

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

November 3, 2022 at 10:30 a.m.

1. <u>22-22159-E-7</u>	JESSICA CASADAY	MOTION TO COMPEL
<u>MMN-2</u>	Michael Noble	ABANDONMENT
		10-17-22 <u>[33]</u>

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on October 17, 2022. By the court's calculation, 17 days' notice was provided. 14 days' notice is required.

The Motion to Compel Abandonment was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offer opposition to the motion, the court will set a briefing schedule and a final hearing, unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion. At the hearing, -----

The Motion to Compel Abandonment is granted.

After notice and a hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or is of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(b). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000).

The Motion filed by Jessica Pulido Casaday (“Debtor”) requests the court to order Geoffrey Richards (“the Chapter 7 Trustee”) to abandon property commonly known as 3445 Truckee Way, Sacramento, California (“Property”). The Property is encumbered by the lien of Superior Loan Services, securing a claim of \$345,000.00; SMUD, securing a lien of \$6,000.00; and the County of Sacramento Property Tax Collector, securing a lien of \$3,200.00. The Declaration of Jessica Casaday has been filed in support of the Motion and values the Property at no more than \$450,000.00, as reflected on Debtor’s Schedules A/B, C, and D, filed. Exhibit A, C, and D, Dckt. 36. However, the Debtor’s declaration states that Debtor believes \$400,000.00 is likely a more accurate current value, based on a recent offer for the Property. Declaration, Dckt. 37. Further, the Chapter 7 Trustee filed docket entry indicating nonopposition on October 22, 2022.

The court finds that the debt secured by the Property exceeds the value of the Property and that there are negative financial consequences to the Estate caused by retaining the Property. The court determines that the Property is of inconsequential value and benefit to the Estate and orders the Chapter 7 Trustee to abandon the property.

CHAMBERS PREPARED ORDER

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 to Compel Abandonment filed by Jessica Pulido Casaday (“Debtor”) 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 Compel Abandonment is granted, and the Property identified as 3445 Truckee Way, Sacramento, California, and listed on Schedule A/B by Debtor is abandoned by the Chapter 7 Trustee, Geoffrey Richards (“Trustee”) to Jessica Pulido Casaday by this order, with no further act of the Trustee required.

Tentative Ruling: Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 27, 2022. By the court's calculation, 37 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(3) (requiring twenty-one days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen days' notice for written opposition).

The Motion for Approval of Compromise has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen 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) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Approval of Compromise is granted.

Nikki B. Farris, the Chapter 7 Trustee, ("Movant Trustee") requests that the court approve a compromise and settle competing claims and defenses with the Chapter 7 Trustee in Debtor's Nevada Bankruptcy Case No. 21-12775 Robert E. Atkinson, the ("Nevada Trustee").

The current case was filed on May 26, 2011. The Nevada case was filed ten years later, on May 28, 2021.

In the Nevada bankruptcy case, Debtor William Blair ("William") asserts a claim arising from a medical device implanted in 2009, followed by numerous revision, repair, replacement, and ultimately removal surgeries over a span of over ten (10) years. It appears to the court this claim surrounds medical malpractice, possible against William's doctor. However, Movant Trustee has not provided the details of who the claim is against.

Movant Trustee asserts the Mesh Claim was not disclosed in the underlying California case. The Mesh Claim was, however, disclosed in the Nevada case. Movant Trustee states Debtor's scheduled

the Mesh Claim in the Nevada case as having an unknown value and asserts a \$0.00 exemption pursuant of 11 U.S.C. § 703.140(B)(11)(D). Movant Trustee has not provided the court a copy of Debtor's Nevada case's schedules.

Movant Trustee asserts she has an interest in the Mesh Claim based on (1) the original implant and (2) revision surgery. The court notes Movant Trustee has listed two revision surgeries for William: one in 2010 and one in 2019. The court presumes Movant Trustee's interest is of the one in 2010, prior to the current case being filed.

