

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

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

DAY: MONDAY
DATE: DECEMBER 6, 2021
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. [21-23113](#)-A-7 **IN RE: TRACY CRUMP**
[UST-1](#)

MOTION TO APPROVE STIPULATION TO DISMISS CHAPTER 7
BANKRUPTCY CASE WITHOUT ENTRY OF DISCHARGE
11-5-2021 [\[18\]](#)

MOHAMMAD MOKARRAM/ATTY. FOR DBT.
JUSTIN VALENCIA/ATTY. FOR MV.

Final Ruling

Motion: Dismiss Chapter 7 Case

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

Disposition: Granted

Order: Prepared by the movant

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).

The United States trustee seeks dismissal of this chapter 7 case pursuant to the terms of a stipulation with the debtor. The U.S. Trustee is prepared to file a motion to dismiss this case for abuse pursuant to 11 U.S.C. §§ 707(b)(1), 707(b)(2) (i.e., presumed abuse) and/or 707(b)(3) (i.e., bad faith and/or totality of the circumstances abuse). The debtor indicated that she does not wish to defend the U.S. Trustee's allegations and has stipulated to dismissal of this chapter 7 bankruptcy case without discharge, ECF No. 17. The parties are not aware of any prepetition/pre-dismissal bad faith conduct and/or non 11 U.S.C. § 707(b) abuse of the bankruptcy process that would limit the Debtor's right to dismiss the case.

CASE DISMISSAL

Dismissal of a chapter 7 case may be sought under either § 305 or § 707(a). 11 U.S.C. §§ 305(a). Section 305 provides, "The court, after notice and a hearing, may dismiss a case under this title . . . at any time if . . . the interests of creditors and the debtor would be better served by such dismissal" 11 U.S.C. § 305(a)(1); *see, e.g., In re Eastman*, 188 B.R. 621, 624 (B.A.P. 9th Cir. 1995). Similarly, § 707(a) authorizes dismissal of a chapter 7 case for cause. *See* 11 U.S.C. § 707(a); *Hickman v. Hana (In re Hickman)*, 384 B.R. 832, 836 (B.A.P. 9th Cir. 2008) (holding that whether "cause" exists for dismissal under § 707(a) can be based on the totality of circumstances unless legal prejudice to creditors would result).

The court finds that cause exists to dismiss the case and that the dismissal poses no prejudice to creditors. The court grants the motion to dismiss.

2. [21-23627](#)-A-7 **IN RE: AKOP SALMANYAN AND LUSINE PAPOYAN**
[SLH-1](#)

MOTION TO AVOID LIEN OF CITIBANK N.A.
11-3-2021 [\[14\]](#)

SETH HANSON/ATTY. FOR DBT.

Final Ruling

Motion: Avoid Lien that Impairs Exemption

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

Disposition: Granted

Order: Prepared by moving party

Judicial Lien Avoided: \$5,815.75 - Citibank N.A.

All Other Liens:

- First Deed of Trust - Central Loan Admin & R - \$90,276.00

- Second Deed of Trust Central Loan Admin & R - \$2,942.00

Exemption: \$300,000.00

Value of Property: \$254,600.00

Subject Property: 5127 Greenberry Drive, Sacramento, California

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).

Debtor seeks an order under 11 U.S.C. § 522(f) avoiding the judicial lien of Citibank, N.A.

DISCUSSION

Section 522(f)

Section 522(f) of the Bankruptcy Code authorizes the court to avoid a lien "on an interest of the debtor in property to the extent that such lien impairs an exemption to which the debtor would have been entitled." 11 U.S.C. § 522(f)(1). There are four elements to avoidance of a lien that impairs an exemption: (1) there must be an exemption to which the debtor would have been entitled; (2) the property must be listed on the schedules and claimed as exempt; (3) the lien must impair the exemption claimed; and (4) the lien must be a judicial lien or nonpossessory, nonpurchase-money security interest in property described in § 522(f)(1)(B). *Goswami v. MTC*

Distrib. (In re Goswami), 304 B.R. 386, 390-91 (B.A.P. 9th Cir. 2003). Impairment is statutorily defined: a lien impairs an exemption "to the extent that the sum of - (i) the lien; (ii) all other liens on the property; and (iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens." 11 U.S.C. § 522(f)(2)(A).

The operative date for determining lien avoidance under § 522(f) is the date of the petition. *In re Chiu*, 266 B.R. 743, 751 (9th Cir. BAP 2001), *aff'd* 304 F.3d 905 (9th Cir. 2002); *In re Salanoa*, 263 B.R. 120, 123 (Bankr. S.D. Cal. 2001) (the petition date is the "operative date to make all § 522(f) determinations"). It controls: (1) the debtor's right to claim a particular exemption and the amount of that exemption, *Owen v. Owen* 500 U.S. 305, 314 fn. 6 (1991); *In re Reaves*, 285 F.3d 1152, 1156 (9th Cir. 2002); *In re Chiu*, 266 B.R. at 751; (2) the value of the property claimed exempt, 11 U.S.C. § 522(a)(2); *In re Dore*, 124 B.R. 94, 96 (Bankr. S.D. Cal. 1991); *In re Harris*, 120 B.R. 142, 148 (Bankr. S.D. Cal. 1990); and (3) the amount of the lien. *In re Salanoa* 263 B.R. at; March, Ahart & Shapiro, *California Practice Guide: Bankruptcy*, Avoidance and Turnover Actions § 21:1470 et seq. (Rutter Group December 2020).

