

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

Chief Judge Fredrick E. Clement
Sacramento Federal Courthouse
501 I Street, 7th Floor
Courtroom 28, Department A
Sacramento, California

DAY: MONDAY
DATE: DECEMBER 5, 2022
CALENDAR: 9:00 A.M. CHAPTER 7 CASES

RULINGS

Each matter on this calendar will have one of three possible designations: No Ruling, Tentative Ruling, or Final Ruling.

"No Ruling" means the likely disposition of the matter will not be disclosed in advance of the hearing. The matter will be called; parties wishing to be heard should rise and be heard.

"Tentative Ruling" means the likely disposition, and the reasons therefor, are set forth herein. The matter will be called. Aggrieved parties or parties for whom written opposition was not required should rise and be heard. Parties favored by the tentative ruling need not appear. Non-appearing parties are advised that the court may adopt a ruling other than that set forth herein without further hearing or notice.

"Final Ruling" means that the matter will be resolved in the manner, and for the reasons, indicated below. The matter will not be called; parties and/or counsel need not appear and will not be heard on the matter.

CHANGES TO PREVIOUSLY PUBLISHED RULINGS

On occasion, the court will change its intended ruling on some of the matters to be called and will republish its rulings. The parties and counsel are advised to recheck the posted rulings after 3:00 p.m. on the next business day prior to the hearing. Any such changed ruling will be preceded by the following bold face text: **"[Since posting its original rulings, the court has changed its intended ruling on this matter]"**.

ERRORS IN RULINGS

Clerical errors of an insignificant nature, e.g., nomenclature ("2017 Honda Accord," rather than "2016 Honda Accord"), amounts, ("\$880," not "\$808"), may be corrected in (1) tentative rulings by appearance at the hearing; or (2) final rulings by appropriate ex parte application. Fed. R. Civ. P. 60(a) *incorporated by* Fed. R. Bankr. P. 9024. All other errors, including those occasioned by mistake, inadvertence, surprise, or excusable neglect, must be corrected by noticed motion. Fed. R. Bankr. P. 60(b), *incorporated by* Fed. R. Bankr. P. 9023.

1. [22-21115](#)-A-7 **IN RE: JANICE/DAVID LACROIX**
[GMR-3](#)

MOTION FOR COMPENSATION FOR GABRIELSON & COMPANY,
ACCOUNTANT(S)
11-1-2022 [\[176\]](#)

NIKKI FARRIS/ATTY. FOR DBT.

Final Ruling

Application: Allowance of Interim Compensation and Expense
Reimbursement

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

Disposition: Approved

Order: Civil minute order

Compensation Approved: \$5,780.00

Expenses Approved: \$114.23

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, Gabrielson & Company, accountant for the trustee, has applied for an allowance of interim compensation and reimbursement of expenses. The applicant requests that the court allow compensation in the amount of \$5,780.00 and reimbursement of expenses in the amount of \$114.23.

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 an interim basis as to the amounts requested. Such amounts shall be perfected, and may be adjusted, by a final application for compensation and expenses, which shall be filed prior to case closure.

SERVICE AND NOTICE

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3, 9036-1, and 7005-1 which requires attorneys and trustees to use EDC 7-005 the form certificate of service.

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding.

In this case there are problems with the use and completion of the standardized Certificate of Service, EDC 7-005.

Section 6 - How Service is Accomplished

The Certificate of Service indicates that service is made pursuant to Fed. R. Bankr. R. 7004. See Box 6A1, Section 6, Certificate of Service, ECF No. 181.

This is a motion to approve compensation, and service is required under Fed. R. Civ. P. 5 *as incorporated by* Fed. R. Bankr. P. 7005. As such Rule 7004 service is not required in this matter. Moreover, service by Rule 7004 has not been accomplished. The matrix lists numerous corporate and insured depository institution parties, none of which were served by certified mail [insured depository institutions] or addressed to the attention of an officer or agent for service of process [corporate parties and insured depository institutions] as required by Rule 7004.

