

**UNITED STATES BANKRUPTCY COURT**  
Eastern District of California

**Honorable Ronald H. Sargis**  
Bankruptcy Judge  
Modesto, California

**December 15, 2022 at 2:00 p.m.**

1. [22-90225](#)-E-11      AVINASH SINGH

**CONFIRMATION OF CHAPTER 11 PLAN  
10-4-22 [\[54\]](#)**

**SUBCHAPTER V**

**Item 1 thru 3**

**Final Ruling: No appearance at the December 15 2022 Hearing is required.**  
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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor in Possession Debtor's Attorney, Chapter 11 Trustee, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on October 13, 2022. By the court's calculation, 63 days' notice was provided. 42 days' notice is required.

The Confirmation of Plan of Reorganization has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1) and Federal Rule of Bankruptcy Procedure 2002(b). 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). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. LOCAL BANKR. R. 9014-1(g).

The court has determined that oral argument will not be of assistance in rendering a decision in this matter.

<b>The Confirmation of Plan of Reorganization is denied.</b>
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On December 13, 2022, Debtor / Debtor in Possession's Attorney, David C. Johnston, filed a "Notice of Inability to Proceed with Confirmation of Plan of Reorganization. Dckt. 91. Debtor / Debtor in Possession's Attorney indicates that the means necessary for implementing the Plan, a \$200,000.00 loan, has not materialized. Additionally, the California Department of Tax and Fee Administration filed a Proof of Claim for \$481,725, which is part secured and part priority, making the Plan unfeasible.

Debtor/Debtor in Possession having effectively requested the dismissal of the proposed Plan and there being no evidence presented or tabulation of ballots, the Confirmation of the Plan is denied.

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

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

The Motion to Confirm the Subchapter V Plan filed by Avinash Singh ("Debtor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Confirm is denied, and the proposed Chapter 12 Plan is not confirmed.

SUBCHAPTER V

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 11 Trustee, and parties requesting special notice, on September 30, 2022. By the court's calculation, 41 days' notice was provided. 35 days' notice is required. FED. R. BANKR. P. 2002(a)(4) (requiring twenty-one-days' notice); LOCAL BANKR. R. 9014-1(f)(1)(B) (requiring fourteen-days' notice for written opposition).

The Motion to Convert 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 non-responding parties 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 Convert the Subchapter V Bankruptcy Case to a Case under Chapter 7 is granted, and the case is converted to one under Chapter 7.**

**MOTION TO DISMISS OR CONVERT**

This Motion to Dismiss or Convert the Subchapter V bankruptcy case of Avinash Singh ("Debtor / Debtor in Possession") has been filed by Tracy Hope Davis ("Movant"), the U.S. Trustee. Movant asserts that the case should be dismissed or converted based on the following grounds:

- A. The Subchapter V Debtor/Debtor in Possession and his counsel have continuously failed to provide requested financial records to the Movant, even though Movant has requested the following documents at least six times:

1. Completed attachments B, C, and D to the Initial Reporting Requirements and Document Request form;
  2. Evidence of one or more Debtor / Debtor in Possession's accounts. In addition, the Debtor / Debtor in Possession has not filed Form 426 for the businesses listed on Schedule A/B; and
  3. Form 426 for the businesses listed on Schedule A/B.
- B. Debtor/Debtor in Possession failed to schedule a noticed hearing on the employment application of Debtor/Debtor in Possession's Counsel, Mr. Johnston.
- C. Debtor has failed to file the Monthly Operating Reports for July and August 2022.
- D. There appears to be nonexempt assets or nonexempt equity in assets that can be liquidated and administered for the benefit of creditors and the estate in a Chapter 7 liquidation.

## **TRUSTEE'S STATEMENT**

Subchapter V Trustee, Walter R. Dahl ("Trustee") filed a statement on October 22, 2022. Dckt. 60. Trustee states support for the U.S. Trustee's motion, and recommends this Chapter 11, Subchapter V case be converted to a Chapter 7 case.

## **APPLICABLE LAW**

Questions of conversion or dismissal must be dealt with a thorough, two-step analysis: "[f]irst, it must be determined that there is 'cause' to act[:] [s]econd, once a determination of 'cause' has been made, a choice must be made between conversion and dismissal based on the 'best interests of the creditors and the estate.'" *Nelson v. Meyer (In re Nelson)*, 343 B.R. 671, 675 (B.A.P. 9th Cir. 2006) (citing *Ho v. Dowell (In re Ho)*, 274 B.R. 867, 877 (B.A.P. 9th Cir. 2002)).

