

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

September 26, 2016 at 10:00 a.m.

No written opposition has been filed to the following motions set for argument on this calendar:

2, 3, 4, 10, 14

When Judge McManus convenes court, he will ask whether anyone wishes to oppose this motion. If you wish to oppose the motion, tell Judge McManus there is opposition. Please do not identify yourself or explain the nature of your opposition. If there is opposition, the motion will remain on calendar and Judge McManus will hear from you when he calls the motion for argument.

If there is no opposition, the moving party should inform Judge McManus if it declines to accept the tentative ruling. Do not make your appearance or explain why you do not accept the ruling. If you do not accept the ruling, Judge McManus will hear from you when he calls the motion for argument.

If no one indicates they oppose the motion and if the moving party does not reject the tentative ruling, that ruling will become the final ruling. The motion will not be called for argument and the parties are free to leave (unless they have other matters on the calendar).

MOTIONS ARE ARRANGED ON THIS CALENDAR IN TWO SEPARATE SECTIONS. A CASE MAY HAVE A MOTION IN EITHER OR BOTH SECTIONS. THE FIRST SECTION INCLUDES ALL MOTIONS THAT WILL BE RESOLVED WITH A HEARING. A TENTATIVE RULING IS GIVEN FOR EACH MOTION. THE SECOND SECTION INCLUDES ALL MOTIONS THAT HAVE BEEN RESOLVED BY THE COURT WITHOUT A HEARING. A FINAL RULING IS GIVEN FOR EACH MOTION. WITHIN EACH SECTION, CASES ARE ORGANIZED BY THE LAST TWO DIGITS OF THE CASE NUMBER.

ITEMS WITH TENTATIVE RULINGS: IF A CALENDAR ITEM HAS BEEN SET FOR HEARING BY THE COURT PURSUANT TO AN ORDER TO SHOW CAUSE OR AN ORDER SHORTENING TIME, OR BY A PARTY PURSUANT TO LOCAL BANKRUPTCY RULE 3007-1(c)(1) OR LOCAL BANKRUPTCY RULE 9014-1(f)(1), AND IF ALL PARTIES AGREE WITH THE TENTATIVE RULING, THERE IS NO NEED TO APPEAR FOR ARGUMENT. HOWEVER, IT IS INCUMBENT ON EACH PARTY TO ASCERTAIN WHETHER ALL OTHER PARTIES WILL ACCEPT A RULING AND FOREGO ORAL ARGUMENT. IF A PARTY APPEARS, THE HEARING WILL PROCEED WHETHER OR NOT ALL PARTIES ARE PRESENT. AT THE CONCLUSION OF THE HEARING, THE COURT WILL ANNOUNCE ITS DISPOSITION OF THE ITEM AND IT MAY DIRECT THAT THE TENTATIVE RULING, AS ORIGINALLY WRITTEN OR AS AMENDED BY THE COURT, BE APPENDED TO THE MINUTES OF THE HEARING AS THE COURT'S FINDINGS AND CONCLUSIONS.

IF A MOTION OR AN OBJECTION IS SET FOR HEARING BY A PARTY PURSUANT TO LOCAL BANKRUPTCY RULE 3007-1(c)(2) OR LOCAL BANKRUPTCY RULE 9014-1(f)(2), RESPONDENTS WERE NOT REQUIRED TO FILE WRITTEN OPPOSITION TO THE RELIEF REQUESTED. RESPONDENTS MAY APPEAR AT THE HEARING AND RAISE OPPOSITION ORALLY. IF THAT OPPOSITION RAISES A POTENTIALLY MERITORIOUS DEFENSE OR ISSUE, THE COURT WILL GIVE THE RESPONDENT AN OPPORTUNITY TO FILE WRITTEN OPPOSITION AND SET A FINAL HEARING UNLESS THERE IS NO NEED

September 26, 2016 at 10:00 a.m.

TO DEVELOP THE WRITTEN RECORD FURTHER.

