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

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

**October 7, 2013 at 10:00 a.m.**

---

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

**5, 17, 21, 24, 25**

When Judge McManus convenes court, he will ask whether anyone wishes to oppose one of these motions. 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**

**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 21, 2013 AT 10:00 A.M. OPPOSITION MUST BE FILED AND SERVED BY OCTOBER 21, 2013, AND ANY REPLY MUST BE FILED AND SERVED BY OCTOBER 28, 2013. 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. | 13-28900-A-7 | ARTHUR YSMAEL AND MIRIAM YSMAEL | OBJECTION TO TRUSTEE'S REPORT OF NO DISTRIBUTION 8-21-13 [12] |

**Tentative Ruling:** The objection will be conditionally sustained in part and overruled in part.

Kathleen Lusher, on behalf of Creditor Mamita Primicias, objects to the trustee's report of no distribution filed on July 25, 2013, arguing that Debtor Arthur Ysmael stole $193,000 from Ms. Primicias and is attempting "to evade his responsibility to account for [Ms. Primicias'] money and to escape his obligation to return her money." Ms. Lusher also says that the debtors have undisclosed property, including two Corvettes, a diamond ring, and "multitude of jewelry."

Subject to hearing from the trustee about whether he has had the opportunity to investigate the claims of Ms. Lusher, the court will sustain the objection in part.

To the extent Ms. Lusher is complaining about misconduct by the debtors, this does not relate to the report of no distribution. The remedies for creditors who have been wronged by debtors is to seek relief under 11 U.S.C. §§ 523 and 727. The issues raised by Ms. Lusher as to the misconduct of the debtors are not bases for sustaining an objection to the report of no distribution. This aspect of the report will be overruled.

| | | | |
|---|---|---|---|
| 2. | 13-28204-A-7<br>FHS-1<br>MARJORIE CRAFT VS. | MADELIN DRUSE | MOTION FOR RELIEF FROM AUTOMATIC STAY 9-23-13 [57] |

**Tentative Ruling:** The motion will be granted in part.

The movant, Marjorie Craft, seeks relief from the automatic stay as to a real property in Igo, California. The movant purchased the property in 1998 from Redding Mortgage Investment, Inc., which acquired it at a foreclosure sale in 1997. The movant allowed the debtor to continue residing on the property. On February 23, 2013, the movant served the debtor with a 60-day notice of termination of tenancy. On April 25, 2013, the movant commenced an unlawful detainer proceeding against the debtor. A judgment for possession was entered on May 28, 2013. A writ of possession was issued on June 4, 2013. The debtor filed the instant petition on June 18, 2013.

The movant is asking the court to confirm that 11 U.S.C. § 362(b)(22) applies and there is no stay for the movant to complete the debtor's eviction. In the alternative, the movant asks for relief from stay for cause under 11 U.S.C. § 362(d)(1).

The court cannot address the applicability of 11 U.S.C. § 362(b)(22) as the motion does not discuss the applicability of 11 U.S.C. § 362(l).

11 U.S.C. § 362(b)(22) provides that only "subject to subsection (l), under subsection (a)(3)," the automatic stay does not operate against "the continuation of any eviction, unlawful detainer action, or similar proceedings by a lessor against a debtor involving residential property in which the debtor

resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor."

The motion does not say whether 11 U.S.C. § 362(l) applies here and, if it does, how it affects the applicability of 11 U.S.C. § 362(b)(22). The court is not satisfied that the movant has carried her burden of persuasion that 11 U.S.C. § 362(b)(22) applies.

Nevertheless, there is cause for the granting of relief from stay.

This is a liquidation proceeding and the debtor has no interest in the property as the movant purchased it pre-petition and obtained a judgment for possession of the property pre-petition. The court also notes that the trustee filed a report of no distribution on September 25, 2013.

The above 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) in order to permit the movant to obtain possession of the property in accordance with the outcome of the state court action. No monetary claim may be collected from the debtor. The movant is limited to recovering possession of the property as permitted by the state court.

No fees and costs are 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) is ordered waived.

3. 13-30604-A-7 TERRI HENDRICK — ORDER TO SHOW CAUSE 9-17-13 [18]

**Tentative Ruling:** The case will be dismissed.

The debtor filed Amended Schedules D and F on September 9, 2013, but did not pay the $30 filing fee. This is cause for dismissal. See 11 U.S.C. § 707(a)(2).

4. 10-47509-A-7 ELIZABETH MARTIN — MOTION TO SELL 9-4-13 [62]
HSM-4

**Tentative Ruling:** The motion will be granted.

The chapter 7 trustee requests authority to sell for $22,500 the estate's 25% remainder interest in a real property in Polson, Montana to the debtor.

In addition to paying $22,500 for the 25% interest in the property, the debtor has agreed to waive any exemption claim in the property, as additional consideration for the purchase. She has an unused wildcard exemption of $20,639.

The sale is as is, where is and without warranty. It is subject to any liens or encumbrances against the property.

The other 75% remainder interest in the property is held by the debtor's siblings. The debtor claims that her mother holds a life estate interest in

the property. The property has a value of between $547,500 and $602,250, subject to encumbrances totaling approximately $428,000, and leaving between $119,500 and $174,250 of equity in the property. This means that aside from the life estate interest in the property, the value of the estate's 25% remainder interest in the property is between approximately $29,875 and $43,562.50.

11 U.S.C. § 363(b) allows the trustee to sell property of the estate, other than in the ordinary course of business. The sale will generate some proceeds for distribution to creditors of the estate. 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.

5. 12-38816-A-7 RYAN/STEPHANI SMITH — MOTION TO COMPEL ABANDONMENT 9-22-13 [47]
KAR-3

**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.

The debtors seek an order compelling the trustee to abandon the estate's interest in their real property in Granite Bay, California. The property is over-encumbered.

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 debtors have produced evidence that the property has a value of $1.4 million, while its encumbrances total approximately $2.087 million, consisting of:

- outstanding property taxes in the approximate amount of $13,430,
- outstanding HOA dues in the approximate amount of $3,476,
- a first mortgage in favor of Select Portfolio Servicing in the approximate amount of approximately $1.592 million,
- a second mortgage in favor of Wells Fargo Bank in the approximate amount of $206,037, and
- a third mortgage held by Ada Smith in the approximate amount of $272,000.

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

6. 13-28318-A-7 WILLIS/VICKIE MARZOLF
BER-3
FINANCIAL CENTER C.U. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
9-6-13 [60]

**Tentative Ruling:** The motion will be dismissed as moot.

The movant, Financial Center Credit Union, seeks relief from the automatic stay as to a real property in Lodi, California (W. Elm Street).

The debtors oppose the motion, contending that their current on payments to the movant.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 (13 or 11) after dismissal under section 707(b), the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case. Section 362(c)(3)(B) allows any party in interest to file a motion requesting the continuation of the stay.

On December 31, 2012, the debtors filed a chapter 13 case (case no. 12-42207). But, the court dismissed that case on April 25, 2013 due to unreasonable delay that is prejudicial to creditors. The debtors filed the instant case on June 20, 2013. The chapter 13 case then was pending within one year of the filing of the instant case. The court has reviewed the docket of the instant case and no motions for continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) have been timely filed.

Hence, the motion will be dismissed as moot because the automatic stay in the instant case expired in its entirety as to the subject property on July 20, 2013, 30 days after the debtors filed the present case. See 11 U.S.C. § 362(c)(3)(A); see also Reswick v. Reswick (In re Reswick), 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011) (holding that when a debtor commences a second bankruptcy case within a year of the earlier case's dismissal, the automatic stay terminates *in its entirety* on the 30th day after the second petition date).

