

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

Honorable Fredrick E. Clement
Fresno Federal Courthouse
2500 Tulare Street, 5th Floor
Courtroom 11, Department A
Fresno, California

PRE-HEARING DISPOSITIONS

DAY: WEDNESDAY
DATE: NOVEMBER 30, 2016
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

GENERAL DESIGNATIONS

Each pre-hearing disposition is prefaced by the words "Final Ruling," "Tentative Ruling" or "No Tentative Ruling." Except as indicated below, matters designated "Final Ruling" will not be called and counsel need not appear at the hearing on such matters. Matters designated "Tentative Ruling" or "No Tentative Ruling" will be called.

ORAL ARGUMENT

For matters that are called, the court may determine in its discretion whether the resolution of such matter requires oral argument. See *Morrow v. Topping*, 437 F.2d 1155, 1156-57 (9th Cir. 1971); accord LBR 9014-1(h). When the court has published a tentative ruling for a matter that is called, the court shall not accept oral argument from any attorney appearing on such matter who is unfamiliar with such tentative ruling or its grounds.

COURT'S ERRORS IN FINAL RULINGS

If a party believes that a final ruling contains an error that would, if reflected in the order or judgment, warrant a motion under Federal Rule of Civil Procedure 60(a), as incorporated by Federal Rules of Bankruptcy Procedure 9024, then the party affected by such error shall, not later than 4:00 p.m. (PST) on the day before the hearing, inform the following persons by telephone that they wish the matter either to be called or dropped from calendar, as appropriate, notwithstanding the court's ruling: (1) all other parties directly affected by the motion; and (2) Kathy Torres, Judicial Assistant to the Honorable Fredrick E. Clement, at (559) 499-5860. Absent such a timely request, a matter designated "Final Ruling" will not be called.

1. [11-62509](#)-A-7 SHAVER LAKEWOODS TRUSTEE'S FINAL REPORT
DEVELOPMENT INC. 3-25-16 [[330](#)]
HENRY NUNEZ/Atty. for dbt.
LISA HOLDER/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

This matter is continued to December 20, 2016, at 9:00 a.m. in Fresno.

2. [11-62509](#)-A-7 SHAVER LAKEWOODS MOTION FOR COMPENSATION BY THE
KDG-9 DEVELOPMENT INC. LAW OFFICE OF KLEIN, DENATALE,
GOLDNER, COOPER, ROSENLIEB AND
KIMBALL FOR LISA HOLDER,
TRUSTEES ATTORNEY(S)
11-1-16 [[368](#)]
HENRY NUNEZ/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

This matter is continued to December 20, 2016, at 9:00 a.m. in Fresno.

3. [11-62509](#)-A-7 SHAVER LAKEWOODS MOTION FOR COMPENSATION FOR M.
MKK-2 DEVELOPMENT INC. KATHLEEN KLEIN, ACCOUNTANT(S)
M. KLEIN/MV 10-1-13 [[106](#)]
HENRY NUNEZ/Atty. for dbt.
RESPONSIVE PLEADING

Final Ruling

This matter is continued to December 20, 2016, at 9:00 a.m. in Fresno.

4. [11-62509](#)-A-7 SHAVER LAKEWOODS MOTION FOR ADMINISTRATIVE
RP-1 DEVELOPMENT INC. EXPENSES
RANDELL PARKER/MV 3-9-16 [[311](#)]
HENRY NUNEZ/Atty. for dbt.
LISA HOLDER/Atty. for mv.

Final Ruling

This matter is continued to December 20, 2016, at 9:00 a.m. in Fresno.

5. [11-62509](#)-A-7 SHAVER LAKEWOODS MOTION FOR COMPENSATION FOR
RP-2 DEVELOPMENT INC. RANDELL PARKER, CHAPTER 7
RANDELL PARKER/MV TRUSTEE(S)
3-25-16 [[335](#)]

HENRY NUNEZ/Atty. for dbt.
LISA HOLDER/Atty. for mv.
RESPONSIVE PLEADING

Final Ruling

This matter is continued to December 20, 2016, at 9:00 a.m. in Fresno.

6. [16-13011](#)-A-7 MARY BUTLER MOTION FOR RELIEF FROM
MSK-1 AUTOMATIC STAY
CHAMPION MORTGAGE COMPANY/MV 10-27-16 [[14](#)]
JOHN BIANCO/Atty. for dbt.
MICHAEL KOGAN/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 3017 South La Mesa Court, Visalia, CA

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.* In this case, Debtor has failed to maintain property insurance, a default under the terms of her reverse mortgage with movant.

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.

Champion Mortgage Company'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. The automatic stay is vacated with respect to the property described in the motion, commonly known as 3017 South La Mesa Court, Visalia, CA, 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.

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.

