

UNITED STATES BANKRUPTCY COURT
DEPARTMENT 5
JUDGE CHRISTOPHER B. LATHAM, PRESIDING

WEDNESDAY, APRIL 15, 2015

10:00 AM

1 - 10-21382-CL Ch 13 GUADALUPE NAYELI BARRAGAN

MOTION TO DISMISS CASE FILED BY TRUSTEE

ATTORNEY: GEORGE PANAGIOTOU (GUADALUPE NAYELI BARRAGAN)

2 - 11-06406-CL Ch 13 BROOKS DAVID GREGG

MOTION TO DISMISS CASE FILED BY TRUSTEE

Tentative Ruling: The court has reviewed the Trustee's motion to dismiss case, Debtor's opposition, and the parties' statements of case status. To allow Debtor time to file his 2014 tax returns and obtain his first paystub, the court **continues** this matter to **April 29, 2015 at 10:00 a.m.** It excuses appearances at the April 15, 2015 hearing.

ATTORNEY: D.J. RAUSA (BROOKS DAVID GREGG)

3 - 11-07126-CL Ch 13 HERIBERTO BAUTISTA MARTINEZ & HILDA PACHUCA

1) MOTION TO DISMISS CASE FILED BY TRUSTEE

2) MOTION TO EXCUSE MISSED PLAN PAYMENTS FILED BY DEBTORS

3) MOTION FOR APPROVAL OF CHAPTER 13 MODIFIED PLAN FILED BY DEBTORS

ATTORNEY: RUBEN F. ARIZMENDI (HERIBERTO BAUTISTA MARTINEZ, HILDA PACHUCA)

10:00 AM

4 - 11-15820-CL Ch 13 ROBIN ANN & ROBERT MELVIN GOODE

MOTION TO DISMISS CASE FILED BY TRUSTEE

Tentative Ruling: The court has reviewed the Trustee's motion to dismiss case, Debtors' opposition, and the parties' statements of case status. The Trustee requests: (1) a PCM increasing plan payments to \$915; and (2) an order tracking Debtors' increased plan payments for April, May, and June 2015. Debtors have agreed to the PCM. But they have also requested time to allow them to liquidate their life insurance policies and dispute the IRS's amended proof of claim. Good cause appearing, the court **grants** the Trustee's tracking order request and **continues** this matter to **June 24, 2015 at 10:00 a.m.** It **awards** Debtors' counsel guideline fees of \$450 for Debtors' opposition. And it notes that, if the Trustee's objections are resolved before this continued hearing date, the Trustee may withdraw his motion and the matter will go off calendar.

If Debtors are prepared to submit on this tentative ruling, they may notify the Trustee's counsel and the courtroom deputy, and the court will excuse appearances at the April 15, 2015 hearing. The Trustee may then upload an order consistent with his statement of case status and this tentative ruling.

ATTORNEY: DANIEL LICKEL (ROBERT MELVIN GOODE, ROBIN ANN GOODE)

5 - 11-17196-CL Ch 13 ALVIN D & DAWNE M WHITE

MOTION TO DISMISS CASE FILED BY TRUSTEE

ATTORNEY: BRIAN J. MCGOLDRICK (ALVIN D WHITE, DAWNE M WHITE)

6 - 11-20754-CL Ch 13 JOSEPH JOHN & CYNTHIA ANN COFFEE

MOTION FOR APPROVAL OF CHAPTER 13 MODIFIED PLAN FILED BY TRUSTEE

Tentative Ruling: The court has reviewed the Trustee's motion to modify plan and the parties' statements of case status. The Trustee's proposed modified plan purports to be the court's "Recommended Form" plan that was in effect in February 2015, and last revised in September 2005. But it is not. Rather, it appears that the Trustee made changes to plan paragraph 3(A), which provides for his fees. He did not address this change in his motion or his memorandum of points and authorities. And he did not otherwise call attention to it. The court finds this inappropriate. Nonetheless, having received no opposition, and good cause otherwise appearing, the court **grants** the motion. It excuses appearances at the April 15, 2015 hearing, and the Trustee may upload an order consistent with this tentative ruling.

