

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Modesto, California

November 21, 2024 at 10:30 a.m.

FINAL RULINGS

1. [24-90602](#)-E-11 AMERICAN TRADERS, INC. MOTION TO EMPLOY MICHAEL JAY
[MJB](#)-4 Michael Berger BERGER AS ATTORNEY(S)
10-17-24 [10]

Final Ruling: No appearance at the November 21, 2024 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, attorneys of record, creditors, and Office of the United States Trustee on October 17, 2024. By the court’s calculation, 35 days’ notice was provided. 28 days’ notice is required.

The Motion to Employ 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Employ is granted.

American Traders, Inc. (“Debtor in Possession”) seeks to employ Michael J. Berger (“Counsel”) pursuant to Local Bankruptcy Rule 9014-1(f)(1) and Bankruptcy Code Sections 328(a) and 330. Debtor in Possession seeks the employment of Counsel for general representation and case prosecution.

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Debtor in Possession argues that Counsel's appointment and retention is necessary for viably reorganizing and to confirm a Plan in this case.

Mr. Berger testifies as to his qualifications, his hourly rate, and his retainer. Decl., Docket 12. Mr. Berger testifies he and the firm do not represent or hold any interest adverse to Debtor or to the Estate and that they have no connection with Debtor, creditors, the U.S. Trustee, any party in interest, or their respective attorneys. *Id.* at ¶ 5.

Pursuant to § 327(a), a trustee or debtor in possession is authorized, with court approval, to engage the services of professionals, including attorneys, to represent or assist the trustee in carrying out the trustee's duties under Title 11. To be so employed by the trustee or debtor in possession, the professional must not hold or represent an interest adverse to the estate and be a disinterested person.

Section 328(a) authorizes, with court approval, a trustee or debtor in possession to engage the professional on reasonable terms and conditions, including a retainer, hourly fee, fixed or percentage fee, or contingent fee basis. Notwithstanding such approved terms and conditions, the court may allow compensation different from that under the agreement after the conclusion of the representation, if such terms and conditions prove to have been improvident in light of developments not capable of being anticipated at the time of fixing of such terms and conditions.

Taking into account all of the relevant factors in connection with the employment and compensation of Counsel, considering the declaration demonstrating that Counsel does not hold an adverse interest to the Estate and is a disinterested person, the nature and scope of the services to be provided, the court grants the motion to employ Michael J. Berger as Counsel for the Chapter 11 Estate on the terms and conditions set forth in the Fee Agreement filed as Exhibit 3, Dckt. 13. Approval of the commission is subject to the provisions of 11 U.S.C. § 328 and review of the fee at the time of final allowance of fees for the professional.

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 Employ filed by American Traders, Inc. ("Debtor in Possession") 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 Employ is granted, effective October 11, 2024, and Debtor in Possession is authorized to employ Michael J. Berger as Counsel for Debtor in Possession on the terms and conditions as set forth in the Fee Agreement filed as Exhibit 3, Dckt. 13.

IT IS FURTHER ORDERED that no compensation is permitted except upon court order following an application pursuant to 11 U.S.C. § 330 and subject to the provisions of 11 U.S.C. § 328.

IT IS FURTHER ORDERED that no hourly rate or other term referred to in the application papers is approved unless unambiguously so stated in this order or in a subsequent order of this court.

IT IS FURTHER ORDERED that except as otherwise ordered by the Court, all funds received by counsel in connection with this matter, regardless of whether they are denominated a retainer or are said to be nonrefundable, are deemed to be an advance payment of fees and to be property of the estate.

IT IS FURTHER ORDERED that funds that are deemed to constitute an advance payment of fees shall be maintained in a trust account maintained in an authorized depository, which account may be either a separate interest-bearing account or a trust account containing commingled funds. Withdrawals are permitted only after approval of an application for compensation and after the court issues an order authorizing disbursement of a specific amount.

Final Ruling: No appearance at the November 21, 2024 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor’s Attorney, attorneys of record, and Office of the United States Trustee on October 31, 2024. By the court’s calculation, 21 days’ notice was provided. 28 days’ notice is required. However, as the Rule 2004 Examination is typically granted *ex parte*, the court shortens the notice period in this single instance to 21 days.