This compromise resolves the interest Movant Trustee has in the Mesh Claim. Movant Trustee and Nevada Trustee have resolved these claims and disputes, subject to approval by the court on the following terms and conditions summarized by the court (the full terms of the Settlement are set forth in the Settlement Agreement filed as Exhibit A in support of the Motion, Dckt. 38):

1. All rights of the 2011 California case's estate regarding the Mesh Claim shall be deemed irrevocably assigned to the 2021 Nevada case's estate.
2. Nevada Trustee shall have exclusive control of the Mesh Claim, including prosecution, settlement, and abandonment, subject to the approval of the 2021 Nevada case's court.
3. Any recovery resulting from the Mesh Claim shall be distributed as follows:
 - a. First to attorney's fees and costs allowed for Nevada Trustee's special counsel and prosecution;
 - b. Second to Debtor's exemptions, if any, allowed against the mesh claim; and
 - c. Third, 50% of the remaining balance to Movant Trustee for the benefit of the 2011 California case's estate.
4. Any exemptions available in the 2011 California case are an undisclosed asset of the 2021 Nevada case's estate. Any and all exemptions available in the 2011 California case are waived by the 2021 case estate. All of the net proceeds remitted to Movant Trustee for the benefit of the 2011 California case estate shall be available for distribution to allowed unsecured and administrative claims. Any distribution in the 2011 California case made pursuant to 11 U.S.C. 726(a)(6) (distribution to the debtor) shall be property of the 2021 Nevada case estate and remitted to Nevada Trustee.
5. The United States Bankruptcy Courts for the Eastern District of California and District of Nevada shall retain jurisdiction to enforce and interpret the provisions of the Settlement Agreement.

DISCUSSION

Approval of a compromise is within the discretion of the court. *U.S. v. Alaska Nat'l Bank of the North (In re Walsh Constr.)*, 669 F.2d 1325, 1328 (9th Cir. 1982). When a motion to approve compromise is presented to the court, the court must make its independent determination that the settlement is appropriate. *Protective Comm. for Indep. S'holders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424–25 (1968). In evaluating the acceptability of a compromise, the court evaluates four factors:

1. The probability of success in the litigation;
2. Any difficulties expected in 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 and a proper deference to their reasonable views.

In re A & C Props., 784 F.2d 1377, 1381 (9th Cir. 1986); *see also In re Woodson*, 839 F.2d 610, 620 (9th Cir. 1988).

Movant Trustee argues that three of the four factors have been met.

Probability of Success

The outcome of litigation is always uncertain, and the issues of this case are heavily disputed. Movant Trustee separates and identifies the issues as follows:

Allocation

Movant Trustee argues that the Mesh Claim is “sufficiently rooted” in Debtor’s prepetition past because it arose from a prepetition right or entitlement. Therefore, it should be deemed property of the estate. However, while the original remedial surgery related to the Mesh Claim took place before 2011, there were several surgeries which occurred after 2011, based on a replacement device.

Exemptions

The extent to which Debtor can exempt a portion of the 2011 California case estate’s interest in the Mesh Claim is at issue. Any exemptions available in such are an undisclosed asset of the 2021 case estate.

703 Exemptions Related to 2011 Case

In the 2011 California case, Debtor exempted \$3,903.00 under California Code of Civil Procedure § 703.140(b)(5) (“Wild Card Exemption”), leaving another \$14,447.00 in exemptions available to Debtor. Additionally, Debtor could exempt \$17,425.00 pursuant to the “Personal Injury Exemption.” C.C.P. § 703.140(b)(11)(D). Debtor may also be entitled to the “Future Earnings Exemption,” to the extent reasonable necessity can be found. C.C.P. § 703.140(b)(11)(E).

If Debtor switched exemptions to Section 704 of the California Code of Civil Procedure, then Debtors would likely rely on Section 704.140, which provides, “Except as provided in subdivisions (c) and (d), an award of damages or a settlement arising out of personal injury is exempt to the extent necessary for the support of the judgment debtor and the spouse and dependents of the judgment debtor.” Therefore, any proceeds would be subject to the “necessary for support” determination.

Given that the success of litigation is ultimately unknown, Movant Trustee argues that the probability of success weighs in favor of the Agreement. Further, only a finding that the settlement was negotiated in good faith and is reasonable, fair, and equitable, is required.