The Bankruptcy Code Provides:

[O]n request of a party in interest, and after notice and a hearing, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under sections 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

## **DISCUSSION**

U.S. Trustee's concerns are well taken. For the grounds outlined above, cause exists to dismiss or convert under 11 U.S.C. § 1112(b).

U.S. Trustee argues conversion is in the best interest of creditors. The court agrees. Based on Debtor / Debtor in Possession's Schedules, Debtor / Debtor in Possession states under penalty of perjury that they have a 99% interest in two businesses with significant value:

1. Randhawa Fuel, LLC
2. Randhawa Petroleum, LLC

with a total value of \$545,400.00. Schedule A/B, Dckt. 19 ¶ 19. These assets can be liquidated for the benefit of creditors and the estate. These assets do not appear to be exempt. Therefore, there appears to be significant equity for unsecured claims.

Debtor in Possession's Schedule E/F, filed on January 18, 2022, lists \$18,584.49 in priority and nonpriority debt. Dckt. 16, at 22. A review of the Proofs of Claims filed as of September 14, 2022 shows that 3 unsecured claims have been filed totaling \$5,567.76, where no secured claims have been filed

Debtor in Possession does not oppose the conversion, nor does any other party in interest.

### **December 15, 2022 Hearing**

Debtor/Debtor in Possession has not been able to prosecute a Subchapter V Plan in this case, and filing an Notice of Inability to Proceed with the Subchapter V Plan Debtor/Debtor in Possession proposed in this case. Dckt. 91.

In reviewing the Docket, the court notes that on December 8, 2022, Creditor U.S. Bank National Association filed a Motion for relief from the automatic stay to repossess the 2017 Mercedes-Benz that secures its claim. Dckt. 84. The Motion includes the grounds that Debtor/Debtor in Possession is fifty-two (52) months in default in the payments due on that secured claim. In the Debtor/Debtor in Possession's proposed plan that has not been confirmed, it provided for the surrender of the Mercedes-Benz.

Cause exists to convert this case pursuant to 11 U.S.C. § 1112(b). The Debtor/Debtor in Possession is unable to prosecute a Plan in this case. The Motion is granted, and the case is converted to a case under Chapter 7.

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

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

The Motion to Convert the Chapter 11 case filed by Tracy Hope Davis ("the U.S. 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 Convert is granted, and the case is converted to a proceeding under Chapter 7 of Title 11, United States Code.

3. [22-90225](#)-E-11 AVINASH SINGH  
[CAE](#)-1

CONTINUED STATUS CONFERENCE RE:  
VOLUNTARY PETITION  
7-8-22 [[1](#)]

**SUBCHAPTER V**

Debtor's Atty: David C. Johnston

Notes:

Continued from 11/10/22 to be conducted in conjunction with the Confirmation Hearing and the U.S. Trustee's Motion to Dismiss or Convert.

<b>The Status Conference in this case is <span style="color: red;">XXXXXXX</span></b>
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**DECEMBER 15, 2022 STATUS CONFERENCE**

At the December 15, 2022 hearing on the U.S. Trustee's Motion to Convert this case to one under Chapter 7, the court XXXXXXX .

4 thru 5

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, May 18, 2022. By the court's calculation, 71 days' notice was provided. 28 days' notice is required. An amended notice of hearing was served on Debtor, Debtor's Counsel, Chapter 7 Trustee, and Office of the United States Trustee on May 23, 2022. By the court's calculation, 66 days' notice was provided.

The Objection to Claimed Exemptions 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). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Objection to Claimed Exemptions is <span style="color: red;">XXXXXXXXXX</span></b>
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BMO Harris Bank N.A. ("Creditor" or "BMO") objects to Jiwan Kaur's ("Debtor") claimed exemptions under California law because there is serious question as to whether the exempted property is actually Debtor's homestead. California Code of Civil Procedure § 704.730 provides an "automatic" homestead exemption for debtors, because the filing of a bankruptcy petition is the equivalent to a forced sale of a homestead. *E.g., In re Diaz*, 547 B.R. 329, 334 (B.A.P. 9th Cir. 2016).

