

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Sacramento, California

November 17, 2022 at 10:00 a.m.

FINAL RULINGS

1. <u>18-20964-E-7</u> <u>KMB-1</u>	BRADLEY GILBREATH Peter Macaluso	CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY 9-15-22 [<u>189</u>]
U.S. BANK NATIONAL ASSOCIATION VS. WITHDRAWN BY M.P.		

Final Ruling: No appearance at the November 17, 2022 hearing is required.

The Motion is Dismissed without prejudice.

U.S. Bank National Association (“Creditor”) having filed a Notice of Withdrawal, which the court construes to be an *Ex Parte* Motion to Dismiss Without Prejudice, pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 7041 and 7041, the Motion for Relief is dismissed without prejudice, and the matter is removed from the calendar.

The court notes that the “Withdrawal” was filed by Movant’s very experienced bankruptcy counsel. Based on the court’s review of the Federal Rule of Bankruptcy Procedure enacted by the U.S. Supreme Court, there is an a process or right to just “withdraw” a pleading from the court. However, in Federal Rule of Civil Procedure 41(a)(1)(A)(i), which is incorporated into Federal Rule of Bankruptcy Procedure 7041 and 9014(c), a party may **dismiss without prejudice** a motion or application without prejudice so long as no responsive pleading was filed.

Here, the Parties and their counsel have productively and responsibly addressed the matters in this Contested Matter, reducing unnecessary legal expenses (having stipulated to continuance, affording the Trustee the time to market and sell the property, Movant to have its claim paid, and the Trustee generate monies for the Estate (Mtn to Sell; Dckt 196).

The court notes that a younger attorney is assisting the experienced bankruptcy attorney on the “Withdrawal.” No authority was stated in the “Withdrawal” as to how the Movant could just “withdraw” a pleading filed with the court.

The court makes this point of noting the absence of a right to “withdraw” pleadings from the court, but that there is a right to dismiss for a couple very practical purposes. First, to acknowledge when the Supreme Court sets Rules, the court, counsel, and parties must follow them.

Second, to highlight that there could be a very unfortunate situation where an attorney believed that a motion could be withdrawn to avoid an “uncomfortable” contested matter, think that “disaster” had been avoided, and then learn the unfortunate news (which the attorney then has to communicate to a grumpy client) that the matter adjudicated and an adverse (to the attorney’s client) ruling was issued.

To avoid any confusion about the dismissal, the court construes the “Withdrawn” as an *ex parte* motion to dismiss without prejudice (Fed. R. Civ. P. 41(a)(2); Fed. R. Bankr. P. 7004, 9014).

The court also notes that the “Withdrawal” is a multi-dimensional pleading, consisting not only of the “Withdrawal,” but also has a Certificate of Service buried within the “Withdrawal,” all filed as one pleading. Dckt. 210. This violates the long standing Local Bankruptcy Rules in this District which requires the motion, points and authorities (which may be combined with if the combined “mothorities” does not exceed six pages in length (including the caption page), notice, opposition, each declarations, and the exhibits (which may be filed as one exhibit document). L.B.R. 9004-2(c), (d); 9014-1(d)(4). Failure of complying with these basic pleading Local Rules can result in the dismissal of the motion/opposition or the issuance of corrective sanctions. L.B.R. 1001(g), 9004-1(a), 9014-1(l).

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 Relief From the Stay filed by U.S. Bank National Association, Trustee (“Movant”), having been presented to the court, a “Withdrawal” of the Motion having been filed by Movant, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion is dismissed without prejudice.

In the Civil Minutes for the November 17, 2022 hearing the court provides a review of there not being a Rule permitting a party to “withdraw” a pleading from the court, that Federal Rule of Civil Procedure 41(a)(1)(i) and (ii) allow for the parties to dismiss a motion or jointly dismissal (if a response has been filed) and Federal Rule of Civil Procedure 41(a)(2) allows a party to request that the court dismiss a motion or application if a response has been filed and no stipulation can be reached. Federal Rule of Civil Procedure is incorporated into Federal Rule of Bankruptcy Procedure 7041 and 9014 (motion and application practice). The court also addresses that sanctions may be ordered when a party fails to comply with the Local Bankruptcy Rules (such as when the “withdrawal”/motion and certificate of service are improperly combined into one pleading).