

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

October 11, 2022 at 1:30 p.m.

1. [21-24204](#)-C-13 MARIA DEL SOCORRO ORTIZ MOTION TO SELL
[PGM](#)-2 Peter Macaluso 9-13-22 [[65](#)]

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 28 days' notice was provided. Dkt. 69.

The Motion to Sell is Granted.

Debtor, Maria del Socorro Ortiz filed this Motion pursuant to 11 U.S.C. §§ 363 and 1303 seeking to sell property commonly known as 7566 Phoenix Park Drive, Sacramento, California ("Property").

The proposed purchaser of the Property is Gabriel Catapang, and the proposed purchase price is \$230,000. The debtor proposes that the net proceeds from the sale - except for \$5,000 to be distributed to debtor to cover moving and storage expenses - be held by the Chapter 13 Trustee to be used to re-invest in a principal residence.

CHAPTER 13 TRUSTEE'S RESPONSE

The Chapter 13 Trustee does not oppose the motion except to the extent that it requests the Trustee to hold the net proceeds of the sale. The Trustee suggests the funds be held in Debtor's Counsel's client trust account instead.

DEBTOR'S REPLY

Debtor's counsel replied he has no issue of holding the exempt proceeds if that is the Court's order. Debtor further requests that the application of dismissal of the case be continued until November 10 to allow time for the sale to occur at which time the delinquency will be cured.

DISCUSSION

At the time of the hearing, the court announced the proposed sale and requested that all other persons interested in submitting overbids present them in open court. At the hearing, the following overbids were

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presented in open court: ~~XXXXXXXXXXXXXXXXXX~~.

Based on the evidence before the court, the court determines that the proposed sale is in the best interest of the Estate because the debtor proposes to purchase a new primary residence, modify the plan and pay her creditors to the best of her ability.

Broker's Commission

Movant has estimated that a 5 percent broker's commission from the sale of the Property will equal approximately \$11,500.00. As part of the sale in the best interest of the Estate, the court permits Movant to pay the broker an amount not more than 5 percent commission.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 6004(h) stays an order granting a motion to sell for fourteen days after the order is entered, unless the court orders otherwise.

Movant has pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 6004(h), and this part of the requested relief is granted.

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

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

The Motion to Sell Property filed by Maria del Socorro Ortiz ("Movant"), having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted. The debtor's counsel shall prepare an appropriate order granting the Motion, transmit the proposed order to the Chapter 13 trustee for approval as to form, and if so approved submit the proposed order to the court.

IT IS FURTHER ORDERED that Movant is authorized to pay a real estate broker's commission in an amount not more than 5 percent of the actual purchase price upon consummation of the sale.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 6004(h) is waived for cause.

2. [21-20009](#)-C-13 CYNTHIA ARIETA
[PGM](#)-5 Peter Macaluso

MOTION FOR COMPENSATION FOR
PETER G. MACALUSO, DEBTORS
ATTORNEY(S)
9-6-22 [[105](#)]

Final Ruling: No appearance at the October 11, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. 21 days notice is required if greater than \$1,000. FRBP 2002(a)(6). The Proof of Service shows that 35 days' notice was provided. Dckt. 108.

The court has reviewed the motion and all related documents. The court has also reviewed and takes judicial notice of the docket. Fed. R. Evid. 201(c)(1). The court has determined that oral argument is not necessary and will not assist in the decision-making process. Local Bankr. R. 1001-1(f), 9014-1(h). The motion will therefore be decided on the papers.

The Motion for Allowance of Professional Fees is Granted.

Counsel for the debtor filed this Motion seeking additional compensation, beyond the fixed fee approved in connection with plan confirmation pursuant to Local Bankruptcy Rule 2016-1(c), for substantial and unanticipated work performed.

Fees are requested for the period April 28, 2022, through September 6, 2022. The order of the court approving the substitution of attorney was entered on July 11, 2022. Dkt. 85. The movant requests fees in the amount of \$2,685.00 and costs in the amount of \$0.

DISCUSSION

The unique facts surrounding the case, including the substitution into the case and having the 1328 requirement waived, preparing and filing the notice of death of debtor, vacating the dismissal, and preparing and filing the motion to sell, raise substantial and unanticipated work for the benefit of the Estate, Debtor, and parties in interest. The court finds that the hourly rates are reasonable and that Applicant effectively used appropriate rates for the services provided. The request for additional fees in the amount of \$2,685.00 are approved pursuant to 11 U.S.C. § 330 and authorized to be paid by the Chapter 13 Trustee from the available funds of the Plan in a manner consistent with the order of distribution in a Chapter 13 case under the confirmed Plan.