A claimed exemption is presumptively valid. *In re Carter*, 182 F.3d 1027, 1029 at fn.3 (9th Cir.1999); *See also* 11 U.S.C. § 522(l). Once an exemption has been claimed, "the objecting party has the burden of proving that the exemptions are not properly claimed." FED. R. BANKR. P. RULE 4003(c); *In re Davis*, 323 B.R. 732, 736 (9th Cir. B.A.P. 2005). If the objecting party produces evidence to rebut the presumptively valid exemption, the burden of production then shifts to the debtor to produce unequivocal evidence to demonstrate the exemption is proper. *In re Elliott*, 523 B.R. 188, 192 (9th Cir. B.A.P. 2014). The burden of persuasion, however, always remains with the objecting party. *Id.*

Although California homestead exemption legislation should be construed liberally and in favor of the debtor (*E.g., In re Gilman*, 887 F.3d 956, 964 (9th Cir. 2018)), to qualify as a homestead a property must still be the principal dwelling of either the debtor or their spouse. California Code of Civil Procedure § 704.710(c). Debtor has claimed a \$248,110.00 exemption in the property commonly known as 5918 Meeks Way, Sacramento, CA 95835 (“Property”) on their Schedule C. Dckt. 1.

However, Debtor also stated at the meeting of creditors held March 1, 2022, that they hold bare legal title for the benefit of senior citizens who reside at the Property. Declaration, Dckt. 35. Debtor has further stated on their Schedule I that they are a caregiver for “In Home Supportive Services,” implying that the Property may, in fact, be Debtor’s place of employment rather than their homestead. Dckt. 1. Therefore, there is serious doubt as to whether the claimed homestead is, in fact, Debtor’s principal dwelling.

### **Status Report**

On July 14, 2022, Creditor and Debtor filed a Joint Status Report (Dckt. 45) stating:

1. Creditor has subpoenaed documents and received a response from AmerHome Mortgage, Bank of America, JP Morgan Chase, and TriCounties Bank.
2. Creditor subpoenaed documents from Debtor’s employer IHSS Public Authority and is waiting for the employer to respond.
3. Creditor has provided Rule 26 disclosures to Debtor.
4. Debtor responded to written discovery.
5. Debtor’s deposition is set for July 29, 2022.
6. Debtor’s Counsel is out of state August 3-12, 2022.
7. Parties request a continuance for 30-60 days.

The Parties reporting that they are actively working on this matter and having identified scheduling conflicts, the court continues the hearing on this Objection to Claim of Exemptions to 10:30 a.m. on September 22, 2022.

### **September 13, 2022 Status Report**

On September 13, 2022, Creditor and Debtor filed a joint status report indicating all discovery has been completed. Dckt. 50. Parties indicate new facts have been discovered which may affect Debtor’s homestead exemption. The court sets the following briefing schedule and final hearing as follows:

- A. Creditor shall file and serve the Opening Supplemental Brief on or before November 3, 2022.
- B. Debtor shall file and serve the Response on or before November 21, 2022



- C. Creditor shall file and serve a Reply, if any, on or before November 30, 2022
- D. The Continued Hearing on the Objection to Claim shall be conducted at 10:30 a.m. on December 8, 2022.

### **Overview of Objection to Exemption and Debtor's Response**

BMO has filed an Objection to Debtor's claim of a homestead exemption in the Meeks Way Property. Dckt. 33. The grounds for this Objection include: (1) Debtor commenced this Bankruptcy Case on December 30, 2021; (2) the Debtor states that the Meeks Way Property is held in a revocable trust for the benefit of Debtor; (3) Debtor has also executed a deed of trust against the Coroval Drive Property; (4) Debtor testified at the First Meeting of Creditors that she holds bare legal title for the benefit of senior citizens who reside at the Meeks Way Property; and (5) that Debtor states that she provides caregiver services (in addition to living with her son at) to elders at the Meeks Way Property.

BMO questions where Debtor resided as of December 30, 2021 (the commencement of this case) and whether Debtor can claim the homestead exemption.

Further, BMO advances the argument that Debtor has merely legal title, at best, and that "The Debtor claims a homestead exemption in real property that she undeniably acquired as a straw purchaser." Objection, p. 2:2-3; Dckt. 55. Further, "The Debtor has been adamant that she is not the owner of the Property, and that she has always intended that her son and the elderly people would be the beneficiaries of the Property." *Id.*; p. 2:12-14.