7. [16-11913](#)-A-7 LUPE SOTO
JHW-1
TD AUTO FINANCE LLC/MV
MARCUS TORIGIAN/Atty. for dbt.
JENNIFER WANG/Atty. for mv.
DISCHARGED

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-20-16 [[37](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted in part, denied in part as moot

Order: Civil minute order

Subject: 2014 Chevrolet Cruze

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).

AS TO DEBTOR

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. 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 will be denied in part as moot as to the debtor.

AS TO ESTATE

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. 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.

TD Auto Finance LLC'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 a 2014 Chevrolet Cruze. 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.

8. [15-10215](#)-A-7 ERIC MCKINLEY
FW-3

MOTION FOR COMPENSATION BY THE
LAW OFFICE OF FEAR WADDELL,
P.C. TRUSTEES ATTORNEY(S)
11-2-16 [[53](#)]

JERRY LOWE/Atty. for dbt.

Final Ruling

Application: Allowance of Final Compensation and Expense Reimbursement

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

Disposition: Approved

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). Written opposition to this application was required not less than 14 days before the hearing on the application. 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).

COMPENSATION AND EXPENSES

In this Chapter 7 case, Fear Waddell, P.C., attorney for the trustee, has applied for an allowance of final compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$18,627.50 and reimbursement of expenses in the amount of \$404.93. There have been no prior fee applications.

Section 330(a) of the Bankruptcy Code authorizes "reasonable compensation for actual, necessary services" rendered by a trustee, examiner or professional person employed under § 327 or § 1103 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a)(1). Reasonable compensation is determined by considering all relevant factors. See *id.* § 330(a)(3).

The court finds that the compensation and expenses sought are reasonable, and the court will approve the application on a final basis.

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.

Fear Waddell, P.C.'s application for allowance of final compensation and reimbursement of expenses 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 application,

IT IS ORDERED that the application is approved on a final basis. The court allows final compensation in the amount of \$18,627.50 and reimbursement of expenses in the amount of \$404.93.

IT IS FURTHER ORDERED that the trustee is authorized without further order of this court to pay from the estate the aggregate amount allowed by this order in accordance with the Bankruptcy Code and the distribution priorities of § 726.

9. [15-14815](#)-A-7 CATHEY LLOYD MOTION TO SELL AND/OR MOTION TO
RWR-3 PAY
JAMES SALVEN/MV 10-25-16 [[44](#)]
GABRIEL WADDELL/Atty. for dbt.
RUSSELL REYNOLDS/Atty. for mv.

Tentative Ruling

Motion: Sell Real Property and Compensate Real Estate Broker

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

Disposition: Granted

Order: Prepared by moving party

Property: 460 S. Front St. Chowchilla, CA (includes several parcels, each identified in the motion by APN)

Buyer: Jose Quinones

Sale Price: \$75,000

Sale Type: Private sale subject to overbid opportunity

Commission: 6% broker's commission to be shared with any cooperating broker pursuant to custom and agreement

Unopposed motions are subject to the rules of default. Fed. R. Civ. P. 55(c), *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 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); *see also In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. *See* 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

Section 330(a) of Title 11 authorizes "reasonable compensation for actual, necessary services" rendered by a professional person employed under § 327 and "reimbursement for actual, necessary expenses." 11 U.S.C. § 330(a). Reasonable compensation is determined by considering all relevant factors. *See id.* § 330(a)(3). The court finds that the compensation sought is reasonable and will approve the application.

10. [16-12615](#)-A-7 WILLIAM/DEBRA NEWMAN MOTION TO COMPEL ABANDONMENT
PBB-1 10-24-16 [[17](#)]
WILLIAM NEWMAN/MV
PETER BUNTING/Atty. for dbt.

Final Ruling

Motion: Compel Abandonment of Property of the Estate

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

Disposition: Granted

Order: Prepared by moving party pursuant to the instructions below

Real Property Description: 1164 Granite Court, Merced, CA

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).

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The real property described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment is warranted. The order shall state that any exemptions claimed in the real property abandoned may not be amended without leave of court given upon request made by motion noticed under Local Bankruptcy Rule 9014-1(f)(1).

11. [16-12016](#)-A-7 SATWANT VIRK MOTION TO COMPEL ABANDONMENT
JRL-1 10-26-16 [[15](#)]
SATWANT VIRK/MV
JERRY LOWE/Atty. for dbt.

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

Disposition: Denied without prejudice

Order: Civil minute order

Real Property Description: 50% interest in real property located at 5766 E. Belgravia Avenue, Fresno, CA

Personal Property: Personal property valued at \$56,614.81 listed in a chart on page 3 of the motion

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The trustee has opposed the motion indicating that a sale has been consented to by the IRS. Even assuming all the facts are true as stated in the debtor's motion, the trustee has arranged a sale of some or all of the IRS's collateral, which indicates the trustee's belief that the property has value to the estate. Thus, an order compelling abandonment is not warranted at this time given that the property may not be of inconsequential value to the estate.

