

BANKRUPTCY SECTION UTAH STATE BAR

“ORDER IN THE COURT”

CHIEF JUDGE R. KIMBALL MOSIER

JUDGE KEVIN R. ANDERSON

FEBRUARY 11, 2016

DEFAULT JUDGMENTS

The entry of a default only results in the defendant’s deemed admission of well-plea facts in the complaint. Thus, even if defendant defaults, the court must assess whether plaintiff’s alleged facts establish a sufficient legal basis to grant the requested relief.

GENERAL PROCEDURE

Obtaining a default judgment is a two-step process. First, Federal Rule of Civil Procedure 55(a) requires that the party moving for default judgment show by affidavit or otherwise that the party “against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend.” Second, once the Clerk has entered the opposing party’s default certificate, the moving party must then apply to the court for a default judgment under Rule 55(b)(2). In re Desousa, Adv. No. 14-2251, 2015 Bankr. LEXIS 349 (Bankr. D. Utah Feb. 4, 2015).

GOVERNING RULES

- Default judgments are subject to Fed. R. Civ. P. 55, as incorporated by Fed. R. Bankr. P. 7055, and Local Rule 7055-1.
- Fed. R. Civ. P. 55 → Default; Default Judgment.
 - Rule 55(a) → Entering a Default.
 - When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party’s default.
 - Local Rule 5003-1 → Clerk’s Authority.
 - The clerk may sign an order entering default for failure to plead or otherwise defend under Fed. R. Bankr. P. 7055.
 - But Local Rule 7055-1(d) also allows the court to review, suspend, alter or rescind the clerk’s actions.

- Local Rule 7055-1(b) → Judgment by Default Entered by Clerk.
 - A proposed judgment by default ... for signature and entry by the clerk ... must be accompanied by a declaration that the person against whom judgment is sought is neither an infant or an incompetent person, nor in the armed forces within the meaning of the Soldiers' and Sailors' Civil Relief Act of 1940, 50 U.S.C. § 520(1).
- Rule 55(b) → Entering a Default Judgment.
 - Plaintiff must apply to the court for a default judgment.
 - “If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing.”
 - Hearing on a Default Judgment. Fed. R. Civ. P. 55(b)(2).
 - The court may conduct a hearing if it needs to consider any of the following before entry of a judgment:
 - (A) conduct an accounting;
 - (B) determine the amount of damages;
 - (C) establish the truth of any allegation by evidence; or
 - (D) investigate any other matter.
 - The decision to hold such a hearing is within the sound discretion of the court. Marcus Food Co. v. DiPanfilo, 671 F.3d 1159, 1172 (10th Cir. 2011).
 - “Under Fed. R. Bankr. P. 7055, courts have broad discretion to conduct such hearings ... as it deems necessary and proper to determine whether a default judgment should be entered.” In re Villegas, 132 B.R. 742, 746 (B.A.P. 9th Cir. 1991).
- Local Rule 7055-1(c) → Judgment by Default Entered by Court.
 - When the application is made to the court, unless the court orders otherwise, the scheduling clerk, upon request of the movant, must schedule an evidentiary hearing. If the party against whom judgment is sought has appeared in the proceeding, the party seeking default judgment shall give notice of the application for default judgment to the attorney for the party as required by Fed. R. Bankr. P. 7055. With leave of the court, proof may be submitted by declaration, but the court may order further hearing at its discretion.