BMO advances its arguments stating "While the Debtor's Schedule C claims a homestead exemption in the Property, the evidence shows that the Debtor has only bare legal title and is not the actual or intended beneficiary of the Trust. Accordingly, the Debtor is not entitled to a homestead Exemption in the Property." *Id.*; p. 2:15-18.

In driving home the point that Debtor has no interest in the Meeks Way Property and therefore cannot claim it as a homestead, BMO shuts the exemption door with the following:

But in the present case, the Debtor as a straw purchaser, admits that she holds bare legal title to the property and admits that she holds no beneficial interest, and therefore, the Debtor cannot successfully assert a homestead exemption in the Property. Thus, the ruling in Nolan also does not provide the Debtor with a homestead exemption under these facts.

*Id.*, p. 7:15-18.

BMO then concludes its arguments that Debtor cannot claim a homestead exemption because Debtor had, and has, no interest (beyond mere legal title for the benefit of others) in the Meeks Way Property, stating:

All of the cases which held that debtors could claim a homestead exemption despite placing their homes in a trust, involved debtors who always intended to retain rights to their property, which was never the Debtor's intent. Here, the Debtor

indisputably acquired the Property as a straw purchaser but now that she is faced with a judgment lien by a creditor, she seeks this court's approval for a homestead exemption in property in which she admits she only holds bare legal title and admits she does not own. The burden is on the Debtor to prove otherwise and she cannot, given her many admissions. Debtor's claim of exemption should be denied.

*Id.*, p. 9:21-26, 10:1-2.

Debtor filed a Reply on November 23, 2022, (which is not supported by a declaration), asserting Debtor is entitled to a homestead exemption under California law. The allegations in the Reply include:

- ◆ Debtor holds legal interest in the Meeks Way Property, with such Property being in a self-settled trust.
- ◆ Debtor intends to reside in the Meeks Way Property and that she did so reside there prior to the commencement of this Bankruptcy Case.
- ◆ If the court concludes that Debtor does not have an interest in the Meeks Way Property (i.e., holding title for the benefit of others), then there is nothing for the BMO judgment lien to attach to for the Meeks Way Property.

#### **Curious and Concerning Matters Presented to the Court**

The court begins with the curious. If BMO's basis for disallowing the claimed homestead exemption prevails, it necessitates that the court determines in BMO's favor that Debtor has no interest in the Meeks Way Property. That Debtor has no interests in the Meeks Way Property which could be the subject of a creditor enforcing judgment rights against.

As provided in California Code of Civil Procedure § 697.340, a judgment lien attaches to interests in real property that are subject to the enforcement of a money judgment against the judgment debtor. California Code of Civil Procedure § 695.010(a) provides that it is the property of the judgment debtor that is subject to the enforcement of a money judgment. Under BMO's theory, it appears that there is no interest of Debtor to which the judgment lien could attach.

Moving on to the concerning, the various transcripts provided and copies of trust documents demonstrate that Debtor has some challenges in making truthful statements. These include, without limitation:

- A. The Eakm Living Trust, Declaration of Trust ("Dec of Trust"); Exhibit 4; Dckt. 57.
  - 1. Debtor is the grantor and trustee of the Eakm Living Trust, into which she transferred all of her interest in the Meeks Way Property. Dec of Trust, § II, A.
  - 2. As long as Debtor is alive, she retains all rights to the income, profits, and control of the Meeks Way Property. *Id.*; II, (C).
  - 3. Debtor may revoke the Trust. *Id.*; II, (E).

4. Successor Trustees are:
  - a. Harpal Kaur, Debtor's Sister,
  - b. Sukhwinder Singh Kang, Debtor's Husband. *Id.*; III; (E).
5. Upon Debtor's death, the beneficiary is Eakmjot [last name blocked out], and that Debtor wishes her father, mother, brother, and sister to reside in the Meeks Way Property for as long as they are alive. *Id.*; § IV, (A)1.