12. [16-13716](#)-A-7 ANNA DOWDY MOTION FOR WAIVER OF THE
CHAPTER 7 FILING FEE OR OTHER
FEE
ANNA DOWDY/MV 10-13-16 [\[5\]](#)
ANNA DOWDY/Atty. for mv.

No tentative ruling.

13. [16-12922](#)-A-7 FAVIOLA RAMOS MOTION FOR RELIEF FROM
APN-1 AUTOMATIC STAY
WELLS FARGO BANK, N.A./MV 10-21-16 [\[13\]](#)
THOMAS GILLIS/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2009 Chevrolet Traverse

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

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the

estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. 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.

Wells Fargo Bank, N.A.'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. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2009 Chevrolet Traverse, 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.

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.

14. [16-12838](#)-A-7 HENRY/CECILIA TORRES MOTION TO SELL
RHT-1 11-4-16 [[20](#)]
ROBERT HAWKINS/MV
MARK ZIMMERMAN/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.

Tentative Ruling

Motion: Sell Property

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

Disposition: Granted

Order: Prepared by moving party

Property: 1941 Chevrolet AH Special 2D Coupe

Buyer: Debtors

Sale Price: \$6352 (\$6000 cash plus \$352 exemption credit)

Sale Type: Private sale subject to overbid opportunity

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).

Section 363(b)(1) of Title 11 authorizes sales of property of the estate "other than in the ordinary course of business." 11 U.S.C. § 363(b)(1); see also *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983) (requiring business justification). The moving party is the Chapter 7 trustee and liquidation of property of the estate is a proper purpose. See 11 U.S.C. § 704(a)(1). As a result, the court will grant the motion. The stay of the order provided by Federal Rule of Bankruptcy Procedure 6004(h) will be waived.

15. [16-13342](#)-A-7 JERRY KNIGHT MOTION FOR RELIEF FROM
ASW-1 AUTOMATIC STAY
NATIONWIDE ADVANTAGE MORTGAGE 10-31-16 [[13](#)]
COMPANY/MV
VINCENT GORSKI/Atty. for dbt.
DANIEL FUJIMOTO/Atty. for mv.

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 28149 McClaren Avenue, Taft, CA

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

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. 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.

Nationwide Advantage Mortgage Co.'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. The automatic stay is vacated with respect to the property described in the motion, commonly known as 28149 McClaren Avenue, Taft, CA, 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.

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.

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| 16. 16-10945 -A-7 ROGER POWELL
JES-1
JAMES SALVEN/MV
MARK ZIMMERMAN/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv.
RESPONSIVE PLEADING | CONTINUED OBJECTION TO DEBTOR'S
CLAIM OF EXEMPTIONS
5-17-16 [18] |
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Final Ruling

The matter resolved by settlement, the objection is dropped as moot.

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| 17. 16-10945 -A-7 ROGER POWELL
RH-2
JAMES SALVEN/MV

MARK ZIMMERMAN/Atty. for dbt.
ROBERT HAWKINS/Atty. for mv. | MOTION TO COMPROMISE
CONTROVERSY/APPROVE SETTLEMENT
AGREEMENT WITH ROGER P. POWELL
10-26-16 [64] |
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Final Ruling

Motion: Approve Compromise of Controversy

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

Disposition: Granted

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). 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).

APPROVAL OF COMPROMISE

In determining whether to approve a compromise under Federal Rule of Bankruptcy Procedure 9019, the court determines whether the compromise was negotiated in good faith and whether the party proposing the

compromise reasonably believes that the compromise is the best that can be negotiated under the facts. *In re A & C Props.*, 784 F.2d 1377, 1381 (9th Cir. 1982). More than mere good faith negotiation of a compromise is required. The court must also find that the compromise is fair and equitable. *Id.* "Fair and equitable" involves a consideration of four factors: (i) the probability of success in the litigation; (ii) the difficulties to be encountered in collection; (iii) the complexity of the litigation, and expense, delay and inconvenience necessarily attendant to litigation; and (iv) the paramount interest of creditors and a proper deference to the creditors' expressed wishes, if any. *Id.* The party proposing the compromise bears the burden of persuading the court that the compromise is fair and equitable and should be approved. *Id.*

The movant requests approval of a compromise that settles a dispute pertaining to the debtor's claim of a homestead exemption. The compromise is reflected in the settlement agreement attached to the motion as an exhibit and filed at docket no. 66. Based on the motion and supporting papers, the court finds that the compromise presented for the court's approval is fair and equitable considering the relevant *A & C Properties* factors. The compromise or settlement will be approved.

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.

James E. Salven's motion to approve a compromise 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. The court hereby approves the compromise that is reflected in the settlement agreement attached to the motion as Exhibit A and filed at docket no. 66.