COURT COMMENTS ON DEFAULTS

- Factors to be Considered → (1) The possibility of prejudice to the plaintiff, (2) the merits of plaintiff’s substantive claim, (3) sufficiency of the complaint, (4) amount at stake, (5) the possibility of a dispute concerning material facts, (6) whether the default was due to excusable neglect, and (7) the strong policy underlying the Federal Rules of Civil Procedure favoring decisions on the merits. In re McGee, 359 B.R. 764, 771 (B.A.P. 9th Cir. 2006).
- Service → The court reviews any application for default to verify valid service of the summons and complaint.
 - Be aware of Fed. R. Bankr. P. 7004(h) regarding service requirements on an Insured Depository Institution.¹
- Fraud → If seeking a judgment under §§ 523 or 727, the plaintiff must schedule a hearing and give notice to the debtor and the debtor’s attorney.
 - Fed. R. Civ. P. 9(b): “In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person’s mind may be alleged generally.”
 - Allegations that make fraud merely a plausible inference are not adequate. In re Lyondell Chemical Co., 541 B.R. 172 (Bankr. S.D.N.Y. 2015).
 - The exceptions to discharge contained in § 523 “are to be narrowly construed, and because of the fresh start objectives of bankruptcy, doubt is to be resolved in the debtor’s favor.” In re Carlson, 2008 U.S. App. LEXIS 1521 (10th Cir. Jan. 23, 2008).
 - “Where the allegation is one of fraud, it is appropriate that the court hear the evidence to insure that the drastic remedy of a determination of non-dischargeability is not entered without the presentation of a prima facie case.” United Counties Trust Co. v. Knapp, 137 B.R. 582 (Bankr. D.N.J. 1992).
- Preference Against Default → “The preferred disposition of any case is upon its merits and not by default judgment, but this preference is counterbalanced by considerations of

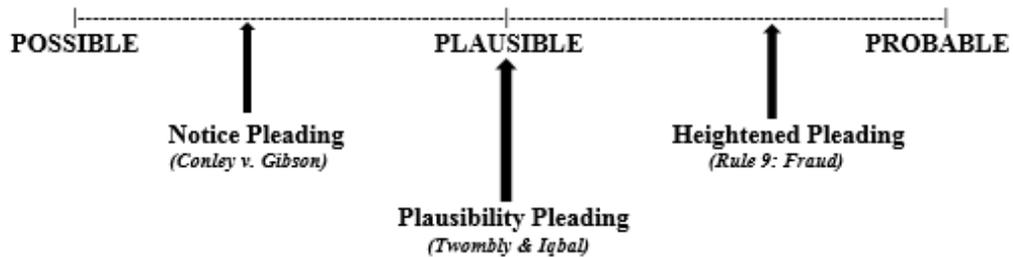
¹ Bankruptcy Rule 7004(h) Service of Process on an Insured Depository Institution: Service on an insured depository institution (as defined in section 3 of the Federal Deposit Insurance Act) in a contested matter or adversary proceeding shall be made by certified mail addressed to an officer of the institution unless—(1) the institution has appeared by its attorney, in which case the attorney shall be served by first class mail; (2) the court orders otherwise after service upon the institution by certified mail of notice of an application to permit service on the institution by first class mail sent to an officer of the institution designated by the institution; or (3) the institution has waived in writing its entitlement to service by certified mail by designating an officer to receive service.

social goals, justice and expediency.” Gomes v. Williams, 420 F.2d 1364, 1366 (10th Cir. 1970).

- A Default Does Not Automatically Result in the Entry of a Default Judgment.
 - “A defendant’s default does not in itself warrant the court in entering a default judgment.” Bixler v. Foster, 596 F.3d 751, 762 (10th Cir. 2010).
 - “Decisions to enter judgment by default are committed to the district court’s sound discretion.” Dennis Garberg & Assocs., Inc. v. Pack-Tech Int’l Corp., 115 F.3d 767, 771 (10th Cir. 1997).
 - “A default is ... merely the admission of the facts cited in the Complaint, which by themselves may or may not be sufficient to establish a defendant’s liability.” Jackson v. Correctional Corp. of Am., 564 F. Supp. 2d 22, 26–27 (D.D.C. 2008).
 - “Even after default, however, it remains for the court to consider whether the unchallenged facts constitute a legitimate cause of action, since a party in default does not admit mere conclusions of law.” In re McGee, 359 B.R. 764 (B.A.P. 9th Cir. 2006) (citation omitted).
- Complaint’s Factual Allegations Must State *Prima Facie* Grounds for Relief
 - The pleading must include “a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2), as incorporated by Fed. R. Bankr. P. 7008.
 - “Once default is entered, ‘it remains for the court to consider whether the unchallenged facts constitute a legitimate cause of action, since a party in default does not admit mere conclusions of law.’” Bixler v. Foster, 596 F.3d 751, 762 (10th Cir. 2010) (citations omitted).
 - Conclusory allegations are insufficient to state a claim for relief:
 - “‘Factual allegations must be enough to raise a right to relief above the speculative level,’ and a complaint that merely offers ‘labels and conclusions,’ or a ‘formulaic recitation of the elements of a cause of action,’ is insufficient.” Bangerter v. Roach, 467 Fed. Appx. 787 (10th Cir. 2012) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544 (2007)).
 - “While legal conclusions can provide the complaint’s framework, they must be supported by factual allegations.” Ashcroft v. Iqbal, 556 U.S. 662, 663 (2009).
 - “Conclusory allegations without supporting factual averments are insufficient to state a claim on which relief can be based.” Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991).