Here, the responding party's judicial lien, all other liens, and the exemption amount together \$399,033.75 exceed the property's value \$254,600.00 by an amount greater than or equal to the judicial lien \$5,815.75. As a result, the responding party's judicial lien will be avoided entirely.

3. [20-24259](#)-A-7 **IN RE: NESTOR/MARIA QUILATES**
[BLF-3](#)

MOTION TO SELL
11-15-2021 [[130](#)]

ARASTO FARSAD/ATTY. FOR DBT.
LORIS BAKKEN/ATTY. FOR MV.

No Ruling

4. [21-23159](#)-A-7 **IN RE: BRITANI DAVIS**
[VVF-2](#)

MOTION FOR RELIEF FROM AUTOMATIC STAY
11-22-2021 [\[35\]](#)

VINCENT FROUNJIAN/ATTY. FOR MV.
HONDA LEASE TRUST VS.

Tentative Ruling

Motion: Stay Relief to Accept Insurance Settlement

Notice: LBR 9014-1(f)(2); non-opposition filed by chapter 7 trustee

Disposition: Granted only to the extent specified in this ruling

Order: Civil minute order

Subject: 2020 Honda Civic - and total loss insurance proceeds

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).

BACKGROUND

Movant Honda Lease Trust seeks an order: terminating the automatic stay for cause under 11 U.S.C. § 362(d)(1), (2); allowing the movant to proceed under its lease agreement and applicable non-bankruptcy laws to enforce its remedies, including receiving and applying the total loss settlement proceeds from State Farm Insurance Company; waving the 14-day stay of Fed. R. Bankr. P. 4001(a)(3).

Movant was assigned the lease and title to the subject vehicle after the debtor executed a Vehicle Lease Agreement. Movant has perfected its security interest in the subject vehicle.

On November 16, 2021, State Farm Insurance Company reported to Movant that on November 8, 2021, the subject vehicle was rendered a total loss. State Farm Insurance Company has accepted the claim and agreed to settle the total loss with Movant for the sum of \$21,665.88. See ECF No. 35, 2:17-21.

Movant states that the current 10-day lease payoff balance is \$21,071.12. *Id.*, 2:17.

The chapter 7 trustee filed a non-opposition to this motion on November 30, 2021.

STAY RELIEF

Section 362(d)(1) authorizes stay relief for cause. Cause is determined on a case-by-case basis and may include the existence of litigation pending in a non-bankruptcy forum that should properly be pursued. *In re Tucson Estates, Inc.*, 912 F.2d 1162, 1169 (9th Cir. 1990).

The Ninth Circuit Bankruptcy Appellate Panel has "agree[d] that the *Curtis* factors are appropriate, nonexclusive, factors to consider in deciding whether to grant relief from the automatic stay to allow pending litigation to continue in another forum." *In re Kronemyer*, 405 B.R. 915, 921 (B.A.P. 9th Cir. 2009).

These factors include: "(1) whether relief would result in a partial or complete resolution of the issues; (2) lack of any connection with or interference with the bankruptcy case; (3) whether the other proceeding involves the debtor as a fiduciary; (4) whether a specialized tribunal with the necessary expertise has been established to hear the cause of action; (5) whether the debtor's insurer has assumed full responsibility for defending it; (6) whether the action primarily involves third parties; (7) whether litigation in another forum would prejudice the interests of other creditors; (8) whether the judgment claim arising from the other action is subject to equitable subordination; (9) whether movant's success in the other proceeding would result in a judicial lien avoidable by the debtor; (10) the interests of judicial economy and the expeditious and economical resolution of litigation; (11) whether the parties are ready for trial in the other proceeding; and (12) impact of the stay on the parties and the balance of harms." *Sonnax Indus., Inc. v. TRI Component Prods. Corp. (In re Sonnax Indus., Inc.)*, 907 F.2d 1280, 1286 (2nd Cir. 1990) (citing *In re Curtis*, 40 B.R. 795, 799-800 (Bankr. D. Utah 1984)).

Courts may consider whichever factors are relevant to the particular case. See *id.* (applying only four of the factors that were relevant in the case). The decision whether to lift the stay is within the court's discretion. *Id.*

Having considered the motion's well-pleaded facts, the court finds cause to grant stay relief subject to the limitations described in this ruling.

The moving party shall have relief from stay to receive the total loss proceeds to the extent required to pay the lease payoff amount of \$21,071.12. But no attorney's fees shall be awarded.

The motion will be granted to the extent specified herein, and the stay of the order provided by 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.

Honda Lease Trust'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 to the extent specified in this order. The automatic stay is vacated to allow the movant to proceed under its lease agreement and applicable non-bankruptcy law to enforce its remedies, including receiving and applying the total loss settlement proceeds from the insurance company to satisfy its remaining claim in the amount of \$21,071.12. No further relief is awarded.

IT IS FURTHER ORDERED that funds from the insurance proceeds exceeding \$21,071.12 shall be paid to the debtor.