Because service is only required under Fed. R. Civ. P. 5 the service of this motion was correct. The Certificate of Service is incorrect because only the boxes under 6B1 and 6B2 are required to be checked, indicating Rule 5 service.

Attachments

The Clerks' Mailing Matrix is mislabeled as Attachment 6A1 when it should be labeled "Attachment 6B2" as it corresponds to that section in the form Certificate of Service.

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.

Gabrielson & Company's application for allowance of interim 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. The court allows interim compensation in the amount of \$5,780.00 and reimbursement of expenses in the amount of \$114.23. The fees and costs are allowed pursuant to 11 U.S.C. § 331 as interim fees and costs, subject to final review and allowance pursuant to 11 U.S.C. § 330. Such allowed amounts shall be perfected, and may be adjusted, by a final application for allowance of compensation and reimbursement of expenses, which shall be filed prior to case closure.

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.

2. [22-22628](#)-A-7 **IN RE: JULIA REECE AND RYAN COLLINS**
[ESC-1](#)

MOTION TO COMPEL ABANDONMENT
11-4-2022 [\[14\]](#)

ELIZABETH CARLSEN/ATTY. FOR DBT.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Compel Abandonment

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

Disposition: Denied without prejudice

Order: Civil minute order

The debtors move for an order compelling the Chapter 7 trustee's abandonment of business assets. The motion will be denied without prejudice as follows.

SERVICE AND NOTICE

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3, 9036-1 and 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

Use of Form EDC 7-005 is Mandatory

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by *either attorneys, trustees, or other Registered Electronic Filing System Users* shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court.

LBR 7005-1(emphasis added).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding. Pursuant to LBR 7005-1 use of Form EDC 7-005 is mandatory in this matter.

Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g) (emphasis added).

The movant has failed to use Form EDC 7-005 in memorializing service in this matter. See Certificate of Service, ECF No. 18. The motion will be denied without prejudice.

CIVIL MINUTE ORDER

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

The debtor's motion to compel abandonment of assets has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.

3. [22-22056](#)-A-7 **IN RE: DAVID MICHAL**
[CLH-1](#)

CONTINUED MOTION TO SET TRIAL DATE
9-19-2022 [[14](#)]

PATRICIA WILSON/ATTY. FOR DBT.

No Ruling

4. [22-22056](#)-A-7 **IN RE: DAVID MICHAL**
[FEC-2](#)

CONTINUED STATUS CONFERENCE RE: INVOLUNTARY PETITION
8-18-2022 [[1](#)]

PATRICIA WILSON/ATTY. FOR DBT.

No Ruling

5. [22-22563](#)-A-7 **IN RE: ZELDA TROUTMAN**
[HSM-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-16-2022 [\[43\]](#)

MARK SHMORGON/ATTY. FOR DBT.
THOMAS GRIFFIN/ATTY. FOR MV.
FIVE STAR BANK VS.

Tentative Ruling

Motion: Stay Relief

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

Disposition: Granted

Order: Civil minute order

Subject: 2712 Barbera Way, Rancho Cordova, California

Value of Collateral: \$354,200.00

Aggregate of Liens: \$809,360.73

These minutes constitute the court's findings of fact and conclusions of law required by Fed. R. Civ. P. 52(a), *incorporated* by Fed. R. Bankr. P. 7052, 9014(c). The findings of fact are as set forth above; the conclusions of law are as set forth below.

Five Star Bank seeks relief from the automatic stay of 11 U.S.C. § 362(a).