- “All well-pleaded facts, as distinguished from conclusory allegations, must be taken as true.” Swanson v. Bixler, 750 F.2d 810, 813 (10th Cir. 1984).

○ The Spectrum of Legal Pleading:



SETTING ASIDE A DEFAULT OR A DEFAULT JUDGMENT

- Fed. R. Civ. P. 55(c) → “The court may set aside an entry of default for good cause, and it may set aside a default judgment under Rule 60(b).”
- Local Rule 7055-1(d) → “The actions of the clerk under this rule may be reviewed, suspended, altered or rescinded by the court.”
- Final Default Judgment → See Fed. R. Bankr. P. 9024 (Relief from Judgment or Order) that incorporates Fed. R. Civ. P. 60.

APPEAL OF DEFAULT JUDGMENT

- “Because the entry of a default judgment is committed to the sound discretion of the district court, we will not overturn the court’s decision without a clear showing that it manifests a clear error of judgment.” Tripodi v. Welch, --- F.3d ---, 2016 U.S. App. LEXIS 502 (10th Cir. Jan. 13, 2016) (citation and internal quotation marks omitted).

UNCONTESTED MOTIONS

Failure to respond to an allegation in a motion requiring a responsive pleading deems that allegation admitted (Fed. R. Civ. P. 8(b)(6)). Even then, the court must still assess whether the admitted facts establish a sufficient legal basis to grant the requested relief.

LOCAL RULES

Utah follows a “negative notice” practice, meaning if there is no response to a motion, the court may grant the requested relief without a hearing. The Utah Bankruptcy Court Local Rules of Practice provide specific procedures for law and motion matters and specifically how to proceed when the movant does not anticipate a response to the motion. Counsel should familiarize themselves with the following Federal and Local Rules.

- Fed. R. Bankr. P. 9013 Motions: Form and Service
 - “A request for an order ... shall be by written motion [and the] motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought.”
- Fed. R. Bankr. P. 9014 Contested Matters
 - Incorporates many of the Federal Rules of Civil Procedure (through Part VII of the Bankruptcy Rules), including Fed. R. Civ. P. 9(b) that requires particularity when pleading fraud or mistake.
- Local Rule 9013-1: Set Hearing
 - Use this procedure when *movant anticipates opposition* to the motion. It requires the movant to obtain a specific hearing date with the court so that if contested, the matter can be heard as soon as practicable. In the absence of a timely response to your motion, you should call the court, and the Judge may agree to strike the hearing and grant the requested relief.
 - *Make your life easier* by using the form notice to parties found in the Local Rules under Appendix I, Local Form 9013-1 captioned “NOTICE OF [MOTION TO] [APPLICATION FOR] [OBJECTION TO CLAIM] AND NOTICE OF HEARING.”
- Local Rule 9013-2: Opportunity for Hearing
 - Use this procedure when the Bankruptcy Code or the Fed. R. Bankr. P. provide that an order may be entered or an action may be taken after “notice and a hearing” or similar phrase, and the *movant does not anticipate opposition* to the motion. It requires the movant to reserve—but not set—a hearing on the court’s calendar.
 - Set Hearings vs. Reserved Hearings.
 - Reserved hearings appear on the court’s calendar as “Reserved – Inactive.” If an objection or response is filed to the motion, then the reserved hearing is activated and appears as a set hearing on the calendar. Note: the hearing is only automatically activated if both the movant and the respondent uses the appropriate ECF event for filing the motion and the response.
 - The advantage of a reserved hearing is that if no response is filed to your motion, the order can be entered without the need to call the court to strike the hearing. This saves both you and the court time and resources.
 - Do not use this procedure for hearings in adversary proceedings.