IF THE COURT SETS A FINAL HEARING, UNLESS THE PARTIES REQUEST A DIFFERENT SCHEDULE THAT IS APPROVED BY THE COURT, THE FINAL HEARING WILL TAKE PLACE ON OCTOBER 17, 2016 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY OCTOBER 3, 2016, AND ANY REPLY MUST BE FILED AND SERVED BY OCTOBER 11, 2016. THE MOVING/OBJECTING PARTY IS TO GIVE NOTICE OF THESE DATES.

ITEMS WITH FINAL RULINGS: THERE WILL BE NO HEARING ON THE ITEMS WITH FINAL RULINGS. INSTEAD, EACH OF THESE ITEMS HAS BEEN DISPOSED OF AS INDICATED IN THE FINAL RULING BELOW. THAT RULING ALSO WILL BE APPENDED TO THE MINUTES. THIS FINAL RULING MAY OR MAY NOT BE A FINAL ADJUDICATION ON THE MERITS. IF ALL PARTIES HAVE AGREED TO A CONTINUANCE OR HAVE RESOLVED THE MATTER BY STIPULATION, THEY MUST ADVISE THE COURTROOM DEPUTY CLERK PRIOR TO HEARING IN ORDER TO DETERMINE WHETHER THE COURT VACATE THE FINAL RULING IN FAVOR OF THE CONTINUANCE OR THE STIPULATED DISPOSITION.

ORDERS: UNLESS THE COURT ANNOUNCES THAT IT WILL PREPARE AN ORDER, THE PREVAILING PARTY SHALL LODGE A PROPOSED ORDER WITHIN 14 DAYS OF THE HEARING.

MATTERS FOR ARGUMENT

1. 16-25804-A-7 PHILIP/MARTHA BEARGEON MOTION TO
SNM-1 COMPEL ABANDONMENT
9-1-16 [5]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be dismissed without prejudice.

The motion seeks to compel the bankruptcy estate to abandon certain business assets because they are exempt and therefore of no value to the estate. However, because the first meeting of creditors will not take place until October 4, the deadline to object to the debtor's exemptions will not expire until November 3. See Fed. R. Bankr. P. 4003(b)(1). Therefore, this motion is premature. Until it is known whether the exemptions will be allowed, it is unknown whether the business assets are of no value to the estate.

2. 13-34622-A-7 LONNIE NIELSON MOTION TO
MKJ-3 AVOID JUDICIAL LIEN
VS. BENEDICT/MARY COMBS 8-31-16 [72]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of \$1,960,000 as of the date of the petition. However, the debtor owned a 12.2% interest in the property. The unavoidable liens encumbering all interests in the property total \$1,225,950, leaving net equity of \$734,050 with the debtor's interest in that equity totaling \$89,554. Encumbering only the debtor's interest are two unavoidable tax liens aggregating approximately \$471,000. The debtor has an available exemption of \$25,214. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the debtor's interest in the subject real property. 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 is avoided.

3. 13-34622-A-7 LONNIE NIELSON
MKJ-4
VS. DOUGLAS/KAY MACDONALD

MOTION TO
AVOID JUDICIAL LIEN
8-31-16 [77]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of \$1,960,000 as of the date of the petition. However, the debtor owned a 12.2% interest in the property. The unavoidable liens encumbering all interests in the property total \$1,225,950, leaving net equity of \$734,050 with the debtor's interest in that equity totaling \$89,554. Encumbering only the debtor's interest are two unavoidable tax liens aggregating approximately \$471,000. The debtor has an available exemption of \$25,214. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the debtor's interest in the subject real property. 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 is avoided.

4. 16-24824-A-7 MONZER/GADEER ERAKAT
SNM-1
HOA HUA VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
9-6-16 [11]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to commence and prosecute an unlawful detainer action as well as take such other acts as are necessary to recover possession of the commercial property leased to the debtor. In violation of the terms of the lease, the debtor has defaulted in the payment of rent both before and after the filing of the bankruptcy case. The trustee has filed a written response indicating that there is no opposition to the motion which the court takes to mean that the estate does not intend to cure the default in order to assume and assign the lease pursuant to 11 U.S.C. § 365. The foregoing is cause to terminate the automatic stay.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived.