Nevertheless, the court will confirm that the automatic stay in the instant case expired in its entirety with respect to the subject property on July 20, 2013, 30 days after the debtors filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

7. 13-28318-A-7 WILLIS/VICKIE MARZOLF
SLF-5

OBJECTION TO
EXEMPTIONS
9-23-13 [85]

**Tentative Ruling:** Because less than 28 days' notice of the hearing was given by the trustee, this objection is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the debtor and any other parties in interest were not required to file a written response or opposition to the objection. 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 objection. Below is the court's tentative ruling, rendered on the assumption

that there will be no opposition to the objection. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The objection will be sustained.

The trustee objects to the debtors' exemptions in Schedule C because they are, once again, using both the regular and special exemptions under California law (Cal. Civ. Proc. Code §§ 703.010-703.150 and §§ 704.010-704.850, respectively).

Fed. R. Bankr. P. 4003(b)(1) provides that:

"[A] party in interest may file an objection to the list of property claimed as exempt within 30 days after the meeting of creditors held under § 341(a) is concluded or within 30 days after any amendment to the list or supplemental schedules is filed, whichever is later. The court may, for cause, extend the time for filing objections if, before the time to object expires, a party in interest files a request for an extension."

The objection is timely as it was filed on September 23, 2013, within 30 days of the last amendment of Schedule C, on August 26, 2013. Docket 43.

Turning to the merits of the objection, the debtors cannot "stack" their exemptions. This means that the debtors have to choose the set of exemptions they will be using, Cal. Civ. Proc. Code §§ 703.010-703.150 or §§ 704.010-704.850. See Cal. Civ. Proc. Code § 703.140(a); see e.g., In re Nygard, 55 B.R. 623, 624 (Bankr. E.D. Cal. 1985). The debtors cannot use some exemptions from one set of the statutes and some exemptions from the other set of the statutes.

The objection will be sustained because the last amendment of Schedule C lists exemptions under both Cal. Civ. Proc. Code §§ 703.010-703.150 and §§ 704.010-704.850. For instance, the debtor's interest in the real property in Lodi, California was exempted pursuant to Cal. Civ. Proc. Code § 703.140(b)(5), while their interest in jewelry was exempted pursuant to Cal. Civ. Proc. Code § 704.040. Docket 43. Given this, the objection will be sustained.

8. 13-28318-A-7 WILLIS/VICKIE MARZOLF — MOTION TO COMPEL TURNOVER 9-23-13 [88]
SLF-6

**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 debtor 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 trustee requests the court to direct the debtors to turn over to the estate their 1957 Chevrolet 210 vehicle, 17 firearms and their rental real property on W. Vine Street in Lodi, California.

The vehicle is unencumbered, has a scheduled value of $9,000, and it is subject to an exemption claim for only $2,585.

The firearms are unencumbered, have a scheduled value of $1,580 and are subject to an exemption claim for $1,580, but the trustee has determined that the value of the firearms is well in excess of their scheduled value.

The real property has a scheduled value of $180,000 and is subject to encumbrances totaling $109,167 and an exemption claim for $25,526.

11 U.S.C. § 541(a)(1) provides that property of the estate consists of "all legal or equitable interests of the debtor in property as of the commencement of the case." 11 U.S.C. § 542(a) requires parties holding property of the estate to turn over such property to the estate "and account for, such property or the value of such property."

11 U.S.C. § 542(a) extends beyond the present possession of estate property. It extends to all property in the possession, custody or control during the case. If a debtor demonstrates that he does not have possession of the estate property or its value at the time of the turnover motion, the trustee is entitled to a money judgment for the value of the estate property. Newman v. Schwartzer (In re Newman), NV-12-1439-JuKiD, *15-16 (B.A.P. 9th Cir. Febr. 4, 2013).

The debtors have refused to turn over the property to the trustee. Given this and given that there is equity in the property for the estate, the court will order turnover of the property as requested by the trustee. This includes turnover of the real property, as that property is not the debtors' residence.

The debtors have a duty to comply with requirements in the chapter 7 bankruptcy case, including their obligation to cooperate with and turn over assets to the trustee in the administration of estate assets, even if they are attempting to obtain an order converting the case to chapter 13. Unless and until the court enters an order of conversion to chapter 13, this case is still a chapter 7 case. The motion will be granted.

9. 09-42342-A-7 JAMES/KATHRYN BAGGARLY — MOTION TO EMPLOY
DNL-8 — 9-9-13 [102]

**Tentative Ruling:** The motion will be granted.

The trustee seeks to have the January 7, 2010 order approving the employment of Brown, White & Newhouse as special counsel for the estate corrected, in that the order provides only for lodestar, hourly compensation, while BWN was actually employed pursuant to a 20% contingency fee agreement. Docket 38.

Given the error in the January 7, 2010 order approving BWN's employment, the court will enter an order reflecting the correct terms of compensation for BWN. No other relief will be awarded on this motion.

10. 09-42342-A-7 JAMES/KATHRYN BAGGARLY
DNL-7

MOTION TO APPROVE COMPENSATION OF SPECIAL COUNSEL (FEES $9,000, EXP. $16,000)
7-29-13 [96]

**Tentative Ruling:** The motion will be granted in part and denied in part.

The hearing on this motion was continued from August 26, 2013. As the trustee has filed and the court has granted a motion for the correction of the order approving the employment of Brown, White & Newhouse, the court has amended the ruling on this motion.

Brown, White & Newhouse, special counsel for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $9,000 in fees (based on a 20% contingency fee arrangement) and $9,017.07 in post-petition expenses, for a total of $18,017.07. In addition, the movant asks the court to approve $22,204.63 in pre-petition expenses as an administrative claim under 11 U.S.C. § 503(b)(1). The expenses were incurred from January 18, 2008 through May 31, 2013. This case was filed on October 14, 2009. The court approved the movant's employment as the trustee's special counsel on January 7, 2010.

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, representing the estate in the litigation and settlement of the debtors' claims against Western Pacific Housing, Inc. and DR Horton, Inc.

Given that the court has granted the trustee's motion to correct the compensation terms of BWN in the order approving its employment, the court will approve the requested fees to the movant based on the 20% contingency fee arrangement.

The court will approve also the reimbursement of the post-petition expenses.

But, the court cannot approve reimbursement of the pre-petition expenses as an administrative claim under 11 U.S.C. § 503(b)(1).

11 U.S.C. § 503(b) provides that "after notice and a hearing, there shall be allowed administrative expenses, other than claims allowed under section 502(f) of this title, including- (1) (A) the actual, necessary costs and expenses of preserving the estate." This requires the claim to be (1) incurred post-petition, (2) be an actual and necessary expense, and (3) directly and substantially benefit the estate. In re Lazar, 207 B.R. 668, 674 (Bankr. C.D. Cal. 1997) (citing Gull Indus., Inc. v. John Mitchell, Inc. (In re Hanna), 168 B.R. 386, 388 (B.A.P. 9th Cir. 1994) and Burlington N. R.R. Co. v. Dant & Russell (In re Dant & Russell), 853 F.2d 700, 706 (9th Cir. 1988)).

The claim for administrative expenses cannot be incurred pre-petition as there could not have been a benefit to the estate at that time. There was no bankruptcy estate before the filing of the petition. The motion will be granted in part.

11. 11-42346-A-7 ERNEST BEZLEY
GMW-5
HAROLD JENNINGS VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
9-9-13 [189]

**Tentative Ruling:** The motion will be denied without prejudice.

The movant, Harold Jennings, seeks relief from the automatic stay as to a real property in Clements, California.

The debtor, his spouse, Jacqueline Bezley, and the trustee oppose the motion.