However, in her Deposition, Debtor's statements under penalty of perjury include the following:

B. Deposition of Debtor, July 29, 2022, Transcript; Exhibit 3, Dckt. 57.

1. Sukhwinder Singh Kang handles all of Debtor's business and financial affairs (including taxes and the bankruptcy schedules). Transcript, p. 12:13-17.
2. The real owners of the Meeks Way Property are the "handicapped people" who live in that Property. *Id.*; p. 20:4-12.
3. Debtor's uncle with dementia gave her \$60,000.00. *Id.*; p. 20:23-21:1; 22:7-9.
4. Sukhwinder Kang provided a gift of \$22,000.00, and identifies himself as Debtor's brother in law, but the gift was actually made by a Surjeet Kuner. *Id.*; p. 22:10-22. Neither Sukhwinder Kang nor Surjeet Kuner are Debtor's brother in law. *Id.*; p. 22:21-25, 23:1-7.
5. Debtor states that the Meeks Way Property belongs to the four "patients" (Debtor's family members) who live there. *Id.*; 23:22-25.
6. Debtor makes the mortgage payment on the Meeks Way Property as her payment of rent for the actual owners letting her live there. *Id.*; p. 24:1-10.
7. The Meeks Way Property was the four handicapped peoples' home and by the trust Debtor "gave it back to them." *Id.*; p. 25:3-5.
8. The purpose of the trust is to benefit the handicapped people who live there. *Id.*; p. 26:9-12.
9. Debtor tried, but could not testify as to why Sukhwinder Singh Kang is identified as Debtor's husband in the trust documents. *Id.*; p. 26:25, 27:1-14.
10. Debtor shares a bank account with Sukhwinder Singh Kang at Tri Counties Bank, and:
  - a. Sukhwinder Singh Kang gives Debtor money (*Id.*; p. 35:1-3);

- b. Debtor does not have any separate bank accounts, only that with Sukhwinder Singh Kang (*Id.*; 35:4-1); and
- c. Sukhwinder Singh Kang also lives at the Meeks Way Property (*Id.*; p. 40:15-18).

Taken as truthful, Debtor makes inaccurate, untruthful statements.

### **Continuance of December 8, 2022 Hearing**

It appears clear that at worst, an evidentiary hearing will be required. However, one has to question why an evidentiary hearing would be required for BMO to prove that Debtor held only merely legal title for the benefit of others, that Debtor has and had no interest in the Meeks Way Property, that Debtor has no interest in the Meeks Way Property in which to claim a homestead exemption, and that Debtor has no interest in the Meeks Way Property against which BMO may try and enforce its judgment lien. Taking the allegations by BMO as true, it wins in proving that Debtor has no interest in the Meeks Way Property, and it loses any judgment lien against the Meeks Way Property.

Debtor has obtained her discharge in this Bankruptcy Case. However, Debtor's twisting tales may indicate that elderly, handicapped persons are at risk, with their assets being diverted to Debtor (and possible others who are living with Debtor).

The judge to whom this case is assigned is unable to hear it on December 8, 2022, so it is continued to December 15, 2022.

### **December 15, 2022 Hearing**

At the hearing, XXXXXXXXXXXX

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

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

The Objection to Claimed Exemptions filed by BMO Harris Bank N.A. ("Creditor") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that the Objection to Claimed Exemptions is  
XXXXXXXXXXXXXXXXXX

**Tentative Ruling:** Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court’s resolution of the matter.

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Local Rule 9014-1(f)(1) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on, Creditor, parties requesting special notice, and Office of the United States Trustee on February 3, 2022. By the court’s calculation, 28 days’ notice was provided. 28 days’ notice is required.

The Motion to Avoid Judicial Lien 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). The defaults of the non-responding parties and other parties in interest are entered.

<b>The Motion to Avoid Judicial Lien is <span style="color: red;">XXXXXXXXXXXXXXXXXX</span></b>
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This Motion requests an order avoiding the judicial lien of BMO Harris Bank (“Creditor” or “BMO”) against property of the debtor, Jiwan Kaur (“Debtor”) commonly known as 5918 Meeks Way, Sacramento, California (“Property”).

A judgment was entered against SSSP Trucking Inc., in favor of Creditor in the amount of \$787,091.84. Exhibit 2, Dckt. 15. An abstract of judgment was recorded with Sacramento County on July 27, 2021, that encumbers the Property. *Id.*

Pursuant to Debtor’s Schedule A, the subject real property has an approximate value of \$560,500.00 as of the petition date. Dckt. 1. The unavoidable consensual liens that total \$312,390.00 as of the commencement of this case are stated on Debtor’s Schedule D. Dckt. 1. Debtor has claimed an exemption pursuant to California Code of Civil Procedure § 704.730 in the amount of \$248,110.00 on Schedule C. Dckt. 1.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of the judicial lien impairs Debtor’s exemption of the real property, and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

