Davis, California.
 - d. Debtor shall continue to make monthly payments until the residence is refinanced with the claim paid fully.
 - e. Payment to be made at the close of refinance.
 - f. Refinance anticipated to occur in October 2016.
2. Class 2
 - a. Michael Kletchko and Patrick Ruedin
 - b. Impaired
 - c. Second priority abstract of judgment secured by Debtor's residence.
 - d. Debtor will seek to avoid the secured claim pursuant to 11 U.S.C. § 547(b)(2).
 - e. If allowed, the unsecured claim will share pro rata with allowed Class 3 claims.
 - f. Allowed unsecured claim estimated to be \$916,762.16.
 - g. Payment to Class 2 shall be made in part upon the completion of the reverse mortgage, estimated within thirty (30) days of the effective date of the Plan, with the balance of the reverse mortgage proceeds

twelve (12) months after the initial payment when the loan facility of the reverse mortgage is available and upon the sale of the Indiana property that shall be within twelve (12) months of the effective date.

- h. The above deadline may be extended for good cause shown and upon noticed motion.
- i. Kletchko and Ruedin are the only creditors who shall be paid upon the completion of the reverse mortgage in the first tranch with the entirety of the proceeds realized, less administrative expenses.
- j. In consideration for the treatment granted in Class 2, Kletchko and Ruedin have voluntarily reduced their claim to \$916,762.16 and have released the lien against the Debtor's residence (as well as a lien against the Indiana property).
- k. The parties stipulate that the liens are being released in consideration of the estate's rights pursuant to 11 U.S.C. § 547, and the liens are preserved for the benefit of the estate, in addition to the parties releasing their Complaint for Non-Dischargeability.
- l. The bankruptcy estate shall irrevocably assign to Kletchko and Ruedin all of the estate's legal and equitable rights and remedies against Prudential Realty and any other known or unknown tortfeasors relating to the Blankenship sale to Kletchko and Ruedin.
- m. All parties agree and acknowledge that such legal and equitable rights and remedies include all liabilities for which Debtor was responsible as a result of the judgment, including but not limited to attorney's fees and costs, as well as continuously accrued interest, entered against Debtor in the case *Kletchko v. Blankenship*, OCSC Case No. 30-2010-00399196, notwithstanding the stipulations and concessions set forth herein to allow this Plan to be confirmed.
- n. Kletchko and Ruedin shall have the right to object to the claims of Class 3 General Unsecured Creditors filed by the Davis Law Firm and the claim scheduled as Yury Galprin Lieber Law.
- o. The pro rata distribution to Classes 2 & 3 will be based upon the final amount available for distribution to Classes 2 & 3.

- p. The distribution to Class 2 from the first tranche of payments available from the refinance of Debtor's residence shall be considered an advance to Class 2.
- 3. Class 3
 - a. General Unsecured Claims
 - b. Impaired
 - c. Class 3 will receive two distributions from the proceeds of a contemplated reverse mortgage of Debtor's residence.
 - d. Class 3 claims will be paid pro rata with Class 2 claims.
 - e. Class 3 claims will receive their pro rata shares of proceeds only from the second distribution of proceeds, which will be available approximately twelve (12) months after the initial payments.
 - f. That distribution will be within twelve (12) months of the effective date of the Plan.
 - g. The above deadline may be extended for good cause shown and upon noticed motion.
 - h. The total of allowed Class 3 claims is estimated to be \$139,421.07.
- 4. Class 4
 - a. Interest of the Debtor
 - b. Impaired
 - c. Debtor shall retain his interest in his post-petition social security and TIAA-CREF income.
 - d. He shall also retain an interest in his residence, subject to the Class 1 secured claim of Amerihome Mortgage and the contemplated reverse mortgage.
 - e. The property of the estate shall revert to the Debtor upon the effective date of the Plan.

E. Allowance and Disallowance of Claims

1. No distribution will be made on account of a disputed claim, unless such claim is allowed by a final noon-appealable order.
2. Debtor will have the power and authority to settle and compromise a disputed claim with court approval and compliance with Federal Rule of Bankruptcy Procedure 9019.
3. All claim objections, including the claims objections allowed to Class 2, shall be filed within 180 days of the effective date of the Plan.