18. [16-13649](#)-A-7 NYEKA HACKETT
APN-1
SANTANDER CONSUMER USA INC./MV
CATARINA BENITEZ/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-27-16 [[12](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2012 Nissan Altima

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

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. 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.

Santander Consumer USA INC.'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. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2012 Nissan Altima, 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.

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.

19. [16-13261](#)-A-7 RODNEY RAY
CJO-1
THE BANK OF NEW YORK MELLON/MV
JUSTIN HARRIS/Atty. for dbt.
CHRISTINA O/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-9-16 [[31](#)]

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 1587 East Cromwell Avenue, Fresno, CA

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).

STAY RELIEF

Section 362(d) (2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d) (2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. 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.

The Bank of New York Mellon, as Trustee, has filed a motion for relief from the automatic stay that 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. The automatic stay is vacated with respect to the property described in the motion, commonly known as 1587 East Cromwell Avenue, Fresno, CA, 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.

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.

20. [16-13261](#)-A-7 RODNEY RAY CONTINUED MOTION FOR RELIEF
HTP-1 FROM AUTOMATIC STAY
STANDARD CREDIT/MV 10-26-16 [[21](#)]
JUSTIN HARRIS/Atty. for dbt.
HANNO POWELL/Atty. for mv.

Final Ruling

The matter resolved by order approving stipulation, ECF #40, the matter is dropped as moot.

21. [16-12962](#)-A-7 TODD SMITH MOTION FOR RELIEF FROM
CJO-1 AUTOMATIC STAY
THE BANK OF NEW YORK MELLON/MV 10-31-16 [[12](#)]
PETER BUNTING/Atty. for dbt.
CHRISTINA O/Atty. for mv.

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: 7522 N Tahan Ave., Fresno, CA

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 DEBTOR

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. 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 ESTATE

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the

aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. 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.

The Bank of New York Mellon'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 7522 N Tahan Ave., Fresno, CA. 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.

22. [16-13963](#)-A-7 DOLORES TORRES
SL-1
DOLORES TORRES/MV
SCOTT LYONS/Atty. for dbt.

MOTION TO COMPEL ABANDONMENT
11-4-16 [\[9\]](#)

Tentative Ruling

Motion: Compel Abandonment of Property of the Estate

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

Disposition: Granted only as to the business and such business assets described in the motion

Order: Prepared by moving party pursuant to the instructions below

Business Description: business providing services as a tax preparer and real estate agent, a sole proprietorship

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).

Property of the estate may be abandoned under § 554 of the Bankruptcy Code if property of the estate is "burdensome to the estate or of inconsequential value and benefit to the estate." See 11 U.S.C. § 554(a)-(b); Fed. R. Bankr. P. 6007(b). Upon request of a party in interest, the court may issue an order that the trustee abandon property of the estate if the statutory standards for abandonment are fulfilled.

The business described above is either burdensome to the estate or of inconsequential value to the estate. An order compelling abandonment of such business is warranted.

The order will compel abandonment of the business and the assets of such business only to the extent described in the motion. The order shall state that any exemptions claimed in the abandoned business or the assets of such business may not be amended without leave of court given upon request made by motion noticed under Local Bankruptcy Rule 9014-1(f)(1).

23. [12-16968](#)-A-7 GREGORY/YVONNE HARK MOTION TO EMPLOY JOSH B. WAGES
KDG-2 AS SPECIAL COUNSEL
RANDELL PARKER/MV 11-11-16 [[46](#)]
NEIL SCHWARTZ/Atty. for dbt.
LISA HOLDER/Atty. for mv.

[Items # 23 & 29 will be called simultaneously at the end of the Chapter 7 calendar.]

No tentative ruling.

24. [16-12468](#)-A-7 NAAZIM HAMED MOTION TO CONVERT CASE FROM
PBB-1 CHAPTER 7 TO CHAPTER 13
11-3-16 [[33](#)]
PETER BUNTING/Atty. for dbt.

Final Ruling

Motion: Convert Case from Chapter 7 to Chapter 13

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 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)).

Schedules E/F show priority unsecured debt exceeding \$628,000. The unsecured debt limit of \$394,725 for chapter 13 relief applies to unsecured debt that is both noncontingent and *liquidated*. The court notes that all of this priority unsecured debt is classified as unliquidated. Therefore, the secured and unsecured debt amounts shown in the debtor's schedules are below the debt limits provided in § 109(e). See 11 U.S.C. § 109(e). The case has not been previously converted under § 1112, 1208, or 1307 of the Bankruptcy Code. See *id.* § 706(a). No party in interest has questioned the debtor's eligibility for relief under Chapter 13.