- **Make your life easier** by using the form notice to parties found in the Local Rules under Appendix I, Local Form 9013-2 captioned “NOTICE OF [MOTION TO] [APPLICATION FOR] [OBJECTION TO CLAIM] AND NOTICE OF OPPORTUNITY FOR HEARING.”
 - By using the form notice, the court can more readily determine if you have given proper notice of your motion; thereby increasing the possibility of it being granted without a hearing.
- Law and Motion Calendar.
 - Each chambers typically reserves one day a week for motions requiring no more than five minutes to hear (“law and motion calendar”). The court schedules these matters in three general categories:
 - (1) Preliminary hearings on motions for relief from the automatic stay;
 - (2) Objections to claims; and
 - (3) Other routine matters where no opposition is anticipated. Examples of routine matters appropriate for the law and motion calendar include motions to amend a chapter 13 plan, objections to trustee’s motion to dismiss, motions to incur debt, and motions to sell property.

Parties should not request time on the law and motion calendar if they believe that a hearing will take more than five minutes. Instead, parties should schedule a lengthier hearing on another day. See Chamber Procedures at <https://www.utb.uscourts.gov/content/judge-kevin-r-anderson>).
- Preset Guidelines (can be used for both Notice of Hearing and Notice of Opportunity for Hearing).
 - The following relates to Chapter 13 and Chapter 7 objections to proofs of claim, motions for relief from stay, objections to trustee’s motions to dismiss, and other routine matters. Hearings on all other law and motion matters that you anticipate will take longer than 5 to 10 minutes must be obtained from the scheduling clerk by calling 801-524-6627.
 - Be sure and set hearings far enough in advance so that if no response is filed, the hearing can be stricken.
 - Please note that these preset dates should **not** be used to schedule any matter relating to Chapter 11 cases, summary judgments, or other complex or hotly contested matters.

THE COURT'S REVIEW OF UNCONTESTED MOTIONS

- “The granting of an uncontested motion is not an empty exercise but requires that the court find merit to the motion.” In re Nunez, 196 B.R. 150, 156 (B.A.P. 9th Cir. 1996).
- “Critical review of uncontested motions, moreover, is consistent with a basic legal principle—that courts are not required to grant a request for relief simply because the request is unopposed.” In re Franklin, 210 B.R. 560 (Bankr. N.D. Ill. 1997).
- The factual and legal predicate in support of the relief requested in the motion must be stated with “particularity.”
 - See Fed. R. Bankr. P. 9013 (Motions: Form and Service) and Rule 7009 (Pleading Special Matters).
 - “The purpose of the particularity requirement is to afford notice of the grounds and prayer of a motion to both the court and the opposing party, providing that party with a meaningful opportunity to respond in court with enough information to process the motion correctly.” In re Aucoin, 150 B.R. 644, 647 (E.D. La. 1993).
 - “The reader [including the court] should not be left with any serious questions concerning either what is to be done or why doing it is appropriate.” In re Minton, 2006 WL 533352 (Bankr. N.D. Ind. 2006).
 - As stated in Barnes v. Jones, 783 F.3d 1185 1196 (10th Cir. 2015):
 - [P]laintiffs forget that they bear “the burden of alleging sufficient facts on which a recognized legal claim could be based.” Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991). Plaintiffs must allege “enough facts to state a claim to relief that is plausible on its face.” Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009).

RELIEF FROM A JUDGMENT OR ORDER

- Technically, there is no such animal as a “Motion to Reconsider.” Procedurally, such relief is sought under Fed. R. Civ. P. 59 (New Trial; Altering or Amending a Judgment) or Rule 60 (Relief from Judgment or Order).
- Fed. R. Civ. P. 60(b) & Fed. R. Bankr. P. 9024 (Relief from Judgment or Order) → There are six grounds on which the court may relieve a party from a final judgment, order, or proceeding:
 - (1) mistake, inadvertence, surprise, or excusable neglect;

