



UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

November 28, 2023 at 1:30 p.m.

Unless otherwise ordered, all matters before the Honorable Christopher M. Klein shall be simultaneously: (1) **In Person** at Sacramento Courtroom #35, (2) via **ZoomGov Video**, (3) via **ZoomGov Telephone**, and (4) via **CourtCall**.

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UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Bankruptcy Judge

Sacramento, California

November 28, 2023 at 1:30 p.m.

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- | | |
|---|--|
| 1. 23-23022 -C-13 AMY STRASSBURG
LGT -1 James Keenan | OBJECTION TO CONFIRMATION OF
PLAN BY LILIAN G. TSANG
10-25-23 [14] |
|---|--|

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 34 days' notice was provided. Dkt. 17.

The Objection to Confirmation of Plan is sustained.

The Chapter 13 Trustee, Lilian G. Tsang ("Trustee"), opposes confirmation of the Chapter 13 plan on the basis that:

1. Debtor has failed to provide her 2022 income tax returns;
and
2. The plan relies on a motion to value collateral that has
not yet been heard or decided.

DISCUSSION

The debtor has not provided the trustee with all required tax returns. 11 U.S.C. § 521(e)(2)(A)(i); FED. R. BANKR. P. 4002(b)(3). That is cause to deny confirmation. 11 U.S.C. § 1325(a)(1).

The plan proposes valuing the secured claim of One Main Financial. Before the court enters an order valuing that secured claim, the plan's feasibility is uncertain.

That is reason to deny confirmation. Therefore, the Objection is sustained.

The court shall issue a minute order substantially in the following form holding that:

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

November 28, 2023 at 1:30 p.m.

Page 1 of 13

The Objection to the Chapter 13 Plan filed by the Chapter 13 Trustee, Lilian G. Tsang 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 Objection is sustained.

2. [16-26531](#)-C-13 HAL BUETTNER AND MICHELE
[22-2015](#) ELKINS
PGM-3

MOTION FOR COMPENSATION FOR
PETER G. MACALUSO, PLAINTIFFS
ATTORNEY(S)
10-31-23 [[117](#)]

BUETTNER, III ET AL V.
RESIDENTIAL FUNDING

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 28 days' notice was provided. Dckt. 121.

The Motion for Prevailing Party Attorney Fees is xxxxxx.

Law Offices of Peter G. Macaluso ("Movant") filed this Motion seeking prevailing party attorney fees in the combined amount of \$59,475.00 pursuant to the order and judgments entered in the Adversary Proceedings Nos. 22-02015 (dcts. 110 & 112) and 22-02038 (dcts. 74 & 76).

Defendants filed an opposition on November 14, 2023. Dkt. 133. Defendants oppose the requested fees on the following basis:

1. The fees are inflated, confusing and blocked together;
2. disproportionate to the actual work product;
3. fail to account for the Offers of Judgment Defendants made to the Plaintiffs; and
4. The fees are wildly out of proportion with the Plaintiffs' actual recovery.

DISCUSSION

At the hearing xxxxxxxx

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 Prevailing Party Fees filed by Peter G. Macaluso ("Movant"), in this Adversary Proceeding having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing.

IT IS ORDERED that Movant is awarded xxxxxxxx

3. [22-22250](#)-C-13 OLIVIA DUBOSE-MAYHUGH
[JCW](#)-1 Kristy Hernandez

MOTION TO CONFIRM TERMINATION
OR ABSENCE OF STAY
10-25-23 [[26](#)]

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 34 days' notice was provided. Dkt. 30.

The Motion for Confirmation that the Automatic Stay is Not In Effect is granted.

The Bank of New York Mellon, as Trustee, by and through its duly authorized servicing agent, Vanderbilt Mortgage and Finance, Inc., successor servicer to Oakwood Acceptance Corporation, LLC (formerly Oakwood Acceptance Corporation), its assignees and/or successors ("Movant") filed this Motion seeking an order confirming the automatic stay is no longer in effect as to the debtor's manufactured home located at 7855 Cottonwood Lane, Unit #25, Sacramento, California (the "Property").