No fees and costs are awarded because the movant is not an over-secured creditor. See 11 U.S.C. § 506.

5. 15-29525-A-7 LARRY/KELLY BUCKINGHAM MOTION TO
SCB-4 SELL OR TO PAY
8-29-16 [54]

Tentative Ruling: The motion will be granted.

The chapter 7 trustee requests authority to sell for \$226,000 in cash the estate's interest in a real property in Marysville, California to April Griffin. The trustee also asks for approval of the payment of the 6% real estate commission to the estate real estate brokers involved in the transaction.

The property is subject to a mortgage of approximately \$150,706 and the debtor's exemption in the amount of \$22,250.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The trustee anticipates the sale to generate approximately \$28,140 for the benefit of the estate and unsecured creditors, after payment of encumbrances, the debtor's exemption and costs of sale. Hence, the sale will be approved pursuant to 11 U.S.C. § 363(b), as it is in the best interests of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h) and will authorize payment of the real estate commission, consistent with the estate's broker's court-approved terms of employment.

6. 16-24744-A-7 ALEKSANDR POKATILOV MOTION FOR
AP-1 RELIEF FROM AUTOMATIC STAY
MUFG UNION BANK, N.A. VS. 8-23-16 [17]

Tentative Ruling: The motion will be denied.

The movant seeks relief from the automatic stay as to real property owned by the debtor. The property has a value of \$258,328 and it is encumbered by the movant's lien securing a claim of approximately \$123,144.50. This leaves approximately \$123,000 of equity in the property. Given this equity, relief from stay as to the debtor under 11 U.S.C. § 362(d)(2) is not appropriate. Costs of sale are not encumbrances for purposes of the equity analysis of section 362(d)(2).

Further, there is no evidence in the record establishing that the property is depreciating in value. Under United Sav. Ass'n. Of Tex. v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988), a secured creditor's interest in its collateral is considered to be inadequately protected only if that collateral is depreciating or diminishing in value. The creditor, however, is not entitled to be protected from an erosion of its equity cushion due to the accrual of interest on the secured obligation. In other words, a secured creditor is not entitled to demand, as a measure of adequate protection, that "the ratio of collateral to debt" be perpetuated. See Orix Credit Alliance, Inc. v. Delta Resources, Inc. (In re Delta Resources, Inc.), 54 F.3d 722, 730 (11th Cir. 1995).

The movant has an equity cushion of more than \$100,000. This equity cushion is

sufficient to adequately protect the movant's interest in the property.

7. 14-24449-A-7 ROBERT/KATHLEEN BRANSON MOTION FOR
EAT-1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. 7-28-15 [71]

Tentative Ruling: The motion will be denied in part and dismissed as moot in part.

The movant, Wells Fargo Bank, seeks relief from stay as to a real property in Sonoma, California.

Given the entry of the debtor's discharge on August 7, 2014, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. The movant had provided the trustee with time to market and sell the property. As the court has not heard from the parties about the outcome of the estate's efforts to sell the property, however, the court infers that the movant is not interested in prosecuting the motion with respect to the estate. Accordingly, the court is inclined to deny the motion as to the estate.

8. 16-24261-A-7 C.C. MYERS, INC. MOTION TO
DNL-6 SELL AND TO APPROVE COMPENSATION
OF REAL ESTATE BROKER
9-2-16 [177]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The chapter 7 trustee requests authority to sell for \$1,550,000 in cash the estate's interest in a building located at 3300 Fitzgerald Rd. in Rancho Cordova and an adjacent 5 acre storage yard to William Heinselman and Snag Thi Tran. The trustee also asks for approval of the payment of the 6% real estate commission to the estate real estate brokers involved in the transaction.

