

**UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF CALIFORNIA**

Honorable Fredrick E. Clement
Bakersfield Federal Courthouse
510 19th Street, Second Floor
Bakersfield, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: NOVEMBER 8, 2017
CALENDAR: 10:00 A.M. CHAPTER 7 CASES

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. 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. If the parties stipulate to continue the hearing on the matter or agree to resolve the matter in a way inconsistent with the final ruling, then the court will consider vacating the final ruling only if the moving party notifies chambers before 4:00 pm at least one business day before the hearing date: Department A-Kathy Torres (559)499-5860; Department B-Jennifer Dauer (559)499-5870. If a party has grounds to contest a final ruling because of the court's error under FRCP 60 (a) (FRBP 9024) ["a clerical mistake (by the court) or a mistake arising from (the court's) oversight or omission"] the party shall notify chambers (contact information above) and any other party affected by the final ruling by 4:00 pm one business day before the hearing.

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.

1. [17-12417](#)-A-7 DAVID/RENEE STAHL
[RSW](#)-1
DAVID STAHL/MV
ROBERT WILLIAMS/Atty. for dbt.

MOTION TO AVOID LIEN OF MIDLAND
FUNDING LLC
10-10-17 [[17](#)]

Final Ruling

Motion: Avoid Lien that Impairs Exemption

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The responding party's judicial lien, all other liens, and the exemption amount together exceed the property's value by an amount greater than or equal to the judicial lien. As a result, the responding party's judicial lien will be avoided entirely.

2. [17-12322](#)-A-7 ALEJANDRO/LISA ROMERO
[JSP](#)-1
ALEJANDRO ROMERO/MV
JOSEPH PEARL/Atty. for dbt.

MOTION TO AVOID LIEN OF
AMERICAN EXPRESS BANK
10-3-17 [[20](#)]

Final Ruling

Motion: Avoid Liens that Impair Exemption

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by moving party

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

LIEN AVOIDANCE UNDER § 522(f)

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC Distrib. (In re Goswami)*, 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

REVERSE-PRIORITY ANALYSIS

In cases in which there are multiple liens to be avoided, the liens must be avoided in the reverse order of their priority. See *In re Meyer*, 373 B.R. 84, 87-88 (B.A.P. 9th Cir. 2007). "[L]iens already avoided are excluded from the exemption-impairment calculation with respect to other liens." *Id.*; 11 U.S.C. § 522(f)(2)(B).

ANALYSIS

The court finds it unnecessary to apply the reverse-priority analysis individually to each of the responding parties' judicial liens. See *In re Meyer*, 373 B.R. at 88 ("[O]ne 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.").

Under the reverse-priority analysis, Midland Funding, LLC's judicial lien would be the last judicial lien to be avoided because of its higher priority than the other judicial liens (but it remains subject to any senior consensual lien). In determining whether its lien may be avoided, the court must exclude all junior judicial liens that would already have been avoided under such analysis. See 11 U.S.C. § 522(f)(2)(B); *In re Meyer*, 373 B.R. at 87-88.

The senior judicial lien, plus all other liens (excluding junior judicial liens lower in priority), plus the exemption amount together equal 174,234.09. This sum exceeds the property's value (\$173,000) by an amount (\$1234.09) that is equal to the senior judicial lien. As a result, Midland Funding, LLC's judicial lien may be avoided entirely.

Because the highest-priority judicial lien is avoidable, all other junior judicial liens are also avoidable, and the reverse-priority analysis is unnecessary to apply to each judicial lien. Stated differently, the sum of the debt secured by the consensual liens plus the debtor's exemption amount equals or exceeds the fair market value of the real property, so all judicial liens on the debtor's property are avoidable under § 522(f).

3. [17-10841](#)-A-7 LLOYD HOLLINS
[VVF](#)-1
HONDA LEASE TRUST/MV
D. GARDNER/Atty. for dbt.
VINCENT FROUNJIAN/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-25-17 [[53](#)]

Tentative Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Granted in part; denied in part as moot

Order: Civil minute order

Subject: Leased 2016 Honda Civic

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

AS TO THE DEBTOR

The motion is denied as moot. The stay that protects the debtor terminates at the entry of discharge. 11 U.S.C. § 362(c)(2). In this case, discharge has been entered. As a result, the motion is moot as to the debtor.

