

UNITED STATES BANKRUPTCY COURT
Eastern District of California
Honorable Jennifer E. Niemann
Hearing Date: Wednesday, October 13, 2021
Place: Department A – Courtroom #11
Fresno, California

Beginning the week of June 28, 2021, and in accordance with District Court General Order No. 631, the court resumed in-person courtroom proceedings in Fresno. Parties to a case may still appear by telephone, provided they comply with the court's telephonic appearance procedures, which can be found on the court's website.

INSTRUCTIONS FOR PRE-HEARING DISPOSITIONS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling. These instructions apply to those designations.

No Ruling: All parties will need to appear at the hearing unless otherwise ordered.

Tentative Ruling: If a matter has been designated as a tentative ruling it will be called, and all parties will need to appear at the hearing unless otherwise ordered. The court may continue the hearing on the matter, set a briefing schedule or enter other orders appropriate for efficient and proper resolution of the matter. The original moving or objecting party shall give notice of the continued hearing date and the deadlines. The minutes of the hearing will be the court's findings and conclusions.

Final Ruling: Unless otherwise ordered, there will be no hearing on these matters. The final disposition of the matter is set forth in the ruling and it will appear in the minutes. The final ruling may or may not finally adjudicate the matter. If it is finally adjudicated, the minutes constitute the court's findings and conclusions.

Orders: Unless the court specifies in the tentative or final ruling that it will issue an order, the prevailing party shall lodge an order within 14 days of the final hearing on the matter.

THE COURT ENDEAVORS TO PUBLISH ITS RULINGS AS SOON AS POSSIBLE. HOWEVER, CALENDAR PREPARATION IS ONGOING AND THESE RULINGS MAY BE REVISED OR UPDATED AT ANY TIME PRIOR TO 4:00 P.M. THE DAY BEFORE THE SCHEDULED HEARINGS. PLEASE CHECK AT THAT TIME FOR POSSIBLE UPDATES.

1. [20-10945](#)-A-12 **IN RE: AJITPAL SINGH AND JATINDERJEET SIHOTA**
[WTJ-1](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WHITNEY, THOMPSON &
JEFFCOACH LLP FOR MANDY L. JEFFCOACH, SPECIAL COUNSEL(S)
9-8-2021 [\[196\]](#)

DAVID JENKINS/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition 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. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As a procedural matter, the exhibits filed in connection with this motion do not comply with LBR 9004-2(c)(1) and (d)(1), which require declarations and exhibits to be filed as separate documents. The declaration was filed as a single document that included the movant's exhibits. E.g., Doc. #198. The court encourages special litigation counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

Whitney Thompson & Jeffcoach LLP ("Movant"), special litigation counsel for Ajitpal Singh and Jatinderjeet Kaur Sihota (together, "Debtors"), requests allowance of interim compensation and reimbursement for expenses for services rendered from November 8, 2020 through August 26, 2021. Doc. #196. Movant is also special litigation counsel for Bhajan Singh and Balvinder Kaur, chapter 12 debtors involved in a similar but separate adversary proceeding. Decl. of Mandy L. Jeffcoach, Doc. #198. Movant requests compensation and reimbursement of \$53,577.60 for services rendered to Debtors. Doc. #196.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a professional person. 11 U.S.C. § 330(a)(1). According to the order authorizing employment of Movant, Movant may submit applications for interim compensation pursuant to 11 U.S.C. §§ 330 and 331. Order, Doc. #145. In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and

value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) attending and conducting client meetings and telephone conferences, as well as meetings and negotiations with opposing counsel; (2) retaining and working with a forensic accountant to prepare substantive damages defenses; (3) researching and drafting dispositive motions for the adversary proceeding that were rendered moot after the bankruptcy court granted stay relief; and (4) reviewing papers drafted by bankruptcy counsel and consulting with bankruptcy counsel. Doc. #199, #198. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$53,577.60. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any retainer held. Debtors are authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

2. [20-10569](#)-A-12 **IN RE: BHAJAN SINGH AND BALVINDER KAUR**
[WTJ-1](#)

MOTION FOR COMPENSATION BY THE LAW OFFICE OF WHITNEY, THOMPSON &
JEFFCOACH LLP SPECIAL COUNSEL(S)
9-8-2021 [\[433\]](#)

MANDY JEFFCOACH/MV
DAVID JENKINS/ATTY. FOR DBT.
MANDY JEFFCOACH/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition 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. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

As a procedural matter, the exhibits filed in connection with this motion do not comply with LBR 9004-2(c)(1) and (d)(1), which require declarations and exhibits to be filed as separate documents. The declaration was filed as a single document that included the movant's exhibits. E.g., Doc. #435. The court encourages special litigation counsel to review the local rules to ensure compliance in future matters or those matters may be denied without prejudice for failure to comply with the local rules.

