

**United States Bankruptcy Court
Central District of California
Los Angeles
Judge Ernest Robles, Presiding
Courtroom 1568 Calendar**

Tuesday, October 20, 2020

Hearing Room 1568

10:00 AM

2:19-20888 Venustiano Lopez Carranza and Patricia Hernandez

Chapter 7

#1.00 HearingRE: [39] Motion to Allow Claim 18 of Nissan Motor Acceptance Corporation as Late Filed, Allowable Against Surplus Only, with proof of service (Pringle (TR), John)

Docket 39

Tentative Ruling:

10/19/2020

Note: Telephonic Appearances Only. The Courtroom will be unavailable for in-court appearances. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, ext. 188 no later than one hour before the hearing. The cost for persons representing themselves has been waived.

For the reasons set forth below, the Motion is GRANTED.

Pleadings Filed and Reviewed

- 1) Motion to Allow Claim 18 of Nissan Motor Acceptance Corporation as Late Filed, Allowable Against Surplus Only (the "Motion") [Doc. No. 39]
- 2) Opposition to Motion to Allow Claim 18 of Nissan Motor Acceptance Corporation as Late Filed, Allowable Against Surplus Only (the "Opposition") [Doc. No. 42]
- 3) Reply in Support of Motion to Allow Claim 18 of Nissan Motor Acceptance Corporation as Late Filed, Allowable Against Surplus Only (the "Reply") [Doc. No. 43]

I. Facts and Summary of Pleadings

Venustiano Lopez Carranza and Patricia Hernandez (the "Debtors") filed their voluntary chapter 7 petition (the "Petition") on September 13, 2019. Shortly thereafter, John Pringle was appointed the chapter 7 trustee in this matter (the "Trustee"). In their Petition, the Debtors listed "Nissan Motor Acceptance" as a creditor, with one claim in the amount of \$20,589. *See* Chapter 7 Voluntary Petition at 9-10 [Doc. No. 1]. On October 31, 2019, the Trustee filed a Notice of Assets, fixing the proof of claims date as February 3, 2020 [Doc. No. 14]. On December 3, 2019, the Court approved a

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compromise between the Trustee and the Debtors, whereby the Debtors would pay the estate \$65,000 to settle a dispute over the transfer of real property (the "Settlement Agreement"). The Settlement Agreement reads, in pertinent part, that "[i]f there is any overage in the Settlement Funds **after 100% distribution to creditors** and all administrative expenses have been paid, the Trustee will pay Defendant Jessey Carranza any overage amount." *See* Settlement Agreement at 12 [Doc. No. 17 - emphasis added.]

After the claims date had passed, Nissan Motor Acceptance Corporation ("Nissan Motor") filed a proof of claim on September 14, 2020. On September 17, 2020, the Trustee filed his Motion to allow Nissan Motor's claim of \$19,050.71 as late filed, allowable against a surplus only, pursuant to 11 U.S.C. § 726(a)(3).

On October 6, 2020, the Debtors filed their Opposition. In their Opposition, the Debtors argue that 11 U.S.C. § 509(b)(9) bars untimely filed claims. The Debtors state that Rule 3002(c)(6) provides that claims may only be filed late if notice to the creditors was insufficient. Because Nissan Motor received proper notice, the Debtors argue, its claim should not be allowed. In addition, the Debtors claim that late filed claims may also only be allowed if the creditor can show "excusable neglect" as defined by 11 U.S.C. § 9006(b). Finally, the Debtors argue that there is no surplus to be distributed because the remaining funds in the estate are already earmarked for Jessey Carranza (the Debtors' son).

On October 8, 2020, the Trustee filed his Reply. The Trustee argues that the Opposition fails to note that 11 U.S.C. § 726(a)(3) allows tardily filed claims of any sort (even absent problems with notice or excusable neglect), but those claims would fall to the bottom of the order of distribution. The Trustee also believes that there is a surplus of funds in the estate because the language of the Settlement Agreement only allows for payment of funds to the Debtors' son after all creditors are paid. Finally, the Trustee asserts that the entire Opposition ought to be rejected because it contains no declarations, as required by Local Bankruptcy Rule ("LBR") 9013-1(i), and because it does not advise opposing counsel that he has the opportunity to file a reply seven days before the hearing on this matter, as required by LBR 9013-1(f)(2).

II. Findings of Fact and Conclusions of Law

The Trustee files his Motion pursuant to 11 U.S.C. § 726(a)(3), which reads:

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Chapter 7

Except as provided in section 510 of this title, property of the estate shall be distributed—

third, in payment of any allowed unsecured claim of proof of which is tardily filed under subsection 501(a) of this title . . .