- (2) newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under Rule 59(b);
 - (3) fraud (whether previously called intrinsic or extrinsic), misrepresentation, or misconduct by an opposing party;
 - (4) the judgment is void;
 - (5) the judgment has been satisfied, released or discharged; it is based on an earlier judgment that has been reversed or vacated; or applying it prospectively is no longer equitable; or
 - (6) any other reason that justifies relief.
- Timing
 - Fed. R. Civ. P. 60 → All motions under Rule 60(b) must be filed within a “reasonable time.” If relief is sought under Rule 60(b)(1), (2), or (3), the motion must be made no more than a year after entry of the judgment.
 - If seeking to vacate an order of dismissal, file the motion within 7 days of the dismissal or be prepared to state good cause for the delay.
 - Once creditors receive notice that a case is dismissed, they are free to pursue collection actions. This can create serious “gap” problems if a creditor takes a collection action between the dismissal and reinstatement of the case.
 - Notice of the motion to vacate must be served on all creditors.
 - Specify the grounds for relief from the order.
 - Clearly state which subsection of Rule 60(b) applies to your situation.
 - If you miss a deadline, the most important factor for the court to consider is the given excuse, so provide a detailed explanation as to why missing the deadline should be “excusable.” U.S. v. Torres, 372 F.3d 1159, 1163 (10th Cir. 2004).
 - The excusable neglect standard.
 - The Supreme Court has held there are four factors in determining whether neglect is excusable, including: “the danger of prejudice to the debtor, the length of the delay and its potential impact on judicial proceedings, the reason for the delay, including whether it was within the reasonable control of the movant, and whether the movant acted in good faith.” Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership, 507 U.S. 380, 395 (1993).
 - Upheaval of a law practice is not probative of excusable neglect. Lang v. Lang, 414 F.3d 1191, 1200-01 (10th Cir. 2005).

- “Counsel’s mistake in applying the rules is generally not a sufficient excuse.” U.S. v. Torres, 372 F.3d 1159, 1163 (10th Cir. 2004).
- “Carelessness [or simple neglect] by a litigant or his counsel does not afford a basis for relief under Rule 60(b)(1).” In re Tarbell, 2007 Bankr. LEXIS 2099 (B.A.P. 10th Cir. June 27, 2007).

JUDGE MOSIER’S POINTERS

1. Take some pride in your work—don’t be lazy or careless.
2. The motion/objection should be pled with particularity.
3. Clearly state what relief is being requested.
4. Include critical information in the motion/objection.
5. Include the submitting attorney information at the top of the order.
6. Do not combine objection to claim with a motion.
7. Do not file one order for multiple motions/objections, etc.
8. Clearly state what is being ordered.
9. Do not include facts in the relief ordered.
 - The court does not “order” facts.
 - An introductory paragraph is appropriate, but should not make factual findings.
10. The order should be consistent with the relief requested in the motion.
 - Do not submit an order that grants relief inconsistent with the motion.
 - Do not submit an order that grants more relief than what is requested in the motion.
11. The order should be a stand-alone document.
12. There is no longer such a thing as an *ex-parte* order.
13. Do not use the term “proposed” in the title when submitting orders.

JUDGE ANDERSON’S POINTERS

ORDER PREPARATION

- Comply with the margin requirements of Local Rule 5005-3: “All orders presented for filing must have a top margin of not less than 2-1/2 inches on the first page.”
- The caption of the order should list the preparing party. For example:

Order Prepared By:
Atticus Finch, Esq.

- Note that an ambiguity in an order may be construed against the drafter. In re Faust, 2007 Bankr. LEXIS 4267 (Bankr. D.N.M. Dec. 12, 2007).
- Unless otherwise directed, an order following a contested hearing should indicate that the court’s findings of fact and conclusions of law were made on the record.
- For orders arising from uncontested motions, do not include findings that were not specifically alleged in the motion.
- Include a brief statement of the relief in the order.
 - Do not simply state “the motion is granted.”
 - The reader should be able to fully understand the requirements and consequences of the order without cross-referencing to other documents.
 - The relief granted in the order must be consistent with the relief requested in the motion.