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

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

The Motion for Allowance of Fees and Expenses filed

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by Peter G. Macaluso ("Applicant"), Attorney having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that Applicant is allowed the following fees and expenses as a professional of the Estate:

Applicant, a professional employed by the Chapter 13 debtor, Cynthia Lynn Arieta,

Fees in the amount of \$2,685.00,

as the final allowance of fees and expenses pursuant to 11 U.S.C. § 330 as counsel for Debtor.

IT IS FURTHER ORDERED that the Chapter 13 trustee is authorized to pay the fees allowed by this Order from the available Plan funds in a manner consistent with the order of distribution in a Chapter 13 case.

Final Ruling: No appearance at the October 11, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 48 days' notice was provided. Dkt. 43.

The plan is not confirmable and the objection is not one that may be resolved in the confirmation order. The court has also determined that oral argument is not necessary and will not assist in the decision-making process or resolution of the motion. Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The Motion to Confirm is denied.

The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 42) filed on August 24, 2022.

The Chapter 13 Trustee filed an Opposition (Dkt. 47) on September 21, 2022, opposing confirmation on the following grounds:

1. Debtor's plan is not feasible because it does not list or provide for the secured claim of Wheels Financial Group (Claim 13-1);

2. The plan would take 82 months, rather than the sixty months proposed, to pay the class 2(a) claim of Global Lending Services;

3. The plan provides for an average monthly payment of \$1,477.12 rather than the \$1,551 that is necessary to make the plan feasible;

4. Payments to creditors Global Lending Flagship Credit Acceptance are delinquent in the amounts of \$2,228.85 and \$3,316.85, respectively;

5. Debtor has not made her best efforts because the debtor has not provided the moving expenses or security deposit receipts that she says was incurred and caused the non-payment of plan payments through August 2022.

DISCUSSION

The debtor is delinquent in plan payments. Declaration, Dkt. 48. Delinquency indicates that the plan is not feasible and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

The plan at Section 3.02 provides that Creditor's Proof of Claim, *and not the plan*, determines the amount and classification of a claim.

Notwithstanding whether the plan provides for claim 13-1 as the trustee argues, the debtor has not carried his burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

The plan mathematically requires a payment of \$1,551 per month, which is greater than the proposed \$1,477.12 payment.

The debtor has not demonstrated the plan is feasible because the plan terms require a higher payment than what is proposed. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

Upon review of the record, the court finds the plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Motion is denied, and the plan is not confirmed.

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

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

The Motion to Confirm filed by the debtor, Joanne Aspiras, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied, and the plan is not confirmed.

4. [22-20511](#)-C-13 JOANNE ASPIRAS
[RDG](#)-2 Peter Cianchetta

CONTINUED MOTION TO DISMISS
CASE
8-10-22 [[35](#)]

Final Ruling: No appearance at the October 11, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 15 days' notice was provided. Dkt. 38.

The Motion to Dismiss is conditionally denied.

The Chapter 13 Trustee filed this Motion To Dismiss arguing that cause for dismissal exists because the debtor has not filed an amended plan since the court denied confirmation of the Chapter 13 plan on May 24, 2022.

At the prior hearing on August 25, 2022 the matter was continued because counsel for the debtor represented a new plan had been filed. A new plan has been filed along with a motion to confirm in Item 3 on the calendar. Confirmation of the new plan has been denied.

The Motion also argues debtor is \$6,853.56 delinquent in plan payments, which is supported by declaration. Dkt. 37. And because confirmation of the plan at Item 3 is denied, there is no plan in which the delinquency will be cured.

The debtor shall have until October 18, 2022, to either become current or file, set, and serve an amended plan and motion to confirm it otherwise this case will be dismissed.

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

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

The Motion to Dismiss the Chapter 13
case filed by the Chapter 13 Trustee, Russell
Greer, having been presented to the court, and
upon review of the pleadings, evidence,
arguments of counsel, and good cause
appearing,

IT IS ORDERED that the Motion to
Dismiss is conditionally denied and the debtor
shall be current or file, set, and serve an
amended plan and motion to confirm it by
October 18, 2022, or the case will dismiss.

5. [22-21112](#)-C-13 REECE/RODINA VENTURA
[NLG](#)-1 Peter Macaluso

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION TO
CONFIRM TERMINATION OR ABSENCE
OF STAY , MOTION FOR RELIEF
FROM CO-DEBTOR STAY
9-15-22 [[46](#)]

WELLS FARGO BANK, N.A. VS.