ATTORNEY: LINDA S. MCALEER (CYNTHIA ANN COFFEE, JOSEPH JOHN COFFEE)

10:00 AM

7 - 12-03703-CL Ch 13 FABIAN & BLANCA E. GIL

MOTION FOR APPROVAL OF LOAN MODIFICATION FILED BY DEBTORS

Tentative Ruling: The court has reviewed Debtors' motion to approve loan modification. Having received no opposition, and good cause appearing, the court **grants** the motion. It excuses appearances at the April 15, 2015 hearing, and Debtors may upload an order consistent with this tentative ruling.

ATTORNEY: MICHAEL KOCH (BLANCA E. GIL, FABIAN GIL)

8 - 12-13786-CL Ch 13 GARY CHRISTOPHER NASH

MOTION TO DISMISS CASE FILED BY TRUSTEE (fr. 4/1/15)

Tentative Ruling: The court has reviewed the Trustee's motion to dismiss case, Debtor's opposition, and the parties' statements of case status. To allow Debtor time to file his 2014 tax returns, the court **continues** this matter to **April 29, 2015 at 10:00 a.m.** It excuses appearances at the April 15, 2015 hearing.

ATTORNEY: D.J. RAUSA (GARY CHRISTOPHER NASH)

9 - 14-00428-CL Ch 13 ROBERT B KRUEGER

- 1) MOTION TO DISMISS CASE FILED BY TRUSTEE (fr. 4/1/15)
- 2) OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND MOTION TO DISMISS CASE FILED BY TRUSTEE (fr. 4/1/15)

ATTORNEY: MICHAEL A. FELDMAN (ROBERT B KRUEGER)

10 - 14-04268-CL Ch 13 TONY VILLAGOMEZ

MOTION FOR RELIEF FROM STAY, RS #TJS-001 FILED BY BMW FINANCIAL SERVICES NA LLC

Court Deputy Note: Off calendar. Order on Stipulation for Adequate Protection entered 4/14/15 (re ECF No. 54).

ATTORNEY: ANDREW MOHER (TONY VILLAGOMEZ)
ATTORNEY: TIMOTHY J. SILVERMAN (BMW FINANCIAL SERVICES NA LLC)

10:00 AM

11 - 14-07812-CL Ch 13 LUIS MARIO FELIX

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN FILED BY CAM VII TRUST, ITS SUCCESSORS AND/OR ASSIGNEES (fr. 4/1/15)

Tentative Ruling: The court has reviewed Debtor's statement of case status and the case docket. To allow notice to run on Bank of America, N.A.'s motion to approve loan modification, the court **continues** this matter to **April 29, 2015 at 10:00 a.m.** It excuses appearances at the April 15, 2015 hearing.

ATTORNEY: JEFFERY R. MENARD (LUIS MARIO FELIX)
ATTORNEY: JOSHUA L. SCHEER (CAM VII TRUST)

12 - 14-08978-CL Ch 13 GREGG B GAYLE

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND MOTION TO DISMISS CASE FILED BY TRUSTEE (fr. 4/1/15)

ATTORNEY: GREGORY HIGHNOTE (GREGG B GAYLE)

13 - 14-09644-CL Ch 13 JOHN ROLAND & LESLIE LYNN DONNELLY

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN FILED BY WELLS FARGO BANK NA S/B/M TO WACHOVIA MORTGAGE FSB A DIVISION OF WELLS FARGO BANK NA AND FKA WACHOVIA MORTGAGE FSB, FKA WORLD SAVINGS FSB (fr. 4/1/15)

Court Deputy Note: Off calendar. Objection to confirmation withdrawn 3/31/15 (re ECF No. 26).

ATTORNEY: CHRISTOPHER R. BUSH (JOHN ROLAND DONNELLY, LESLIE LYNN DONNELLY)
ATTORNEY: ROBERT ZAHRADKA (WELLS FARGO BANK NA)

10:00 AM

14 - 14-07308-CL Ch 13 EDWARD BUSTIN

MOTION TO VALUE REAL PROPERTY, TREAT CLAIM AS UNSECURED AND AVOID JUNIOR LIEN OF BUCKS FINANCIAL LLC, ITS SUCCESSORS OR ASSIGNS FILED BY DEBTOR

Court Deputy Note: Matter restored to calendar and to be heard on **April 15, 2015 at 10:00 a.m.** Appearance by counsel required.

