

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

November 5, 2024 at 1:00 p.m.

- | | | | |
|----|--|-----------------------|--|
| 1. | 24-22501 -B-13
LGT -1 | DULCY KELLY
Pro Se | CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY LILIAN
G. TSANG
7-29-24 [17] |
|----|--|-----------------------|--|

Final Ruling

The case having been dismissed on October 30, 2024, the continued objection to confirmation of plan is overruled as moot.

The court will issue an order.

November 5, 2024 at 1:00 p.m.

2. [24-20702](#)-B-13 CRAIG GILMORE
[RAS](#)-1 G. Michael Williams

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
10-7-24 [[56](#)]

FEDERAL HOME LOAN MORTGAGE
CORPORATION VS.

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). 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 deny without prejudice the motion for relief from automatic stay.

Creditor Federal Home Loan Mortgage Corporation, through its servicer Selene Finance LP ("Creditor"), moves for relief from the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301 as to real property located at 717 E. Longview Avenue, Stockton, California ("Property"). Creditor asserts that debtor Craig Gilmore ("Debtor") and original borrower James Williams, Jr. have failed to make post-petition mortgage payments since March 2024. As of September 2024, Creditor asserts a default of \$4,080.02.

Debtor filed a declaration and an amended declaration in opposition to the motion. Debtor asserts that, through a series of numerous (and confusing) transactions, the deed of trust which Creditor seeks to enforce has already been fully reconveyed and released, and that there is no enforceable deed of trust that Creditor may foreclose upon.

Creditor did not file a reply.

A party seeking stay relief is required to establish that it has a colorable claim to the property at issue. *Arkison v. Griffin (In re Griffin)*, 719 F.3d 1126, 1128 (9th Cir. 2013); see also *Cruz v. Stein Strauss Trust #1361, LLC (In re Cruz)*, 516 B.R. 594, 602 (9th Cir. BAP 2014). A colorable claim is some interest in the property. *Veal v. Am. Home Mortg. Servicing, Inc. (In re Veal)*, 450 B.R. 897, 917 (9th Cir. BAP 2011).

Debtor has produced evidence that there is no longer an enforceable deed of trust on the Property which Creditor may foreclose because the subject deed of trust has been fully reconveyed. Creditor did not refute this assertion or otherwise respond to or rebut Debtor's evidence in a reply or otherwise. The evidentiary record closed when the time to file a reply passed. See Local Bankr. R. 9014-1(f)(1)(C).

Based on the record before it, the court is not persuaded that Creditor has established an interest in - and therefore a colorable claim to - the Property. The motion is therefore DENIED WITHOUT PREJUDICE.¹

The court will prepare an appropriate order.

¹Given the extent of transfers of the Property, and Debtor's evidence that the deed of trust on which Creditor seeks to foreclose has been fully reconveyed, it may be that an adversary proceeding is necessary to establish Creditor's interest in the Property, if any. See Fed. R. Bankr. P. 7001(2).

3. [24-22927](#)-B-13 ELIZABETH WILSON CONTINUED OBJECTION TO
[LGT](#)-1 Kathleen H. Crist CONFIRMATION OF PLAN BY LILIAN
G. TSANG
8-22-24 [[14](#)]

Final Ruling

The objection was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankr. R. 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Parties in interest may, at least 7 days prior to the date of the hearing, serve and file with the court a written reply to any written opposition. Local Bankr. R. 9014-1(f)(1)(C). Nowritten reply has been filed to the objection.

All objections have been resolved and the court has determined that oral argument is not necessary. See Local Bankr. R. 1001-1(f), 9014-1(h). This matter will be decided on the papers. No appearance at the hearing is necessary.

The court's decision is to overrule the objection and confirm the plan.

The Chapter 13 Trustee objected to confirmation of the plan on grounds that the meeting of creditors was not concluded. The continued meeting of creditors was held on October 30, 2024, and concluded as to Debtor.

The issues being resolved, the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The objection is overruled and the plan filed July 3, 2024, is confirmed.

The objection is ORDERED OVERRULED for reasons stated in the minutes.