## **CREDITOR'S OPPOSITION**

On February 17, 2022, BMO Harris Bank, Creditor, filed an Opposition to Debtor's Motion to Avoid Judicial Lien. Dckt. 21. The Opposition states the court should not adjudicate the Motion without holding an evidentiary hearing after an adequate opportunity for discovery. Creditor has serious questions on whether or not the Debtor is entitled to a homestead exemption on the Property. Creditor would like an evidentiary hearing to take place to determine:

- (a) whether the Property is an investment property for use in Debtor's home health care business;
- (b) whether Debtor actually resides in the Property; and
- (c) if Debtor currently resides in the Property, and whether Debtor has resided in the Property for the period required to give rise to a homestead exemption.

Creditor requests the court to treat the Motion as a "long cause" matter; use the March 3, 2022, hearing date as a scheduling conference; establish deadlines for discovery and the presentation of evidence; and set a date for an evidentiary hearing.

## **CREDITOR'S SEPARATE STATEMENT**

Creditor filed a Separate Statement along with their Opposition. Dckt. 22. The Statement provides for Creditor's arguments for their allegation that the real property of 5918 Meeks Way, Sacramento, California, is actually an investment property. Creditor points to Debtor's Declaration, Dckt. 14, that Debtor states the Property is her real property and has claimed an exemption. Further, Debtor is being served with pleadings at 2248 Coroval Drive, Sacramento, California. Additionally, the Deed of Trust for the Property, Debtor indicates her residence is the Coroval Property. Lastly, Debtor's boyfriend/partner, Sukhwinder Singh Kang, has advised Creditor on at least two occasions that Debtor acquired the Property for the purpose of running an in-home elder care business for friends and relatives.

Counsel for Creditor reported that based on the information provided at the First Meeting of Creditors, there are other issues for which discovery is required. The Parties agreed to continue the hearing so that they may proceed with orderly discovery on these issues.

## **Creditor's Objection to Debtor's Claim of Exemptions**

On May 18, 2022, Creditor filed an Objection to Debtor's Claim of Exemptions. Dckt. 33. Creditor's objections consist of essentially the same arguments as Creditor's opposition in this motion. Creditor requests that both contested matters be heard and litigated together.

## **Status Report**

On July 14, 2022, Creditor and Debtor filed a Joint Status Report (Dckt. 45) stating:

1. Creditor has subpoenaed documents and received a response from AmerHome Mortgage, Bank of America, JP Morgan Chase, and TriCounties Bank.

2. Creditor subpoenaed documents from Debtor's employer IHSS Public Authority and is waiting for the employer to respond.
3. Creditor has provided Rule 26 disclosures to Debtor.
4. Debtor responded to written discovery.
5. Debtor's deposition is set for July 29, 2022.
6. Debtor's Counsel is out of state August 3-12, 2022.
7. Parties request a continuance for 30-60 days.

The Parties reporting that they are actively working on this matter and having identified scheduling conflicts, the court continues the hearing on this Motion to Avoid Judicial Lien to 10:30 a.m. on September 22, 2022.

### **September 13, 2022 Status Report**

On September 13, 2022, Creditor and Debtor filed a joint status report indicating all discovery has been completed. Dckt. 50. Parties indicate new facts have been discovered which may affect Debtor's homestead exemption. The parties propose the court set a briefing schedule and a final hearing date for oral argument.

The court continues the hearing to allow the Parties to litigate the underlying substantive issues on the Objection to Claim of Exemption.

### **Overview of Objection to Exemption and Debtor's Response (which issues relate directly to this Motion to Avoid Judicial Lien)**

BMO has filed an Objection to Debtor's claim of a homestead exemption in the Meeks Way Property. Dckt. 33. The grounds for this Objection include: (1) Debtor commenced this Bankruptcy Case on December 30, 2021; (2) the Debtor states that the Meeks Way Property is held in a revocable trust for the benefit of Debtor; (3) Debtor has also executed a deed of trust against the Coroval Drive Property; (4) Debtor testified at the First Meeting of Creditors that she holds bare legal title for the benefit of senior citizens who reside at the Meeks Way Property; and (5) that Debtor states that she provides caregiver services (in addition to living with her son at) to elders at the Meeks Way Property.

BMO questions where Debtor resided as of December 30, 2021 (the commencement of this case) and whether Debtor can claim the homestead exemption.