Whitney Thompson & Jeffcoach LLP ("Movant"), special litigation counsel for Bhajan Singh and Balvinder Kaur (together, "Debtors"), requests allowance of interim compensation and reimbursement for expenses for services rendered from November 8, 2020 through August 26, 2021. Doc. #433. Movant is also special litigation counsel for Ajitpal Singh and Jatinderjeet Kaur Sihota, chapter 12 debtors involved in a similar but separate adversary proceeding. Decl. of Mandy L. Jeffcoach, Doc. #435. Movant requests compensation and reimbursement of \$53,577.60 for services rendered to Debtors. Doc. #433.

Section 330(a)(1) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services rendered" and "reimbursement for actual, necessary expenses" to a professional person. 11 U.S.C. § 330(a)(1). According to the order authorizing employment of Movant, Movant may submit applications for interim compensation pursuant to 11 U.S.C. §§ 330 and 331. Order, Doc. #382. In determining the amount of reasonable compensation to be awarded to a professional person, the court shall consider the nature, extent, and value of such services, taking into account all relevant factors. 11 U.S.C. § 330(a)(3).

Movant's services included, without limitation: (1) attending and conducting client meetings and telephone conferences, as well as meetings and negotiations with opposing counsel; (2) retaining and working with a forensic accountant to prepare substantive damages defenses; (3) researching and drafting dispositive motions for the adversary proceeding that were rendered moot after the bankruptcy court granted stay relief; and (4) reviewing papers drafted by bankruptcy counsel and consulting with bankruptcy counsel. Doc. #436, #435. The court finds the compensation and reimbursement sought by Movant to be reasonable, actual, and necessary.

This motion is GRANTED. The court allows interim compensation in the amount of \$53,577.60. Movant is allowed interim fees and costs pursuant to 11 U.S.C. § 331, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure. Movant may draw on any retainer held. Debtors are authorized to pay the fees allowed by this order from available funds only if the estate is administratively solvent and such payment will be consistent with the priorities of the Bankruptcy Code.

3. [21-11970](#)-A-11 **IN RE: HIGH PLAINS MESA HOLDINGS, LP**
[GMK-2](#)

MOTION TO EMPLOY GARY M. KAPLAN AS ATTORNEY(S)
9-3-2021 [\[52\]](#)

HIGH PLAINS MESA HOLDINGS, LP/MV
GARY KAPLAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to October 20, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

A hearing on a motion to dismiss this bankruptcy case, Doc. #91, is set for October 20, 2021 at 9:30 a.m. This matter will be continued to be heard in conjunction with that hearing.

4. [21-11971](#)-A-11 **IN RE: HIGH PLAINS MESA MANAGEMENT, LLC**
[GMK-2](#)

MOTION TO EMPLOY GARY M. KAPLAN AS ATTORNEY(S)
9-3-2021 [\[46\]](#)

HIGH PLAINS MESA MANAGEMENT, LLC/MV
GARY KAPLAN/ATTY. FOR DBT.
RESPONSIVE PLEADING

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Continued to October 20, 2021 at 9:30 a.m.

ORDER: The court will issue an order.

A hearing on a motion to dismiss this bankruptcy case, Doc. #83, is set for October 20, 2021 at 9:30 a.m. This matter will be continued to be heard in conjunction with that hearing.

1. [20-13808](#)-A-7 **IN RE: YULIANA TEJEDA**
[FW-2](#)

MOTION TO COMPROMISE CONTROVERSY/APPROVE SETTLEMENT AGREEMENT
WITH YULIANA TEJEDA
9-9-2021 [\[43\]](#)

JAMES SALVEN/MV
SUSAN HEMB/ATTY. FOR DBT.
PETER FEAR/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Granted.