Section 501(a) reads "[a] creditor or an indenture trustee may file a proof of claim." The Debtors mischaracterize the Trustee's Motion because while 11 U.S.C. § 502(b) (9) bars untimely claims, the Debtors fail to recognize the exception within that section, which reads that claims may be "tardily filed as permitted under (1), (2), or (3) of section 726(a)." The plain language of § 726(a)(3) makes clear that a claim may be tardily filed, but its order of distribution is third.

In addition, the Debtors' argument that Rule 3002(c)(b) applies is inapposite. Rule 3002(c)(b) is only applicable in instances where the creditor is requesting an extension of time to *timely* file a claim. Here, neither Nissan Motor nor the Trustee are not arguing that Nissan Motor's claim is timely. The Trustee explicitly states: "[b]ecause *the Claim was filed late*, it should be allowed to receive a distribution against a surplus, if any, pursuant to 11 U.S.C Section 726(a)(3)." Motion at 1 (emphasis added). Rule 9006(b) is likewise inapplicable because the Trustee is not seeking any sort of "enlargement" of the time to *timely* file a claim.

Therefore, the proof of claim is tardily filed under 11 U.S.C. § 726(a)(3) and shall be allowed to receive a distribution against a surplus, if any [**Note 1**].

III. Conclusion

For the reasons set forth above, the Motion is GRANTED.

The Trustee is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Andrew Lockridge at 213-894-1522. **If you intend to contest the tentative ruling and**

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appear, please first contact opposing counsel to inform them of your intention to do so. Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Note 1: While the Court has decided to entertain the Debtors' Opposition despite the clear violation of LBR 9013-1(i) and 9013-1(f)(2), the Debtors' counsel is warned that complying with the Local Bankruptcy Rules is not an optional practice.

Party Information

Debtor(s):

Venustiano Lopez Carranza

Represented By
Erika Luna

Joint Debtor(s):

Patricia Hernandez

Represented By
Erika Luna

Trustee(s):

John P Pringle (TR)

Represented By
Michelle A Marchisotto

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2:18-20698 United International Mortgage Solutions, Inc.

Chapter 11

#2.00 HearingRE: [189] U.S. Trustee Motion to dismiss or convert or appoint a Chapter 11 Trustee . (Attachments: # 1 BANS # 2 COS)(united states trustee (hy))

Docket 189

Tentative Ruling:

10/19/2020

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For the reasons set forth below, the Motion is GRANTED, and this case is DISMISSED.

Pleadings Filed and Reviewed

- 1) U.S. Trustee's Motion to Dismiss or Convert or Appoint a Chapter 11 Trustee (the Motion to Dismiss or Convert") [Doc. No. 189]
- 2) Debtor's Limited Opposition to U.S. Trustee's Motion to Dismiss or Convert or Appoint a Chapter 11 Trustee; Declaration of Bankruptcy Analyst (the "Limited Opposition") [Doc. No. 194]

I. Facts and Summary of Pleadings

Debtor and Debtor-in-Possession, United International Mortgage Solutions, Inc. (the "Debtor"), filed its voluntary chapter 11 bankruptcy petition on September 12, 2018. The Debtor is a California corporation that owns three residential real properties:

- 1) 1258 N. Virgil Avenue, Los Angeles, CA 90029 (the "Virgil Property");
- 2) 5935 Playa Vista Drive, #414, Playa Vista, CA 90094 (the "Playa Vista Property"); and
- 3) 6205 Senford Avenue, Los Angeles, CA 90056 (the "Senford Property," and together with the Virgil Property and Playa Vista Property, the "Properties")

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CONT... United International Mortgage Solutions, Inc.

Chapter 11

The Debtor filed its petition to address several defaulted loans secured by liens on the Properties and to reorganize its affairs. The liens on each property are as follows:

- 1) Virgil Property
 - a. Mr. Cooper - \$882,107
 - b. Errol Gordon, Esq. - \$50,000
- 2) Playa Vista Property
 - a. Mr. Cooper/Nationstar - \$857,177
 - b. Playa Vista Parks HOA - \$70,080
 - c. Villa d'Este HOA - \$31,855
- 3) Senford Property
 - a. Errol Gordon, Esq. - \$285,000
 - b. L.A. County Treasurer and Tax Collector - \$97,939

Motion at 2; *see also* Debtor's Reply to Order to Show Cause at 2-3 [Doc. No. 177]. The other debts of the estate include \$400 to the Internal Revenue Service, \$2,542 to the Franchise Tax Board, and \$723 of general unsecured debts. On April 24, 2019, the Debtor filed an amended chapter 11 plan (the "Plan"). On September 4, 2019, the Court denied confirmation of the Debtor's Plan.