DEFAULT OF RESPONDENT

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

"[A]fter notice and a hearing," the court may terminate, annul, modify or condition the stay: (1) "for cause, including the lack of adequate protection"; or (2) "with respect to a stay of an act against property [of the estate]" if the debtor lacks "equity" in that property and if that "property is not necessary for an effective reorganization." 11 U.S.C. § 362(d); *see also* Fed. R. Bankr. P. 4001(a)(1). The party seeking stay relief bears the burden of proof as to "the debtor's equity in the property" and on the validity and perfection of its security interest, as well as the amount of its debt. 11 U.S.C. § 362(g)(1); *In re Dahlquist*, 34 B.R. 476, 481 (Bankr. S.D. 1983). The party opposing stay relief, e.g., the debtor or Chapter 7 trustee, bears the burden of proof on all other issues. 11 U.S.C. § 362(g)(2).

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.

SERVICE AND NOTICE

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3, 9036-1 (electronic service) and 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding.

While not fatal, there are problems with the use and completion of the standardized Certificate of Service, EDC 7-005.

First, the caption is not properly completed as the debtor's name is omitted.

Second, while service is properly accomplished, the form is not properly completed in memorializing service. Service upon the debtor in a motion for relief from stay is required pursuant to Fed. R. Bankr. P. 4001(a) which states that Rule 9014 is applicable. Rule 9014 requires service under Rule 7004 upon the party against whom relief is sought. Service on other parties is required pursuant to Fed. R. Civ. P. 5. While the form properly indicates service under Rule 5 as to other parties, service upon the debtor should be indicated as being completed pursuant to Rule 7004. Thus, in addition to checking box 6B1-2, the movant should also have checked box 6A1. As both rules allow for service by first class mail service was properly accomplished in this case.

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.

Five Star Bank'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 2712 Barbera Way, Rancho Cordova, California, 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.

6. [22-22181](#)-A-7 **IN RE: NEAL PRICE**
[RER-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-1-2022 [\[26\]](#)

RACHEL RENNO/ATTY. FOR MV.
YINGRONG TAO VS.
CASE DISMISSED: 11/8/22

Final Ruling

Motion: Stay Relief

Disposition: Denied as moot

Order: Civil minute order

Case Dismissed: November 8, 2022

Federal courts have no authority to decide moot questions. *Arizonans for Official English v. Arizona*, 520 U.S. 43, 67-68, 72 (1997). "The basic question in determining mootness is whether there is a present controversy as to which effective relief can be granted." *Nw. Env'tl. Def. Ctr. v. Gordon*, 849 F.2d 1241, 1244-45 (9th Cir. 1988) (citing *United States v. Geophysical Corp.*, 732 F.2d 693, 698 (9th Cir.1984)).

Dismissal of a bankruptcy case terminates the automatic stay. Under § 362(c)(1), the stay of an act against property of the estate terminates when such property leaves the estate. 11 U.S.C. § 362(c)(1). And the dismissal of a case "revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case." *Id.* § 349(b)(3). Under § 362(c)(2), the stay of "any other act" under § 362(a) terminates upon the earlier of three events: (i) dismissal of a case, (ii) closure of a case, or (iii) the time a discharge is granted or denied. 11 U.S.C. § 362(c)(2)(A)-(C).

Because the case has been dismissed, the automatic stay no longer exists. The court is unable to grant effective relief. The motion will be denied as moot.

SERVICE AND NOTICE

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3, 9036-1 and 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

Use of Form EDC 7-005 is Mandatory

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by *either attorneys, trustees, or other Registered Electronic Filing System Users* shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court.

LBR 7005-1(emphasis added).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding. Pursuant to LBR 7005-1 use of Form EDC 700-5 is mandatory in this matter.

Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g)(emphasis added).

The movant has failed to use Form EDC 7005-1 in memorializing service in this matter. See Certificate of Service, ECF No. 30. Had the motion not been denied as moot the court would have denied the motion for failure to use the required certificate of service, EDC 7-005.

CIVIL MINUTE ORDER

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

Yingrong Tao's Motion for Relief From Automatic Stay has been presented to the court. Having considered the motion together with papers filed in support and opposition, and having heard the arguments of counsel, if any,

IT IS ORDERED that the motion is denied as moot.