ORDER: The Moving Party shall submit a proposed order in conformance with the ruling below.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition 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. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

James Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Yuliana Tejeda ("Debtor"), moves the court for an order pursuant to Federal Rule of Bankruptcy Procedure 9019, approving the compromise of all claims and disputes against Debtor regarding her claimed exemption in a \$50,000 equalization payment from her ex-husband. Doc. #43.

Debtor's initial schedules disclosed an interest in real property in Madera, California shared with Debtor's ex-husband. Decl., Doc. #45. Debtor initially scheduled an exemption of \$50,000 in the property pursuant to California Civil Procedure Code ("C.C.P.") § 704.730. Id. Debtor later disclosed that she was awarded a \$50,000 equalization payment for her equity in the property, but her ex-husband was awarded the property. Id. Debtor amended her schedules, removing any reference to an ownership of the Madera property but exempting \$24,158.49 of the equalization payment pursuant to C.C.P. 703.140(b)(5). Id. Trustee believes he is entitled to the entire \$50,000 equalization payment. Id. Because there are significant risks associated with successfully litigating Trustee's claim, Trustee and Debtor have agreed to settle the dispute. Id. Debtor will pay \$16,000 to the bankruptcy estate in two payments. Id. In exchange, Trustee will release any and all claims relating to ownership or transfer of the Madera property. Id.

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. Martin v. Kane (In re A & C Props.), 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. Woodson v. Fireman's Fund Ins. Co. (In re Woodson), 839 F.2d 610, 620 (9th Cir. 1988).

It appears from the moving papers that Trustee has considered the standards of A & C Properties and Woodson. Doc. #45. The proposed settlement will result in a \$16,000 payment to the bankruptcy estate. Tr.'s Decl., Doc. #45. Were Trustee to litigate his claim against Debtor and any third party, significant issues relating to collection would arise, as Trustee might only recover a money judgment against Debtor's ex-husband. Id. Trustee may be able to recover the property in Madera but would then be required to sell the property to recover Debtor's interest for the benefit of the estate, which would entail significant time and costs to the estate. Id. Trustee believes in his business judgment that the settlement is fair, reasonable, and obtains an economically advantageous result for the estate. Doc. #45. The court concludes that the Woodson factors balance in favor of approving the compromise, and the compromise is in the best interests of the creditors and the estate.

Accordingly, it appears that the compromise pursuant to Federal Rule of Bankruptcy Procedure 9019 is a reasonable exercise of Trustee's business judgment. 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). No opposition has been filed. Furthermore, the law favors compromise and not litigation for its own sake. Id.

Accordingly, the motion is GRANTED, and the settlement between Trustee and Debtor is approved. Trustee is authorized, but not required, to execute any and all documents necessary to effectuate the settlement agreement.

2. 21-11860-A-7 **IN RE: KATHERINE MAKOWSKI**
MMJ-1

MOTION FOR RELIEF FROM AUTOMATIC STAY
9-16-2021 [18]

CAPITAL ONE AUTO FINANCE/MV
MARK ZIMMERMAN/ATTY. FOR DBT.
MARJORIE JOHNSON/ATTY. FOR MV.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Denied without prejudice.

ORDER: The court will issue an order.

This matter is DENIED WITHOUT PREJUDICE for improper notice.

Notice by mail of this motion was sent September 16, 2021, with a hearing date set for October 13, 2021. The motion was set for hearing on less than 28 days' notice and is governed by Local Rule of Practice ("LBR") 9014-1(f)(2). Pursuant to LBR 9014-1(f)(2), written opposition was not required, and any opposition

may be raised at the hearing. However, the Notice of Hearing filed with the motion cited LBR 9014-1(f)(1) and stated that opposition must be filed and served no later than fourteen days before the hearing and that failure to file written response may result in the court granting the motion prior to the hearing. The Notice of Hearing does not comply with LBR 9014-1(f)(2).

3. [21-11463](#)-A-7 **IN RE: RICHARD/LOURDES TORRES**
[JDR-1](#)

MOTION TO AVOID LIEN OF THE BEST SERVICE CO., INC.
9-3-2021 [\[13\]](#)

LOURDES TORRES/MV
JEFFREY ROWE/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Granted in part.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order after the hearing.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered.