The property is subject to the liens of Parker Mortgage Trust, \$1,171,000, and Liberty Mutual Insurance Co., \$25,000. Liberty Mutual consents to the sale and will permit the estate to retain 5% of the sale proceeds plus \$3,500.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. 11 U.S.C. § 363(f)(2) allows the trustee to sell property of the estate free and clear of Liberty Mutual's lien with its consent.

The sale will be approved pursuant to 11 U.S.C. § 363(b) and (f)(2), as it is in the best interests of the creditors and the estate. The court will waive the 14-day period of Rule 6004(h) and will authorize payment of the real estate commission, consistent with the estate's broker's court-approved terms of employment.

9. 12-38363-A-7 WILLIAM ST CLAIR
MOH-4

MOTION TO
COMPEL ABANDONMENT
9-12-16 [324]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the debtor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be denied without prejudice.

References to schedules and what creditors have said the subject property is worth are not admissible evidence in a motion filed by the debtor. This motion is not accompanied by admissible evidence as to the value of the subject property or the liens encumbering the property.

10. 15-29268-A-7 JOANNE GODREAU
DNL-5

MOTION TO
APPROVE COMPENSATION OF TRUSTEE'S
ATTORNEY
9-2-16 [78]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

Desmond Nolan Livaich & Cunningham, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of \$10,057 in fees and \$98.45 in expenses. This motion covers the period from January 1, 2016 through September 1, 2016. The court approved the movant's employment as the trustee's attorney on January 13.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services related

primarily to advising the trustee regarding the liquidation of rental property owned by the debtor and the liquidation of that property. The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved.

11. 15-26985-A-7 SCOTT HOMES MOTION FOR
EAT-1 RELIEF FROM AUTOMATIC STAY
U.S. BANK, N.A. VS. 11-20-15 [26]

Tentative Ruling: The motion will be denied without prejudice in part and dismissed as moot in part.

The movant, U.S. Bank, seeks relief from stay as to a real property in El Dorado Hills, California.

Given the entry of the debtor's discharge on February 9, 2016, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

As to the estate, the analysis is different. According to the movant, there is approximately \$87,000 of equity in the property. It has a value of \$760,000 and it is encumbered by claims totaling \$672,918. The movant's claim is the only encumbrance against the property.

Given this equity, relief from stay as to the estate under 11 U.S.C. § 362(d)(2) is not appropriate.

Further, there is no evidence in the record establishing that the property is depreciating in value. Under United Sav. Ass'n. Of Tex. v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed.2d 740 (1988), a secured creditor's interest in its collateral is considered to be inadequately protected only if that collateral is depreciating or diminishing in value. The creditor, however, is not entitled to be protected from an erosion of its equity cushion due to the accrual of interest on the secured obligation. In other words, a secured creditor is not entitled to demand, as a measure of adequate protection, that "the ratio of collateral to debt" be perpetuated. See Orix Credit Alliance, Inc. v. Delta Resources, Inc. (In re Delta Resources, Inc.), 54 F.3d 722, 730 (11th Cir. 1995).

More, the trustee has filed a response, indicating that his investigation has revealed that the property has a value of much more than \$760,000. The trustee seeks to continue marketing the property and attempt to sell for the benefit of the estate and the unsecured creditors.

Given the equity in the property, the trustee's investigation about the value of the property and the March 2016 written \$870,000 offer for purchase of the property, the court will permit the trustee to continue marketing the property. The motion will be denied without prejudice as to the estate.

12. 16-24589-A-7 ETHLEEN GUMMOW MOTION TO
DISMISS CASE
8-24-16 [17]

Tentative Ruling: The motion will be denied. While the debtor failed to appear at the meeting on August 23, the debtor appeared at the continued meeting on September 20 and the trustee was able to conclude the meeting.

However, because of the failure to appear, the court will extend the deadlines for all parties in interest to file complaints/motions pursuant to 11 U.S.C. § 523(c) and 727 to November 28, 2016.