MOTIONS

- Avoid “boilerplate” motions.
 - What is needed: more factual narrative, less boilerplate.
 - Fed. R. Bankr. P. 9013 requires the grounds for the motion to be stated with particularity.
 - Allegations of fraud require a higher level of particularity.
 - Do not mix facts with assumptions, presumptions, speculation, argument, conclusions, etc.
 - Let the facts speak for themselves. Use minimal italics or underlining as emphasis. Avoid the unnecessary use of bolds, all caps, and exclamation points, which is the textual equivalent of screaming. This is how pro se litigants write—not lawyers.
 - Be precise and accurate with your facts. When possible, avoid vague terms such as “approximately” or “on or about,” especially when a date or dollar figure is essential to the motion.
 - Do not presume the court is as familiar with the facts of your case as you are. Set forth all necessary facts plainly and simply. Motions often omit relevant and critical information. Do not expect the court to fill in the gaps or to assume facts not properly pled.
- Include statutory or legal authority in the motion.
 - Support your request for relief with citations to statutes or applicable case law. The court only has such authority as conferred by statute or applicable case law.
 - A solitary reference to § 105 (Power of the Court) is likely to be unavailing.

- “We have long held that whatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code.” Law v. Siegel, 134 S. Ct. 1188, 1194 (U.S. 2014).
- Always research to see if there is a Utah or Tenth Circuit case on point. Don’t forget to review the list of Utah opinions at <https://www.utb.uscourts.gov/judges-info/opinions>.
- Motion to Approve Agreement or Settlement
 - Orders approving a settlement or other agreement should be absolutely clear as to the controlling document. Changes are often made to a document after the motion to approve is filed, including oral changes made on the record at the hearing. Parties should not be required to listen to the hearing to understand the full terms of the court-approved settlement or agreement.
 - Therefore, the best practice is to include the final, approved document as an exhibit to the order or include the text of the agreement in the order itself.

MOTIONS FOR RELIEF FROM STAY.

- The alleged facts must be specific enough to establish all of the legal elements necessary for the court to grant relief. Bald statements that a creditor is secured, that there is no equity in the collateral, or that the collateral is not necessary to an effective reorganization are conclusions of law. If uncontested, only alleged *facts* are deemed admitted, not conclusions of law.
 - Best Practices:
 - Identify the collateral with specificity. If a car, list the year, make, model, and VIN. If real property, list the address and legal description.
 - Establish the perfected security interest. Attach a copy of the vehicle title (or other DMV printout) showing the lienholder or attach a recorded copy of the trust deed.
 - Establish the value of the collateral. Give a dollar amount as to the creditor’s alleged valuation of the collateral. If applicable, state the source of the valuation figure—e.g., NADA, inspection, appraisal, etc.
 - Establish the amount of the debt. Provide a basic accounting showing how the creditor calculated the amount of the secured claim at the time of the motion.
 - Establish that the property is not necessary to an effective reorganization. Allege facts that explain why this is the case. Sometimes this is fairly obvious, but other times it requires an extensive exposition to assist the court in understanding how the collateral relates to the debtor’s business operations.

APPLICATIONS FOR COMPENSATION

- The court applies a cost/benefit analysis in reviewing fee applications. When the requested fees significantly exceed the return to creditors, provide more specificity in the application as to the services provided in the case, the result of those services, and why the services were reasonable even if they did not result in a net benefit to the estate.
 - The above statement especially applies when the amount of a proposed settlement approximates the fees being requested by the applicant.
- Exercise billing discretion as to whether services are most appropriately performed by the Trustee, the attorney for the Trustee, a paralegal, or a secretary.
- Avoid lumping services in the itemization of time spent.

APPLICATIONS TO APPOINT SPECIAL COUNSEL

- Explain why the matter requires special counsel and the unique skills of counsel to be employed.
- Avoid seeking to employ special counsel to perform services that could be performed by a trustee.
- In cases where special counsel is appointed, the court will review the trustee's final report to assess whether special counsel's services were warranted.

EXAMPLES

UNOPPOSED TURNOVER MOTION

IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF UTAH

In re:

LUKE SKYWALKER,

Debtor.