Richard Emanuel Torres and Lourdes Deroma Torres (collectively, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of The Best Service Co., Inc. ("Best Service") on their residential real property commonly referred to as 3924 N. Tollhouse Rd., Fresno, CA 93726 (the "Property"). Doc. #13; Schedules A/B and C, Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtors' schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Debtors filed their bankruptcy petition on June 4, 2021. A judgment was entered against Richard E. Torres in the amount of \$311,230.19 in favor of Best Service on August 13, 2019. Ex. B, Doc. #16. The abstract of judgment was recorded pre-petition in Fresno County on December 11, 2019. Ex. B, Doc. #16. The lien attached to Debtors' interest in the Property located in Fresno County. Doc. #16. The Property is encumbered by a lien in favor of BNC Mortgage Inc., serviced by NewRaz, in the amount \$141,014.00. Schedule D, Doc. #1. The Property is further encumbered by a senior judicial lien in favor of Discover Bank recorded in Fresno County on December 20, 2010, in the amount of \$1,813.53. Ex. C, Doc. #16. Debtors claimed an exemption of \$131,371.40 in the

Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1.

Where the movant seeks to avoid multiple liens as impairing the debtor's exemption, the liens must be avoided in the reverse order of their priority. Bank of Am. Nat'l Tr. & Sav. Ass'n v. Hanger (In re Hanger), 217 B.R. 592, 595 (B.A.P. 9th Cir. 1997). Liens already avoided are excluded from the exemption-impairment calculation with respect to other liens. Id.; 11 U.S.C. § 522(f)(2)(B). The court "must approach lien avoidance from the back of the line, or at least some point far enough back in line that there is no nonexempt equity in sight." Meyer, 373 B.R. at 88. "Judicial liens are avoided in reverse order until the marginal lien, i.e., the junior lien supported in part by equity, is reached." Id.

Debtors' schedules reflect that, like other 11 U.S.C. § 522(f)(1) lien avoidance matters that have come before the court, Debtors include the cost of a hypothetical sale to reduce the apparent value of their interest in the Property. In Schedule A/B, Debtors assert a market value for the Property of \$296,071.00, but deducted an estimated 8% costs of a hypothetical sale leaving the value of their interest in the Property at \$272,385.40 on their Schedules and for this motion. Doc. #1; Doc. #13.

However, this approach is contrary to In re Aslanyan, which this court finds persuasive and follows, in which Judge McManus held "[l]iquidation costs or closing costs are not deducted from market value in the context of a motion to avoid a judicial lien." Case No. 17-24195-A-7, 2017 Bankr. LEXIS 4363, at *4 (Bankr. E.D. Cal. Dec. 20, 2017) (citing In re Wolmer, 494 B.R. 783, 784 (Bankr. D. Conn. 2013); In re Barrett, 370 B.R. 1, 3 (Bankr. D. Me. 2007) ("[A] bevy of courts have opted against including hypothetical sales costs and other transaction costs in the valuation of collateral for the purpose of determining the fate of a judicial lien."); In re Sheth, 225 B.R. 913, 918-19 (Bankr. N.D. Ill. 1998); In re Sumerell, 194 B.R. 818, 827 (Bankr. E.D. Tenn. 1996); In re Abrahamzadeh, 162 B.R. 676, 678 (Bankr. N.J. 1994); In re Yackel, 114 B.R. 349, 351 (Bankr. N.D.N.Y. 1990)). "When the bankruptcy court determines a debtor's exemption rights in property, 11 U.S.C. § 522(a)(2) directs it to value property at 'market value as of the date of the filing of the petition' There is no provision in section 522(a)(2) or in the statutory formula in section 522(f)(2)(A) mandating that a debtor's likely costs of sale be taken into account when ascertaining market value." Aslanyan, 2017 Bankr. LEXIS 4363, at *4.