13. 13-28491-A-7 JAMES ENGLISH
KJH-5

MOTION TO
APPROVE COMPENSATION OF TRUSTEE
9-2-16 [184]

Tentative Ruling: Because less than 28 days' notice of the hearing was given by the trustee, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the creditors, the debtor, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted in part

The chapter 7 trustee, Kimberly Husted, seeks compensation of \$10,750 and reimbursement of \$464.99 in expenses, a total of \$11,214.99 for her services liquidating this estate.

The court is satisfied that the requested compensation does not exceed the cap of 11 U.S.C. § 326(a) except in one respect. According to the trustee's final report, gross receipts equaled \$150,050. From these receipts the trustee paid the debtor \$10,000 to satisfy an allowed exemption. Because the trustee cannot be compensated on amounts distributed to the debtor, the total fund that the trustee's compensation may be based on its \$140,050. Applying the formula in section 326(a) to \$140,050 yields total compensation of \$10,252.50.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses."

"[A]bsent extraordinary circumstances, chapter 7, 12 and 13 trustee fees should be presumed reasonable if they are requested at the statutory rate. Congress would not have set commission rates for bankruptcy trustees in §§ 326 and 330(a)(7), and taken them out of the considerations set forth in § 330(a)(3), unless it considered them reasonable in most instances. Thus, absent extraordinary circumstances, bankruptcy courts should approve chapter 7, 12 and 13 trustee fees without any significant additional review."

Hopkins v. Asset Acceptance LLC (In re Salgado-Nava), 473 B.R. 911, 921 (B.A.P. 9th Cir. 2012). The movant's services did not involve extraordinary circumstances. The court concludes that the compensation, as allowed, is for actual and necessary services rendered in the administration of this estate. The compensation will be approved.

14. 16-25291-A-7 MICHELE WALTON
BPE-1
VERNON SCHEUPLEIN VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
9-2-16 [19]

Tentative Ruling: Because less than 28 days' notice of the hearing was given

by the creditor, this motion is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the other creditors, the debtor, the trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The motion will be granted.

The movant leased residential real property to the debtor. Prior to the filing of the petition, the debtor defaulted in the payment of rent and the movant served a notice to pay rent or quit and, when the debtor did neither, the movant filed an unlawful detainer action in state court.

Given the filing of the unlawful detainer action and the notice to quit that necessarily preceded it, the debtor's right to possession has terminated and there is cause to terminate the automatic stay. In re Windmill Farms, Inc., 841 F.2d 1467 (9th Cir. 1988); In re Smith, 105 B.R. 50, 53 (Bankr. C.D. Cal. 1989). The debtor, and therefore the bankruptcy estate, no longer has an interest in the subject property which can be considered either property of the estate or an interest deserving of protection by section 362(a).

The automatic stay is modified to permit the movant to seek possession of the property. No fees and costs are awarded. The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is ordered waived.

FINAL RULINGS BEGIN HERE

15. 16-24903-A-7 ANDREW JARVIS MOTION FOR
AYV-1 RELIEF FROM AUTOMATIC STAY
PARTNERS FEDERAL CREDIT UNION VS. 8-24-16 [10]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent 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.

The motion will be granted.

The movant seeks relief from the automatic stay as to real property in Sacramento, California.

The movant is the legal owner of the property and the debtor leases or rents it from the movant. The debtors defaulted under the lease agreement both before and after the filing of the bankruptcy case by failing to pay rent.

This is a liquidation proceeding and the debtors have no ownership interest in the property as the movant is the legal owner of it. And, even though the debtors are tenants at the property, they have defaulted under the lease agreement by failing to pay rent due to the movant.

This is cause for the granting of relief from stay. Accordingly, the motion will be granted for cause pursuant to 11 U.S.C. § 362(d)(1) to permit the movant to exercise its state law remedies in accordance with the orders and judgments of the state court in the unlawful detainer action.

No monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property to the extent permitted by the state court. No other relief will be awarded.

No fees and costs will be awarded because the movant is not an over-secured creditor. See 11 U.S.C. § 506.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be waived.