Difficulties in Collection

Movant Trustee simply states that this factor does not support approval of the Agreement.

Expense, Inconvenience, and Delay of Continued Litigation

Movant Trustee argues that continued litigation concerning the Mesh Claim will require time and incur expense, which is avoided by this Agreement. Further, the Agreement avoids further delay and allows Trustee Farris to move forward with distribution efforts without unnecessary administrative costs.

Paramount Interest of Creditors

Movant Trustee states that the court may give weight to the Movant Trustee’s opinion. Movant Trustee believes this Agreement is in the best interest of the estate because it resolves the issues above without costly litigation. Further, because the Agreement causes the 2021 Nevada case estate to waive all exemptions that would be available in the 2011 California case, the Agreement provides for an efficient administration of the Debtor’s estate and is in the paramount interest of creditors.

Consideration of Additional Offers

At the hearing, the court announced the proposed settlement and requested that any other parties interested in making an offer to Movant Trustee to purchase or prosecute the property, claims, or interests of the estate present such offers in open court. At the hearing -----.

Upon weighing the factors outlined in *A & C Props* and *Woodson*, the court determines that the compromise is in the best interest of the creditors and the Estate because after Nevada Trustee’s attorneys fees and costs and Debtor’s exemptions, it allows fifty percent of the remaining proceeds to be distributed to Movant Trustee for the benefit of the 2011 California Case’s estate. The Motion is granted.

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 to Approve Compromise filed by Nikki B. Farris, the Chapter 7 Trustee, (“Movant Trustee”) 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 for Approval of Compromise between Movant Trustee and Robert E. Atkinson (“Nevada Trustee”) is granted, and the respective rights and interests of the parties are settled on the terms set forth in the executed Settlement Agreement filed as Exhibit A in support of the Motion (Dckt. 38).

FINAL RULINGS

3. [19-22653-E-7](#)
[DNL-20](#)

REECE/RODINA VENTURA
Peter Macaluso

CONTINUED MOTION FOR
TURNOVER OF PROPERTY
8-30-22 [[449](#)]

WITHDRAWN BY M.P.

Final Ruling: No appearance at the November 3, 2022 hearing is required.

The Motion For Turnover of Property is dismissed without prejudice.

Geoffrey Richards (“the Chapter 7 Trustee”) having filed a “Withdrawal of Motion”, which the court construes to be an Ex Parte Motion to Dismiss the pending Motion on October 11, 2012, Dckt. 465. Trustee, or any party, is not given a “super power” to withdraw from the court contested matters or other proceedings in which oppositions or other responses have been filed. The court is unaware of any Federal Rule enacted by the Supreme Court that allows a party to withdraw from the court a matter for which responsive pleadings have been filed.

There has been extensive discussion throughout the life of this matter. This matter has been continued twice, with representation from not only Trustee and their attorney, but also creditors’ attorneys, Debtor’s Attorney, and other interested parties. Civil Minutes, Dckt. 463.

A party, once an opposition or other response pleading has been filed may seek an order dismissing the motion or application before the court. Fed. R. Civ. P. 41(a)(2), Fed. R. Bankr. P. 7041, 9014. However, such a motion must state grounds for the court entering such an order.

The Parties reported to the court at the October 6, 2022 hearing on the Motion that the Trustee would be **DISMISSING** this Motion in light of the Debtor having provided the Waiver and Assignment Agreement. Civil Minutes; Dckt. 463.

The court accepts, This Time, Trustee’s “withdrawal” as a dismissal of the Motion as provided in Federal Rule of Civil Procedure 41(a)(1)(A)(i). The court enters an order for the dismissal, in light of the unprovided for “withdrawal” stated by the Trustee.

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 Turnover of Property filed by Geoffrey Richards (“the Chapter 7 Trustee”) having been presented to the court, the Chapter 7 Trustee having stated that the Motion was “Withdrawn, the court treating the “Withdrawal” as a dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 465, the “Withdrawal” document not clearly stating in the record that the Motion was dismissed, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion For Turnover of Property is dismissed without prejudice