Tentative Ruling: The court has reviewed Debtor's motion to value real property, treat claim as unsecured, and avoid junior lien of Bucks Financial LLC. It notes that the appraiser's declaration that Debtor submitted does not bear the appraiser's signature. Rather, it simply states "Signature Pending." This is not admissible evidence of the subject property's fair market value. Accordingly, the court **continues** this matter to **April 22, 2015 at 11:00 a.m.** to allow Debtor time to obtain and file a properly signed appraiser's declaration. It excuses appearances at the April 15, 2015 hearing.

ATTORNEY: JOHN C. COLWELL (EDWARD BUSTIN)

15 - 14-07334-CL Ch 13 TUYE PAK

MOTION TO VALUE REAL PROPERTY, TREAT CLAIM AS UNSECURED AND AVOID JUNIOR LIEN OF GREEN TREE, AKA GREEN TREE SERVICING LLC, ITS SUCCESSORS OR ASSIGNS FILED BY DEBTOR

Tentative Ruling: Debtor's motion to value real property, treat claim as unsecured, and avoid junior lien of Green Tree Servicing, LLC is **granted**. Per unopposed evidence, the residence is valued at \$425,000. Pursuant to 11 U.S.C. § 506(a), the court finds that the junior lienholder's lien is wholly unsecured by the residence's value. Pursuant to 11 U.S.C. § 1322(b), the claim may be treated as unsecured for purposes of this case, and the lien may be stripped off following plan confirmation, completion of the plan, and resulting discharge, if applicable.

As this motion is unopposed, appearances are excused and Debtor may upload an order that substantially conforms to Local Form CSD 1171.2. Once the court enters the order, Debtor is directed to serve it in accordance with FRBP 7004 and LBR 9013-10(c), and then promptly file a proof of service. The court awards Debtor's counsel \$625 in guideline fees, plus associated costs subject to proof.

ATTORNEY: JOHN C. COLWELL (TUYE PAK)

10:00 AM

16 - 14-07886-CL Ch 13 MARGARITA LEONARDO SALGADO

AMENDED MOTION TO VALUE REAL PROPERTY, TREAT CLAIM AS UNSECURED AND AVOID JUNIOR LIEN OF DB 50 2011-2 TRUST FILED BY DEBTOR (fr. 3/18/15)

Court Deputy Note: Off calendar. Order on Stipulation Resolving Debtor's Motion to Value Real Property, Treat Claim as Unsecured and Avoid Junior Lien of Creditor Real Time Resolutions Inc, as Servicing Agent for DB50 20111-2 Trust entered 3/31/15 (re ECF No. 49).

ATTORNEY: ALBERTO M. CARRANZA (MARGARITA LEONARDO SALGADO)

17 - 14-08120-CL Ch 13 BEA & SONY PHUONG

MOTION TO VALUE REAL PROPERTY, TREAT CLAIM AS UNSECURED AND AVOID JUNIOR LIEN OF NATIONSTAR MORTGAGE, SERVICED BY SPECIALIZED LOAN SERVICING AND ASSIGNED TO VERIPRO SOLUTIONS INC FILED BY DEBTORS

Tentative Ruling: Debtor's motion to value real property, treat claim as unsecured, and avoid junior lien of Nationstar Mortgage is **granted**. Per unopposed evidence, the residence is valued at \$456,000. Pursuant to 11 U.S.C. § 506(a), the court finds that the junior lienholder's lien is wholly unsecured by the residence's value. Pursuant to 11 U.S.C. § 1322(b), the claim may be treated as unsecured for purposes of this case, and the lien may be stripped off following plan confirmation, completion of the plan, and resulting discharge, if applicable.

As this motion is unopposed, appearances are excused and Debtor may upload an order that substantially conforms to Local Form CSD 1171.2. Once the court enters the order, Debtor is directed to serve it in accordance with FRBP 7004 and LBR 9013-10(c), and then promptly file a proof of service. The court awards Debtor's counsel \$625 in guideline fees, plus associated costs subject to proof.