Final Ruling: No appearance at the October 11, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that only 26 days' notice was provided. Dkt. 51.

Nevertheless, the court has reviewed the motion and all related documents. The court has also reviewed and takes judicial notice of the docket. Fed. R. Evid. 201(c)(1). The court has determined that oral argument is not necessary and will not assist in the decision-making process or resolution of the motion. Local Bankr. R. 1001-1(f), 9014-1(h). Because the motion is moot, the motion will therefore be decided on the papers despite the notice issue.

**The Motion for Relief from the Automatic Stay is Denied
Without Prejudice as Moot.**

Wells Fargo Bank N.A., as Trustee for, Carrington Mortgage Loan Trust, Series 2006-FRE1 Asset Backed Pass-Trough Certificates ("Movant") filed this Motion seeking relief from the automatic stay as to the debtors' real property located at 340 Washington Avenue, Dumont, New Jersey (the "Property"). Movant asserts that the Property was property of the prior Chapter 7 case, Case No. 19-22653.

Debtor's, Rodina Cordero Ventura's, interest in the Property was sold in the debtor's prior bankruptcy case. Case 19-22653, dkt. 327 & 328.

The applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 541(a)(1). That section provides:

(a) The commencement of a case under section 301, 302, or 303 of this title creates an estate. Such estate is comprised of all of the following property, wherever located and by whomever held:

(1) Except as provided in subsections (b) and (c)(2) of this section, all legal or equitable interests of the debtor in property at the commencement of the case.

11 U.S.C. § 541(a)(1).

As of the commencement of this case, the debtor did not have any legal or equitable interest in the Property. In order for relief from the

stay to be granted the Property would need to be part of the estate. See 11 U.S.C. § 362 (a)(3). Therefore, since the property is not part of the estate the motion is moot.

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

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

The Motion for Relief from the Automatic Stay filed by Wells Fargo Bank N.A., as Trustee for, Carrington Mortgage Loan Trust, Series 2006-FRE1 Asset Backed Pass-Trough Certificates ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied without prejudice as moot.

6. [20-24730](#)-C-13 BETTY PARADEE
[APN-1](#) Michael Benavides

MOTION FOR RELIEF FROM
AUTOMATIC STAY
8-30-22 [[32](#)]

SPECIALIZED LOAN SERVICING
LLC VS.

Final Ruling: No appearance at the October 11, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 42 days' notice was provided. Dkt. 37.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion for Relief from the Automatic Stay is Granted.

Specialized Loan Servicing LLC ("Movant") filed this Motion seeking relief from the automatic stay as to the debtor's real property located at 415 Marlin Spike Way, Sacramento, California (the "Property").

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtors is delinquent 7 postpetition and 1 prepetition payments. Declaration, Dkt. 35.

DISCUSSION

Upon review of the record, the court finds cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtor is delinquent 7 postpetition and 1 prepetition payments.

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

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

The Motion for Relief from the Automatic Stay filed by Specialized Loan Servicing LLC ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents,

representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed that is recorded against the real property commonly known as 415 Marlin Spike Way, Sacramento, California, ("Property") to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale to obtain possession of the Property.

No other or additional relief is granted.

Final Ruling: No appearance at the October 11, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 61 days' notice was provided. Dkt. 51.

The plan is not confirmable and the objection is not one that may be resolved in the confirmation order. The court has also determined that oral argument is not necessary and will not assist in the decision-making process or resolution of the motion. Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The Motion to Confirm is Denied.

The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 50) filed on August 11, 2022.

OPPOSITION

Creditor, Santander Consumer USA Inc. filed an Opposition (Dkt. 52) on August 19, 2022, opposing confirmation on the following grounds:

1. The plan incorrectly classifies creditor's claim as a secure claim that matures after completion of the plan and incorrectly lists the monthly payment as \$0.00;
2. The plan fails to provide for creditor's full amount of pre-petition arrears as stated in creditor's proof of claim;
3. The plan does not require creditor to release its lien upon completion of plan unless the debt is paid in full because there is a non-filing co-debtor on the contract and title to the vehicle.