7. [22-21692](#)-A-7 **IN RE: EVERGREEN ARBORISTS, INC.**
[FLC-1](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
10-25-2022 [\[146\]](#)

GABRIEL LIBERMAN/ATTY. FOR DBT.
STEVEN FOX/ATTY. FOR MV.
ILLAHEE RANCH, LLC VS.
TRUSTEE NON-OPPOSITION

Final Ruling

Motion: Relief From Stay

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

Disposition: Denied without prejudice

Order: Civil minute order

Illahee Ranch, LLC moves for relief from the automatic stay of 11 U.S.C. § 362(a). The motion will be denied without prejudice because the court is unable to determine if the motion was properly served.

SERVICE AND NOTICE

As of November 1, 2022, the court adopted Local Bankruptcy Rules 2002-3, 9036-1 and 7005-1 (requiring attorneys and trustees to use a standardized Certificate of Service, EDC 7-005).

Use of Form EDC 7-005 is Mandatory

The service of pleadings and other documents in adversary proceedings, contested matters in the bankruptcy case, and all other proceedings in the Eastern District of California Bankruptcy Court by *either attorneys, trustees, or other Registered Electronic Filing System Users* shall be documented using the Official Certificate of Service Form (Form EDC 007-005) adopted by this Court.

LBR 7005-1(emphasis added).

The form certificate of service is intended to allow parties to memorialize service efficiently and accurately, and to aid the court in ensuring sufficient service is achieved in each proceeding. Pursuant to LBR 7005-1 use of Form EDC 700-5 is mandatory in this matter.

LBR 9014-1

A proof of service, in the form of a certificate of service, shall be filed with the Clerk concurrently with the pleadings or documents served, or not more than three (3) days after they are filed.

LBR 9014-1(e) (2) (emphasis added).

The movant has failed to comply with LBR 9014-1(e) (2) as it has filed multiple certificates of service. See Certificate of Service, ECF Nos. 151, 152. Only one certificate is authorized for each proceeding. The additional certificate is not indicated as an amended document, ECF No. 152. Thus, the court cannot determine which certificate is the proper document. Both certificates suffer from defects as discussed below and for these reasons the motion will be denied without prejudice.

Attachments

Attachment 4 is missing in the Certificate of Service filed at ECF No. 152. Therefore, it is impossible for the court to determine which documents were served.

Attachment 6B1 is incorrect in the Certificate of Service filed at ECF No. 151 and 152. EDC 7-005 requires the use of an official list of registered e-file users as follows, "[a] copy of the Clerk's Electronic Service Matrix applicable to this case and/or adversary proceeding is appended hereto and numbered Attachment 6B1." See Section 6B1, EDC 7-005. The list which is appended to the certificates is not the Clerk's Electronic Service Matrix.

Attachment 6B2 includes schedules filed in the bankruptcy case as a listing of creditors served. See Attachment 6B2, Certificate of Service, ECF No. 152. The movant is authorized only to use the Clerk's Matrix or a list of creditors totaling no more than 6 parties served as an attachment.

Dismissal of Action for Failure to Comply with Local Rules

Failure of counsel or of a party to comply with these Rules, with the Federal Rules of Civil Procedure or the Federal Rules of Bankruptcy Procedure, or with any order of the Court may be grounds for imposition of any and all sanctions authorized by statute or rule or within the inherent power of the Court, including, without limitation, *dismissal of any action*, entry of default, finding of contempt, imposition of monetary sanctions or attorneys' fees and costs, and other lesser sanctions.

LBR 1001-1(g) (emphasis added).

The court will deny the motion without prejudice.

CIVIL MINUTE ORDER

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

Illahee Ranch, LLC's Motion for Relief From the Automatic Stay has been presented to the court. Given the procedural deficiencies discussed by the court in its ruling,

IT IS ORDERED that the motion is denied without prejudice.