The court rejects the opposition raised by Mrs. Bezley as she has no standing to appear on this motion. Citing Local Bankruptcy Rule 9014-1(d)(4), she argues that she should have been served with the motion papers because she is someone "directly affected by the requested relief."

The court disagrees. The movant is seeking relief from the automatic stay. The automatic stay does not protect Mrs. Bezley, as she is only the debtor's non-filing spouse. There is no co-debtor stay in this case. The co-debtor stay applies only in chapter 13 proceedings. See 11 U.S.C. § 1301(a). This means that her interest in the property is not protected by the automatic stay in this case, meaning that she cannot have a reasonable expectation that she is protected by the stay as to which the movant is seeking relief. Mrs. Bezley has no standing to oppose this motion.

The court also notes that Mrs. Bezley's opposition to the motion is not supported by a declaration. Hence, to the extent her opposition may be construed to allege some basis for standing, none of the factual assertions relating to standing are supported by admissible evidence.

Turning to the merits of the motion, the movant has produced evidence that the property has a value of $950,000 and evidence that it is encumbered by claims totaling approximately $964,632, consisting of outstanding property taxes in the amount of $87,974, two mortgages held by the movant for $482,164 and $349,270, respectively, and a judgment lien held by Hoge, Fenton, Jones & Appel, Inc. in the amount of approximately $45,222. The movant is seeking relief from stay as to both of his mortgages pursuant to 11 U.S.C. § 362(d)(1) and (d)(2).

The court rejects the debtor's valuation of the property at $1.45 million. This valuation is based solely on the debtor's own opinion of value, as an owner of the property. On the other hand, the movant's evidence of value is based on expert evidence from an appraiser who prepared an appraisal report. Docket 191, Sutton Decl.; Docket 194.

Nevertheless, the court cannot grant the motion at this time as there is a disputed material factual issue over what is owed on the two loans held by the movant. The trustee has filed an adversary proceeding disputing the amounts owed on the loans to the movant. Adv. Proc. No. 13-2291. As this creates a disputed material issue of fact and this court cannot determine the validity, priority or extent of the movant's interest in the property on a motion, this court cannot determine the balances on the loans held by the movant in connection with this motion and cannot determine whether there is equity in the property or whether the movant's interest in the property is adequately protected. See Fed. R. Bankr. P. 7001(2).

In short, the movant has not carried his burden of persuasion that there is no

equity in the property or that his interest in the property is not adequately protected. 11 U.S.C. § 362(d)(1) and (d)(2). Accordingly, the court cannot grant this motion at this time. The motion will be denied without prejudice.

| | | | |
|---|---|---|---|
| 12. | 12-36347-A-7<br>MET-1 | ARNOLD THREETS AND TESSA BANUELOS-THREETS | MOTION TO COMPEL ABANDONMENT<br>9-2-13 [127] |

**Tentative Ruling:** The motion will be denied without prejudice.

The debtors are asking the court to compel abandonment of the real and personal property scheduled in Schedules A and B, including three real properties (including a residence and two rental properties), four financial accounts, household goods, clothing, jewelry, firearms, two term life insurance policies, unspecified retirement accounts, 8.2333% of their 2012 tax refund, a pending appeal of a Contra Costa County Superior Court action, a pending U.S. District Court action, unasserted causes of action "relative to Case No. C 08-03401 MHP, a 2013 Ford Flex, a 2012 Toyota Camry and two dogs.

The trustee and the City of Richmond oppose the motion. The debtors have filed a reply.

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 motion will be denied. The motion is vague, ambiguous and confusing about the assets as to which the debtors are seeking abandonment and lacks evidence for the abandonment of some assets, including the debtors' residence.

At first, the motion reads as if the debtors are seeking abandonment of all real and personal property assets in Schedules A and B.

"Debtors assert their interest in the real and personal property disclosed in their Schedules A and B is of inconsequential value to the bankruptcy estate." Docket 130 at 2.

"Debtors believe they have properly exempted all property of the estate, to the extent allowed under C.C.P. Section 703.140." Docket 127 at 2.

"Debtor prays: 1. For an Order Compelling the Trustee to abandon *said* property of the estate."

However, the motion then goes on to say that some assets should not be abandoned, including the state court appeal and the district court action.

Yet, in the reply, the debtors change their mind once again and seek abandonment of those assets, in the exempted amounts for each lawsuit, $1 exemption for the state court appeal and $6,652 exemption for the district court action.

Additionally, the motion clearly says that it is seeking abandonment of all three real properties, the residence and two rentals, as the debtors "believe" the rentals are foreclosed or being foreclosed.

In the reply, however, the debtors say that they are not seeking abandonment of

the rentals, noting that the trustee obtained an order abandoning one of the rentals and he is administering the other rental.

Further, there is no admissible evidence with the motion about the value to the estate of the three real properties. There is no evidence of value and encumbrances as to the residence. Also, the debtors' beliefs about the status of the rental properties are not admissible evidence. Testimony on information and belief is not admissible evidence as the declarant admits to not having personal knowledge as to the information in the statement. Fed. R. Evid. 602.

And, providing evidence with the reply to support the motion is impermissible as such evidence should have been produced with the motion. Parties in interest cannot file a response to the debtors' reply to their oppositions. As such, providing evidence with the reply to support the motion amounts to sandbagging.

More, the court does not allow abandonment of assets by lots, *e.g.*, all personal property assets listed in Schedule B or all personal property assets exempted in Schedule C. For the abandonment of every asset, the court expects the motion to outline the value for that asset, any encumbrances on the asset, any exemption claims against the asset, and, if applicable, any further explanation of why the asset is burdensome or of inconsequential value to the estate.

Finally, the court does not order the partial abandonment of assets that are being administered, to the extent they are exempted. Once the trustee completes the liquidation of a partially exempt asset, he would have to pay the exemption. But, the court will not order partial abandonment of a partially exempt asset that is being administered by the trustee. Given the foregoing, the motion will be denied. This ruling does not impact the merits of the debtors' exemption claims.

| | | | |
|---|---|---|---|
| 13. | 12-36347-A-7<br>PA-9 | ARNOLD THREETS AND TESSA BANUELOS-THREETS | MOTION TO ABANDON<br>8-9-13 [120] |

**Tentative Ruling:** The motion will be granted.

The chapter 7 trustee asks for the court to order the abandonment of the estate's interest in an appeal from Contra Costa County Superior before the First District California Court of Appeal. The dispute in that litigation is between Debtor Arnold Threets and the City of Richmond. The dispute arises from discrimination claim(s) asserted against the City by some persons, including Mr. Threets. A judgment was entered against Mr. Threets in favor of the City in the state court action, along with an order for Mr. Threets to pay the litigation costs of the City. It is the appeal from that judgment and order that the trustee wishes to abandon.

There is a separate federal district court action containing discrimination claims by Mr. Threets against the City, pending in the Northern District of California. The trustee is <u>not</u> seeking to abandon that action.

The debtors filed this case on September 7, 2012. The City filed a proof of claim against this estate for $458,551.33 on January 2, 2013. The bankruptcy trustee has been attempting to administer both the appeal and the federal court action.

The City objects to the abandonment of the appeal, arguing that it has some value to the estate. The City claims that it has offered an unspecified sum to the trustee to settle both the appeal and the federal court action. The City disputes that the estate's special counsel in the federal court action, Wilcoxen Callaham, does not represent Mr. Threets in the state court appeal. The City contends that the estate is represented by Mr. Callaham in the appeal as he has been negotiating with the City with respect to both the federal action and the appeal.

The trustee replies that he is not represented by Mr. Callaham in the appeal and reaffirms that he has not been able to locate counsel to represent him in it.