Eliminating Debtors' deduction of 8% estimated cost of sale, the sum of the judicial lien, all other liens, including senior judicial liens, on the Property, and the amount of exemption does not exceed the value of the Debtors' interest in the Property:

Amount of Best Service's judicial lien		\$311,230.19
Total amount of all other liens on the Property (excluding junior judicial liens)	+	142,827.53
Amount of Debtors' claim of exemption in the Property	+	131,371.40
		\$585,429.12
Value of Debtors' interest in the Property absent liens	-	296,071.00
Amount Best Service's lien impairs Debtors' exemption		\$289,358.12

Under Aslanyan, the valuation of Debtors' Property does not support a determination that Best Service's judicial lien fully impairs Debtors' current claim of exemption. Application of the arithmetical formula leaves \$21,872.07 of equity to support Best Service's judicial lien that does not impair Debtors' exemption in the Property. Therefore, Debtors have not satisfied the

requirements of § 522(f)(1) to avoid Best Service's judicial lien in full as requested in the motion.

The court recognizes that under California Code of Civil Procedure § 704.730, Debtors may be able to claim an exemption in an amount greater than \$131,371.40, but those are not the facts currently before the court.

Accordingly, and based on the evidence currently before the court, the court will partially avoid Best Service's judicial lien to the extent of \$289,358.12.

4. [21-11463](#)-A-7 **IN RE: RICHARD/LOURDES TORRES**
[JDR-2](#)

MOTION TO AVOID LIEN OF DISCOVER BANK
9-3-2021 [\[18\]](#)

LOURDES TORRES/MV
JEFFREY ROWE/ATTY. FOR DBT.

TENTATIVE RULING: This matter will proceed as scheduled.

DISPOSITION: Denied without prejudice.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The court will issue an order after the hearing.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1). The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered.

Richard Emanuel Torres and Lourdes Deroma Torres (collectively, "Debtors"), the debtors in this chapter 7 case, move pursuant to 11 U.S.C. § 522(f) and Federal Rules of Bankruptcy Procedure 4003(d) and 9014 to avoid the judicial lien of Discover Bank ("Discover") on their residential real property commonly referred to as 3924 N. Tollhouse Rd., Fresno, CA 93726 (the "Property"). Doc. #18; Schedules A/B and C, Doc. #1.

In order to avoid a lien under 11 U.S.C. § 522(f)(1), the movant must establish four elements: (1) there must be an exemption to which the debtor would be entitled under § 522(b); (2) the property must be listed on the debtors' schedules as exempt; (3) the lien must impair the exemption; and (4) the lien must be either a judicial lien or a non-possessory, non-purchase money security interest in personal property listed in § 522(f)(1)(B). 11 U.S.C. § 522(f)(1); Goswami v. MTC Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003) (quoting In re Mohring, 142 B.R. 389, 392 (Bankr. E.D. Cal. 1992)).

Debtors filed their bankruptcy petition on June 4, 2021. A judgment was entered against Lourdes Deroma Torres in the amount of \$1,813.53 in favor of Discover on October 15, 2009. Ex. C, Doc. #21. The abstract of judgment was recorded pre-petition in Fresno County on December 20, 2010. Ex. C, Doc. #21. The lien attached to Debtors' interest in the Property located in Fresno County. Doc. #21. The Property also is encumbered by a lien in favor of BNC Mortgage

Inc., serviced by NewRaz, in the amount \$141,014.00. Schedule D, Doc. #1. Debtors claim an exemption of \$131,371.40 in the Property under California Code of Civil Procedure § 704.730. Schedule C, Doc. #1.

Debtors' schedules reflect that, like other 11 U.S.C. § 522(f)(1) lien avoidance matters that have come before the court, Debtors include the cost of a hypothetical sale to reduce the apparent value of their interest in the Property. In Schedule A/B, Debtors assert a market value for the Property of \$296,071.00, but deducted an estimated 8% costs of a hypothetical sale leaving the value of their interest in the Property at \$272,385.40 on their Schedules and for this motion. Doc. #1; Doc. #18.