Bankruptcy Number: 16-XXXXXX

Chapter 7

Hon. R. Kimball Mosier

MOTION FOR TURNOVER

Han Solo, Chapter 7 Trustee, by and through counsel, hereby moves the Court for an order requiring Luke Skywalker (the “Debtor”) to turn over non-exempt furniture at the Debtor’s personal residence pursuant to 11 U.S.C. § 542 based upon the following facts:

1. The Debtor filed a chapter 7 petition on January 1, 2016.
2. On the Statement of Financial Affairs, question 14, the Debtor lists a coffee table, nightstand, couch, table, four (4) chairs, and a light saber as “property held for another person” (the “Furniture”). The name and address of the owner is listed as “Padme Amidala (Debtor’s Mother) at 1234 E. Tatooine Street.”
3. The Debtor’s Schedule C does not claim an exemption in the Furniture, and under Imperial law, the Debtor is not entitled to claim an exemption in the Furniture.
4. On the petition, the Debtor lists his address as 1234 E. Tatooine Street, which is the same as his mother’s address.
5. At the meeting of creditors held on February 15, 2016, the Debtor testified that he lives with his mother at 1234 E. Tatooine Street and that the Furniture is actually his property.

WHEREFORE, the Trustee requests the Debtor turn over the Furniture located at his personal residence at 1234 E. Tatooine Street, within 7 days of entry of an order in this matter.

UNOPPOSED ADVERSARY PROCEEDING COMPLAINT

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH**

| | |
|--|--|
| In re: SONNY SMITH, Debtor. | Bankruptcy Number: 15-XXXXX Chapter 7 |
| GRANNY SMITH, an Individual, Plaintiff, vs. SONNY SMITH, an Individual, Defendant. | Adversary Proceeding No. 15-XXXX Hon. Kevin R. Anderson |

COMPLAINT

Plaintiff, Granny Smith, by and through counsel, brings this action against Sonny Smith to deny discharge of the debt owed to Granny Smith by Sonny Smith under 11 U.S.C. § 523(a)(2)(A). Plaintiff alleges as follows:

FACTS

1. The Defendant, Sonny Smith, is the Plaintiff's grandson.
2. On July 1, 2015, Sonny Smith approached Granny Smith at her 80th birthday party and asked her for a loan.
3. Sonny Smith told Granny Smith that he needed \$3,000 to get his car repaired so that he could travel to work and take his children to school.
4. Granny Smith relied on this representation in loaning Sonny Smith \$3,000 because she was aware that he had an older car and that he needed the car to travel to work and take his children to school.
5. Sonny Smith promised that he would pay back the \$3,000 on August 1, 2015 when he received his next paycheck.

6. Granny Smith relied on this representation in loaning Sonny Smith \$3,000 because she was aware that Sonny Smith had a job that paid enough to repay the \$3,000 from his next paycheck.

7. On July 1, 2015, Sonny Smith knew that his car did not need any repairs, and he knew that if Granny Smith loaned him any money, he would immediately use it to purchase hardware for his personal entertainment.

8. On July 2, 2015, Granny Smith wired \$3,000 from her checking account to Sonny Smith's checking account.

9. Upon information and belief, Sonny Smith did not use the \$3,000 loan from Granny Smith to repair his car.

10. Upon information and belief, Sonny Smith used the \$3,000 from Granny Smith on July 3, 2015 to purchase a 70-inch UHD 4K television, eleven speakers for a Dolby Atmos sound system, a Blu-ray player, and an Xbox One game console.

11. Contrary to his representation to Granny Smith, Sonny Smith did not repay any portion of the loan on or before August 1, 2015.

12. Sonny Smith filed a voluntary chapter 7 petition on August 5, 2015.

13. Granny Smith has been injured as a direct result of Sonny Smith's failure to repay the \$3,000 loan, in that it has caused her to be financially unable to make her monthly mortgage payment for August and September of 2015.

CAUSE OF ACTION (11 U.S.C. § 523(a)(2)(A))

14. Plaintiff incorporates paragraphs 1-9.

15. The Defendant obtained the \$3,000 loan on July 2, 2015 from Plaintiff by false pretenses and false representations.

16. Therefore, the \$3,000 debt owed to Granny Smith is non-dischargeable under 11 U.S.C. § 523(a)(2)(A).

PRAYER FOR RELIEF

WHEREFORE, the Plaintiff requests a judgment against the Defendant Sonny Smith resulting from Defendant Sonny Smith's false representations in the amount of \$3,000, declaring that such judgment is non-dischargeable under 11 U.S.C. § 523(a)(2)(A).