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the insurance on the Property had lapsed.

DISCUSSION

As noted by the Movant, the Confirmed Chapter 13 Plan provides for Movant's claim as a Class 4. Plan, Dkt. 3; Order, Dkt. 14. The Confirmed Plan states the following with respect the automatic stay and Class 4 claims:

(a) Upon confirmation of the plan, the automatic stay of 11 U.S.C. § 362(a) and the co-debtor stay of 11 U.S.C. § 1301(a) are (1) terminated to allow the holder of a Class 3 secured claim to exercise its rights against its collateral; (2) modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract; and (3) modified to allow the nondebtor party to an unexpired lease that is in default and rejected in section 4 of this plan to obtain possession of leased property, to dispose of it under applicable law, and to exercise its rights against any nondebtor.

Id.

Based on the plain language of the Plan, the automatic stay was already modified to allow Movant to enforce its rights with respect to the collateral. Therefore, the relief requested by the Motion is moot.

The court recognizes that creditors may need an order specifying the continuing effect and modification of an automatic stay when state recording and filing law come into play, as well as for title insurance purposes.

The Ninth Circuit Court of Appeal has recognized the basic "discretion is the better part of valor" principle when it comes to the automatic stay. Seeking a separate order clearly specifying the scope of the relief granted in the Plan is not inappropriate.

The court grants the Motion, granting relief that under the terms of the confirmed Chapter 13 Plan, Dkt. 3, in this bankruptcy case, "all bankruptcy stays are modified to allow [Movant, and its agents and successors, as] the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract."

No other or additional relief is granted by the court.

The court shall issue a minute 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 Automatic Stay filed by The Bank of New York Mellon, as Trustee, by and through its duly authorized servicing agent, Vanderbilt Mortgage and Finance, Inc., successor servicer to Oakwood Acceptance Corporation, LLC (formerly Oakwood Acceptance Corporation), its assignees and/or successors ("Movant") 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 relief is granted pursuant to the Motion, the court confirming that "all bankruptcy stays are modified to allow Movant, and its agents and successors, as the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract." Confirmed Chapter 13 Plan, Dkt. 3; Order Confirming, Dkt.14.

4. [23-23055](#)-C-13 SUSANA FULCHER
[WSC](#)-1 Julius Cherry

OBJECTION TO CONFIRMATION OF
PLAN BY WOODSIDE CREDIT, LLC
10-13-23 [[16](#)]

Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 46 days' notice was provided. Dkt. 19.

The Objection to Confirmation of Plan is sustained.

Creditor Woodside Credit, LLC ("Creditor") opposes confirmation of the Chapter 13 plan on the basis that:

1. The proposed plan does not provide for adequate protection payments to creditor;
2. The plan proposes to pay administrative and attorneys' fees in full before paying creditor's claim; and
3. The plan proposes an improper interest rate on creditor's claim.

DISCUSSION

Creditor opposes confirmation on the basis that the plan proposes paying its claim at five percent interest. Creditor argues that this interest rate is outside the limits authorized by the Supreme Court in *Till v. SCS Credit Corp.*, 541 U.S. 465 (2004). In *Till*, a plurality of the Court supported the "formula approach" for fixing post-petition interest rates. *Id.* Courts in this district have interpreted *Till* to require the use of the formula approach. See *In re Cachu*, 321 B.R. 716 (Bankr. E.D. Cal. 2005); see also *Bank of Montreal v. Official Comm. of Unsecured Creditors (In re American Homepatient, Inc.)*, 420 F.3d 559, 566 (6th Cir. 2005) (*Till* treated as a decision of the Court). Even before *Till*, the Ninth Circuit had a preference for the formula approach. See *Cachu*, 321 B.R. at 719 (citing *In re Fowler*, 903 F.2d 694 (9th Cir. 1990)).