25.	16-13579 -A-7 LISA PUGH APN-1 BMW BANK OF NORTH AMERICA/MV SCOTT LYONS/Atty. for dbt.	MOTION FOR RELIEF FROM AUTOMATIC STAY 11-2-16 [14]
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Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2013 BMW 328i

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

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. 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.

BMW Bank of North America'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. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2013 BMW 328i, 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.

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.

26. [16-13679](#)-A-7 SHAYLA JOHNSON
APN-1
NISSAN MOTOR ACCEPTANCE
CORPORATION/MV
JERRY LOWE/Atty. for dbt.
AUSTIN NAGEL/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-27-16 [[11](#)]

Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2015 Nissan Altima

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

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada*,

Inc., 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. 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.

Nissan Motor Acceptance Corporation'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. The automatic stay is vacated with respect to the property described in the motion, commonly known as a 2015 Nissan Altima, 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.

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.

27.	16-12990 -A-7 MARIO PICENO GUEVARA EAT-1 NATIONSTAR MORTGAGE LLC/MV JIM TREVINO/Atty. for dbt. DARLENE VIGIL/Atty. for mv.	MOTION FOR RELIEF FROM AUTOMATIC STAY 10-26-16 [14]
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Final Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 13404 Larkspur Way, Armona, CA

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).

AS TO DEBTOR

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. 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 will be denied in part as moot as to the debtor.

AS TO ESTATE

Section 362(d)(2) authorizes stay relief if the debtor lacks equity in the property and the property is not necessary to an effective reorganization. 11 U.S.C. § 362(d)(2). Chapter 7 is a mechanism for liquidation, not reorganization, and, therefore, property of the estate is never necessary for reorganization. *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66 (B.A.P. 9th Cir. 1982). In this case, the aggregate amount due all liens exceeds the value of the collateral and the debtor has no equity in the property. 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.

Nationstar Mortgage LLC'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 13404 Larkspur Way, Armona, CA. 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.

28. [16-12096](#)-A-7 ALFONSO AGUILAR AND ERICA MOTION FOR RELIEF FROM
RCO-1 VILLEGAS-AGUILAR AUTOMATIC STAY
PLANET HOME LENDING, LLC/MV 10-28-16 [[28](#)]
MARIO LANGONE/Atty. for dbt.
BRETT RYAN/Atty. for mv.
DISCHARGED

Final Ruling

Motion: Stay Relief

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

Disposition: Granted in part, denied in part as moot

Order: Civil minute order

Subject: 3020 70th Way SW, Olympia, WA

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).

AS TO DEBTOR

The motion will be denied in part as moot to the extent it seeks stay relief as to the debtor. 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 will be denied in part as moot as to the debtor.

AS TO 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).

"Where the property is declining in value or accruing interest and taxes eat up the equity cushion to the point where the cushion no longer provides adequate protection, the court may either grant the motion to lift the stay or order the debtor to provide some other form of adequate protection." Kathleen P. March, Hon. Alan M. Ahart & Janet A. Shapiro, *California Practice Guide: Bankruptcy* ¶ 8:1096 (rev. 2015). Further, "[a]n undersecured creditor is entitled to adequate protection only for the decline in the [collateral's] value *after* the bankruptcy filing." *Id.* ¶ 8:1065.1 (citing *United Sav. Ass'n v. Timbers of Inwood Forest Assocs., Ltd.*, 484 U.S. 365, 370-73 (1988)). When a creditor is oversecured, however, an existing equity cushion may adequately protect the creditor's security interest against a decline in the collateral's value while the stay remains in effect. *See id.* ¶ 8:1072 (citing cases). In calculating the amount of the movant creditor's equity cushion, the court ignores the debt secured by junior liens. *See id.* ¶ 8:1076 (citing *In re Mellor*, 734 F.2d

1396, 1400-01 (9th Cir. 1984)). "The Ninth Circuit has held that a 20% equity cushion (based on the property's fair market value . . .) adequately protects a creditor's security interest." March, Ahart & Shapiro, *supra*, at ¶ 8:1092 (citing *In re Mellor*, 734 F.2d at 1401).

The movant creditor's equity cushion is less than 20% based on the property's fair market value. The equity cushion is only 5.3%. This is inadequate given that adequate protection payments are not being made. A total of 4 *postpetition* payments of principal and interest are past due.

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.

Planet Home Lending, LLC'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 3020 70th Way SW, Olympia, WA. 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.

29. [12-16968](#)-A-7 GREGORY/YVONNE HARK
KDG-3
RANDELL PARKER/MV

MOTION TO APPROVE COMPROMISE OF
PRODUCT LIABILITY CLAIMS AND/OR
MOTION FOR COMPENSATION BY THE
LAW OFFICE OF BLASINGAME,
BURCH, GARRARD, AND ASHLEY,
P.C. FOR JOSH B. WAGES, SPECIAL
COUNSEL(S)
11-14-16 [[54](#)]

NEIL SCHWARTZ/Atty. for dbt.
LISA HOLDER/Atty. for mv.
OST 11/14/16

*[Items # 23 & 29 will be called simultaneously at the end of the
Chapter 7 calendar.]*

No tentative ruling.