AS TO THE ESTATE

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

"[U]nder section 362(d)(1), the stay must be terminated for 'cause.' Lack of adequate protection is but one example of "cause" for relief from stay." *In re Ellis*, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). The panel in the *Ellis* case rejected the argument that under § 362(d)(1) "the stay can only be terminated if [the movant-creditors] show a lack of adequate protection." *Id.*

The debtor has missed 1.7 post-petition payments due under the lease with the movant. The moving party's interest in the vehicle is not being adequately protected due to the debtor's postpetition default. This constitutes cause for stay relief.

The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

Honda Lease Trust's motion for relief from the automatic stay has been presented to the court. Having entered the default of respondent for failure to appear, timely oppose, or otherwise defend in the matter, and having considered the well-pleaded facts of the motion,

IT IS ORDERED that the motion is granted in part and denied as moot in part. The automatic stay is vacated with respect to the interest of the trustee in the property described in the motion, commonly known as 2016 Honda Civic. Relief from the automatic stay as to the interest of the debtor in such property is denied as moot given the entry of the discharge in this case. 11 U.S.C. § 362(c)(2)(C).

IT IS FURTHER ORDERED that the 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

IT IS FURTHER ORDERED that no other relief is awarded. To the extent that the motion includes any request for attorney's fees or other costs for bringing this motion, the request is denied.

4. [14-11761](#)-A-7 FRANCISCO/DIANE LOPEZ MOTION TO RECONVERT CASE FROM
[RSW](#)-5 CHAPTER 7 TO CHAPTER 13
10-23-17 [[140](#)]
ROBERT WILLIAMS/Atty. for dbt.

Tentative Ruling

Motion: Re-convert Case from Chapter 7 to Chapter 13

Notice: LBR 9014-1(f)(2); no written opposition required

Disposition: Denied

Order: Civil minute order

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

FACTS

This case was filed as a chapter 13 case on April 6, 2014. A chapter 13 plan was confirmed in this case.

This year, the case was voluntarily converted to chapter 7 on June 15, 2017. But the debtors filed a prior chapter 7 case on September 25, 2008, and received a discharge in that prior case. Under § 727(a)(8), the debtors are precluded from receiving a chapter 7 discharge in this case because the debtors have been granted a discharge in chapter 7 in a case commenced within 8 years before the date of the filing of the petition.

Because the debtors are precluded from receiving a discharge in the chapter 7, they request conversion of their case back to chapter 13.

RECONVERSION UNDER § 706(a)

Section 706 of the Bankruptcy Code gives chapter 7 debtors a qualified conversion right. See 11 U.S.C. § 706(a), (d). A debtor's right to convert a case from Chapter 7 to Chapter 11, 12, or 13 is conditioned on (i) the debtor's eligibility for relief under the chapter to which the case will be converted and (ii) the case not having been previously converted under §§ 1112, 1208, or 1307. 11 U.S.C. § 706(a), (d); see also *Marrama v. Citizens Bank of Mass.*, 549 U.S. 365, 372-74 (2007) (affirming denial of debtor's conversion from Chapter 7 to Chapter 13 based on bad faith conduct sufficient to establish cause under § 1307(c)).

A split of authority exists on the question whether the court may authorize a debtor to reconvert a case under § 706(a) when the case was already converted to chapter 7. See Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 5:1732-5:1734 (rev. 2016) (citing cases on both sides of the issue).

In this case, section 706(a) no longer gives the debtors the right to convert their case to chapter 13 because this case was previously converted to a chapter 7 case. But the court agrees that it has discretion to reconvert a case from chapter 7 to chapter 13, when the case was previously converted to chapter 7. See *In re Johnson*, 376 B.R. 763, 764 (Bankr. D.N.M. 2007) ("This Court agrees with those courts which conclude that reconversion is permitted under 706(a), and that such determination falls within the Court's discretion.").

But like the court in *In re Johnson*, the court has scrutinized the debtors' circumstances and will not exercise its discretion to authorize reconversion here. The debtors bear the burden of showing that reconversion is appropriate. See *id.* This burden has not been satisfied. When the debtors' case was pending in chapter 13, the trustee filed four motions to dismiss for plan delinquencies. And the delinquencies were significant in amount. This pattern of delinquencies tends to show that the reconversion of this case is not in the best interests of creditors and the estate.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

The debtor's motion to reconvert this case from chapter 7 to chapter 13 has been presented to the court. Having considered the motion, oppositions, responses and replies, if any, and having heard oral argument presented at the hearing,

IT IS ORDERED that the motion is denied.