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

The court is satisfied that the trustee has demonstrated that he cannot find counsel to represent him in the appeal before the California Court of Appeal. This court did not approve Mr. Callaham's employment as counsel for the estate in the appeal. Mr. Callaham's employment was approved to represent the estate solely in the federal court action. Dockets 101, 116, 117.

Although Mr. Callaham may have discussed with the City the settlement of the appeal along with settlement of the federal action, this does not make him attorney of record for the estate in the appeal and before the California Court of Appeal.

More, the estate's discussions with the City to settle the appeal are not inconsistent with a conclusion that the appeal is burdensome to the estate, if the trustee has been unable to settle the appeal or find an attorney to represent him before the California Court of Appeal. Docket 122 ¶ 5. The court also notes that the last day to file an opening brief in the appeal was August 12, 2013. Docket 122 ¶ 6. This date has passed and the estate has obviously defaulted in the appeal.

In short, the trustee has met his burden of persuasion that the appeal is burdensome or of inconsequential value to the estate.

Finally, the City claims that "[s]hould the [t]rustee successfully abandon the appeal, that will reduce the value of the current settlement negotiations," as the City is willing to pay more to settle the appeal and the federal action than just the federal action. Docket 125 ¶ 9. But, this begs the question of why would the City want to settle an appeal on which the opposing party appellant has defaulted. The City does not answer this question. The court is not persuaded that the appeal is not of inconsequential value to the estate after the estate's default of not filing an opening brief.

The motion will be granted.

14. 13-27551-A-7 PATRICK LEAL — MOTION TO AVOID LIEN
TBK-1
VS. LEE FERGUSON, P.C. — 8-29-13 [15]

**Tentative Ruling:** The motion will be denied.

The debtor moves to avoid a nonpossessory, nonpurchase money security interest

consisting of an attorney's lien encumbering a real property in Klamath Falls, Oregon. The lien is in the amount of $4,817 and was recorded in Klamath County, Oregon on December 4, 2007. The lien is held by attorney Lee Ferguson, PC. The real property has been claimed as exempt in the amount of $1.00 pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in Amended Schedule C. Docket 12.

Turning to the merits of the motion, 11 U.S.C. § 522(f) provides that "(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled under subsection (b) of this section, if such lien is–

(A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523 (a)(5); or

(B) a nonpossessory, nonpurchase-money security interest in any–

(I) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(ii) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or

(iii) professionally prescribed health aids for the debtor or a dependent of the debtor.

The lien cannot be avoided under 11 U.S.C. § 522(f)(1)(A) as it is not a judicial lien. And, it cannot be avoided under 11 U.S.C. § 522(f)(1)(B) because the property as to which the avoidance is sought is not any of the property described in 11 U.S.C. § 522(f)(1)(B)(i)-(iii). The property as to which avoidance is sought is real property, whereas 11 U.S.C. § 522(f)(1)(B)(i) - (iii) enumerates only personal property.

The motion does not even say under what subsection of 11 U.S.C. § 522(f)(1) the debtor is seeking to have the lien avoided. Accordingly, the motion will be denied.

15. 13-27551-A-7 PATRICK LEAL — MOTION TO AVOID LIEN
TBK-2
VS. LEE FERGUSON, P.C. — 8-29-13 [20]

**Tentative Ruling:** The motion will be denied.

The debtor moves to avoid a nonpossessory, nonpurchase money security interest consisting of an attorney's lien encumbering a real property (three lots of land) in Bly, Oregon. The lien is in the amount of $4,817 and was recorded in Klamath County, Oregon on December 4, 2007. The lien is held by attorney Lee Ferguson, PC. The real property has been claimed as exempt in the amount of $9,643.99 pursuant to Cal. Civ. Proc. Code § 703.140(b)(5) in Amended Schedule C. Docket 12.

Turning to the merits of the motion, 11 U.S.C. § 522(f) provides that "(1) Notwithstanding any waiver of exemptions but subject to paragraph (3), the debtor may avoid the fixing of a lien on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would

have been entitled under subsection (b) of this section, if such lien is-

(A) a judicial lien, other than a judicial lien that secures a debt of a kind that is specified in section 523 (a)(5); or

(B) a nonpossessory, nonpurchase-money security interest in any-

(i) household furnishings, household goods, wearing apparel, appliances, books, animals, crops, musical instruments, or jewelry that are held primarily for the personal, family, or household use of the debtor or a dependent of the debtor;

(ii) implements, professional books, or tools, of the trade of the debtor or the trade of a dependent of the debtor; or

(iii) professionally prescribed health aids for the debtor or a dependent of the debtor.

The lien cannot be avoided under 11 U.S.C. § 522(f)(1)(A) as it is not a judicial lien. And, it cannot be avoided under 11 U.S.C. § 522(f)(1)(B) because the property as to which the avoidance is sought is not any of the property described in 11 U.S.C. § 522(f)(1)(B)(i)-(iii). The property as to which avoidance is sought is real property, whereas 11 U.S.C. § 522(f)(1)(B)(i) - (iii) enumerates only personal property.

The motion does not even say under what subsection of 11 U.S.C. § 522(f)(1) the debtor is seeking to have the lien avoided. Accordingly, the motion will be denied.

16. 13-21157-A-7 KEVIN/JENNIFER PERRINE — MOTION TO EMPLOY
KJH-3 — 9-13-13 [43]

**Tentative Ruling**: The motion will be denied without prejudice.

West Auctions, Inc. has filed its first and final motion for approval of compensation. The requested compensation consists of $1,995.78 in fees and $1,555 in expenses, for a total of $3,550.78. This motion is for a sale completed on June 27, 2013. The requested compensation is based on a 12% commission and reimbursement of expenses.

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 the sale of two trucks, machinery fixtures and supplies on June 27, 2013.

The trustee says that the court approved West's employment, as auctioneer for the trustee, on June 16, 2013.

The motion will be denied because the court did not approve West's employment on June 16, 2013.

The order the court entered on June 16, 2013 (Docket 33 - DCN KJH-1) was pursuant to the trustee's motion to approve West's employment and compensation as auctioneer for the estate (DCN KJH-1). Docket 22 & 33. In its June 3 ruling on the motion to employ and compensate, the court granted the motion to employ West but denied the request for compensation. Docket 31.

The rulings says that "[t]he chapter 7 trustee requests authority to employ and compensate West Auctions as auctioneer of the estate. West will assist the estate with the sale of two vehicles and machinery fixtures and supplies." The ruling makes it clear that "[t]he disposition of this motion does not encompass the sale of the property." Docket 31.

Yet, the order submitted by the trustee on her motion to employ and compensate West is an order solely allowing the sale of the property for which West was being employed. While the order says that the trustee may submit a motion for West's compensation, it does not provide for the approval of West's employment as auctioneer for the estate. Docket 33.

The court will not approve West's compensation until it enters an order approving West's employment.

But, the court cannot enter an order approving West's employment until the order on the motion for approval of its employment is vacated as that order solely approves the sale of the property - even though the court's ruling expressly stated that the court is not addressing the sale of the property. Dockets 31 & 33.

More, the court has no record of the trustee ever asking for the approval of the sale for which West was to be employed. The motion to employ and compensate West merely asked for an order "authorizing the employment of West to sell the Assets of the estate, and the compensation of West." Docket 22 at 4. The motion does not even mention 11 U.S.C. § 363(b). This motion will be denied without prejudice.

17. 11-34464-A-7 STUART SMITS — MOTION TO APPROVE COMPROMISE
TGM-10 — 9-17-13 [235]

**Tentative Ruling**: The motion will be granted.

The trustee requests approval of a settlement agreement between the estate and Elias Bardis, resolving the trustee's action against Mr. Bardis involving the following claims: an objection to a secured proof of claim for $772,587.73, turnover, and avoidable pre-petition transfers, consisting of the recording of abstracts of judgment, the filing of an UCC-1 financing statement, and the service of an order to appear for examination.