30. [16-13079](#)-A-7 LIZA ZAVALZA
BN-1
THE GOLDEN 1 CREDIT UNION/MV
ROSALINA NUNEZ/Atty. for dbt.
VALERIE PEO/Atty. for mv.

MOTION FOR RELIEF FROM
AUTOMATIC STAY
11-16-16 [[16](#)]

Final Ruling

Motion: Relief from Stay

Disposition: Denied without prejudice

Order: Civil minute order

As a contested matter, a motion for relief from stay is governed by Federal Rule of Bankruptcy Procedure 9014. Fed. R. Bankr. P. 4001(a)(1), 9014(a). In contested matters generally, "reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought." Fed. R. Bankr. P. 9014(a). A motion initiating a contested matter must be served pursuant to Rule 7004. Fed. R. Bankr. P. 9014(b).

The motion must be served on the party against whom relief is sought. See Fed. R. Bankr. P. 9014(a)-(b). The debtor and the trustee are ordinarily the parties against whom relief is sought in a typical motion for relief from the automatic stay.

In this case, the service of the motion was insufficient and did not comply with Rules 7004 and 9014. Although relief is sought against the debtor, the proof of service reveals that the motion was not mailed to the debtor. Fed. R. Bankr. P. 7004(b)(9).

31. [16-12127](#)-A-7 STUEVE'S MILK TRANSPORT, MOTION TO EMPLOY HILTON A.
HAR-1 INC. A CALIFORNIA RYDER AS ATTORNEY(S)
JAMES SALVEN/MV 10-27-16 [[19](#)]
HAGOP BEDOYAN/Atty. for dbt.
JAMES SALVEN/Atty. for mv.
RESPONSIVE PLEADING

Tentative Ruling

Application: Employ General Counsel (McCormick Barstow, Sheppard, Wayte and Carruth, LLP)

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

Disposition: Denied

Order: Civil minute order

Chapter 7 trustee James E. Salven ("Salven") prays approval of McCormick Barstow, Sheppard, Wayte and Carruth, LLP ("McCormick Barstow") as general counsel. The applicant has represented, and continues to represent, Eldert Van Dam and Susan Van Dam, Trustees of the E & S Van Dam Revocable Trust ("Van Dam"), a creditor of the debtor. Among others things, the applicant pursue actions on behalf of the estate against others, including Prin-Gram, LLC ("Prin-Gram"). Prin-Gram opposes McCormick Barstow's employment.

FACTS

Stueve's Milk Transport, Inc. ("Stueve's") is a corporation. At all pertinent times, Stueve's was owned by Prin-Gram and/or Michael Stueve. Prin-Gram was owned equally by John Prince ("Prince") and William Ingram ("Ingram"). Prince, Ingram and Stueve were officer and/or directors of Stueve. Stueve's business consisted of hauling milk and/or milk components.

As alleged by Van Dams and/or the McCormick Barstow, SMT Logistics, Inc. ("SMT") was formed for the purpose of taking over Stueve's operations because Stueve's suffered from high insurance rates, including workers compensation insurance, and was the subject of a discrimination suit by a former employee. As a result, at least according to Van Dam's, Stueve's employees, assets and were transferred to SMT. And in their view, SMT bears successor liability for Stueve's debts.

Van Dams loaned Stueve's \$500,000. The loan was supposed to be secured by 18 trailers used by the debtor for transporting milk and milk components. For reasons not clear from the record, the security interest in the trailers was not properly perfected and Stueve's, acting through Ingram, Price and Stueve sold the trailers and retained proceeds of those sales. After the loan was paid down to \$355,000 Stueve's stopped paying Van Dams and, later filed a Chapter 7 bankruptcy.

After Stueve's filed bankruptcy, Van Dams brought suit against Price, Ingram and Michael Stueve (but not the corporation) for breach of fiduciary duty, conversion and fraudulent concealment. *Van Dam v. Prince et al*, No. Unknown (Tulare County Superior Court 2016) ("Tulare County Case"). All causes of action arise from Stueve's sale of the 18 trailers, subject to Van Dam's unperfected security interest, and retention of those proceeds. Van Dam's state court counsel, McCormick Barstow seeks employment as counsel for Salven.