5. [14-11761](#)-A-7 FRANCISCO/DIANE LOPEZ MOTION FOR DENIAL OF DISCHARGE
[UST](#)-1 OF BOTH DEBTORS UNDER 11 U.S.C.
TRACY DAVIS/MV SECTION 727(A)
9-19-17 [[133](#)]
- ROBERT WILLIAMS/Atty. for dbt.
ROBIN TUBESING/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Motion: Deny Discharge under § 727(a)(8)

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Prepared by the movant

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

The U.S. Trustee has moved for denial of discharge pursuant to § 727(a)(8). The debtor has received a chapter 7 discharge in a prior case. The prior case was commenced within 8 years prior to the petition date in the current case. Pursuant to § 727(a)(8), the debtor is not entitled to receive a discharge in this case.

6. [16-12063](#)-A-7 TIMOTHY CLARK
[TGM-2](#)
RANDELL PARKER/MV
ROBERT WILLIAMS/Atty. for dbt.
TRUDI MANFREDO/Atty. for mv.
RESPONSIVE PLEADING

OBJECTION TO DEBTOR'S CLAIM OF
EXEMPTIONS
9-13-17 [[69](#)]

Final Ruling

Motion: Objection to Claim of Exemptions

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Continued to November 29, 2017, at 9:00 a.m. in Fresno

Order: Civil minute order

Trustee Randell Parker ("Parker") objects to debtor Timothy Scott Clark's ("Clark") Second Amended Claim of Exemptions, September 13, 2017, ECF # 72. Clark opposes the objection.

DISCUSSION

Motion Insufficiently Specifies the Items and Factual/Legal Grounds for the Objection

Federal Rule of Bankruptcy Procedure 9013 requires a written motion to "set forth the relief or order sought" and to "state with particularity the grounds" for that request. Under this rule, a motion lacking proper grounds for relief (or lacking the relief sought) does not comply with this rule by including them in the declaration, exhibits or other papers in support.

Local Rule 9014-1(d)(3)(A) amplifies Rule 9013. It provides: "**The application, motion, contested matter, or other request for relief shall set forth the relief or order sought and shall state with particularity the factual and legal grounds therefor.** Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request" (emphasis added).

The court understands that trustee Parker objects to Clark's Second Amended Claim of Exemptions, September 13, 2017, ECF # 72, as to pertains to "household goods," exempted under California Code of Civil Procedure § 704.020. Objection p. 1, lines 18-23, September 13, 2017, ECF # 69. The trustee is requested to file a statement clarifying which particular claims of exemptions in the Second Amended Claim of Exemptions, September 13, 2017, ECF # 72, to which objection is made, e.g. Household goods (Battery Charger et al.) \$10,000; Household electronics (A/V Pre-Amp.) \$7,500; Antique Dresser \$2,000; Items Stolen (Bicycle et al.) \$4,750. That statement shall also specify the legal and/or factual basis for those objections. Is the trustee solely objecting to the claim of exemptions on the basis of their location on the date of the petition and the debtor's claim of 100% exemption? Or is the objection also raising other basis (hinted at but not specifically stated), e.g. (1) whether proceeds of the exempted items stolen and for which proceeds are due the debtor/estate may be exempted under the claimed exemption, (2) whether judicial estoppel precludes the debtor from exempting an amount beyond the amount specified in the original schedules, Schedule B, July 5, 2016, ECF # 24 (items 6-8 aggregating \$10,000); (3) whether California equitable estoppel precludes the debtor from claiming the exemption;

(4) whether California's doctrine of laches precludes the debtor from claiming the exemption; and/or (5) whether a lack of good faith exists and, if so, whether California law would find that a sufficient basis to overrule Clark's claim of exemption.

Amalgamated Motion and Memorandum Violates LBR 9014-1(d)

Generally, a motion, notice of hearing, memorandum of points and authorities, supporting declaration, and certificate of service must each be filed as separate documents. LBR 9014-1(d)(1), (4). As a result, the motion and the memorandum of points and authorities may not be filed as an amalgamated document. See *id.*

Written motions are defined by their content in the Federal Rules of Bankruptcy Procedure. They must state the relief or order sought and the grounds for that relief or order. Fed. R. Bankr. P. 9013. "Legal grounds for the relief sought means citation to the statute, rule, case, or common law doctrine that forms the basis of the moving party's request *but does not include a discussion of those authorities or argument for their applicability.*" LBR 9014-1(d)(3)(A) (emphasis added). In contrast, a memorandum of points and authorities is "a succinct and reasoned explanation of the moving party's entitlement to relief." LBR 9014-1(d)(3)(C).