Further, BMO advances the argument that Debtor has merely legal title, at best, and that "The Debtor claims a homestead exemption in real property that she undeniably acquired as a straw purchaser." Objection, p. 2:2-3; Dckt. 55. Further, "The Debtor has been adamant that she is not the owner of the Property, and that she has always intended that her son and the elderly people would be the beneficiaries of the Property." *Id.*; p. 2:12-14.

BMO advances its arguments stating “While the Debtor’s Schedule C claims a homestead exemption in the Property, the evidence shows that the Debtor has only bare legal title and is not the actual or intended beneficiary of the Trust. Accordingly, the Debtor is not entitled to a homestead Exemption in the Property.” *Id.*; p. 2:15-18.

In driving home the point that Debtor has no interest in the Meeks Way Property and therefore cannot claim it as a homestead, BMO shuts the exemption door with the following:

But in the present case, the Debtor as a straw purchaser, admits that she holds bare legal title to the property and admits that she holds no beneficial interest, and therefore, the Debtor cannot successfully assert a homestead exemption in the Property. Thus, the ruling in Nolan also does not provide the Debtor with a homestead exemption under these facts.

*Id.*, p. 7:15-18.

BMO then concludes its arguments that Debtor cannot claim a homestead exemption because Debtor had, and has, no interest (beyond mere legal title for the benefit of others) in the Meeks Way Property, stating:

All of the cases which held that debtors could claim a homestead exemption despite placing their homes in a trust, involved debtors who always intended to retain rights to their property, which was never the Debtor’s intent. Here, the Debtor indisputably acquired the Property as a straw purchaser but now that she is faced with a judgment lien by a creditor, she seeks this court’s approval for a homestead exemption in property in which she admits she only holds bare legal title and admits she does not own. The burden is on the Debtor to prove otherwise and she cannot, given her many admissions. Debtor’s claim of exemption should be denied.

*Id.*, p. 9:21-26, 10:1-2.

Debtor filed a Reply on November 23, 2022, (which is not supported by a declaration), asserting Debtor is entitled to a homestead exemption under California law. The allegations in the Reply include:

- ◆ Debtor holds legal interest in the Meeks Way Property, with such Property being in a self-settled trust.
- ◆ Debtor intends to reside in the Meeks Way Property and that she did so reside there prior to the commencement of this Bankruptcy Case.
- ◆ If the court concludes that Debtor does not have an interest in the Meeks Way Property (i.e., holding title for the benefit of others), then there is nothing for the BMO judgment lien to attach to for the Meeks Way Property.

**Curious and Concerning Matters Presented  
to the Court**



The court begins with the curious. If BMO's basis for disallowing the claimed homestead exemption prevails, it necessitates that the court determines in BMO's favor that Debtor has no interest in the Meeks Way Property. That Debtor has no interests in the Meeks Way Property which could be the subject of a creditor enforcing judgment rights against.

As provided in California Code of Civil Procedure § 697.340, a judgment lien attaches to interests in real property that are subject to the enforcement of a money judgment against the judgment debtor. California Code of Civil Procedure § 695.010(a) provides that it is the property of the judgment debtor that is subject to the enforcement of a money judgment. Under BMO's theory, it appears that there is no interest of Debtor to which the judgment lien could attach.

Moving on to the concerning, the various transcripts provided and copies of trust documents demonstrate that Debtor has some challenges in making truthful statements. These include, without limitation:

- A. The Eakm Living Trust, Declaration of Trust ("Dec of Trust"); Exhibit 4; Dckt. 57.
  - 1. Debtor is the grantor and trustee of the Eakm Living Trust, into which she transferred all of her interest in the Meeks Way Property. Dec of Trust, § II, A.
  - 2. As long as Debtor is alive, she retains all rights to the income, profits, and control of the Meeks Way Property. *Id.*; II, (C).
  - 3. Debtor may revoke the Trust. *Id.*; II, (E).
  - 4. Successor Trustees are:
    - a. Harpal Kaur, Debtor's Sister,
    - b. Sukhwinder Singh Kang, Debtor's Husband. *Id.*; III; (E).
  - 5. Upon Debtor's death, the beneficiary is Eakmjot [last name blocked out], and that Debtor wishes her father, mother, brother, and sister to reside in the Meeks Way Property for as long as they are alive. *Id.*; § IV, (A)1.