CHAPTER 13 TRUSTEE'S OPPOSITION

1. The debtor is delinquent in plan payments in the amount of \$941.60;
2. The debtor has not filed the Attachment to Schedule I that provides for debtor's business income and expenses;
3. Debtor has not provided his 2021 tax returns;
4. Plan is not feasible because the plan provides for an average monthly payment of \$4,891.43 rather than the \$5,288.00 that is

required to be feasible;

5. Plan classifies Santander as a class 1 creditor but fails to indicate the amount of arrears, interest rate on arrears, arrearage dividend or post-petition payment to be paid to creditor;

6. The plan incorrectly states the attorney fees Rights and Responsibilities and services included in the No Look Fee agreement;

7. Debtor's schedules are inconsistent as to the debtor's household size.

DISCUSSION

The debtor is \$941.60 delinquent in plan payments. Declaration, Dkt. 60. Delinquency indicates that the plan is not feasible and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

The plan mathematically requires a payment of \$5,288.00 per month, which is greater than the proposed \$4,891.43 payment. The debtor has not demonstrated the plan is feasible because the plan terms require a higher payment than what is proposed. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

The plan at Section 3.02 provides that Creditor's Proof of Claim, *and not the plan*, determines the amount and classification of a claim.

Notwithstanding whether the plan provides for the prepetition arrearage as Creditor argues, the debtor has not carried his burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

The debtor has not filed all required tax returns. 11 U.S.C. §§ 1308, 1325(a)(9). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The debtor has not filed all business documents including the Attachment to Schedule I. 11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3), 1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1) & (a)(6).

Upon review of the record, the court finds the plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Motion is denied, and the plan is not confirmed.

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

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

The Motion to Confirm filed by the debtor, Vasilios Tsigaris, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and

good cause appearing,

IT IS ORDERED that the Motion is denied, and the plan is not confirmed.

8. [22-21446](#)-C-13 DWAYNE/ROSEMARY WRIGHT OBJECTION TO CLAIM OF BANK OF
[RDG](#)-1 Mikalah Liviakis THE WEST, CLAIM NUMBER 28
9-6-22 [[23](#)]

Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b) (2) procedure which requires 30 days' notice. The Proof of Service shows that 35 days' notice was provided. Dkt. 25.

The Objection to Proof of Claim is sustained, and the claim is disallowed in its entirety.

The Chapter 13 trustee filed this Objection arguing that Proof of Claim, No. 28-1, filed by Bank of the West was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is August 16, 2022. Notice of Bankruptcy Filing and Deadlines, Dkt. 14. The Proof of Claim subject to this Objection was filed August 24, 2022.

Based on the evidence before the court, the court finds the creditor's claim was filed untimely. The Objection to the Proof of Claim is sustained, and the claim is disallowed in its entirety.

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

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

The Objection to Claim filed in this case by the Chapter 13 trustee, Russell D. Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 28-1 of Bank of the West is sustained, and the claim is disallowed in its entirety.

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 45 days' notice was provided. Dkt. 83.

The Motion to Confirm is xxxxxxxx

The debtor filed this Motion seeking to confirm the Modified Chapter 13 Plan (Dkt. 78) filed on July 11, 2022.

The Chapter 13 Trustee filed an Opposition (Dkt. 84) on August 4, 2022, opposing confirmation on the following grounds:

1. The debtor is delinquent \$2,700 in plan payments; and
2. The plan is not feasible because it does not provide for the correct amount of postpetition arrears.

At the prior hearing the Trustee represented that although the debtor has made a partial payment, the debtor is still delinquent in plan payments. The motion was continued to allow the debtor to get current in plan payments, otherwise the motion will be denied.

DISCUSSION

At the hearing xxxxxxxx

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

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

The Motion to Confirm filed by the debtor, Tema Kay Robinson, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is xxxxxxxx

Final Ruling: No appearance at the October 11, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 48 days' notice was provided. Dkt. 45.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Confirm is granted.

The debtor filed this Motion seeking to confirm the Amended Chapter 13 Plan (Dkt. 41) filed on August 24, 2022.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Motion is granted, and the plan is confirmed.

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

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

The Motion to Confirm filed by the debtor, Elizabeth Ann Andrade, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is granted, the debtor's Amended Chapter 13 Plan (Dkt. 41) meets the requirements of 11 U.S.C. §§ 1322 and 1325(a), and the plan is confirmed. Counsel for the debtor shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.

11. [22-21870](#)-C-13 JIMMY SUJANTO
[RDG](#)-1 Arete Kostopoulos

OBJECTION TO CONFIRMATION OF
PLAN BY RUSSELL D. GREER
9-21-22 [[14](#)]

Final Ruling: No appearance at the October 11, 2022 hearing is required.

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 20 days' notice was provided. Dkt. 17.