IT IS FURTHER ORDERED that the plan is CONFIRMED for reasons stated in the minutes. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

4. [24-23635](#)-B-13 JOHNNY/KIMBERLY ALDAPE OBJECTION TO CONFIRMATION OF
[NLG](#)-1 Thomas L. Amberg PLAN BY CARRINGTON MORTGAGE
SERVICES, LLC
WITHDRAWN BY M.P. 10-10-24 [[16](#)]

Final Ruling

Creditor Citibank, N.A. having filed a notice of withdrawal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.

5. [24-23139](#)-B-13 FRANK CANO AND ELIZABETH CONTINUED OBJECTION TO
[LGT-1](#) RAPISURA CONFIRMATION OF PLAN BY LILIAN
Peter G. Macaluso G. TSANG
9-9-24 [[17](#)]

Final Ruling

The *initial* Chapter 13 Plan filed July 18, 2024, is not confirmable and the objection is not one that may be resolved in the confirmation order. Nevertheless, because this is the *initial* Chapter 13 Plan, the procedure in Local Bankr. R. 3015-1(c)(4) applies.

The court's decision is to continue the hearing to November 12, 2024, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.

First, Debtors are \$8,050.00 delinquent in plan payments. The Debtors have paid \$4,025.00 into the plan to date. 11 U.S.C. § 1325(a)(2). Debtors may not be able or willing to make the plan payments based on their current delinquency under the pending plan. 11 U.S.C. § 1325(a)(6).

Second, feasibility relies on the granting of motions to value collateral of RC Willey Home Furnishings and Ally Bank. To date, the Debtors have failed to file these motions to value collateral.

Third, Debtors have failed to provide the Chapter 13 Trustee with Business Documents including: 6 months of profit and loss statements and copies of Debtors' liability riders and workers' compensation riders, if applicable, for Debtors' business. 11 U.S.C. § 521(e)(2)(A); FRBP 4002(b)(3). These are required 7 days before the date set for the first meeting of creditors, 11 U.S.C. § 521(e)(2)(A)(I).

Fourth, the attachment to Schedule I, which provides for Debtors' business income and expenses, needs to be filed. Without this document, it cannot be determined whether Debtors' plan is feasible and pays all projected disposable income for the applicable commitment period to Debtors' general unsecured creditors.

The plan filed July 18, 2024, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Conditional Nature of this Ruling

Because the objection has been filed, set, and served under Local Bankruptcy Rules 3015-1(c)(4) and 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on November 8, 2024, to file and serve a response to the objection(s). See Local Bankr. R. 3015-1(c)(4), 9014-1(f)(2)(C). Any response shall be served on the Chapter 13 Trustee, the Debtors, the Debtors' attorney, and/or the attorney for the objecting party by facsimile or email.

If no response is timely filed and served, the objection will be deemed sustained for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on November 12, 2024, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on November 12, 2024, at 1:00 p.m.

The objection is ORDERED CONDITIONALLY SUSTAINED for reasons stated in the minutes.

The court will issue an order.

Final Ruling

The *initial* Chapter 13 Plan filed September 3, 2024, is not confirmable and the objection is not one that may be resolved in the confirmation order. Nevertheless, because this is the *initial* Chapter 13 Plan, the procedure in Local Bankr. R. 3015-1(c)(4) applies.

The court's decision is to continue the hearing to November 12, 2024, at 1:00 p.m., conditionally sustain the objection, and deny confirmation of the plan.

First, Debtor's plan fails to provide the amount of arrears owed to Class 1 creditor Ally Financial and fails to provide the monthly arrearage dividend to Ally Financial. It cannot be determined whether the Debtor's plan has been proposed in good faith under 11 U.S.C. § 1325(a)(3).

Second, Section 2.01 of the plan lists a monthly payment of \$600.00 for a duration of 36 months but Schedule J lists a monthly net income of only \$238.00. With these numbers, the Debtor will not be able to make all payments under the plan and comply with the plan. 11 U.S.C. § 1325(a)(6).