Moreover, Romspen has reused a Docket Control Number. Romspen is reminded that the Local Rules require the use of a new Docket Control Number with each motion. LOCAL BANKR. R. 9014-1(c). Here, the moving party reused a Docket Control Number. That is not correct. The Court will consider the motion, but counsel is reminded that not complying with the Local Rules is cause, in and of itself, to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

The Motion for Rule 2004 Examination 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

<p>The Motion for Rule 2004 Examination is granted.</p>
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Romspen California Mortgage Limited Partnership (“Romspen”) moves this court for an Order pursuant to Fed. R. Bankr. P. 2004 allowing Romspen to: (a) examine representative(s) of Art Buildings, LLC (“Debtor in Possession”) most knowledgeable about the topics set forth in Attachment A and (b) compel the Debtor to produce documents delineated in the Motion.

Attached to the Motion are a list of subjects for examination (Attachment A) and a list of documents requests (Attachment B). Mot. 7-13, Docket 71.

Fed. R. Bankr. P. 2004 states:

(a) Examination on Motion. On motion of any party in interest, the court may order the examination of any entity.

(b) Scope of Examination. The examination of an entity under this rule or of the debtor under §343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In a family farmer's debt adjustment case under chapter 12, an individual's debt adjustment case under chapter 13, or a reorganization case under chapter 11 of the Code, other than for the reorganization of a railroad, the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

(c) Compelling Attendance and Production of Documents or Electronically Stored Information. The attendance of an entity for examination and for the production of documents or electronically stored information, whether the examination is to be conducted within or without the district in which the case is pending, may be compelled as provided in Rule 9016 for the attendance of a witness at a hearing or trial. As an officer of the court, an attorney may issue and sign a subpoena on behalf of the court where the case is pending if the attorney is admitted to practice in that court.

(d) Time and Place of Examination of Debtor. The court may for cause shown and on terms as it may impose order the debtor to be examined under this rule at any time or place it designates, whether within or without the district wherein the case is pending.

(e) Mileage. An entity other than a debtor shall not be required to attend as a witness unless lawful mileage and witness fee for one day's attendance shall be first tendered. If the debtor resides more than 100 miles from the place of examination when required to appear for an examination under this rule, the mileage allowed by law to a witness shall be tendered for any distance more than 100 miles from the debtor's residence at the date of the filing of the first petition commencing a case under the Code or the residence at the time the debtor is required to appear for the examination, whichever is the lesser.

See 9 Collier on Bankruptcy ¶ 2004.01 (discussing procedure and scope of a 2004 Examination).

Romspen is a party in interest, holding the largest secured claim in the case of \$3,840,860.06. POC 3-1. The areas of discovery outlined in Attachment A and Attachment B fit within the limitations of the scope of examination pursuant to Fed. R. Bankr. P. 2004(b). Therefore, the court finds the 2004 Examination is appropriate, and 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 for Rule 2004 Examination filed by Romspen California Mortgage Limited Partnership (“Romspen”) 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 Rule 2004 Examination is granted pursuant to Fed. R. Bankr. P. 2004(a), subject to the limitations of Fed. R. Bankr. P. 2004(b).

3.	<u>24-90219-E-7</u> <u>24-9008</u> KOSTKAS V. CASEY, JR ET AL	JESSE/AMBER CASEY ERG-1	MOTION TO DISMISS ADVERSARY PROCEEDING/NOTICE OF REMOVAL 10-24-24 <u>[14]</u>
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Status Conference - Item #7 on 2:00 calendar.

Final Ruling: No appearance at the November 21, 2024 hearing is required.

The court has issued an Order continuing the hearing on the Motion to Dismiss Adversary proceeding and related Status Conference to December 12, 2024 at 10:00 a.m. Order, Docket 21.

No appearance of the parties is required at the November 21, 2024 hearing, the court having issued an Order continuing the hearing on the Motion to Dismiss Adversary proceeding and related Status Conference to December 12, 2024 at 10:00 a.m. Order, Docket 21.

Item 4 thru 5

Final Ruling: No appearance at the November 21, 2024 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, other parties in interest, and Office of the United States Trustee on October 21, 2024. By the court's calculation, 31 days' notice was provided. 28 days' notice is required.

The Motion to Avoid Judicial Lien 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The hearing on the Motion to Avoid Judicial Lien is continued to December 12, 2024 at 10:30 a.m.

This Motion requests an order avoiding the judicial lien of Farmers Insurance Exchange ("Creditor") against property of the debtor, Denise Arlene Cannistraci ("Debtor") commonly known as 407 Semple Street, Modesto, CA 95354 ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of \$43,607.42. Exhibit 4, Dckt. 14. An abstract of judgment was recorded with Stanislaus County and was issued on June 11, 2019 and September 16, 2019, that encumbers the Property. *Id.*

The Motion is not clear which abstract it seeks to avoid, providing two abstracts to the court at Ex. 4, Docket 14. It is clear one abstract relates to the original judgment while the second abstract relates to the renewal of the judgment, but the Motion does not state with particularity which abstract it seeks to avoid.

