

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus  
Bankruptcy Judge  
Sacramento, California

October 14, 2014 at 10:00 a.m.

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1. 11-47119-A-12 TIMOTHY WILSON OBJECTION TO  
JPJ-1 CLAIM  
VS. COMMERCIAL EQUIPMENT LEASE CORP. 8-18-14 [173]

**Final Ruling:** This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

The objection will be sustained. The chapter 12 trustee objects to the secured proof of claim of Commercial Equipment Lease Corporation in the amount of \$12,163.46. The basis for the objection is that the proof of claim is untimely. The deadline for filing proofs of claim by nongovernmental entities - which deadline applies to the movant as it is such an entity - was March 14, 2012. The subject proof of claim was filed on June 5, 2012. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9<sup>th</sup> Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9<sup>th</sup> Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9<sup>th</sup> Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9<sup>th</sup> Cir. 1990).

2. 11-47119-A-12 TIMOTHY WILSON OBJECTION TO  
JPJ-2 CLAIM  
VS. FORESTRY & FIRE PROTECTION 7-22-14 [165]

**Final Ruling:** This objection, as amended by Docket 177, will be dismissed as duplicative of another related objection. See Docket 181.

3. 11-47119-A-12 TIMOTHY WILSON OBJECTION TO  
JPJ-3 CLAIM  
VS. DEPT OF FORESTRY & FIRE PROTECTION 8-18-14 [181]

**Final Ruling:** This objection to proof of claim has been set for hearing on at least 44 days' notice to the claimant as required by Local Bankruptcy Rule 3007-1(b)(1)(A). The failure of the claimant to file written opposition at least 14 calendar days prior to the hearing is considered as consent to the sustaining of the objection. Cf. Ghazali v. Moran, 46 F.3d 52, 53 (9<sup>th</sup> Cir. 1995). Further, because the court will not materially alter the relief

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requested by the objecting party, an actual hearing is unnecessary. See Boone v. Burk (In re Eliapo), 468 F.3d 592 (9<sup>th</sup> Cir. 2006). Therefore, the claimant's default is entered and the objection will be resolved without oral argument.

The objection will be sustained.

The objection will be sustained. The chapter 12 trustee objects to the priority proof of claim of the California Department of Forestry and Fire Protection in the amount of \$20,000. The basis for the objection is that the proof of claim is untimely. The deadline for filing proofs of claim by governmental entities - which deadline applies to the movant as it is such an entity - was May 15, 2012. The subject proof of claim was filed on January 24, 2013. Pursuant to 11 U.S.C. § 502(b)(9) and Fed. R. Bankr. P. 3002(c), the claim is disallowed because it is untimely. See In re Osborne, 76 F.3d 306 (9<sup>th</sup> Cir. 1996); In re Edelman, 237 B.R. 146, 153 (B.A.P. 9<sup>th</sup> Cir. 1999); Ledlin v. United States (In re Tomlan), 907 F.2d 114 (9<sup>th</sup> Cir. 1989); Zidell, Inc. V. Forsch (In re Coastal Alaska), 920 F.2d 1428, 1432-33 (9<sup>th</sup> Cir. 1990).

4.	14-20348-A-11    JOE/CAROL MOBLEY PPR-1 ONEWEST BANK, N.A. VS.	MOTION FOR RELIEF FROM AUTOMATIC STAY 9-11-14 [76]
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**Tentative Ruling:**    The motion will be granted.

The movant, Onewest Bank, seeks relief from the automatic stay as to a four-plex real property in Richmond, California. The debtors oppose the motion, contending that they have filed a confirmable plan and denying unauthorized use of cash collateral.

11 U.S.C. § 362(g) provides that:

"In any hearing under subsection (d) or (e) of this section concerning relief from the stay of any act under subsection (a) of this section—

(1) the party requesting such relief has the burden of proof on the issue of the debtor's equity in property; and

(2) the party opposing such relief has the burden of proof on all other issues."

In other words, the moving creditor has the burden of persuasion as to the value of and lack of equity in the property while the debtors have the burden of persuasion as to necessity to an effective reorganization. United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 375 (1988).

The standard in a chapter 11 proceeding is a showing that "the property is essential for an effective reorganization that is in prospect." This means, that there must be "a reasonable possibility of a successful reorganization within a reasonable time." Timbers at 376. While bankruptcy courts demand a less detailed showing during the four months of exclusivity, "even within that period[,] lack of any realistic prospect of effective reorganization will require § 362(d)(2) relief." Timbers at 376.

The movant has established that the property has a value of \$390,000 and that it is encumbered by at least \$782,735. The movant's deed is the only encumbrance against the property.

As to necessity to an effective reorganization, the debtors have the burden to establish necessity to an effective reorganization, when the moving creditor has shown that its claim is undersecured. United Sav. Ass'n of Texas v. Timbers of Inwood Forest Assocs., Ltd., 484 U.S. 365, 375 (1988). The standard in a chapter 11 proceeding is a showing that "the property is essential for an effective reorganization that is in prospect." This means, that there must be "a reasonable possibility of a successful reorganization within a reasonable time." Timbers at 376.