However, this approach is contrary to In re Aslanyan, which this court finds persuasive and follows, in which Judge McManus held "[l]iquidation costs or closing costs are not deducted from market value in the context of a motion to avoid a judicial lien." Case No. 17-24195-A-7, 2017 Bankr. LEXIS 4363, at *4 (Bankr. E.D. Cal. Dec. 20, 2017) (citing In re Wolmer, 494 B.R. 783, 784 (Bankr. D. Conn. 2013); In re Barrett, 370 B.R. 1, 3 (Bankr. D. Me. 2007) ("[A] bevy of courts have opted against including hypothetical sales costs and other transaction costs in the valuation of collateral for the purpose of determining the fate of a judicial lien."); In re Sheth, 225 B.R. 913, 918-19 (Bankr. N.D. Ill. 1998); In re Sumerell, 194 B.R. 818, 827 (Bankr. E.D. Tenn. 1996); In re Abrahamzadeh, 162 B.R. 676, 678 (Bankr. N.J. 1994); In re Yackel, 114 B.R. 349, 351 (Bankr. N.D.N.Y. 1990)). "When the bankruptcy court determines a debtor's exemption rights in property, 11 U.S.C. § 522(a)(2) directs it to value property at 'market value as of the date of the filing of the petition' There is no provision in section 522(a)(2) or in the statutory formula in section 522(f)(2)(A) mandating that a debtor's likely costs of sale be taken into account when ascertaining market value." Aslanyan, 2017 Bankr. LEXIS 4363, at *4.

Eliminating Debtors' deduction of 8% estimated cost of sale, the sum of the judicial lien, all other liens on the Property, and the amount of exemption does not exceed the value of the Debtors' interest in the Property:

Amount of Discover's judicial lien		\$1,813.53
Total amount of all other liens on the Property (excluding junior judicial liens)	+	141,014.00
Amount of Debtors' claim of exemption in the Property	+	131,371.40
		\$274,198.93
Value of Debtors' interest in the Property absent liens	-	296,071.00
Amount Discover's lien impairs Debtors' exemption		(\$21,872.07)

Under Aslanyan, the valuation of Debtors' Property does not support a determination that Discover's judicial lien impairs Debtors' current claim of exemption. Therefore, Debtors have not satisfied the requirements of § 522(f)(1) to avoid Discover's judicial lien.

The court recognizes that under California Code of Civil Procedure § 704.730, Debtors may be able to claim an exemption in an amount greater than \$131,371.40, but those are not the facts currently before the court.

Debtors have not established the four elements necessary to avoid Discover's lien under 11 U.S.C. § 522(f)(1). Accordingly, this motion is DENIED WITHOUT PREJUDICE.

MOTION TO SELL
9-14-2021 [\[38\]](#)

JAMES SALVEN/MV
PETER BUNTING/ATTY. FOR DBT.
GABRIEL WADDELL/ATTY. FOR MV.

TENTATIVE RULING: This matter will proceed as scheduled for higher and better offers.

DISPOSITION: Granted.

ORDER: The minutes of the hearing will be the court's findings and conclusions. The Moving Party will submit a proposed order after the hearing.

This motion was set for hearing on at least 28 days' notice pursuant to Local Rule of Practice ("LBR") 9014-1(f)(1) and will proceed as scheduled for higher and better offers. The failure of creditors, the U.S. Trustee, or any other party in interest to file written opposition at least 14 days prior to the hearing as required by LBR 9014-1(f)(1)(B) may be deemed a waiver of any opposition to the granting of the motion. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9th Cir. 1995). Therefore, the defaults of the above-mentioned parties in interest are entered. Upon default, factual allegations will be taken as true (except those relating to amount of damages). Televideo Sys., Inc. v. Heidenthal, 826 F.2d 915, 917 (9th Cir. 1987). Constitutional due process requires a moving party make a *prima facie* showing that they are entitled to the relief sought, which the movant has done here.

James Salven ("Trustee"), the chapter 7 trustee of the bankruptcy estate of Robert Adams Graham ("Debtor"), moves the court pursuant to 11 U.S.C. § 363(b) for an order authorizing the sale of the bankruptcy estate's interest in a 1963 Cessna 182F aircraft (the "Aircraft") to Kevin Lester ("Buyer") for the purchase price of \$20,000.00, subject to higher and better bids at the hearing. Doc. #38.