The court agrees with the court in *Cachu* that the correct valuation of the interest rate is the prime rate in effect at the commencement of this case plus a risk adjustment. Because the creditor has only identified risk factors common to every bankruptcy case, the court fixes the interest rate as the prime rate in effect at the commencement of the case, 8.50%, plus a 1.25% risk adjustment, for a 9.75% interest rate.

That is reason to deny confirmation. Therefore, the Objection is sustained.

The court shall issue a minute 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 Objection to the Chapter 13 Plan filed by Woodside Credit, LLC, 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 Objection is sustained.

5. [19-27468](#)-C-13 EDDIE/CARYN GARDNER MOTION FOR RELIEF FROM
[AP-2](#) Peter Macaluso AUTOMATIC STAY
10-30-23 [[197](#)]
HSBC BANK USA, NATIONAL
ASSOCIATION VS.

No Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 28 days' notice. The Proof of Service shows that 29 days' notice was provided. Dkt. 203.

The Motion for Relief from the Automatic Stay is xxxxxxx

HSBC Bank USA, National Association as Trustee for Ellington Loan AcquisitionTrust 2007-1, Mortgage Pass-Through Certificates, Series 2007-1 ("Movant") filed this Motion seeking relief from the automatic stay as to the debtors' real property located at 9475 Mandrake Court, Elk Grove, California (the "Property").

Movant argues cause for relief from stay exists pursuant to 11 U.S.C. § 362(d)(1) because the debtors are delinquent \$17,943.12 postpetition payments. Declaration, Dkt. 199.

DEBTOR'S OPPOSITION

Debtor filed an Opposition on November 14, 2023. Dkt. 204. Debtor asserts a modified plan will be filed that cures the postpetition arrears.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee filed a response on November 14, 2023. Dkt. 207, representing that the debtor is delinquent on plan payments and payments to Nationstar Mortgage are in arrears in the amount of \$9,187.02.

DISCUSSION

At the hearing xxxxxxxxxx

The court shall issue a minute 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 Automatic Stay filed by HSBC Bank USA, National Association as Trustee for Ellington Loan AcquisitionTrust 2007-1, Mortgage Pass-Through Certificates, Series 2007-1 ("Movant") 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 automatic stay provisions of
11 U.S.C. § 362(a) are ~~xxxxxxx~~

6. [22-21477](#)-C-13 VICTOR NAVARRO AND CONTINUED MOTION TO MODIFY PLAN
FF-[3](#) KRISTINA ZAPATA NAVARRO 8-25-23 [[83](#)]
Gary Fraley

Tentative Ruling:

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 40 days' notice was provided. Dkt. 89.

The Motion to Confirm is denied.

The debtors filed this Motion seeking to confirm the Modified Chapter 13 Plan (Dkt. 87) filed on August 25, 2023.

The Chapter 13 Trustee filed an Opposition (Dkt. 102) on September 18, 2023, opposing confirmation on the following grounds:

1. The debtor is delinquent \$7,765.00 and the plan fails to suspend the delinquency;
2. The plan fails the liquidation test;
3. The plan provides for the incorrect amount of postpetition arrears to Rushmore Loan Management;
4. The plan is not feasible, whether the motion for compensation below is approved or not;
5. The plan incorrectly accounts for payments already made to the Trustee; and
6. The debtors' motion and declarations are inconsistent as to debtor's income and expenses.

DISCUSSION

The motion was continued from the prior hearing to allow the debtor and the trustee to see if they could work out the issues raised in the opposition. A review of the docket shows that nothing has been filed since the hearing on November 14, 2023.

The debtor is \$7,765.00 delinquent in plan payments. Declaration, Dkt. 103. Delinquency indicates that the plan is not feasible and is reason to deny confirmation. See 11 U.S.C. § 1325(a)(6).