Under the terms of the compromise, Mr. Bardis will release any liens or encumbrances created by the avoidable transfers, on both real and personal property that the trustee would seek to sell or transfer for monetary consideration prior to the closure of this bankruptcy case. Mr. Bardis will receive nothing from the proceeds generated by the sale or transfer of any such properties. This aspect of the settlement will not apply to real property located in Sacramento County.

In addition, for purposes of dividend distribution, any claim of Mr. Bardis, including his proof of claim, will not be secured as to any property sold or transferred for monetary consideration - except for real property in Sacramento County, as provided above - but any such claim will remain secured as to any property not sold or transferred for monetary consideration during the pendency of this bankruptcy case. Mr. Bardis will continue to have security interest in property subject to the avoidable transfers if such property is not sold, transferred or abandoned prior to closure of this case. The trustee will

dismiss the pending avoidance litigation against Mr. Bardis.

On a motion by the trustee and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019. Approval of a compromise must be based upon considerations of fairness and equity. In re A & C Properties, 784 F.2d 1377, 1381 (9th Cir. 1986). The court must consider and balance four factors: 1) the probability of success in the litigation; 2) the difficulties, if any, to be encountered in the matter of collection; 3) the complexity of the litigation involved, and the expense, inconvenience, and delay necessarily attending it; and 4) the paramount interest of the creditors with a proper deference to their reasonable views. In re Woodson, 839 F.2d 610, 620 (9th Cir. 1988).

The court concludes that the Woodson factors balance in favor of approving the compromise. That is, given the removal of Mr. Bardis' liens on property the trustee would be seeking to administer for the benefit of creditors, given the unsecured status of Mr. Bardis' sizeable secured proof of claim for distribution purposes, and given the avoidance of the inherent costs, risks, delay and inconvenience of further litigation, the settlement is equitable and fair.

Therefore, the court concludes the compromise to be in the best interests of the creditors and the estate. The court may give weight to the opinions of the trustee, the parties, and their attorneys. In re Blair, 538 F.2d 849, 851 (9th Cir. 1976). Furthermore, the law favors compromise and not litigation for its own sake. Id. Accordingly, the motion will be granted.

18. 12-33565-A-7 MARK KOLODZIEJ — OBJECTION TO CLAIM
BHS-4
VS. MARIO DIAZ MDA CONSTRUCTION, INC. — 8-13-13 [33]

**Tentative Ruling:** The objection will be sustained in part.

The trustee is objecting to unsecured claim 2-1 held by Mario Diaz MDA Construction, Inc. The general unsecured portion of the claim is for $500,000 - for "Services Performed/Breach of Partnership Contract" - and the priority portion of the claim is for $11,725, for wages, salaries or commissions. The trustee asks for disallowance of claim 2-1 in its entirety.

Without regard to the basis cited by the trustee for the disallowance of the claim, the objection is seeking only the disallowance of claim 2-1, which has been superseded by claim 2-2. Hence, claim 2-1 will be disallowed solely because it has been superseded by claim 2-2, which was filed on the same date as claim 2-1, January 4, 2013. This objection makes no reference to claim 2-2. Thus, the court will sustain the objection solely as to claim 2-1. This ruling does not and cannot affect claim 2-2, as the objection makes no mention of it.

19. 13-25976-A-7 MICHAEL/ALESIA BARNES — MOTION TO AVOID JUDICIAL LIEN
GJS-3
VS. CHRYSLER FINANCIAL — 9-17-13 [26]

**Tentative Ruling:** The motion will be denied without prejudice.

The debtor is asking the court to avoid the judicial lien on his real property in Stockton, California, held by Chrysler Financial Services Americas L.L.C. for the sum of $24,402.29, based on a state court judgment entered on September 7, 2010.

However, the motion will be denied because there is no admissible evidence that there is a judicial lien held by Chrysler Financial Services Americas against the property. The attached abstract of judgment to the motion has not been recorded. And, any reference to a recordation of the abstract of judgment in the motion papers is inadmissible because it is based on the non-existent recorded abstract and it is also hearsay. Fed. R. Evid. 802; Docket 26 ¶ 6. Accordingly, the motion will be denied without prejudice.

20. 13-23380-A-7 DOUGLASS DUNN — MOTION TO AVOID JUDICIAL LIEN
DEF-3
VS. SEQUOIA CONCEPTS, INC. — 9-11-13 [38]

**Tentative Ruling:** The motion will be denied.

The debtor is asking the court to avoid the judicial lien of Sequoia Concepts, Inc. for the sum of $25,588.93, based on a state court judgment entered on January 23, 2007. The abstract of judgment was recorded with Amador County on June 4, 2007. That lien attached to the debtor's 50% interest in a residential real property in Sutter Creek, California. As of the petition date, the amount of the judgment was $28,835.12. See Schedule D.

The motion will be denied because the court already adjudicated this motion, granting it in part, on June 3, 2013. Docket 22. The June 3 ruling on this motion follows below.

"Tentative Ruling: The motion will be granted in part.

"A judgment was entered against the debtor in favor of Sequoia Concepts, Inc. for the sum of $25,588.93 on January 23, 2007. The abstract of judgment was recorded with Amador County on June 4, 2007. That lien attached to the debtor's 50% interest in a residential real property in Sutter Creek, California. As of the petition date, the amount of the judgment was $28,835.12. See Schedule D.

"The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $350,000 as of the date of the petition. The unavoidable liens total $172,742 on that same date, consisting of a first mortgage in favor of Citimortgage in the amount of $136,282 and a second mortgage in favor of Wells Fargo Bank in the amount of $36,460. This leaves $177,258 of equity in the property ($350,000 minus $172,742). As the debtor owns one-half interest in the property, he is entitled only to one-half interest in this equity, which is $88,629 ($177,258 divided by 2). The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730(a)(1) in the amount of $75,000 in Schedule C.

"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 $13,629 in equity to support the judicial lien ($88,629 of equity subject to exemption minus $75,000 exemption). Therefore, the fixing of this judicial lien impairs the debtor's exemption of the real property to the extent of $15,206.12 ($28,835.12 lien minus $13,629 in available equity for lien) and its fixing to the extent of $15,206.12 is avoided subject to 11 U.S.C. § 349(b)(1)(B)."

Docket 22.

This motion is identical to the motion this court heard on June 3, except that the debtor is now asserting a lower value for the subject real property, attempting to avoid the full amount of the judicial lien.

Given that the court has adjudicated this motion already, the court cannot adjudicate it once again, just because the debtor does not like the outcome of the motion. The court notes that counsel for the debtor appeared at the June 3 hearing on this motion, yet the minutes do not reflect that he disagreed with the court's ruling on the motion. Docket 22. There was no opposition to the motion and the debtor was free to voluntarily dismiss the motion at the June 3 hearing, before the court granted it in part. Instead, the debtor accepted the court's ruling and the record on the debtor's motion heard on June 3 is now closed. Docket 22.

The only way for this court to re-adjudicate this motion is for the debtor to submit an order on the court's June 3 ruling on this motion and then ask the court to reconsider that order. This is not a guarantee that the court will reconsider its order on the June 3 ruling, however. This motion will be denied.

21. 13-29781-A-7 ANTONIO/ALYCIA ANAYA — MOTION TO DISMISS
SDM-2 — 9-9-13 [17]

**Tentative Ruling:** The motion will be granted and the case will be dismissed as to Debtor Alycia Anaya only.

The debtors are asking the court to dismiss the case as to debtor Alycia Anaya because they are not married.