ATTORNEY: LINDA S. MCALEER (BEA PHUONG, SONY PHUONG)

10:00 AM

18 - 15-00162-CL Ch 13 JOSEPH S. & ROCIO A. O'HARA

MOTION TO VALUE REAL PROPERTY, TREAT CLAIM AS UNSECURED AND
AVOID JUNIOR LIEN OF NAVY FEDERAL CREDIT UNION FILED BY
DEBTORS

Tentative Ruling: The court has reviewed Debtors' motion to value real property, treat claim as unsecured, and avoid junior lien of Navy Federal Credit Union ("Navy FCU"). Debtors' motion requires service on Navy FCU in compliance with Rule 7004 of the Federal Rules of Bankruptcy Procedure. Debtors' certificate of service indicates that they served Navy FCU in three ways: (1) at its proof of claim address; (2) under Rule 7004(b)(3); and (3) under Rule 7004(h). Debtor's first and third methods serve Navy FCU at an address in "Merrifield, VA." Yet Navy FCU's address is actually in the neighboring city of Vienna, VA. And Debtor's second method serves Navy FCU at their attorney's address. But neither Navy FCU nor its attorney has appeared in this case. As such, all of Debtors' service methods are improper.

Further, the court notes that lay witness testimony must be "rationally based on the witness's [own] perception" under Rule 701 of the Federal Rules of Evidence. But Mr. O'Hara's declaration as to the subject property's fair market value appears to rely on a "Comparative Market Analysis" that constitutes hearsay. Moreover, his declaration does not make clear the specific date of his valuation - which, in any event, must be the petition date.

Accordingly, for the foregoing reasons, the court **denies** Debtors' motion **without prejudice to re-filing by May 1, 2015**. If Debtors are prepared to submit on this tentative ruling, they may notify the courtroom deputy, and the court will excuse appearances at the April 15, 2015 hearing.

ATTORNEY: AHREN TILLER (JOSEPH S. O'HARA, ROCIO A. O'HARA)

11:00 AM

1 - 11-01866-CL Ch 13 BOBBY ROY & HEIDI JO EUGENIO

MOTION TO AVOID JUDICIAL LIEN PURSUANT TO 11 USC §522(f) ON REAL PROPERTY FILED BY DEBTORS (ON SHORTENED TIME) (re Discover Bank, Issuer of the Discover Card)

Tentative Ruling: The court has reviewed Debtors' motion to avoid Discover Bank's judicial lien under 11 U.S.C. § 522(f). It will **hear** the matter. Although Debtors have alleged grounds to avoid the lien, their motion is rife with problems. First, § 522(f) motions are contested matters that require Rule 7004 service. *See* Rules 4003(d) and 9014. Here, Debtors failed to serve Discover Bank by certified mail as Rule 7004(h) requires. Second, Debtors fail to provide their appraiser's declaration. Accordingly, they have no competent evidence of the subject property's fair market value. And third, Debtors claim a "homestead exemption." But they fail to provide: (1) the statutory basis for this exemption; and (2) a copy of the recorded homestead declaration as Local Bankruptcy Rule 4003-1 requires. Debtors should come prepared to address these issues at the April 15, 2015 hearing.

ATTORNEY: JOHN F. BRADY (BOBBY ROY EUGENIO, HEIDI JO EUGENIO)

02:00 PM

1 - 09-10731-CL Ch 13 WILLIAM LEONARD ALDREDGE & LAURA DESS MITCHELL

MOTION TO DISMISS CASE FILED BY TRUSTEE (fr. 4/1/15)

ATTORNEY: SHAWN A. DOAN (LAURA DESS MITCHELL, WILLIAM LEONARD ALDREDGE)

ATTORNEY: TODD A. WARSHOF (LAURA DESS MITCHELL, WILLIAM LEONARD ALDREDGE)

ATTORNEY: WILFRED E. BRIESEMEISTER (LAURA DESS MITCHELL, WILLIAM LEONARD ALDREDGE)

2 - 09-15595-CL Ch 13 RONALD L & SHIRLEY A CHADWICK

MOTION TO DISMISS CASE FILED BY TRUSTEE (fr. 4/1/15)

Tentative Ruling: The court has reviewed the Trustee's motion to dismiss, Debtor's opposition, and the parties' status reports. The Trustee offered to allow Debtor until May 20, 2015 to pay off the remainder of her case. And Debtor accepted that offer. Accordingly, the court **continues** this matter to **May 27, 2015 at 2:00 p.m.** and excuses appearances at the April 15, 2015 hearing.