Third, Debtor has failed to disclose all income received six months prior to filing on Form 122C-1. Without this information, it cannot be determined whether Debtor's plan is feasible and pays all projected disposable income for the applicable commitment period to general unsecured creditors. 11 U.S.C. § 1325(b)(1)(B).

The plan filed September 3, 2024, does not comply with 11 U.S.C. §§ 1322 and 1325(a). The objection is sustained and the plan is not confirmed.

Conditional Nature of this Ruling

Because the objection has been filed, set, and served under Local Bankruptcy Rules 3015-1(c)(4) and 9014-1(f)(2), any party in interest shall have until 5:00 p.m. on November 10, 2024, to file and serve a response to the objection(s). See Local Bankr. R. 3015-1(c)(4), 9014-1(f)(2)(C). Any response shall be served on the Chapter 13 Trustee, the Debtor, the Debtor's attorney, and/or the attorney for the objecting party by facsimile or email.

If no response is timely filed and served, the objection will be deemed sustained for the reasons stated hereinabove, this ruling will no longer be conditional and will become the court's final decision, and the continued hearing on November 12, 2024, at 1:00 p.m. will be vacated.

If a response is timely filed and served, the court will hear the objection on November 12, 2024, at 1:00 p.m.

The objection is ORDERED CONDITIONALLY SUSTAINED for reasons stated in the minutes.

The court will issue an order.

7. [24-21946](#)-B-13 DANA BUCKINGHAM
[TMO](#)-2 T. Mark O'Toole

MOTION TO CONFIRM PLAN
9-23-24 [[42](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 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). 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 confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtor has provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

8. [24-23051](#)-B-13 JOHN KEIFER
[JCW](#)-2 Pro Se
Thru #9

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY
CITIBANK, N.A.
8-28-24 [[23](#)]

WITHDRAWN BY M.P.

Final Ruling

Creditor Citibank, N.A. having filed a notice of withdrawal of its objection, the objection is dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041. The matter is removed from the calendar.

The objection is ORDERED DISMISSED WITHOUT PREJUDICE for reasons stated in the minutes.

The court will issue an order.

9. [24-23051](#)-B-13 JOHN KEIFER
[LGT](#)-2 Pro Se

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY LILIAN
G. TSANG
10-4-24 [[36](#)]

Final Ruling

The case having been dismissed on October 30, 2024, the objection to confirmation of plan is overruled as moot.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

10. [24-23164](#)-B-13 ESTELLE YANCEY CONTINUED OBJECTION TO
[LGT](#)-1 Pro Se CONFIRMATION OF PLAN BY LILIAN
Thru #11 G. TSANG
9-10-24 [[19](#)]

CONTINUED TO 11/19/24 AT 1:00 P.M. AT SACRAMENTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 11/13/24.

Final Ruling

No appearance at the November 5, 2024, hearing is required. The court will issue an
order.

11. [24-23164](#)-B-13 ESTELLE YANCEY CONTINUED OBJECTION TO
[RAS](#)-1 Pro Se CONFIRMATION OF PLAN BY
WILMINGTON SAVINGS FUND
SOCIETY, FSB
9-11-24 [[22](#)]

CONTINUED TO 11/19/24 AT 1:00 P.M. AT SACRAMENTO COURTROOM TO BE HEARD AFTER THE
CONTINUED MEETING OF CREDITORS SET FOR 11/13/24.

Final Ruling

No appearance at the November 5, 2024, hearing is required. The court will issue an
order.

12. [24-24477](#)-B-13 BRANDY DEHART
KH-1 Pro Se
TWIN CREEKS KF, LP. VS.
DEBTOR DISMISSED: 10/22/24

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-17-24 [[11](#)]

Final Ruling

The case having been dismissed on October 22, 2024, the motion for relief from automatic stay under 11 U.S.C. § 362(d)(1) and (2) is denied as moot.

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

The court will issue an order.

13. [24-22879](#)-B-13 ALLISON MELLO MCSHEA AND MOTION TO CONFIRM PLAN
[JLL](#)-1 ZACHARY MCSHEA 9-12-24 [[20](#)]
Leo G Spanos

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 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). 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 confirm the amended plan.