The Debtor remains current on the senior liens for the Playa Vista Property and the Senford Property. However, on July 1, 2020, the Debtor notified the court that it was unable to refinance the lien on the Virgil Property and would instead seek to sell it. On July 17, 2020, the Court held a hearing on an Order to Show Cause where the Debtor confirmed that it had listed the Virgil Property for sale and requested 90 days to effectuate such a sale. The Court expressed concern over the fact that the case had been struggling for almost a year and told the Debtor's counsel that if a chapter 11 plan of reorganization was not confirmed by October 30, 2020, then the Court would convert or dismiss the case without further hearing.

On September 21, 2020, the U.S. Trustee filed its Motion to Dismiss or Convert. In that motion, the U.S. Trustee requests conversion to chapter 7 because the Debtor has not filed a monthly operating report for August 2020, and has not paid the quarterly filing fees for the second or third quarters of 2020. On September 23, 2020, the Debtor filed its August monthly operating report [Doc. No. 193]. On October 6,

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Chapter 11

2020 the Debtor filed its Limited Opposition. In its Limited Opposition, the Debtor notes that it has accepted an offer from W. Spaulding Settle to purchase the Virgil Property for \$2,100,000. At that price, the Debtor expects to be able to pay off all liens against the Virgil Property, as well as the Internal Revenue Service debt, the Franchise Tax Board debt, the Playa Vista Parks HOA, the Villa d'Este HOA, and the general unsecured debts. In addition, the Debtor attached, as an exhibit, proof of payment of the second quarter fees to the U.S. Trustee. Limited Opposition at 8.

II. Findings of Fact and Conclusions of Law

Under § 1112(b), the Court shall dismiss or convert a case to one under chapter 7 upon a showing of "cause." 11 U.S.C. § 1112(b). Section 1112(b)(4) provides a nonexclusive list of factors that include "(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;" and "(H) failure to timely provide information or attend meetings reasonably required by the United States Trustee." 11 U.S.C. § 1112(b)(4)(F) & (H). "The enumerated causes are not exhaustive, and 'the court will be able to consider other factors as they arise, and to use its equitable powers to reach an appropriate result in individual cases.'" *In re Consol. Pioneer Mortg. Entities*, 248 B.R. 368, 375 (B.A.P. 9th Cir. 2000) (quoting H.R. No. 95-595, 95th Cong., 1st Sess. 405-06 (1977)), *aff'd*, 264 F.3d 803 (9th Cir. 2001).

While the Debtor has filed its August monthly operating report and paid its fees for the second quarter of 2020, the case has been pending since 2018 and no amended plan has been filed such that it could be confirmed by the Court's mandated October 30, 2020 deadline. In addition, the Debtor does not dispute that the case ought to be dismissed or converted. Rather, the Debtor requests that the "UST's Motion to Dismiss/Convert be granted only to the extent that the case is dismissed." Limited Opposition at 3. Therefore, the Court finds that cause exists to dismiss or convert the case.

Having determined that cause exists, the only issue remaining for the Court is to determine whether conversion, dismissal, or appointment of a Chapter 11 trustee serves the best interests of creditors or the estate. *See In re Products Int'l Co.*, 395 B.R. 101, 107 (Bankr. D. Ariz. 2008) (citing *In re Nelson*, 343 B.R. 671 (9th Cir. 2006)). "[W]hen deciding between dismissal and conversion under 11 U.S.C. § 1112(b), the court must consider the interests of *all* of the creditors." *Shulkin Hutton*,

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Inc. v. Treiger (In re Owens), 552 F.3d 958, 961 (9th Cir. 2009) (emphasis in original) (quoting *Rollex Corp. v. Associated Materials, Inc. (In re Superior Siding & Window, Inc.)*, 14 F.3d 240, 243 (4th Cir. 1994)).

As the Debtor has accepted a purchase offer for its Virgil Property that would pay off the liens and debts of the estate in full, it appears as though dismissal is in the best interest of creditors. The Court finds that there does not appear to be the need for a chapter 11 trustee, which would only cost the estate valuable funds, and the debtor has only minimal unsecured debts.

III. Conclusion

For the reasons set forth above, the Motion is GRANTED, and this case is DISMISSED with a 180-day bar to re-filing. In addition, the Debtor is ordered to pay any outstanding fees to the U.S. Trustee.

The U.S. Trustee is directed to lodge a conforming proposed order, incorporating this tentative ruling by reference, within seven days of the hearing.

No appearance is required if submitting on the court's tentative ruling. If you intend to submit on the tentative ruling, please contact Daniel Koontz or Andrew Lockridge at 213-894-1522. **If you intend to contest the tentative ruling and appear, please first contact opposing counsel to inform them of your intention to do so.** Should an opposing party file a late opposition or appear at the hearing, the court will determine whether further hearing is required. If you wish to make a telephonic appearance, contact Court Call at 888-882-6878, no later than one hour before the hearing.

Party Information

Debtor(s):

United International Mortgage

Represented By

Matthew D. Resnik

Roksana D. Moradi-Brovia