However, in her Deposition, Debtor's statements under penalty of perjury include the following:

- B. Deposition of Debtor, July 29, 2022, Transcript; Exhibit 3, Dckt. 57.
  - 1. Sukhwinder Singh Kang handles all of Debtor's business and financial affairs (including taxes and the bankruptcy schedules). Transcript, p. 12:13-17.
  - 2. The real owners of the Meeks Way Property are the "handicapped people" who live in that Property. *Id.*; p. 20:4-12.
  - 3. Debtor's uncle with dementia gave her \$60,000.00. *Id.*; p. 20:23-21:1; 22:7-9.

4. Sukhwinder Kang provided a gift of \$22,000.00, and identifies himself as Debtor's brother in law, but the gift was actually made by a Surjeet Kuner. *Id.*; p. 22:10-22. Neither Sukhwinder Kang nor Surjeet Kuner are Debtor's brother in law. *Id.*; p. 22:21-25, 23:1-7.
5. Debtor states that the Meeks Way Property belongs to the four "patients" (Debtor's family members) who live there. *Id.*; 23:22-25.
6. Debtor makes the mortgage payment on the Meeks Way Property as her payment of rent for the actual owners letting her live there. *Id.*; p. 24:1-10.
7. The Meeks Way Property was the four handicapped peoples' home and by the trust Debtor "gave it back to them." *Id.*; p. 25:3-5.
8. The purpose of the trust is to benefit the handicapped people who live there. *Id.*; p. 26:9-12.
9. Debtor tried, but could not testify as to why Sukhwinder Singh Kang is identified as Debtor's husband in the trust documents. *Id.*; p. 26:25, 27:1-14.
10. Debtor shares a bank account with Sukhwinder Singh Kang at Tri Counties Bank, and:
  - a. Sukhwinder Singh Kang gives Debtor money (*Id.*; p. 35:1-3);
  - b. Debtor does not have any separate bank accounts, only that with Sukhwinder Singh Kang (*Id.*; 35:4-1); and
  - c. Sukhwinder Singh Kang also lives at the Meeks Way Property (*Id.*; p. 40:15-18).

Taken as truthful, Debtor makes inaccurate, untruthful statements.

### **Continuance of December 8, 2022 Hearing**

It appears clear that at worst, an evidentiary hearing will be required. However, one has to question why an evidentiary hearing would be required for BMO to prove that Debtor held only merely legal title for the benefit of others, that Debtor has and had no interest in the Meeks Way Property, that Debtor has no interest in the Meeks Way Property in which to claim a homestead exemption, and that Debtor has no interest in the Meeks Way Property against which BMO may try and enforce its judgment lien. Taking the allegations by BMO as true, it wins in proving that Debtor has no interest in the Meeks Way Property, and it loses any judgment lien against the Meeks Way Property.

Debtor has obtained her discharge in this Bankruptcy Case. However, Debtor's twisting tales may indicate that elderly, handicapped persons are at risk, with their assets being diverted to Debtor (and possible others who are living with Debtor).

The judge to whom this case is assigned is unable to hear it on December 8, 2022, so it is continued to December 15, 2022.

**December 15, 2022 Hearing**

At the hearing, XXXXXXXXXXXX

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

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

The Motion to Avoid Judicial Lien pursuant to 11 U.S.C. § 522(f) filed by Jiwan Kaur (“Debtor”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** that Motion to Avoid Judicial Lien is XXXXXXXXXXXX

# FINAL RULINGS

6. [20-90210-E-11](#)      **JOHN YAP AND IRENE LOKE**      **CONTINUED STATUS CONFERENCE RE:**  
[21-9016](#)      **CAE-1**      **COMPLAINT**  
**YAP ET AL V. PNC FINANCIAL**      **12-10-21 [1]**  
**SERVICES GROUP, INC. ET AL**

**Final Ruling:** No appearance at the December 15, 2022 Status Conference is required.  
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Plaintiff's Atty: Arasto Farsad, Nancy W. Weng  
Defendant's Atty: unknown

Adv. Filed: 12/10/21  
Answer: none

Nature of Action:  
Validity, priority or extent of lien or other interest in property

Notes:  
Continued from 11/10/22 to allow Counsel to address lodging a proposed judgment with the court.

Default Judgment filed 11/30/22 [Dckt 47]

The Default Judgment having been entered on November 30, 2022 (Dckt. 47), the Status Conference is continued to **2:00 p.m. on January 26, 2023**, to allow for the filing of any post-judgment motions.