11 U.S.C. § 707(a) provides that "[t]he court may dismiss a case under this chapter only after notice and a hearing and only for cause."

Apparently, "[t]here was a miscommunication between [the debtors' counsel's] office and the Debtors; the Debtors are not legally married; Debtors have been divorced since 2008." Docket 17 at 1.

The fact that the debtors are not legally married is cause for dismissal of the case as to one of the debtors. Hence, the court will dismiss the case as to Debtor Alycia Anaya only. The motion will be granted.

22. 13-29593-A-7 DOMINGO GONZALES AND MARIA GONZALEZ — MOTION FOR RELIEF FROM AUTOMATIC STAY
ADR-1 — 9-4-13 [13]
WOODS INVESTMENTS, L.L.C. VS.

**Tentative Ruling:** The motion will be denied.

The movant, Woods Investments, L.L.C., seeks relief from the automatic stay as to a real property in Hughson, California. The movant purchased the property at a pre-petition foreclosure sale on February 19, 2013. This case was filed on July 22, 2013.

The motion will be denied because it contains inconsistent statements. On one hand, the motion says that the movant served the debtors with a notice to quit the property. Docket 16 at 4. On the other hand, the motion claims that the debtors "w[ere] not the previous owner of the property" and that the prior owners "remained in possession after the foreclosure and the sale of the home

to Movant." Docket 18 at 1; Docket 16 at 4. The court cannot reconcile the above statements and cannot determine when and how the debtors became involved in the movant's attempts to obtain possession of the property.

Additionally, the property is not listed anywhere in the schedules or statements of the debtors, they are not occupying the property as their address in this case (Sacramento, California) is different from the address of the property, and the movant admits that the debtors did not own the property prior to foreclosure and that it was the prior owners who stayed on the property after foreclosure. Given this, the court is not certain that the granting of relief from stay is necessary.

23. 13-28194-A-7 JOHN KING — MOTION TO AVOID JUDICIAL LIEN
BMW-2
VS. GRANT AND WEBER — 8-26-13 [16]

**Tentative Ruling:** The motion will be denied without prejudice.

The debtor is asking the court to avoid the judicial lien on his real property in Rancho Cordova, California, held by Grant & Weber (a corporation) for the sum of $7,877.50, based on a state court judgment entered on April 20, 2012.

However, the motion will be denied because there is no admissible evidence that there is a judicial lien held by Grant & Weber against the property. The copy of the abstract of judgment with the motion has not been recorded. And, any reference to a recordation of the abstract of judgment in the motion papers is inadmissible because it is based on the non-existent recorded abstract and it is also hearsay. Fed. R. Evid. 802; Docket 16 ¶ 7. Accordingly, the motion will be denied without prejudice.

24. 09-21797-A-7 CONNECT 2 WIRELESS INC. — OBJECTION TO CLAIM
SLC-5
VS. BRAGG CRANE — 9-6-13 [154]

**Tentative Ruling:** This objection to a proof of claim has been set for hearing on less than 44 but more than 30 days notice to the claimant, as required by Local Bankruptcy Rule 3007-1(b)(2). If the claimant appears at the hearing and offers opposition to the objection, 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 dispose of the matter based on the record as developed.

The objection will be sustained.

The trustee requests the court to reclassify priority proof of claim 28 for $20,895.52 of Bragg Crane from a priority to a general unsecured claim.

Priority status can be claimed only for claims outlined in 11 U.S.C. § 507(a). Here, none of the documentation attached to the proof of claim indicates that the proof of claim is entitled to priority status under 11 U.S.C. § 507(a). The proof of claim indicates that the basis for the claim is crane services provided in February 2008 and in November 2007. This case was filed on February 3, 2009. Hence, the claim will be classified as a general unsecured claim. The objection will be sustained.

25. 13-29197-A-7 ALTA RUBINO
PD-1
PACIFICA L52, L.L.C. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
9-3-13 [12]

**Tentative Ruling:** The motion will be dismissed as moot.

The movant, Pacifica L52, L.L.C., seeks relief from the automatic stay as to a real property in Stockton, California.

11 U.S.C. § 362(c)(3)(A) provides that if a single or joint case is filed by or against a debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding one-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 (13 or 11) after dismissal under section 707(b), the automatic stay with respect to a debt, property securing such debt, or any lease terminates on the 30th day after the filing of the new case. Section 362(c)(3)(B) allows any party in interest to file a motion requesting the continuation of the stay.

On February 18, 2011, the debtor filed a chapter 13 case (case no. 11-24161). But, the court dismissed that case on December 21, 2012 due to the debtor's failure to make plan payments. The debtor filed the instant case on July 11, 2013. The chapter 13 case then was pending within one year of the filing of the instant case. The court has reviewed the docket of the instant case and no motions for continuation of the automatic stay under 11 U.S.C. § 362(c)(3)(B) have been timely filed.

Hence, the motion will be dismissed as moot because the automatic stay in the instant case expired in its entirety as to the subject property on August 10, 2013, 30 days after the debtor filed the present case. See 11 U.S.C. § 362(c)(3)(A); see also Reswick v. Reswick (In re Reswick), 446 B.R. 362, 371-73 (B.A.P. 9th Cir. 2011) (holding that when a debtor commences a second bankruptcy case within a year of the earlier case's dismissal, the automatic stay terminates *in its entirety* on the 30th day after the second petition date).

Nevertheless, the court will confirm that the automatic stay in the instant case expired in its entirety with respect to the subject property on August 10, 2013, 30 days after the debtor filed the present case. See 11 U.S.C. §§ 362(c)(3)(A) and 362(j).

26. 13-20898-A-7 CORNEL/TINA VANCEA
KMR-3
FEDERAL NATIONAL MORTGAGE ASSN. VS.

MOTION FOR
RELIEF FROM AUTOMATIC STAY
9-3-13 [79]

**Tentative Ruling:** The parties have agreed to continue the hearing on this motion for 90 days. Dockets 92 & 94.

***THE FINAL RULINGS BEGIN HERE***

27. 13-30504-A-7 MANUEL/RHUENA BUENTIPO — MOTION TO COMPEL ABANDONMENT 8-20-13 [9]
CAH-1

**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 debtors request an order compelling the trustee to abandon the estate's interest in their food business, Heavenly Food Creations.

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.

According to the motion, the business assets include a checking bank account with a balance of $3,826.43, a savings bank account with a balance of $118.88, linens, dishes, silverware and flatware with a scheduled value of $500, a 2003 Toyota Sequoia vehicle with a scheduled value of $5,325.

The assets have been claimed fully exempt in Schedule C. Given the exemption claims, the court concludes that the business, to the extent of the assets listed in the motion, is of inconsequential value to the estate. The motion will be granted.

28. 13-30809-A-7 ZAKARIAH BASS — MOTION FOR RELIEF FROM AUTOMATIC STAY 9-5-13 [9]
TJP-1
CALIFORNIA REPUBLIC BANK VS.

**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, California Republic Bank, seeks relief from the automatic stay with respect to a 2013 Ford Mustang vehicle. The vehicle has a value of $18,925 and its secured claim is approximately $35,724.

The court concludes that there is no equity in the vehicle and no evidence exists that it is necessary to a reorganization or that the trustee can administer it for the benefit of the creditors. The court also notes that the trustee filed a report of no distribution on September 25, 2013. And, in the statement of intention, the debtor has indicated an intent to surrender the vehicle. The court also notes that the movant has possession of the vehicle.

Accordingly, the motion will be granted pursuant to 11 U.S.C. § 362(d)(2) to permit the movant to dispose of its collateral pursuant to applicable law and to use the proceeds from its disposition to satisfy its claim. No other relief is awarded.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is ordered waived due to the fact that the movant has possession of the vehicle and it is depreciating in value.