CAUSES OF ACTIONS HELD BY SALVEN AND BY VAN DAMS

The parties agree that Van Dams are asserting causes of action for breach of fiduciary duty, conversion and fraudulent concealment. Those causes of action have been asserted, and are now pending, in the Tulare County case. Those causes of action are unique to Van Dams, and Salven holds now cause of action for "recovery of the proceeds of the trailers." Amended Declaration of Ryder, Exh. A at 3:21-23, October 28, 2016, ECF # 22. Salven holds causes of action as follows: (1) against Prin-Gram and SMT for success-in-interest liability; (2) against Prince, Ingram and Michael Stueve under the trust fund doctrine; and (3) against SMT for fraudulent conveyances. Amended Declaration of Ryder, Exh. A at 3:21-24-4:11, October 28, 2016, ECF # 22.

LAW

Employment of counsel by a Chapter 7 trustee is controlled by 11 U.S.C. § 327(a), (c). Those sections provide: "Except as otherwise provided in this section, the trustee, with the court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title. . . .(c) In a case under chapter 7, 12, or 11 of this title, a person is not disqualified for employment under this section solely because of such person's employment by or representation of a creditor, unless there is objection by another creditor or the United States trustee, in which case the court shall disapprove such employment if there is an actual conflict of interest."

The standards for such employment are well-known to this court. "Section 327 governs the employment of attorneys by the Chapter 7 trustee. "The applicant bears the burden of proving that the standards for appointment have been met." *Official Comm. of Unsecured Creditors v. ABC Capital Mkts. Grp. (In re Capitol Metals Co., Inc.)*, 228 B.R. 724, 727 (B.A.P. 9th Cir.1998) (citing *Credit Alliance Corp. v. Boies (In re Crook)*, 79 B.R. 475, 478 (B.A.P. 9th Cir.1987)).

Employment may be for a general or limited, specific purpose. See 11 U.S.C. § 327(a), (c), (e); *Bank Brussels Lambert v. Coan (In re AroChem Corp.)*, 176 F.3d 610, 622 (2d Cir.1999) (distinguishing between employment of general counsel and special counsel for purposes of conflicts and eligibility analysis); *Fondiller v. Robertson (In re Fondiller)*, 15 B.R. 890, 892 (B.A.P. 9th Cir.1983) (same), appeal dismissed, 707 F.2d 441 (9th Cir.1983).

A creditor's attorney may be employed by the trustee provided the attorney is "disinterested," "do[es] not hold or represent an interest adverse to the estate," and, if an objection is made, does not have an "actual conflict of interest." 11 U.S.C. § 327(a), (c). When applied to employment of a creditor's attorney by the trustee as special counsel for a specific matter, the conflicts and eligibility analysis under § 327 is limited to the specific matter for which the attorney is to be employed. See *Stoumbos v. Kilimnik*, 988 F.2d 949, 964 (9th Cir.1993); *Coan*, 176 F.3d at 622-29; *Fondiller*, 15 B.R. at 892.

Section 327 is implemented by Federal Rule of Bankruptcy Procedure 2014(a), which requires an applicant to disclose all connections with the debtor, creditors, parties in interest, and their respective attorneys and accountants. The disclosure must be full, candid, and complete. *Tevis v. Wilke, Fleury, Hoffelt, Gould & Birney, LLP (In re Tevis)*, 347 B.R. 679, 693-94 (B.A.P. 9th Cir.2006). The duty to disclose continues throughout the representation, and incomplete disclosure may result in the denial of fees. *Neben & Starrett, Inc. v. Chartwell Fin. Corp. (In re Park-Helena Corp.)*, 63 F.3d 877, 880-82 (9th Cir.1995); cf. 11 U.S.C. § 328(c)." *In re Hummer Transp., Inc.*, No. 11-60663, 2013 WL 8013588, at *2-3 (Bankr. E.D. Cal. Sept. 12, 2013), aff'd sub nom. *In re Hummer Transp.*, No. CV F 13-1640 LJO, 2014 WL 412534 (E.D. Cal. Feb. 3, 2014).

DISCUSSION

Disinterestedness

"An attorney must be a disinterested person to be employed as special counsel by the trustee. 11 U.S.C. § 327(a). "Disinterested person" is a defined term. Id. § 101(14). Creditors are not disinterested persons. Id. § 101(14)(A). "Yet, § 327(c) makes clear that an attorney's representation of a creditor does not per se deprive that attorney of 'disinterested' status, but rather becomes a potential disqualifier for employment" if an "actual conflict of interest" exists. See *In re Kobra Props.*, 406 B.R. 396, 403 (Bankr.E.D.Cal.2009) (citing § 327(c)) (distinguishing between a creditor and creditor's counsel)." *Hummer Transp.* at *3.

Other than any disinterestedness arising from a conflict of interest occasioned by McCormick's representation of Van Dams, the record does not reflect any indication that McCormick is not disinterested.