16. 14-31211-A-7 ALICE CARLSON MOTION TO
MOH-1 AVOID JUDICIAL LIEN
VS. CITIBANK (SOUTH DAKOTA), N.A. 8-26-16 [21]

Final Ruling: The motion will be dismissed without prejudice because service of the motion did not comply with Fed. R. Bankr. P. 7004(b)(3), which requires service "[u]pon a domestic or foreign corporation or upon a partnership or other unincorporated association . . . to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant." The debtor served the motion on the corporate entities

without addressing it "to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process." Docket 25 and 26.

Assuming that Hunt & Henriques were the state court attorneys of the respondent, service on the attorneys is not sufficient to serve the corporations unless the attorney agreed to accept service. There is no evidence of an agreement, such service is insufficient. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

17. 16-23622-A-7 PETR KRAVCHUK MOTION FOR
JCW-1 RELIEF FROM AUTOMATIC STAY
U.S. BANK, N.A. VS. 8-29-16 [16]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee, to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent 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.

The motion will be granted in part.

The movant seeks relief from the automatic stay in order to take possession of real property it acquired in a pre-petition foreclosure.

Given the entry of the debtor's discharge on August 31, 2016, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

However, as to the bankruptcy estate the motion will be granted pursuant to 11 U.S.C. § 362(d)(1). Given the pre-petition foreclosure, the estate has no interest in the subject property that can be liquidated for the benefit of creditors. This is cause to terminate the automatic stay.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived.

No fees and costs are awarded because the movant is not an over-secured creditor. See 11 U.S.C. § 506.

18. 10-52136-A-7 SETH SUNGA MOTION TO
HSM-11 APPROVE COMPENSATION OF CHAPTER 7
TRUSTEE'S ATTORNEY
8-29-16 [120]

Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Fed. R. Bankr. R. 2002(a)(6). The failure of the trustee, the debtor, the United States Trustee, the creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent 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.

The motion will be granted.

Hefner Stark & Marois, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of \$26,576.50 in fees and \$347 in expenses. This motion covers the period from January 13, 2011 through September 26, 2016. The court approved the movant's employment as the trustee's attorney on January 26, 2011.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services related primarily to advising the trustee regarding the estate's interest in certain insurance proceeds payable on the debtor's spouse's death and recovering that benefit from the debtor. The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The requested compensation will be approved.

19. 15-22639-A-7 ISRAEL/MARLINE LOPEZ MOTION TO
HCS-1 EXTEND TIME
9-9-16 [33]

Final Ruling: The motion will be granted per the stipulation between the debtor and the trustee filed September 22.

20. 14-28852-A-7 JOHN LIVINGSTON MOTION FOR
ETL-1 RELIEF FROM AUTOMATIC STAY
WELLS FARGO BANK, N.A. VS. 8-16-16 [69]

Final Ruling: The motion will be dismissed without prejudice because it was not served on the trustee's counsel.

21. 11-49968-A-7 STEPHEN/SANDRA PADILLA MOTION TO
HLG-3 AVOID JUDICIAL LIEN
VS. AMERICAN EXPRESS CENTURION BANK 8-15-16 [46]

Final Ruling: This motion to avoid a judicial lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent 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 trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of \$91,700 as of the date of the petition. The unavoidable liens total \$193,162. The debtor has an available exemption of \$1.00. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. 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 is avoided.

22. 16-24179-A-7 MARK BROWN
JCW-1
BANK OF AMERICA, N.A. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
8-18-16 [16]

Final Ruling: This motion for relief from the automatic stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the debtor and the trustee to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent 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.

The motion will be granted in part.

The movant seeks relief from the automatic stay in order to foreclose on real property owned by the debtor. The property has a value of \$244,000 and it is encumbered by the movant's lien which secures a claim of \$317,702.36.

Given the entry of the debtor's discharge on January 26, 2015, the automatic stay has expired as to the debtor and any interest the debtor may have in the property. See 11 U.S.C. § 362(c). Hence, as to the debtor, the motion will be dismissed as moot.