The debtors have not met their burden of persuasion and established that there is a reasonable possibility of a successful reorganization within a reasonable time. The plan filed by the debtors and described in their opposition to this motion proposes to pay only approximately 5.1% dividend to general unsecured claims, totaling approximately \$372,473, \$362,236 of which is held by the movant as a deficiency claim. Yet, the debtors are proposing to retain property of the estate - namely, the four-plex - without paying all unsecured claims in full. Yet, given the stated intention of the movant to reject this treatment, the general unsecured class will not accept the plan. Therefore, the debtors cannot satisfy the absolute priority rule. See 11 U.S.C. § 1129(b). Their plan will not be confirmed.

Accordingly, 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.

To the extent applicable, 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) will not be 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.

5.	12-29961-A-7	PAUL DOSCHER	MOTION FOR
	13-2378	PLC-4	SUMMARY JUDGMENT OR ADJUDICATION
	WHATLEY V. MOREHOUSE ET AL		9-17-14 [69]

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

The plaintiff, Douglas Whatley, the chapter 7 trustee in the underlying chapter 7 bankruptcy case, moves for summary judgment on his single claim for relief in this adversary proceeding.

The motion will be denied. Although claim for relief purports to be for "turnover," in fact it is a collection action on a debt already reduced to judgment.

According to the complaint and motion, one of the defendants, Jack Morehouse,

instituted pre-petition nonbankruptcy claims against Paul Doscher, the debtor in the underlying bankruptcy case, as well as against Wanda Eaton (aka Doscher) and the Paulsue Living Trust. The litigation was eventually dismissed and "an order for costs" was entered. "The Order requires defendant Jack Morehouse to pay to Paul Doscher individually and as Trustee of the Paulsue Living Trust Prejudgment Costs in the amount of \$7,837.22." Docket 69 ¶ 9. "This Court found that the Paulsue Living Trust no longer exists (Exhibit 1) (see Doc 51 dated 04/14/2014)." Docket 69 ¶ 10.

The plaintiff seeks summary judgment requiring:

- Jack Morehouse to turn over the \$7,837.22 in litigation costs to the estate;
- pre-judgment interest under 28 U.S.C. § 1961(c)(4);
- post-judgment interest under 28 U.S.C. § 1961(c)(4);
- attorney's fees;
- costs of suit.

This is not a turnover complaint. It is a collection action. More to the point, it is an effort to collect a judgment already entered in a collection action. The problem for the plaintiff is that this court did not enter the judgment. As the successor in interest to the prevailing party in the state court, the trustee should use the state court procedures in the state court to collect a judgment. The court sees no utility in entering a judgment to enforce a judgment. The San Diego Superior Court entered an order directing Jack Morehouse to pay the funds to the debtor. As the debtor has now filed for bankruptcy, the plaintiff is the proper party in interest with standing to enforce the order. 11 U.S.C. § 541(a) specifies what constitutes property of the bankruptcy estate and 11 U.S.C. § 704(a) outlines the duties of the plaintiff in administering the bankruptcy estate, including that he "collect and reduce to money the property of the estate for which such trustee serves." 11 U.S.C. § 704(a)(1). The plaintiff may seek a writ of execution solely based on the order entered by the San Diego Superior Court. Accordingly, it is unnecessary for this court to adjudicate or enter another order or judgment about the same debt. The motion will be denied.

6.	12-29961-A-7    PAUL DOSCHER 13-2378 WHATLEY V. MOREHOUSE ET AL	STATUS CONFERENCE 12-4-13 [1]
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**Tentative Ruling:**    None.

7.	14-28468-A-11    BUALAI WHITE	ORDER TO SHOW CAUSE 9-25-14 [33]
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**Final Ruling:** The order to show cause will be discharged and the petition will remain pending.

The debtor was given permission to pay the petition filing fee in installments pursuant to Fed. R. Bankr. P. 1006(b). The initial installment fee in the amount of \$429 due on September 22, 2014 was not paid. However, the debtor paid the installment fee on October 3, 2014. No prejudice has resulted from the delay.

8. 14-28468-A-11 BUALAI WHITE STATUS CONFERENCE  
8-21-14 [1]

**Tentative Ruling:** None.

9. 13-22486-A-12 STEVEN SAMRA ORDER TO  
13-2158 SHOW CAUSE  
COATE V. SAMRA 9-16-14 [16]

**Tentative Ruling:** The adversary proceeding complaint will be dismissed.

This order to show cause was issued due to the lack of prosecution of this adversary proceeding. At the status conference hearing on September 30, 2013, the plaintiff had told the court that he would be dismissing this adversary proceeding. Docket 15. More than one year has passed since that status conference hearing was held and the adversary proceeding has not been dismissed yet. Given this and given the plaintiff's lack of response to this order to show cause, the court will dismiss the subject complaint.

10. 13-32288-A-7 RANDALL ACKERMAN MOTION TO  
THA-2 SELL  
9-4-14 [41]

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

The chapter 7 trustee requests authority to sell for \$30,300 the estate's 11.11% membership interest in Halvorson Oil Properties, L.L.C., a North Dakota limited liability company, to the debtor. The interest has a scheduled value of \$20,000 and the debtor has received post-petition \$10,000 in royalty distributions. The trustee also asks for a good faith finding under 11 U.S.C. § 363(m).

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. The court will also make a good faith finding under 11 U.S.C. § 363(m).