

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

Honorable Christopher D. Jaime
Robert T. Matsui U.S. Courthouse
501 I Street, Sixth Floor
Sacramento, California

PRE-HEARING DISPOSITIONS COVER SHEET

DAY: TUESDAY

DATE: October 19, 2021

CALENDAR: 1:00 P.M. CHAPTER 13

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. 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 and no appearance is necessary. 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 seven (7) days of the final hearing on the matter.

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

October 19, 2021 at 1:00 p.m.

1. [15-23006](#)-B-13 CHERYL HULSEY MOTION TO AVOID LIEN OF CACH,
[PGM](#)-2 Peter G. Macaluso LLC
9-21-21 [[67](#)]

Final Ruling

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to deny the motion without prejudice.

This is a request for an order avoiding the judicial lien of Cach, LLC ("Creditor") against the Debtor's property commonly known as 1840 West Lodi Avenue, Lodi, California ("Property").

Problematic is that Debtor's motion fails to elect a homestead exemption. Although Debtor's declaration elects a homestead exemption of \$100,000.00, Debtor's Schedule C does not reflect any claimed homestead exemption. Dkt. 1, p. 17. It appears that the Debtor has only elected to exempt personal property and not any real property. Therefore, the Debtor has failed to establish an element of lien avoidance under § 522(f)(1). See *Green v. Hapo Community Credit Union*, 2013 WL 4055846, *4 (9th Cir. BAP 2013) (identifying one of four elements necessary for relief under § 522(f)(1) as "the property must be listed on the debtor's schedules and claimed as exempt").

Avoiding the judicial lien requires that there is no equity in Debtor's property after accounting for the mortgage liens and homestead exemption. The Debtor has not claimed the homestead exemption in her schedules. The judicial lien is therefore not avoided.

The motion is ORDERED DENIED WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.

October 19, 2021 1:00 p.m.

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Final Ruling

The motion has been set for hearing on 28-days notice. Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. Cf. *Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). No opposition was filed. The matter will be resolved without oral argument. No appearance at the hearing is required.

The court's decision is to grant the motion to extend automatic stay.

Debtor seeks to have the provisions of the automatic stay provided by 11 U.S.C. § 362(c)(3) extended beyond 30 days in this case. This is the Debtor's second bankruptcy petition pending in the past 12 months. The Debtor's prior bankruptcy case was dismissed on August 4, 2021, for failure to make plan payments (case no. 19-24908, dkt. 29). Therefore, pursuant to 11 U.S.C. § 362(c)(3)(A), the provisions of the automatic stay end in their entirety 30 days after filing of the petition. See e.g., *Reswick v. Reswick (In re Reswick)*, 446 B.R. 362 (9th Cir. BAP 2011) (stay terminates in its entirety); accord *Smith v. State of Maine Bureau of Revenue Services (In re Smith)*, 910 F.3d 576 (1st Cir. 2018).

Discussion

Upon motion of a party in interest and after notice and hearing, the court may order the provisions extended beyond 30 days if the filing of the subsequent petition was in good faith. 11 U.S.C. § 362(c)(3)(B). The subsequently filed case is presumed to be filed in bad faith if there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13. *Id.* at § 362(c)(3)(C)(i)(III). The presumption of bad faith may be rebutted by clear and convincing evidence. *Id.* at § 362(c)(3)(C).

In determining if good faith exists, the court considers the totality of the circumstances. *In re Elliot-Cook*, 357 B.R. 811, 814 (Bankr. N.D. Cal. 2006); see also Laura B. Bartell, *Staying the Serial Filer - Interpreting the New Exploding Stay Provisions of § 362(c)(3) of the Bankruptcy Code*, 82 Am. Bankr. L.J. 201, 209-210 (2008).

The Debtor states that she fell behind on plan payments due to heart issues that required being in and out of the hospital for the first part of 2021. It was due to the health issues that caused Debtor to fall behind on plan payments. Debtors circumstances have changed in the present bankruptcy because her health now stable after being placed on medications. Debtor's daughter continues to be her primary caretaker and contributes \$1,850.00 per month to the household. Declarations were filed by both the Debtor and her daughter.

The Debtor has sufficiently rebutted, by clear and convincing evidence, the presumption of bad faith under the facts of this case and the prior case for the court to extend the automatic stay.

The motion is granted and the automatic stay is extended for all purposes and parties, unless terminated by operation of law or further order of this court.

The motion is ORDERED GRANTED for reasons stated in the minutes.

The court will issue an order.

3. [11-49867](#)-B-13 GABRIEL/MARIA TAURO
[21-2034](#)
TAURO ET AL V. U.S. BANK N.A

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
5-20-21 [[1](#)]

ADVERSARY PROCEEDING CLOSED:
9/9/2021

Final Ruling

The adversary proceeding having been dismissed on September 9, 2021, the status conference scheduled for October 19, 2021, at 1:00 p.m. is vacated.

The court will issue an order.

Final Ruling

The motion has been set for hearing on the 35-days notice required by Local Bankruptcy Rules 3015-1(d)(1), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 2002(b). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Opposition was filed.

The court has determined that oral argument will not assist in the decision-making process or resolution of the motion. See Local Bankr. R. 9014-1(h), 1001-1(f). This matter will therefore be decided on the papers.

The court's decision is to not confirm the first amended plan.

First, Debtor's Schedule A, line 25, lists 1 acre of land in rural Georgia, purchased by mother, held in constructive trust, with a value of zero. At the meeting of creditors, Debtor testified that she owns a one-half interest in the property with her mother. The Debtor has not provided evidence of the fair market value of the Georgia property. Until this evidence is provided, it cannot be determined whether the plan passes the liquidation test of 11 U.S.C. §1325(a)(4).

Second, the plan provides for the balance of attorney fees in the amount of \$2,000.00 to be paid a monthly dividend of \$15.00. Debtor's plan is a 60-month plan and the monthly dividend proposed to pay debtor's attorney fees will take 134 months to pay said claim. Debtor's plan is not feasible. 11 U.S.C. §1325(a)(6).

The amended plan does not comply with 11 U.S.C. §§ 1322, 1323, and 1325(a) and is not confirmed.

The motion is ORDERED DENIED for reasons stated in the minutes.

The court will issue an order.