F. Provisions for Executory Contracts and Unexpired Leases

1. Debtor assumes no executory contracts or leases.

G. Means for Implementation of the Plan

1. Debtor shall retain the property of the estate and obtain a reverse mortgage.
2. Distribution to Classes 2 & 3 will be in three steps.
 - a. First, when the reverse mortgage is funded (c. October 2016), the Debtor shall distribute funds to allowed or pending priority claims and the remainder to Class 2 claims.
 - b. Second, twelve (12) months later when the line of credit secured by the reverse mortgage is available, a distribution in the amount of \$168,635.00 will be made.
 - c. Third, when the Apnea Analysis stock is sold, Debtor will distribute funds, estimated at \$112,500.00.
3. The court will retain jurisdiction for approval of a sale of the Spencer Indiana farm and Apnea Analysis stock.
4. The Spencer Indiana property shall be listed for sale with a licensed realtor no later than thirty (30) days after the effective date of the Plan.
5. The Apnea Analysis stock shall be sold by a private sale noticed to all creditors as well as all known owners of Apnea Analysis stock and shall be by noticed motion in the United States Bankruptcy Court for the Eastern District of California, Sacramento Division.

6. Within fourteen days of Plan confirmation, creditors Kletchko and Ruedin shall file lien releases for the Debtor's residence and for the Spencer Indiana property with the appropriate county recorders.
7. Kletchko and Ruedin shall dismiss, with prejudice, their Complaint for Non-Dischargeability, Adversary Proceeding No. 16-0210.
8. Debtor shall dismiss Adversary Proceeding No. 16-02068 within fourteen (14) days of the delivery to counsel for the debtor of the recorded lien releases.

H. General Provisions

1. The effective date of the Plan is the fourteenth business day following the date of entry of the order of confirmation, but if a stay of the confirmation order is in effect on that date, the effective date will be the first business day after that date on which no stay of the confirmation order is in effect, provided that the confirmation order has not been vacated.
2. If any provision of the Plan is determined to be unenforceable, the determination will in no way limit or affect the enforceability and operative effect of any other provision of the Plan.
3. The rights and obligations of any entity named or referred to in the Plan will be binding upon and will inure to the benefit of the successors or assigns of such entity.
4. California law governs the Plan, unless a rule of law or procedure is supplied by the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure.

I. Discharge

1. Upon completion of payments contemplated by the Plan, the Debtor shall be discharged from any debt that arose before confirmation of the Plan, to the extent specified in 11 U.S.C. § 1141(d)(5)(A), except that the Debtor shall not be discharged of any debt (i) imposed by the Plan, (ii) of a kind specified in 11 U.S.C. § 1141(d)(6)(A) if a timely complaint was filed in accordance with Federal Rule of Bankruptcy Procedure 4007(c), or (iii) of a kind specified in 11 U.S.C. § 1141(d)(6)(B).

Tabulation of Ballots:

Class	Voting	Ballot Percentage Calculation	Claim Percentage Calculation
	For: Against:		
	For: Against:		
	For: Against:		
	For: Against:		
	For: Against:		
	For: Against:		
	For: Against:		
	For: Against:		

At the hearing, the Debtor advised the court that **XXXXXXXXXXXXXXXXXXXXXXX**.

NO EVIDENCE FILED

No declaration has been filed in support of confirmation providing evidence of compliance with the necessary elements for confirmation in 11 U.S.C. § 1129.

CONCLUSION

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 Confirmation of the Amended Chapter 11 Plan of Reorganization filed by the 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 **XXXXXX**.

3. [15-28108-E-11](#) **WILLARD BLANKENSHIP**
[16-2010](#) **Stephen Reynolds**
KLETCHKO ET AL V. BLANKENSHIP
ET AL

STATUS CONFERENCE CONTINUED RE:
AMENDED COMPLAINT
1-29-16 [[11](#)]

Plaintiff's Atty: Marc Y. Lazo

Defendant's Atty:

Stephen M. Reynolds [Willard Blankenship]

Unknown [Charles Hoffmeister]

Yury Galperin [Gary Labin, Stanley Lieber, Lieber Williams and Labin LLP, Howard Williams]

Adv. Filed: 1/19/16

Answer: none

Amd Cmplt Filed: 1/27/16

Answer: none

2nd Amd Cmplt Filed: 1/29/16

Answer: 2/29/16 [Willard Blankenship]

Nature of Action:

Objection/revocation of discharge

Dischargeability - false pretenses, false representation, actual fraud

Dischargeability - willful and malicious injury

Notes:

Continued from 8/10/16 to be conducted in conjunction with the confirmation hearing.