ATTORNEY: THOMAS K. SHANNER (RONALD L CHADWICK, SHIRLEY A CHADWICK)

02:00 PM

3 - 09-16867-CL Ch 13 JUANCHO S. SANTOS & MELODY R. CAYABAN

MOTION FOR ORDER TO SHOW CAUSE WHY THE COURT SHOULD NOT FIND TRINITY FINANCIAL SERVICES IN COMTEMPT OF COURT FOR FAILURE TO RECONVEY THE JUNIOR LIEN STRIPPED OFF DEBTORS' REAL PROPERTY IN VIOLATION OF THE DISCHARGE INJUNCTION AND OTHER COURT ORDERS; AND REQUEST FOR ATTORNEYS FEES, SANCTIONS AND DAMAGES FILED BY DEBTORS

Court Deputy Note: Off calendar. Motion withdrawn 4/14/15 (re ECF No. 65).

ATTORNEY: THOMAS K. SHANNER (JUANCHO S. SANTOS, MELODY R. CAYABAN)

4 - 11-09475-CL Ch 13 DAVID ALAN & DANA LORRAINE RUIZ

MOTION TO DISMISS CASE FILED BY TRUSTEE (fr. 2/18/15)

ATTORNEY: CRAIG S. TRENTON (DANA LORRAINE RUIZ, DAVID ALAN RUIZ)

5 - 13-02877-CL Ch 13 CESAR MORENO

MOTION TO DISMISS CASE FILED BY TRUSTEE

Tentative Ruling: The court has reviewed the Chapter 13 Trustee's motion to dismiss, Debtor's opposition, and the Trustee's statement of case status. The Trustee requests that this matter be continued and heard alongside Debtor's motion to sell. Accordingly, the Court **continues** this matter to **April 29, 2015 at 2:00 p.m.** and excuses appearances at the April 15, 2015 hearing. If Debtor opposes this tentative ruling, he should notify the courtroom deputy and the Chapter 13 Trustee. The court will then restore this matter to the April 15 calendar.

ATTORNEY: AHREN TILLER (CESAR MORENO)

6 - 13-02971-CL Ch 13 SAM VICTOR & KIMBERLY JOANNE CARLINO

MOTION TO DISMISS CASE FILED BY TRUSTEE

ATTORNEY: DAVID A. POMERANZ (KIMBERLY JOANNE CARLINO, SAM VICTOR CARLINO)

02:00 PM

7 - 13-06395-CL Ch 13 JEFFREY SCOTT WINKLER

MOTION FOR APPROVAL OF CHAPTER 13 MODIFIED PLAN FILED BY DEBTOR

Tentative Ruling: The court has reviewed the Debtor's motion to modify his Chapter 13 plan and the Chapter 13 Trustee's statement of non-opposition. Having received no opposition, and good cause appearing, the court **grants** the motion, **approves** the modified plan, and excuses appearances at the April 15, 2015 hearing. It also awards Debtor's counsel \$650 in guideline fees. Debtor may submit an order consistent with this tentative ruling.

ATTORNEY: DANIEL LICKEL (JEFFREY SCOTT WINKLER)

8 - 13-07405-CL Ch 13 EMILIANO Z. & TONIA G COLEMAN

MOTION TO DISMISS CASE FILED BY TRUSTEE

Tentative Ruling: The court has reviewed the Chapter 13 Trustee's motion to dismiss, Debtors' opposition, and the parties' statements of case status. In his statement, the Trustee proposes a three-month tracking order. And Debtors consent to it. The parties could have simply stipulated to this. But they did not, thereby causing this matter unnecessarily to remain on calendar. Nevertheless, good cause appearing, the court **grants** the Trustee's request for a tracking order and **awards** Debtors' counsel guideline fees of \$490. It excuses appearances at the April 15, 2015 hearing, and the Trustee may upload an order consistent with his statement of case status and this tentative ruling.

ATTORNEY: D.J. RAUSA (EMILIANO Z. COLEMAN, TONIA G COLEMAN)

9 - 13-07605-CL Ch 13 TIMOTHY PETER ANGEL

OBJECTION TO CLAIM #12 OF BANK OF AMERICA NA FILED BY DEBTOR
(fr. 2/18/15)

ATTORNEY: JOHN A. VARLEY (TIMOTHY PETER ANGEL)
ATTORNEY: DANIEL K. FUJIMOTO (BANK OF AMERICA NA)

02:00 PM

10 - 13-07771-CL Ch 13 SARAH M. WESTBROOK

MOTION TO DISMISS CASE FILED BY TRUSTEE

Tentative Ruling: The court has reviewed the Trustee's motion to dismiss, Debtor's opposition, and the Trustee's statement of case status. In his statement, the Trustee indicates that he no longer seeks dismissal. Accordingly, the court treats the motion as withdrawn, takes the matter off calendar, and excuses appearances at the April 15, 2015 hearing. It also awards Debtor's counsel guideline fees of \$490.