29. 13-27215-A-7 PAUL/DELSIE GRIFFIN — MOTION TO EXTEND DEADLINE 8-30-13 [25]
TAA-1

**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 debtor, 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 trustee requests a 64-day extension, from August 30, 2013 to November 2, 2013, of the deadline for filing complaints objecting to discharge pursuant to 11 U.S.C. § 727. The trustee requests the extension because he needs additional time to investigate the debtor's financial affairs.

Fed. R. Bankr. P. 4004(b) provides that the court may extend the deadline for filing discharge complaints for cause. The motion must be filed before the deadline expires. The deadline for filing such complaints was August 30, 2013. The motion was filed on August 30, 2013. Thus, the motion complies with the temporal requirements of the rule.

The trustee has discovered some discrepancies in the debtors' reporting of income in Schedule I and the statement of financial affairs. The trustee needs more time to determine "the relationship between Debtor's prior income from self-employment and his current income from employment." This is cause for granting the extension. The motion will be granted and the deadline for filing complaints pursuant to 11 U.S.C. § 727 by the trustee will be extended to November 2, 2013.

30. 13-28318-A-7 WILLIS/VICKIE MARZOLF — MOTION TO CONVERT CASE TO CHAPTER 13
PK-2 — 9-6-13 [55]

**Final Ruling:** The motion will be dismissed without prejudice.

The notice of hearing is not accurate. It states that written opposition need not be filed by the respondent. Instead, the notice advises the respondent to oppose the motion by appearing at the hearing and raising any opposition orally at the hearing. This is appropriate only for a motion set for hearing on less than 28 days of notice. See Local Bankruptcy Rule 9014-1(f)(2). However, because 28 days or more of notice of the hearing was given in this instance, Local Bankruptcy Rule 9014-1(f)(1) is applicable. It specifies that written opposition must be filed and served at least 14 days prior to the hearing. Local Bankruptcy Rule 9014-1(f)(1)(ii). The respondent was told not to file and serve written opposition even though this was necessary. Therefore, notice was materially deficient.

In short, if the movant gives 28 days or more of notice of the hearing, it does not have the option of pretending the motion has been set for hearing on less than 28 days of notice and dispensing with the court's requirement that written opposition be filed.

31. 12-24831-A-7 RANDEEP DEOL — MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY (FEES $35,943.25, EXP. $1,590.75)
HSM-9 — 9-6-13 [106]

**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 debtor, 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.

Hefner, Stark & Marois, attorney for the trustee, has filed its first interim motion for approval of compensation. The requested compensation consists of $35,943.25 in fees and $1,590.75 in expenses, for a total of $37,534. This motion covers the period from May 9, 2012 through July 31, 2013. The court approved the movant's employment as the trustee's attorney on June 1, 2012. In performing its services, the movant charged hourly rates of $295, $300 and $380.

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: (1) reviewing petition documents, (2) investigating the estate's interest in a Subway franchise, (3) assisting the trustee with the recovery of an interest in a promissory note, (4) prosecuting

a claim against the payor on the note, (5) conducting discovery to obtain information about the recovery and administration of estate assets, (6) prosecuting a denial of discharge claim, and (7) preparing and filing employment and compensation motions.

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.

32. 13-29132-A-7 RUBEN NAVARRO — MOTION FOR RELIEF FROM AUTOMATIC STAY
KAZ-2 — 9-11-13 [44]
FEDERAL HOME LOAN MORTGAGE CORP. VS.

**Final Ruling:** The motion will be dismissed as moot because the automatic stay expired when this case was dismissed on July 30, 2013, 21 days after it was filed on July 9. 11 U.S.C. § 362(c)(2)(B). The court notes that the motion does not ask for retroactive relief from stay and does not ask for relief under 11 U.S.C. § 362(d)(4), assuming no stay is found to exist. See Docket 44 at 3.

33. 13-27036-A-7 SHERYL PINTO — MOTION TO AVOID JUDICIAL LIEN
PJR-2 — 9-4-13 [19]
VS. DEPARTMENT OF HEALTH SERVICES

**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 respondent creditor 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.

A judgment was entered against the debtor in favor of Sandra Shewry, Director of the California Department of Health Services for the sum of $125,950.40 on July 11, 2006. As of May 29, 2012, the creditor claims that the debtor owes $206,481.89 on the judgment. The abstract of judgment was recorded with Sacramento County on September 25, 2006. That lien attached to the debtor's residential real property located in Sacramento, California.

The motion will be granted pursuant to 11 U.S.C. § 522(f)(1)(A). Pursuant to the debtor's Schedule A, the subject real property has an approximate value of $156,200 as of the date of the petition. The unavoidable liens total $25,739 on that same date, consisting of a mortgage in favor of Golden One Credit Union. The debtor claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $175,000 in Schedule C.

Cal. Civ. Proc. Code § 704.730 provides that:

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

(1) Seventy-five thousand dollars ($75,000) unless the judgment debtor or spouse of the judgment debtor who resides in the homestead is a person described in paragraph (2) or (3).

(2) One hundred thousand dollars ($100,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead a member of a family unit, and there is at least one member of the family unit who owns no interest in the homestead or whose only interest in the homestead is a community property interest with the judgment debtor.

(3) One hundred seventy-five thousand dollars ($175,000) if the judgment debtor or spouse of the judgment debtor who resides in the homestead is at the time of the attempted sale of the homestead any one of the following:

(A) A person 65 years of age or older.

(B) A person physically or mentally disabled who as a result of that disability is unable to engage in substantial gainful employment. There is a rebuttable presumption affecting the burden of proof that a person receiving disability insurance benefit payments under Title II or supplemental security income payments under Title XVI of the federal Social Security Act satisfies the requirements of this paragraph as to his or her inability to engage in substantial gainful employment.

(C) A person 55 years of age or older with a gross annual income of not more than twenty-five thousand dollars ($25,000) or, if the judgment debtor is married, a gross annual income, including the gross annual income of the judgment debtor's spouse, of not more than thirty-five thousand dollars ($35,000) and the sale is an involuntary sale."

The debtor was 66 years old when this petition was filed on May 23, 2013.

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 subject to 11 U.S.C. § 349(b)(1)(B).

34. 13-26742-A-7 MARILYN BROPHY — MOTION FOR RELIEF FROM AUTOMATIC STAY
RCO-1 — 8-29-13 [20]
JPMORGAN CHASE BANK, N.A. VS.

**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 and dismissed as moot in part.

The movant, JPMorgan Chase Bank, seeks relief from the automatic stay as to a real property in Woodland, California.

Given the entry of the debtor's discharge on September 4, 2013, 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 property has a value of $303,000 and it is encumbered by claims totaling approximately $361,111. The movant's deed is the only encumbrance against the property.

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. The court also notes that the trustee filed a report of no distribution on June 28, 2013.

Thus, the motion will be granted as to the estate 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 court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

35. 13-26551-A-7 MICHAEL HOLT — MOTION TO EXTEND TIME
SLF-11 — 9-9-13 [115]

**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 debtor, 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 trustee moves for a 30-day extension, from September 9, 2013 to October 9, 2013, of the time to assume or reject the debtor's executory contracts, as the trustee needs additional time to review and assess the debtor's executory

contracts.

11 U.S.C. § 365(d)(1) provides that "In a case under chapter 7 of this title, if the trustee does not assume or reject an executory contract or unexpired lease of residential real property or of personal property of the debtor within 60 days after the order for relief, or within such additional time as the court, for cause, within such 60-day period, fixes, then such contract or lease is deemed rejected."