11 U.S.C. § 1323 permits a debtor to amend a plan any time before confirmation. The Debtors have provided evidence in support of confirmation. No opposition to the motion has been filed by the Chapter 13 Trustee or creditors. The amended plan complies with 11 U.S.C. §§ 1322 and 1325(a) and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

14. [24-22684](#)-B-13 ANDREW GILTON
[LGT](#)-1 Steven A. Alpert

CONTINUED OBJECTION TO
CONFIRMATION OF PLAN BY LILIAN
G. TSANG
8-14-24 [[16](#)]

Final Ruling

The case having been dismissed on October 27, 2024, the objection to confirmation of plan is overruled as moot.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

15. [24-23588](#)-B-13 MAY LOR
[LGT](#)-1 Arete Kostopoulos

OBJECTION TO CONFIRMATION OF
PLAN BY LILIAN G. TSANG
10-3-24 [[15](#)]

Final Ruling

The objection to confirmation was properly filed at least 14 days prior to the hearing on the motion to confirm a plan. See Local Bankruptcy Rules 3015-1(c)(4) & (d)(1) and 9014-1(f)(2). Nonetheless, the court determines that the resolution of this matter does not require oral argument. See Local Bankr. R. 9014-1(h).

The court's decision is to overrule the objection as moot.

Subsequent to the filing of the Chapter 13 Trustee's objection, the Debtor filed an amended plan on October 3, 2024. The confirmation hearing for the amended plan has not yet been scheduled. Nonetheless, the earlier plan filed August 14, 2024, is not confirmed.

The objection is ORDERED OVERRULED AS MOOT for reasons stated in the minutes.

The court will issue an order.

16. [23-21099](#)-B-13 ANGELICA CINTORA
[JCK](#)-3 Gregory J. Smith

MOTION TO MODIFY PLAN
9-17-24 [[44](#)]

Final Ruling

The motion has been set for hearing on the 35-days' notice required by Local Bankruptcy Rule 3015-1(d)(2), 9014-1(f)(1), and Federal Rule of Bankruptcy Procedure 3015(g). 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 permit the requested modification and confirm the modified plan.

11 U.S.C. § 1329 permits a debtor to modify a plan after confirmation. The Debtor has filed evidence in support of confirmation. No opposition to the motion was filed by the Chapter 13 Trustee or creditors. The modified plan complies with 11 U.S.C. §§ 1322, 1325(a), and 1329, and is confirmed.

The motion is ORDERED GRANTED for reasons stated in the minutes. The Chapter 13 Trustee shall prepare an appropriate order confirming the Chapter 13 plan and submit the proposed order to the court.

The court will issue an order.

17. [23-22562](#)-B-13 KENNETH/SOPHIA MOORE
[LGT](#)-2 Lauren Franzella

CONTINUED MOTION TO DISMISS
CASE
10-4-24 [[105](#)]

Final Ruling

This matter was continued from October 29, 2024, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, November 1, 2024. Debtors filed a timely response stating that they entered a stipulation with creditor Superior Loan Servicing with regard to past due payments and future payments, and that they have no remaining funds if the bankruptcy is converted to a chapter 7. The issue raised by the Chapter 13 Trustee with regard to delinquent plan payments remains unresolved.

Given the aforementioned, the court finds dismissal, rather than conversion, is in the best interest of creditors. The court's conditional ruling at dkt. 109 and the continued hearing on November 5, 2024, at 1:00 p.m. are vacated. The motion to dismiss case is granted.

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

The court will issue an order.

18. [24-21266](#)-B-13 LANA CHURCHILL
[LGT](#)-2 Gregory J. Smith

CONTINUED MOTION TO DISMISS
CASE
10-4-24 [[76](#)]

Final Ruling

This matter was continued from October 29, 2024, to allow any party in interest to file an opposition or response by 5:00 p.m. Friday, November 1, 2024. Nothing was filed. Therefore, the court's conditional ruling at dkt. 80, granting the motion to dismiss case, shall become the court's final decision. The continued hearing on November 5, 2024, at 1:00 p.m. is vacated.

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

The court will issue an order.