

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

December 7, 2016, at 1:30 p.m.

1. [15-20081-E-7](#) JANET ROBINSON
[16-2016](#)
DNL-1
HOPPER V. ROBINSON

MOTION TO DISMISS ADVERSARY
PROCEEDING
10-28-16 [\[14\]](#)

Final Ruling: No appearance at the December 7, 2016 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff, Defendant, Defendant's Attorney, and Office of the United States Trustee on October 28, 2016. By the court's calculation, 40 days' notice was provided. 28 days' notice is required.

The Motion to Dismiss has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the respondent and other parties in interest are entered. Upon review of the record, there are no disputed material factual issues, and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion to Dismiss is granted, and the adversary proceeding is dismissed, without prejudice.

J. Michael Hopper, Plaintiff and Chapter 7 Trustee in Defendant-Debtor's bankruptcy case, moves for dismissal of this adversary proceeding pursuant to Federal Rule of Bankruptcy Procedure 7041, which incorporates Federal Rule of Civil Procedure 41(a)(2). The Trustee states that under those rules, a plaintiff may dismiss an adversary proceeding voluntarily after giving notice to the trustee, United States Trustee, and other parties as the court directs.

**Grounds Stated with Particularity in Motion
(Fed. R. Civ. P. 7(b) and Fed. R. Bankr. P. 7007)**

The Plaintiff-Trustee seeks to have the court deny the Debtor her discharge for her failure to disclose the ownership interest in and financial transactions involving what is called the Acacia Property and the financial information relating to the 8th Street Property.

The Trustee argues dismissing the adversary proceeding is in the best interest of the Estate because it would avoid costs and delays of further litigation. The Trustee believes that his claims have merit, but the Estate would be better served by receiving a substantial dividend available now rather than seeing funds be reduced from administrative expenses in litigation for a case where the primary creditor's claim is for student loans and is likely non-dischargeable. The Trustee commenced this action to preserve the Estate's rights and without knowing whether he would be able to sell the Estate's fractional interest in real property. Now that he has sold the interest in property and that there are enough funds to provide a substantial dividend, the Trustee believes that dismissal is warranted.

Following commencement of this proceeding, the Debtor's sister, who was a co-owner of real property that the Trustee sought to sell, expressed her desire to purchase the Estate's interest. After negotiating, Betty Robinson agreed to purchase the property for a net purchase price of \$30,000.00, and the court approved the sale on August 23, 2016.

Total funds in the estate are approximately \$130,000.00. Total unsecured claims against the estate aggregate approximately \$114,000.00, of which \$111,500 is for student loans.

Federal Rule of Bankruptcy Procedure 7041 incorporates Federal Rule of Civil Procedure 41 and states additionally that "a complaint objecting to the debtor's discharge shall not be dismissed at the plaintiff's instance without notice to the trustee, the United States trustee, and such other persons as the court may direct, and only on order of the court containing terms and conditions which the court deems proper." Here, all of the proper parties have been served notice of this Motion to Dismiss Adversary Proceeding.

Federal Rule of Civil Procedure 41(a)(2) provides for dismissal of an adversary proceeding by court order on terms that the court considers to be proper. Unless ordered otherwise, such dismissal is without prejudice. Here, the Trustee has demonstrated two credible grounds for dismissing this adversary proceeding. First, after commencing this proceeding, the Trustee was able to sell the Estate's interest in real property, thus securing substantial funds to disburse to unsecured claims. Further litigation of this proceeding will incur additional administrative expenses that will reduce how much can be disbursed to those claims.

Second, the Trustee has since learned that the primary creditor's claim is for student loans. Those loans may be deemed non-dischargeable anyway, and so, the Complaint's objection to Debtor's discharge is not as compelling as when filed.

Cause exists to dismiss this adversary proceeding. The Motion is granted, and the adversary proceeding is dismissed.

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

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

The Motion to Dismiss the Adversary Proceeding filed by the Chapter 7 Trustee having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion to Dismiss is granted, and the adversary proceeding is dismissed, without prejudice.