The Ninth Circuit's interpretation of the language "or within such additional time as the court, for cause, within such 60-day period, fixes," is that "the cause must arise within 60 days (and implicitly the debtor must file its motion to show cause within that period) [and] there is no express limit on when the bankruptcy court must hear and decide the motion." Southwest Aircraft Services, Inc. v. City of Long Beach (In re Southwest Aircraft Services, Inc.), 831 F.2d 848, 850 (9th Cir. 1987) (addressing the identical language in pre-BAPCPA 11 U.S.C. § 365(d)(4)); see also Glimidakis v. Any Mountain, Ltd (In re Any Mountain, Ltd), Case Nos. NC-06-1006-JBS, 04-12989, 2006 WL 6810944 at *3-4 (B.A.P. 9th Cir. Nov. 3, 2006) (citing Southwest with approval).

"Under the section, the court's ability to extend the 60-day period is limited by a clause which includes three successive terms: 'for cause,' 'within such 60-day period,' and 'fixes.' It is not entirely clear whether the second term-'within such 60-day period'-modifies the term that precedes it or the term that follows it. If we read it as modifying 'fixes', then a bankruptcy court would not under the literal words of the statute have the authority to grant a timely motion to extend after the sixtieth day. That is the interpretation advanced by Long Beach, as well as by some bankruptcy courts in this and other cases. See In re House of Deals of Broward, Inc., 67 B.R. 23, 24 (Bankr. E.D.N.Y. 1986); In re Coastal Indus., Inc., 58 B.R. 48, 49 (Bankr. D.N.J. 1986); In re Taynton Freight Sys., Inc., 55 B.R. 668, 671 (Bankr. M.D.Pa. 1985). If, however, the 60-day term modifies 'for cause,' then while the cause must arise within 60 days (and implicitly the debtor must file its motion to show cause within that period), there is no express limit on when the bankruptcy court must hear and decide the motion. This more liberal reading of the statute would allow the bankruptcy courts to operate with greater freedom and flexibility. It is the one we adopt."

This petition was filed on May 10, 2013. The last day of the deadline under 11 U.S.C. § 365(d)(1) expired on September 9, 2013, pursuant to a prior extension of that deadline in an order entered on August 12, 2013. Docket 97. As this motion was filed on September 9, 2013, it is timely under 11 U.S.C. § 365(d)(1).

The trustee needs additional time to assess the estate's interest in the executory contracts, especially the contracts pertaining to the ASM and SVH entities. This is cause for the granting of the requested extension. The deadline will be extended to October 9, 2013. The motion will be granted.

36. 13-23459-A-7 EVANGELINA AGUILAR — MOTION TO AVOID JUDICIAL LIEN
MMG-6
VS. CALVARY SPV I, L.L.C. — 9-18-13 [79]

**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 motion was served solely on the Winn Law Group, counsel for the respondent creditor Calvary SPV I, L.L.C. Docket 84. But, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

37. 13-23459-A-7 EVANGELINA AGUILAR — AMENDED MOTION TO AVOID JUDICIAL LIEN
MMG-7
VS. MIDLAND FUNDING, L.L.C. — 9-19-13 [85]

**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 motion was served solely on the Brachfeld Law Firm, counsel for the respondent creditor Midland Funding, L.L.C. Docket 90. But, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).

38. 12-34874-A-7 MARCUS PEASE — MOTION FOR RELIEF FROM AUTOMATIC STAY
PD-1
U.S. BANK, N.A. VS. — 8-27-13 [32]

**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 and dismissed as moot in part.

The movant, U.S. Bank, seeks relief from the automatic stay as to a real property in Fairfield, California.

Given the entry of the debtor's discharge on December 3, 2012, 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 property has a value of $574,000 and it is encumbered by claims totaling approximately at least $781,242. The movant's deed is in first priority position and secures a claim

of approximately $648,354.

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.

Thus, the motion will be granted as to the estate 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 court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

39. 13-28180-A-7 RONALD/KELLY WATERLYN — MOTION FOR RELIEF FROM AUTOMATIC STAY
PPR-1
BANK OF NEW YORK MELLON VS. — 8-29-13 [13]

**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, The Bank of New York Mellon, seeks relief from the automatic stay as to a real property in Lincoln, California. The property has a value of $284,200 and it is encumbered by claims totaling approximately $487,028. The movant's deed is in first priority position and secures a claim of approximately $436,145.

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. The court also notes that the trustee filed a report of no distribution on August 8, 2013.

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 court determines that this bankruptcy proceeding has been finalized for purposes of Cal. Civil Code § 2923.5 and the enforcement of the note and deed of trust described in the motion against the subject real property. Further, upon entry of the order granting relief from the automatic stay, the movant and its successors, assigns, principals, and agents shall comply with Cal. Civil Code § 2923.52 et seq., the California Foreclosure Prevention Act, to the extent it is otherwise applicable.

Because the movant has not established that the value of its collateral exceeds the amount of its secured claim, the court awards no fees and costs in connection with the movant's secured claim as a result of the filing and prosecution of this motion. 11 U.S.C. § 506(b).

The 14-day stay of Fed. R. Bankr. P. 4001(a)(3) is not waived. That period, however, shall run concurrently with the 7-day period specified in Cal. Civ. Code § 2924g(d) to the extent section 2924g(d) is applicable to orders terminating the automatic stay.

| | | | |
|---|---|---|---|
| 40. | 12-24482-A-7<br>BHS-2 | ISAO/JOYCE SANO | MOTION TO APPROVE COMPENSATION OF TRUSTEE'S ATTORNEY (FEES $3,292.50, EXP. $34.98)<br>9-9-13 [21] |

**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 debtor, 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.

Law Office of Barry Spitzer, attorney for the trustee, has filed its first and final motion for approval of compensation. The requested compensation consists of $2,892.50 in fees and $34.98 in expenses, for a total of $2,927.48, plus up to $400 in preparing this motion and responding to oppositions to the motion. This motion covers the period from October 10, 2012 through September 9, 2013. The court approved the movant's employment as the trustee's attorney on November 14, 2012. In performing its services, the movant charged an hourly rate of $325.

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: (1) reviewing and analyzing petition documents, (2) communicating with the trustee about the recovery of assets, (3) assisting the trustee with the recovery of nonexempt interest in probate assets, and (4)

preparing and filing employment and compensation motions.

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.

To the extent applicable, the movant shall deduct from the allowed compensation any fees or costs that have been estimated but not incurred.

41. 09-21797-A-7 CONNECT 2 WIRELESS INC. MOTION TO
SLC-6 APPROVE COMPENSATION OF ACCOUNTANT
(FEES $5,035.50)
9-6-13 [158]

**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 debtor, 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.

Gonzales & Sisto, accountant for the estate, has filed its first and final motion for approval of compensation. The requested compensation consists of $5,035.50 in fees and $0.00 in expenses. This motion covers the period from March 21, 2010 through June 30, 2013. The court approved the movant's employment as the estate's accountant on March 21, 2010. In performing its services, the movant charged hourly rates of $80, $155, $180, $240, $275, and $300.

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 preparing payroll returns, W-2s for employees, and estate tax returns.

The court concludes that the compensation is for actual and necessary services rendered in the administration of this estate. The compensation will be approved.

42. 10-46597-A-7 ROBERT/REBECCA WHITE MOTION TO
NSN-1 AVOID JUDICIAL LIEN
VS. VION HOLDING, L.L.C. 9-23-13 [28]

**Final Ruling:** The motion will be dismissed without prejudice as the respondent creditor, Vion Holding, L.L.C. has not been served with the motion papers. And while the debtor served the creditor's attorney, unless the attorney agreed to accept service, service was improper. See, e.g., Beneficial California, Inc. v. Villar (In re Villar), 317 B.R. 88, 92-94 (B.A.P. 9th Cir. 2004).