ATTORNEY: AHREN TILLER (SARAH M. WESTBROOK)

11 - 13-11723-CL Ch 13 JASON MICHAEL & CORI ALEXANDRIA CLINE

TELE

MOTION TO DISMISS CASE FILED BY TRUSTEE

OTHER: CORI ALEXANDRIA CLINE

OTHER: JASON MICHAEL CLINE

12 - 14-03991-CL Ch 13 JAMES & WENDY M. BUCARO

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE
FILED BY TRUSTEE (fr. 1/21/15)

Tentative Ruling: The court has reviewed the Trustee's objection to confirmation and motion to dismiss, Debtors' opposition, its own minute order, and the parties' statements of case status. Debtors' counsel states that "Debtors would not object to their chapter 13 case being dismissed since it is impossible to know when a working plan will be available" (ECF No. 33). Accordingly, the court treats the opposition as withdrawn. Good cause appearing, the court **sustains** the Trustee's objection, **grants** the Trustee's motion, and **dismisses** Debtors' case.

Counsel requests "statutory attorney fees" for filing the petition, responding to the Trustee's and JP Morgan Chase's objections, attending the § 341 meetings, and a court appearance. At the last hearing, the court reduced counsel's fees to \$3,450. The court awards counsel these fees, subject to funds on hand.

If Debtors are willing to submit on this tentative ruling, they may notify the Trustee and the courtroom deputy. The court will then excuse appearances at the April 15, 2015 hearing, and the Trustee may submit an order consistent with this tentative ruling.

ATTORNEY: DAVID CASEY (JAMES BUCARO, WENDY M. BUCARO)

02:00 PM

13 - 14-04619-CL Ch 13 FILOMENA BONDOC

OBJECTION TO CONFIRMATION OF CHAPTER 13 PLAN AND MOTION TO DISMISS CASE FILED BY TRUSTEE (fr. 2/18/15)

ATTORNEY: RORY VOHWINKEL (FILOMENA BONDOC)

14 - 14-04835-CL Ch 13 JOHN T. & PAMELA M. ROZAR

MOTION FOR APPROVAL OF CHAPTER 13 MODIFIED PLAN FILED BY DEBTORS

Tentative Ruling: The court has reviewed Debtors' motion to modify their Chapter 13 plan and the Chapter 13 Trustee's statement of non-opposition. Having received no opposition, and good cause appearing, the court **grants** the motion, **approves** the modified plan, and excuses appearances at the April 15, 2015 hearing. It also awards Debtors' counsel \$650 in guideline fees. Debtors may submit an order consistent with this tentative ruling.

ATTORNEY: D.J. RAUSA (JOHN T. ROZAR, PAMELA M. ROZAR)

15 - 14-05945-CL Ch 13 EDUARDO DE LEON BARRIOS

MOTION FOR RELIEF FROM STAY, RS #JLS-001 FILED BY PACIFICA REAT 2013-1 (fr. 4/1/15)

ATTORNEY: ALBERTO M. CARRANZA (EDUARDO DE LEON BARRIOS)
ATTORNEY: JOSHUA L. SCHEER (PACIFICA REAT 2013-1)

16 - 14-07121-CL Ch 13 JOSEPHINE BARDIAGO ALGAS

MOTION TO DISMISS CASE FILED BY TRUSTEE

ATTORNEY: JOHN F. BRADY (JOSEPHINE BARDIAGO ALGAS)

02:00 PM

17 - 14-07603-CL Ch 13 NICOLE MORA

MOTION FOR RELIEF FROM STAY, RS #JHK-1 FILED BY CAB WEST LLC (fr. 4/1/15)

Court Deputy Note: Off calendar. Order on Stipulation for Adequate Protection entered 4/13/15 (re ECF No. 57).