Actual Conflict of Interest

"[A] conflict of interest is actual and warrants disqualification under § 327(c) if there is active competition between two interests, in which one interest can only be served at the expense of the other." *Johnson v. Richter, Miller & Finn (In re Johnson)*, 312 B.R. 810, 822 (E.D.Va.2004) (internal quotation marks omitted). "[T]here is no 'actual conflict of interest' warranting disqualification unless (i) the interests of the trustee and the creditor are in fact directly conflicting or (ii) the creditor is actually afforded a preference that is denied to other creditors." Id. (footnote omitted), quoted in *Byrd v. Johnson*, 467 B.R. 832, 848-49 (D.Md.2012)." *Hummer Transp.* *4.

As with the other elements, McCormick Barstow bears the burden of proof on the issue. Prin-Gram correctly points out that an active competition exists between Van Dams and the estate with regard to collection of judgments against Prince, Ingram and Michael Stueve, who are each individual targets of actions by Van Dams (for breach of fiduciary duty, conversion and fraudulent concealment) and by the trustee (under the trust fund doctrine). Because each cause of action exists independently, if each is successful and unless Prince/Ingram/Michael Stueve are able to promptly and completely each judgment in full, McCormick Barstow would be placed in the position of which creditor, Van Dam (in which all monies collected will benefit them) or Salven (in which monies collected will benefit all creditors), will be paid first or at all. McCormick Barstow

acknowledges the issue but states only "Considering that Prince and Ingram" either invested or loaned Debtor approximately \$1,700,000.00 and have continued to operate Debtor's business through SMT and Prince-Gram, there *should* be adequate funds to go around . . . "Amended Declaration of Ryder, Exh. A at 4:15-17, October 28, 2016, ECF # 22. (emphasis added). This is insufficient evidence to sustain the burden of proof on the issue.

Adverse Interest

"Section 327(a) also requires that prospective counsel not hold or represent an interest adverse to the estate. To hold an interest adverse to the estate means '(1) to possess or assert any economic interest that would tend to lessen the value of the bankrupt estate or that would create either an actual or potential dispute in which the estate is a rival claimant; or (2) to possess a predisposition under circumstances that render such a bias against the estate.' *Tevis*, 347 B.R. at 688. To represent an adverse interest means to serve as an attorney for an entity holding such an adverse interest." *Id. Hummer Transp.* * 4.

Here, McCormick Barstow's assertion of Van Dam's rights in state court is problematic. At the outset, it tends to less than value of the estate. By asserting a claim against former officers and directors the Van Dam's (and their counsel McCormick Barstow) may create a claim for indemnity by Ingram and Prince. In some instances, corporation must indemnify officers and directors from civil action. Cal. Corp. Cod § 317(d). Concededly mandatory indemnity is a narrow window. "If the director or officer accused of wrongdoing is successful on the merits in defense of the proceeding, indemnification is mandatory. The defendant "shall be indemnified against expenses actually and reasonably incurred" in defense of the proceeding (e.g., attorney fees, court costs, expert witness fees, etc.). [Corps.C. § 317(d) (emphasis added); *Groth Bros. Oldsmobile, Inc. v. Gallagher* (2002) 97 CA4th 60, 73, 118 CR2d 405, 414-415." Friedman, Fotenos, & Rybka, California Practice Guide: Corporations, Operating Problems 6:439 (Rutter Group 2016). But depending on the terms of the bylaws and agreements, if any, with Prince and Ingram, the debtor might be contractually obligated to defend them in the Tulare County action. Friedman, *California Practice Guide: Corporations* at § 6:464.1. This has not been adequately addressed by the applicant.

Beyond that, McCormick Barstow's representation of the Van Dams in the state court action creates a dispute in which the Stueve's estate is a rival claimant and/or lessens the estate. Van Dams must assert that the Prince, Ingram and/or Stueve, sold the trailers, not subject to a perfected security interest, and used those proceeds for purposes other than paying Van Dams. Those same facts also demonstrate the debtor breached its obligation to Van Dams. By so doing, McCormick Barstow's proof in state court will prove the validity of its claim before this court. And that lessens the value of the estate for other creditors.

It also places the estate in the position of a rival claimant. The estate has an interest in proffering facts, if any, that demonstrate that the officers and directors were, in fact, entitled to do what they are alleged to have done, e.g. sell the 18 trailers without paying Van Dams. Van Dam's interest is just the opposite, and as consequence, McCormick Barstow represents an adverse interest.

For each of these reasons, the application will be denied.

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.

McCormick Barstow, Sheppard, Wayte and Carruth, LLP's QZ has been presented to the court. Having considered the well-pleaded facts of the application,

IT IS ORDERED that the application is denied.

32.	<u>16-13301</u> -A-7 ERIC/RONDA KOZLOWSKI LRP-1 ROBERT HAWKINS/MV THOMAS ARMSTRONG/Atty. for dbt. ROBERT HAWKINS/Atty. for mv.	MOTION TO EMPLOY CRAIG B. FRY AS SPECIAL COUNSEL 11-18-16 [17]
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No tentative ruling.