The rule prohibiting a combined motion and memorandum of points and authorities contains an exception when the total length of the combined document does not exceed 6 pages. LBR 9014-1(d)(4).

Here, the trustee Parker has combined the motion and memorandum of points and authorities. That document exceeds six pages. As a consequence, the movant has not complied with the separate document requirement of LBR 9014-1(d)(4). Counsel for counsel for trustee is reminded to comply with applicable provisions of the Federal Rules of Bankruptcy Procedure and Local Bankruptcy Rules.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

IT IS ORDERED that the is Randell Parker's Objection to the Second Amended Claim of Exemptions, September 13, 2017, ECF # 72 is continued to November 29, 2017, at 9:00 a.m. in Fresno.

IT IS FURTHER ORDERED that not later than November 22, 2017, the trustee shall file and serve on the debtor and his counsel a statement clarifying (1) which particular items in the Second Amended Claim of Exemptions, September 13, 2017, ECF # 72, to which objection is made; and (2) the basis, factual and legal, for the objection.

IT IS FURTHER ORDERED that other than the trustee's statement described in the preceding paragraph no other filings are authorized by any party.

7. [17-13363](#)-A-7 RUBEN PINEDA MURILLO MOTION FOR RELIEF FROM
[VVF](#)-1 AUTOMATIC STAY
HONDA LEASE TRUST/MV 10-10-17 [[12](#)]
BARRY BOROWITZ/Atty. for dbt.
VINCENT FROUNJIAN/Atty. for mv.

Final Ruling

Motion: Stay Relief

Notice: LBR 9014-1(f)(1); written opposition required

Disposition: Granted

Order: Civil minute order

Subject: Leased 2015 Honda Accord

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55, *incorporated by* Fed. R. Bankr. P. 7055, 9014(c). Written opposition to this motion was required not less than 14 days before the hearing on this motion. LBR 9014-1(f)(1)(B). None has been filed. The default of the responding party is entered. The court considers the record, accepting well-pleaded facts as true. *TeleVideo Sys., Inc. v. Heidenthal*, 826 F.2d 915, 917-18 (9th Cir. 1987).

STAY RELIEF

Subsection (d)(1) of § 362 of Title 11 provides for relief from stay for "cause, including the lack of adequate protection of an interest in property of such party." 11 U.S.C. § 362(d)(1). Adequate protection may consist of a lump sum cash payment or periodic cash payments to the entity entitled to adequate protection "to the extent that the stay . . . results in a decrease in the value of such entity's interest in property." 11 U.S.C. § 361(1).

"[U]nder section 362(d)(1), the stay must be terminated for 'cause.' Lack of adequate protection is but one example of "cause" for relief from stay." *In re Ellis*, 60 B.R. 432, 435 (B.A.P. 9th Cir. 1985). The panel in the *Ellis* case rejected the argument that under § 362(d)(1) "the stay can only be terminated if [the movant-creditors] show a lack of adequate protection." *Id.*

The debtor has missed 2 post-petition payments due on the debt under the moving party's lease. The moving party's interest in the vehicle is not being adequately protected due to the debtor's postpetition default. This constitutes cause for stay relief.

The court does not address grounds for relief under § 362(d)(2) as relief is warranted under § 362(d)(1). The motion will be granted, and the 14-day stay of Federal Rule of Bankruptcy Procedure 4001(a)(3) will be waived. No other relief will be awarded.

CIVIL MINUTE ORDER

The court shall issue a civil minute order that conforms substantially to the following form:

Findings of fact and conclusions of law are stated in the civil minutes for the hearing.

IT IS ORDERED that the motion is granted. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2015 Honda Accord, as to all parties in interest. The 14-day stay of the order under Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived. Any party with standing may pursue its rights against the property pursuant to applicable non-bankruptcy law.

8. [17-13699](#)-A-7 STEPHANIE NAVARRETTE ORDER TO SHOW CAUSE - FAILURE
TO PAY FEES
10-11-17 [[11](#)]

If the filing fee of \$335 has not been paid in full by the time of the hearing, the case will be dismissed without further notice or hearing.