The plan is not confirmable and the objection is not one that may be resolved in the confirmation order. The court has also determined that oral argument is not necessary and will not assist in the decision-making process or resolution of the objection. Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The plan does not provide an arrears amount for the four Class 1 creditors and that the creditors are misclassified;
2. The Attachment to Schedule I for the debtor's non-filing spouse's business income and expenses has not been filed;
3. The Rights and Responsibilities filed by debtor and debtor's attorney is incomplete and is contradictory in the amount of attorney's fees;
4. Debtor's official forms listing the debtor's non-filing spouse's income has not been completed correctly;
5. Debtor's tax returns shall be provided to Trustee on or before April 30 of year during the pendency of the case.

DISCUSSION

The plan at Section 3.02 provides that Creditor's Proof of Claim, *and not the plan*, determines the amount and classification of a claim.

Notwithstanding whether the plan provides for the prepetition arrearage as Trustee argues, the debtor has not carried his burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

The debtor has not filed all business documents including the Attachment to Schedule I. 11 U.S.C. §§ 521(e)(2)(A)(i), 704(a)(3),

1106(a)(3), 1302(b)(1), 1302(c); FED. R. BANKR. P. 4002(b)(2) & (3). Debtor is required to submit those documents and cooperate with the Chapter 13 Trustee. 11 U.S.C. § 521(a)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1) & (a)(6).

That is reason to deny confirmation. Therefore, the Objection is sustained.

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

Final Ruling: No appearance at the October 11, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 40 days' notice was provided. Dkt. 56.

The plan is not confirmable and the objection is not one that may be resolved in the confirmation order. The court has also determined that oral argument is not necessary and will not assist in the decision-making process or resolution of the motion. Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The Motion to Confirm is Denied.

The debtor filed this Motion seeking to confirm the Chapter 13 Plan (Dkt. 55) filed on September 1, 2022.

OPPOSITION

Creditor, Real Time Resolutions, Inc. as agent for The Bank of New York Mellon FKA The Bank of New York, Successor Indenture Trustee To JPMorgan Chase Bank N.A. as Indenture Trustee on behalf of the Noteholders of the CWHEQ Inc., CWHEQ Revolving Home Equity Loan Trust, Series 2006-B ("Creditor") filed an Opposition (Dkt. 59) on September 7, 2022, opposing confirmation on the following grounds:

1. Plan fails to provide for pre-petition arrears;
2. Debtor mistakenly relies on Creditor participating in the HAMP loan modification program;
3. Plan is not feasible; and
4. Debtor is incapable of reorganization based upon the documents filed.

CHAPTER 13 TRUSTEE OPPOSITION

The Chapter 13 Trustee filed an Opposition (Dkt. 64) on September 21, 2022, opposing confirmation on the following grounds:

1. The plan is not feasible and may not be proposed in good faith because the nonstandard provisions in the plan are unclear, uncertain, and convoluted;
2. The plan relies on payment from daughter of debtor, but a

declaration from the daughter stating her ability and willingness to assist debtor has not been filed;

3. The plan does not suspend postpetition contractual payments and does not provide for arrears to creditor Real Time Resolutions.

4. The plan does not provide for Trustee compensation and expense;

5. The plan relies on loan modifications, but does not provide a date certain nor a sum certain to be paid into the plan from loan modifications, and there are no pending motions to incur debt in the debtor's case;

6. The plan modifies the rights of a holder of a secured claim only by a security interest in real property that is the debtor's principal residence;

7. The plan fails the liquidation test.

DEBTOR'S REPLY

Debtor filed a reply to the oppositions on October 3, 2022 with the following:

1. Debtor asserts that the plan was filed in good faith with a total plan payment \$3,900.00 per month.

2. Debtor's plan is contingent on two loan modifications being approved, and if he fails to obtain the loan modifications then the plan will be altered to a sales plan at the same 100% payment.

3. Debtor agrees to include the federal judgement interest rate.

DISCUSSION

The plan proposes modifying two secured loans with prepetition arrearages. Before the court enters an order granting motions to incur/modify debt, the plan's feasibility is uncertain.

Notwithstanding the processing of the loan modifications, the plan at Section 3.02 provides that Creditor's Proof of Claim, *and not the plan*, determines the amount and classification of a claim.

Whether the plan provides for the prepetition arrearage as Creditor argues, the debtor has not carried his burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

The modifications of the two secured loans is an improper modification of a claim secured only by a security interest in real property that is the debtor's principal residence. That is reason to deny confirmation. 11 U.S.C. § 1322(b)(2).