Pursuant to 11 U.S.C. § 363(b)(1), the trustee, after notice and a hearing, may "use, sell, or lease, other than in the ordinary course of business, property of the estate." Proposed sales under § 363(b) are reviewed to determine whether they are: (1) in the best interests of the estate resulting from a fair and reasonable price; (2) supported by a valid business judgment; and (3) proposed in good faith. In re Alaska Fishing Adventure, LLC, 594 B.R. 883, 887 (Bankr. D. Alaska 2018) (citing 240 N. Brand Partners, Ltd. v. Colony GFP Partners, L.P. (In re 240 N. Brand Partners, Ltd.), 200 B.R. 653, 659 (B.A.P. 9th Cir. 1996)). "In the context of sales of estate property under § 363, a bankruptcy court 'should determine only whether the trustee's judgment [is] reasonable and whether a sound business justification exists supporting the sale and its terms.'" Alaska Fishing Adventure, 594 B.R. at 889 (quoting 3 COLLIER ON BANKRUPTCY ¶ 363.02[4] (Richard Levin & Henry J. Sommer eds., 16th ed.)). "[T]he trustee's business judgment is to be given great judicial deference." Id. at 889-90 (quoting In re Psychometric Sys., Inc., 367 B.R. 670, 674 (Bankr. D. Colo. 2007)).

Debtor has waived any exemption in the Aircraft and any proceeds from the sale of the Aircraft. Doc. #36; Decl. of Tr., Doc. #40. Trustee has entered into a

written agreement with Buyer for the sale of Aircraft. Doc. #40. Buyer has made an initial deposit of \$5,000 and will pay \$15,000 within 14 days of the court order approving the sale. Doc. #40. Trustee does not possess the current legal title document for the Aircraft and cannot deliver to Buyer an original legal title document. Doc. #30. Buyer has agreed to obtain a replacement title. Doc. #40. Buyer will pay any and all taxes, duties, and fees arising out of the sale of the Aircraft. Doc. #40. The Aircraft will be sold as-is and where it is currently located, and Buyer will arrange and pay for any transportation. Doc. #40. Buyer will also pay the costs of storage incurred both before and after the sale of the Aircraft. Doc. #40. Trustee makes no warranties and has no documentation or information relating to any Aircraft documentation, including documents related to Aircraft possession, inspections, certificates, manuals, or logs. Doc. #40. The terms of the sale between Trustee and Buyer were negotiated at arm's length. Doc. #40; Ex. A, Doc. #41.

In the event another party appears to bid on the Aircraft, Trustee suggests certain bidding procedures. Doc. #40. Among other requests specified in Trustee's motion, Trustee requests a deposit of \$5,000 and minimum bidding increments of \$2,000. Doc. #40. Trustee believes the bidding procedures are reasonable and necessary to obtain the highest return for the estate. Doc. #40.

However, Trustee does not state, and provides no evidence, that the proposed sale is made in consideration of the full and fair market value of the Aircraft and is supported by Trustee's valid business judgment. Trustee refers to Debtor's schedules, which value the Aircraft at \$40,000, but Trustee seeks to sell the Aircraft for half that amount. At the hearing, Trustee shall be prepared to supplement the record to support the court's finding that (1) the sale of the estate's interest in the Aircraft is in the best interests of the estate, (2) the Aircraft will be sold for a fair and reasonable price, and (3) the sale is supported by a valid business judgment and proposed in good faith.

Accordingly, subject to overbid offers made at the hearing and Trustee supplementing the record, the court is inclined to GRANT Trustee's motion and authorize the sale of the estate's interest in the Aircraft to Buyer on the terms set forth in the motion and the sale agreement (Ex. A, Doc. #41).

The 14-day stay of Fed. R. Bankr. P. 6004(h) will be ordered waived.

6. [21-11899](#)-A-7 **IN RE: VICTOR SIFUENTES**
[PFT-1](#)

OPPOSITION RE: TRUSTEE'S MOTION TO DISMISS FOR FAILURE TO
APPEAR AT SEC. 341(A) MEETING OF CREDITORS
9-8-2021 [\[16\]](#)

JOEL WINTER/ATTY. FOR DBT.

FINAL RULING: There will be no hearing on this matter.

DISPOSITION: Conditionally denied.

ORDER: The court will issue the order.

The chapter 7 trustee's motion to dismiss is CONDITIONALLY DENIED.

The debtor shall attend the meeting of creditors rescheduled for October 18, 2021, at 3:00 p.m. If the debtor fails to do so, the chapter 7 trustee may file a declaration with a proposed order and the case may be dismissed without a further hearing.

The time prescribed in Rules 1017(e)(1) and 4004(a) for the chapter 7 trustee and the U.S. Trustee to object to the debtor's discharge or file motions for abuse, other than presumed abuse, under § 707, is extended to 60 days after the conclusion of the meeting of creditors.