However, as to the bankruptcy estate the motion will be granted pursuant to 11 U.S.C. § 362(d)(2). The court concludes that there is no equity in the property and there is no evidence that it is necessary to a reorganization or that the trustee can administer it for the benefit of creditors. There is no equity in the property.

Thus, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to conduct a nonjudicial foreclosure sale and to obtain possession of the subject property following sale. No other relief is awarded.

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) will be ordered waived.

No fees and costs are awarded because the movant is not an over-secured creditor. See 11 U.S.C. § 506.

23. 15-26985-A-7 SCOTT HOMES
BLC-1

MOTION TO
COMPEL ABANDONMENT
7-1-16 [59]

Final Ruling: This motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the creditors, the trustee, the U.S. Trustee, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent 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.

The motion will be granted.

The debtor seeks an order compelling the trustee to abandon the estate's interest in his real property. The entire equity in the property is exempt.

11 U.S.C. § 554(b) provides that on request of a party in interest and after notice and a hearing, the court may order the trustee to abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate.

The property has a scheduled value of \$760,000, subject to secured claims totaling \$697,171.84. The debtor has also claimed a \$75,000 exemption in the property. The trustee, after initially obtaining a continuance and an extension of time to file written opposition, has filed no opposition to the motion.

Given the property's value, encumbrances and exemption claim, the court concludes that the property is of inconsequential value to the estate. The motion will be granted.

24.	15-22890-A-7 ANGELICA BOCHAROFF JB-2	MOTION TO APPROVE COMPENSATION OF ACCOUNTANT 8-18-16 [80]
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Final Ruling: This compensation motion has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Fed. R. Bankr. R. 2002(a)(6). The failure of the trustee, the debtor, the United States Trustee, the creditors, and any other party in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent 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.

The motion will be granted.

Gabrielson & Company, accountant for the estate, has filed its first and final application for approval of compensation. The requested compensation consists of \$1,691.50 in fees and \$89.98 in expenses, a total of \$1,781.48. This motion covers the period from December 29, 2015 through August 17, 2016. The court approved the movant's employment as the estate's accountant on January 11, 2016.

11 U.S.C. § 330(a)(1)(A)&(B) permits approval of "reasonable compensation for actual, necessary services rendered by . . . [a] professional person" and "reimbursement for actual, necessary expenses." The movant's services included, without limitation, preparing estate tax returns for the estate. The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The compensation will be approved.

25. 16-23191-A-7 PAUL/MICHELLE TRACE
SBS-3
VS. CITIBANK, N.A.

MOTION TO
AVOID JUDICIAL LIEN
8-17-16 [31]

Final Ruling: This motion to avoid a judicial lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent 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 trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of \$192,207 as of the date of the petition. The unavoidable liens total \$88,104. The debtor has an available exemption of \$104,103. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. 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 is avoided.

26. 16-23191-A-7 PAUL/MICHELLE TRACE
SBS-4
VS. CITIBANK, N.A.

MOTION TO
AVOID JUDICIAL LIEN
8-17-16 [37]

Final Ruling: This motion to avoid a judicial lien has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the trustee and the respondent creditor to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered as consent 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 trustee and the respondent creditor are entered and the matter will be resolved without oral argument.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). The subject real property has a value of \$192,207 as of the date of the petition. The unavoidable liens total \$88,104. The debtor has an available exemption of \$104,103. The respondent holds a judicial lien created by the recordation of an abstract of judgment in the chain of title of the subject real property. 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 is avoided.

27. 12-24198-A-7 CARLA MEDRANO
PLC-4
VS. THE GOLDEN 1 CREDIT UNION

MOTION TO
AVOID JUDICIAL LIEN
8-31-16 [55]

Final Ruling: The motion will be dismissed without prejudice.

The debtor gave 26 days' notice of the hearing and the notice of hearing

advised the respondent that written opposition was due 14 days prior to the hearing. In order to require a respondent to file written opposition to a motion, the respondent must be given 28 days' notice of the hearing. See Local Bankruptcy Rule 9014-1(f)(1).