ATTORNEY: ANDREW MOHER (NICOLE MORA)
ATTORNEY: JOHN H. KIM (CAB WEST LLC)

18 - 14-07633-CL Ch 13 ADAM DALE & JENNA ALEXIS YOUNG

MOTION TO DISMISS CASE FILED BY TRUSTEE

Tentative Ruling: The court has reviewed the Chapter 13 Trustee's motion to dismiss, Debtors' opposition, and the Trustee's statement of case status. In his statement, the Trustee indicates that he no longer seeks dismissal. Accordingly, the court treats the motion as withdrawn, takes the matter off calendar, and excuses appearances at the April 15, 2015 hearing. It also awards Debtors' counsel guideline fees of \$490.

ATTORNEY: JON COOPER (ADAM DALE YOUNG, JENNA ALEXIS YOUNG)

19 - 14-08219-CL Ch 13 AUGUSTIN RUIZ

OBJECTION TO CONFIRMATION OF PLAN AND MOTION TO DISMISS CASE FILED BY TRUSTEE

ATTORNEY: JEFFERY R. MENARD (AUGUSTIN RUIZ)

20 - 15-01777-CL Ch 13 RONALD D. MONEY

MOTION TO EXTEND AUTOMATIC STAY FILED BY DEBTOR

Tentative Ruling: The court has considered Debtor's motion to extend the automatic stay. It finds the presumption of bad faith as to all creditors arises. *See* 11 U.S.C. § 362(c)(3)(C)(i). Having received no opposition, and good cause appearing, the court finds that Debtor has rebutted the presumption of bad faith. Accordingly, it **grants** the motion and excuses appearances at the April 15, 2015 hearing. Debtor's counsel may submit an order.

ATTORNEY: TATE CASEY (RONALD D. MONEY)

03:00 PM

1 - 15-01068-CL Ch 11 PREMIER GOLF PROPERTIES, LP

FIRST INTERIM APPLICATION FOR COMPENSATION AND
REIMBURSEMENT OF EXPENSES FOR FITZMAURICE & DEMERGIAN,
ATTORNEYS FOR DEBTOR

Tentative Ruling: The court has reviewed Jack Fitzmaurice, Esq.'s first interim fee application. Having received no objection, and good cause appearing, the court **grants** the application and **awards** applicant \$15,875 in fees and \$1,401.06 in costs. It notes, however, that UST Guideline No. 4 - revised March 1, 2015 - provides that photocopy charges should not exceed 20 cents per page. Here, applicant charges 30 cents per page for a total photocopy expense of \$1,146.60. Accordingly, applicant's final fee application may draw opposition. And the court may reduce the final amount of applicant's award. Regardless, at this time, the court excuses appearances at the April 15, 2015 hearing and applicant may submit an order consistent with this tentative ruling.

ATTORNEY: JACK FITZMAURICE (PREMIER GOLF PROPERTIES, LP)
ATTORNEY: DARVY MACK COHAN (PREMIER GOLF PROPERTIES, LP)
ATTORNEY: MARY TESTERMAN DUVOISIN (U.S. TRUSTEE)

- 1) FIRST INTERIM APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR ALAN MYERS CPA, ACCOUNTANT FOR CHAPTER 11 TRUSTEE

Tentative Ruling: The court has reviewed Alan Myers, CPA's first interim application for compensation and reimbursement of expenses. Having received no objection, and good cause appearing, the court **grants** the application and **awards** applicant \$5,957 in fees. The court excuses appearances at the April 15, 2015 hearing, and applicant may submit an order consistent with this tentative ruling.

- 2) AMENDED FIRST INTERIM APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR THOMAS C. HEBRANK, CHAPTER 11 TRUSTEE

Tentative Ruling: The court has reviewed Chapter 11 Trustee Thomas Hebrank's first interim application for compensation and reimbursement of expenses. Having received no objection, and good cause appearing, the court **grants** the application and **awards** applicant \$18,564 in fees and \$645.45 in costs. The court excuses appearances at the April 15, 2015 hearing, and applicant may submit an order consistent with this tentative ruling.

- 3) AMENDED FIRST INTERIM APPLICATION FOR COMPENSATION AND REIMBURSEMENT OF EXPENSES FOR MULVANEY BARRY BEATTY LINN & MAYERS LLP, ATTORNEYS FOR CHAPTER 11 TRUSTEE

Tentative Ruling: The court has reviewed Mulvaney Barry Beatty Linn & Mayers LLP's ("Mulvaney") application for compensation, creditor El Patio, LLC's ("El Patio") objection, and Mulvaney's reply.