Notwithstanding whether the plan provides for the postpetition arrearage as Trustee argues, the debtor has not carried his burden to show the plan is adequately funded. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

The debtor has non-exempt assets totaling \$1,180.16. The plan

provides for a 3 percent dividend to unsecured claims, which is less than the 6.64 percent dividend necessary to meet the liquidation test. That is cause to deny confirmation. 11 U.S.C. § 1325(a)(4).

The plan mathematically requires a payment of \$3,161.14 per month, which is greater than the proposed \$2,891.45 payment.

The debtor has not demonstrated the plan is feasible because the plan terms require a higher payment than what is proposed. That is reason to deny confirmation. 11 U.S.C. § 1325(a)(6).

Upon review of the record, the court finds the plan does not comply with 11 U.S.C. §§ 1322, 1325(a), and 1329. The Motion is denied, and the plan is not confirmed.

The court shall issue a minute 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 Confirm filed by the debtors, Victor Navarro, Jr. and Kristina Navarro, 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 is denied, and the plan is not confirmed.

7. [23-22685](#)-C-13 KEVIN SMITH
[MRT](#)-2 Michael Totaro

MOTION TO CONVERT CASE FROM
CHAPTER 13 TO CHAPTER 11
11-14-23 [[68](#)]

No Tentative Ruling:

The Objection has been set on Local Rule 9014-1(f)(2) notice which requires 14 days' notice. The Proof of Service shows that 46 days' notice was provided. Dkt. 19.

The Motion to Convert the Chapter 13 Bankruptcy Case to a Case under Chapter 11 is XXXXXXXXXX

This Motion to Convert the Chapter 13 bankruptcy case of Kevin Smith ("Debtor") has been filed by the Debtor. Debtor asserts that the case should be converted based on the following grounds:

- A. Debtor filed an emergency petition
- B. Debtor is an independent contractor and does not always receive income in the same amount or at the same time every month

APPLICABLE LAW

The Bankruptcy Code Provides:

Except as provided in subsection (f) of this section, at anytime before the confirmation of a plan under section 1325 of this title, on request of a party in interest or the United States trustee and after notice and a hearing, the court may convert a case under this chapter to a case under chapter 11 or 12 of this title.

11 U.S.C. § 1307(c).

The docket shows that the debtor's motion to confirm an amended plan was denied on November 14, 2023 (dkt. 76) and no plan has been confirmed.

DISCUSSION

At the hearing

The court shall issue a minute 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 Convert the Chapter 13 case filed by Kevin Smith ("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 Convert is XXXXXXXXXX

Final Ruling: No appearance at the November 28, 2023 hearing is required.

The Motion has been set on Local Rule 9014-1(f)(1) procedure which requires 35 days' notice. The Proof of Service shows that 49 days' notice was provided. Dkt. 39.

No opposition has been filed. Therefore, the court enters the defaults of the non-responding parties in interest, finds there are no disputed material factual issues, and determines the matter will be resolved without oral argument. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995); *Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006).

The Motion to Confirm is granted.

The debtors filed this Motion seeking to confirm the Amended Chapter 13 Plan (Dkt. 36) filed on October 10, 2023.

No opposition to the Motion has been filed.

Upon review of the record, the court finds the plan complies with 11 U.S.C. §§ 1322 and 1325(a). The Motion is granted, and the plan is confirmed.

The court shall issue a minute 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 Confirm filed by the debtors, Lazaro Martinez and Elsy Martinez, 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 is granted, the debtor's Amended Chapter 13 Plan (Dkt. 36) meets the requirements of 11 U.S.C. §§ 1322 and 1325(a), and the plan is confirmed. Counsel for the debtors shall prepare an appropriate order confirming the Chapter 13 Plan, transmit the proposed order to the Chapter 13 trustee for approval as to form, and if so approved, the trustee will submit the proposed order to the court.