Upon review of the record, the court finds the plan does not comply with 11 U.S.C. §§ 1322 and 1325(a). The Motion is denied, and the plan is not confirmed.

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

holding that:

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

The Motion to Confirm filed by the debtor, Nathaniel Jones, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is denied, and the plan is not confirmed.

13. [22-21979](#)-C-13 MARK/ROBERTA VILLARREAL OBJECTION TO CONFIRMATION OF
[CJK](#)-1 Jasmin Nguyen PLAN BY WELLS FARGO BANK, NA
9-22-22 [[22](#)]

Final Ruling: No appearance at the October 11, 2022 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(2) procedure which requires 14 days' notice. The Proof of Service shows that 19 days' notice was provided. Dkt. 23.

The plan is not confirmable and the objection is not one that may be resolved in the confirmation order. The court has also determined that oral argument is not necessary and will not assist in the decision-making process or resolution of the objection. Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The Objection to Confirmation of Plan is sustained.
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Creditor, Wells Fargo Bank N.A. as Trustee, on behalf of The Holders of Structured Asset Mortgage Investments II, Inc., Bear Stearns Mortgage Funding, Trust 2007-AR4, Mortgage Pass Through Certificates, Series 2007-AR4 by Select Portfolio Servicing, Inc. as service ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that:

1. Plan does not provide for curing the prepetition arrears owed to Creditor.

DISCUSSION

The plan at Section 3.02 provides that Creditor's Proof of Claim, *and not the plan*, determines the amount and classification of a claim.

Notwithstanding whether the plan provides for the prepetition arrearage as Creditor argues, the debtor has not carried his burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

That is reason to deny confirmation. Therefore, the Objection is sustained.

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

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

The Objection to the Chapter 13 Plan filed by Wells Fargo Bank N.A. as Trustee, on behalf of The Holders of Structured Asset Mortgage Investments II, Inc., Bear Stearns Mortgage Funding, Trust 2007-AR4, Mortgage Pass Through Certificates, Series 2007-AR4 by Select Portfolio Servicing,

Inc. as service, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.

14. [22-20080](#)-C-13 SABUETTE DEMATTIES
[RDG](#)-1 Mikalah Liviakis

OBJECTION TO CLAIM OF PG&E,
CLAIM NUMBER 12
9-6-22 [[32](#)]

Tentative Ruling:

The Objection has been set on Local Rule 3007-1(b)(2) procedure which requires 30 days' notice. The Proof of Service shows that 35 days' notice was provided. Dkt. 34.

The Objection to Proof of Claim is sustained, and the claim is disallowed in its entirety.

The Chapter 13 trustee filed this Objection arguing that Proof of Claim, No. 121, filed by PG&E was filed late and should be disallowed.

The deadline for filing proofs of claim in this case is March 23, 2022. Notice of Bankruptcy Filing and Deadlines, Dkt. 16. The Proof of Claim subject to this Objection was filed August 22, 2022.

Based on the evidence before the court, the court finds the creditor's claim was filed untimely. The Objection to the Proof of Claim is sustained, and the claim is disallowed in its entirety.

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

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

The Objection to Claim filed in this case by the Chapter 13 trustee, Russell D. Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection to Proof of Claim Number 12-1 of PG&E is sustained, and the claim is disallowed in its entirety.

15. [22-21986](#)-C-13 TIFFANY CHARLES
[RDG-1](#) Kristy Hernandez

AMENDED OBJECTION TO
CONFIRMATION OF PLAN BY RUSSELL
D. GREER
9-20-22 [[16](#)]

Final Ruling: No appearance at the October 11, 2022 hearing is required.

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 21 days' notice was provided. Dkt. 19.

The plan is not confirmable and the objection is not one that may be resolved in the confirmation order. The court has also determined that oral argument is not necessary and will not assist in the decision-making process or resolution of the objection. Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, Russell Greer ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. The 341 Meeting has not been held;
2. The plan is not feasible because it does not provide for the IRS's priority claim as filed in proof of claim no. 9-1.

DISCUSSION

A review of the docket shows that the 341 meeting was held on September 29. The debtor and debtor's counsel appeared and the meeting was concluded as to the debtor.

However, the plan at Section 3.02 provides that Creditor's Proof of Claim, *and not the plan*, determines the amount and classification of a claim.

Notwithstanding whether the plan provides for the IRS's claim as the Trustee argues, the debtor has not carried his burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

That is reason to deny confirmation. Therefore, the Objection is sustained.

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

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

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Russell Greer, having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Objection is sustained.