El Patio objects to Mulvaney's handling of the case in three respects and also to individual line items. The court shares some of El Patio's concerns, but in the interest of judicial economy finds that these objections should more properly be brought at the time Mulvaney seeks approval of its final fee application. First, El Patio criticizes the Trustee for not immediately seeking to convert the case once it was immediately clear a plan was infeasible. As Mulvaney argues, El Patio, itself, did not seek conversion and the court denied conversion on several occasions (*see* ECF Nos. 202, 331, and 416). But at each instance, Mulvaney opposed conversion (*see* ECF Nos. 184, 278, and 404). And the court is concerned about this - indeed, it previously issued an order to show cause why the case should not be converted (ECF Nos. 396). Second, El Patio objects to Mrs. Cheroske's involvement in various settlement proceedings. But it could have objected to the settlement agreements when they were before the court (*see, e.g.*, ECF Nos. 143 and 316). It did not. And third, El Patio asserts that Mr. Cheroske will suffer no negative consequences for his alleged abuse of the bankruptcy process. El Patio filed an adversary complaint, alleging the nondischargeability of its debts. [Adv. Proc. No. 12-90021-CL.] But it settled that complaint with Mr. Cheroske and voluntarily dismissed the adversary proceeding. [*Id.*, ECF No. 17.]

El Patio also objects to various line items and proposes a \$16,750 reduction in fees. Mulvaney argues that its application included a global 25% discount on

fees. It also proposes an additional \$10,147.44 discount in costs. Mulvaney essentially asserts that its proposed discounts are greater than El Patio's. The court accepts the discounts. It is concerned, however, about Mulvaney's apparent inefficiencies throughout the case. But this is Mulvaney's *interim* fee application. The court will impose a 20% holdback on this interim award, and it may reduce the final amount of Mulvaney's award.

Accordingly, the court **overrules** El Patio's objection **without prejudice** to renewing the objection with the final fee application.

The court thus **grants** the application and **awards** Mulvaney \$224,839.50 in fees and \$7,276.72 in costs. It **authorizes** immediate payment of **80%** of this award and issues a **holdback** of the remainder. If Mulvaney and El Patio are prepared to submit on this tentative ruling, they may notify the courtroom deputy and opposing counsel, and the court will excuse appearances at the April 15, 2015 hearing. Applicant may then submit an order consistent with this tentative ruling.

4) MOTION FOR APPROVAL AND CONFIRMATION OF COMBINED CHAPTER 11 PLAN AND DISCLOSURE STATEMENT FILED BY CHAPTER 11 TRUSTEE THOMAS C. HEBRANK

Tentative Ruling: The court will **hear** this matter. The Trustee proposes additional modifications to the plan: to update the distribution the priority tax claimants will receive and to add language that the Franchise Tax Board required. In addition, the Trustee anticipates that the unsecured creditors will receive no distribution. By operation of § 1126(g), then, they are deemed to reject the plan and are not entitled to vote. *In re Quail Lake Estates Associates, L.P.*, No. 08-41296T, 2008 WL 4532182, at *4 (Bankr. N.D. Cal. Oct. 6, 2008). *See In re U.S. Fidelis, Inc.*, 481 B.R. 503, 545 (Bankr. E.D. Mo. 2012); *In re G-I Holdings Inc.*, 420 B.R. 216, 229 (D.N.J. 2009). Accordingly, the plan must meet the requirements of § 1129(b). And the Trustee does not address this.

The parties should come prepared to address these matters.

5) ORDER TO SHOW CAUSE WHY CASE SHOULD NOT BE CONVERTED TO CHAPTER 7 IF NEXT REITERATION OF PLAN & DISCLOSURE STATEMENT IS NOT CONFIRMED (fr. 2/11/15)

Tentative Ruling: The court will **hear** this matter.

ATTORNEY: PRO SE (Richard Cheroske)
ATTORNEY: CHRISTOPHER B. GHIO (THOMAS C. HEBRANK)
ATTORNEY: DAVID A. ORTIZ (U.S. TRUSTEE)
OTHER: RICHARD JULIAN CHERSOKE