Moreover, there is no recorder information on the abstracts in the exhibits uploaded with the court. The court is unable to determine the document number of the abstracts or the date they were recorded. To afford Debtor a chance to supplement the record and clearly state what relief is requested, the court continues the hearing on this Motion to December 12, 2024 at 10:30 a.m.

ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Denise Arlene Cannistraci (“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 hearing on this Motion is continued to **December 12, 2024 at 10:30 a.m.**

Final Ruling: No appearance at the November 21, 2024 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Chapter 7 Trustee, Creditor, other parties in interest, and Office of the United States Trustee on October 21, 2024. By the court’s calculation, 31 days’ notice was provided. 28 days’ notice is required.

The Motion to Avoid Judicial Lien 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The hearing on the Motion to Avoid Judicial Lien is continued to December 12, 2024 at 10:30 a.m.

This Motion requests an order avoiding the judicial lien of Ruzicka Associates (“Judgment Creditor”) against property of the debtor, Denise Arlene Cannistraci (“Debtor”) commonly known as 407 Semple Street, Modesto, CA 95354 (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$5,990.21. Exhibit 4, Dckt. 19. An abstract of judgment was recorded with Stanislaus County on September 2, 2020, that encumbers the Property. *Id.* It appears the Claim and rights of collection have since been assigned to ROBERT S. STACK d/b/a INTERNATIONAL RECOVERY SOLUTIONS (“Assignee”). *Id.*

The Motion does not mention the Assignee at all, seeking instead to avoid the lien of Judgment Creditor. There is no evidence of the transfer of claim submitted to the court beyond the abstract of judgment mentioning the Assignee. The Motion must state with particularity as to whom relief is requested. To afford Debtor a chance to supplement the record and clearly state what relief is requested, the court continues the hearing on this Motion to December 12, 2024 at 10:30 a.m.

ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Denise Arlene Cannistraci (“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 hearing on this Motion is continued to December 12, 2024 at 10:30 a.m.

6. [24-90181](#)-E-7
[SLH-3](#)

DAWN BARNARD
Seth Hanson

**MOTION TO AVOID LIEN OF KELSTIN
GROUP, INC.**
9-27-24 [38]

Final Ruling: No appearance at the November 21, 2024 hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Chapter 7 Trustee, Creditor, creditors, other parties in interest, parties requesting special notice, and Office of the United States Trustee on September 30, 2024. By the court’s calculation, 52 days’ notice was provided. 28 days’ notice is required.

The Motion to Avoid Judicial Lien 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). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties’ pleadings.

The Motion to Avoid Judicial Lien is granted.
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This Motion requests an order avoiding the judicial lien of Kelstin Group, Inc. DBA Pacific Credit Services (“Creditor”) against property of the debtor, Dawn Marie Barnard (“Debtor”) commonly known as 2210 Monte Carlo Ave. Modesto, CA 95350 (“Property”).

A judgment was entered against Debtor in favor of Creditor in the amount of \$15,982.61. Exhibit B, Dckt. 41. An abstract of judgment was recorded with Stanislaus County on October 24, 2022, that encumbers the Property. *Id.*

Pursuant to Debtor's Schedule A, the subject real property has an approximate value of \$427,800 as of the petition date. Schedule A at 11, Docket 1. The unavoidable consensual liens that total \$335,964 as of the commencement of this case are stated on Debtor's Schedule D. Schedule D at 22, Docket 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$125,000 on Schedule C. Schedule C at 18, Docket 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor's exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

ISSUANCE OF A COURT-DRAFTED ORDER

An order substantially in the following form shall be prepared and issued by the court:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Dawn Marie Barnard ("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 judgment lien of Kelstin Group, Inc. DBA Pacific Credit Services, California Superior Court for San Joaquin County Case No. STK-CV-LBC-2016-7309, recorded on October 24, 2022, Document No. 2022-0069869, with the Stanislaus County Recorder, against the real property commonly known as 2210 Monte Carlo Ave. Modesto, CA 95350, is avoided in its entirety pursuant to 11 U.S.C. § 522(f)(1), subject to the provisions of 11 U.S.C. § 349 if this bankruptcy case is dismissed.