UNOPPOSED MOTION FOR RELIEF FROM STAY
(INSUFFICIENT FACTS)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH**

In re:

SONNY SMITH,

Debtor.

Bankruptcy Number: 16-XXXXX

Chapter 7

Hon. R. Kimball Mosier

MOTION FOR RELIEF FROM STAY

Granny Smith Finance Co. (“Creditor”), secured creditor of the Debtor, Sonny Smith, by and through counsel, hereby moves the Court for an order for relief from stay under 11 U.S.C. § 362(d) to allow Creditor to pursue its state law and other remedies against the Debtor’s 2001 Chevrolet Impala (the “Vehicle”). Creditor requests relief from stay under the following facts:

1. The Debtor, Sonny Smith, filed a voluntary chapter 7 petition on January 1, 2016.
2. On January 1, 2014, the Debtor executed a Retail Installment Contract (the “Contract”) in favor of Granny Smith Finance Co. **[NO ATTACHED CONTRACT]**
3. Under the Contract, the Debtor granted a security interest in the Vehicle to Creditor.

Granny Smith Finance Co. has a security interest in the Vehicle as reflected on the certificate of title. **[NO ATTACHED PROOF OF PERFECTED SECURITY INTEREST]**

4. Under the Contract, the Debtor was required to make payments to Creditor in the amount of \$100 per month beginning on January 1, 2014 for 36 months. The Debtor has failed to

make payments under the Contract. [NO ACCOUNTING AS TO THE AMOUNT OF THE DELINQUENCY]

5. There is no equity in the Vehicle. As of the petition date, the payoff under the Contract to Creditor is \$20,000. The fair market value of the Vehicle is less than the payoff. [NO ALLEGATION AS TO THE VALUE OF THE COLLATERAL]

6. Therefore, cause exists to lift the automatic stay under 11 U.S.C. § 362(d) because Creditor is not adequately protected, the Debtor does not have equity in the Vehicle, and the Vehicle is not necessary to an effective reorganization.

WHEREFORE, Creditor seeks relief from stay under 11 U.S.C. § 362(d) to repossess or otherwise execute on its security interest in the Vehicle.

UNOPPOSED MOTION FOR RELIEF FROM STAY
(SUFFICIENT FACTS)

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH**

In re:

SONNY SMITH,

Debtor.

Bankruptcy Number: 16-XXXXXX

Chapter 7

Hon. R. Kimball Mosier

MOTION FOR RELIEF FROM STAY

Granny Smith Finance Co. (“Creditor”), secured creditor of the Debtor, Sonny Smith, by and through counsel, hereby moves the Court for an order for relief from stay under 11 U.S.C. § 362(d) to allow Creditor to pursue its state law and other remedies against the Debtor’s 2001 Chevrolet Impala (the “Vehicle”). Creditor requests relief from stay under the following facts:

1. The Debtor, Sonny Smith, filed a voluntary chapter 7 petition on January 1, 2016.
2. On January 1, 2014, the Debtor executed a Retail Installment Contract (the “Contract”) in favor of Granny Smith Finance Co. A copy of the Contract is attached as *Exhibit 1*.
3. Under the Contract, the Debtor granted a security interest in the Vehicle to Creditor.

Granny Smith Finance Co. has a security interest in the Vehicle as reflected on the certificate of title. A copy of the certificate of title for the 2001 Chevrolet Impala (VIN 995678987) is attached hereto as *Exhibit 2*.

4. Under the Contract, the Debtor was required to make payments to Creditor in the amount of \$100 per month beginning on January 1, 2014 for 36 months. The Debtor has failed to make payments under the Contract. As of the petition date, the Debtor was delinquent payments under the Contract in the total amount of \$4,500.
5. Based on the Debtor's Schedule B, the fair market value of the Vehicle is \$10,000.
6. As of January 1, 2016 NADA lists the retail value of the Vehicle at \$9,500. A copy of the NADA retail value estimate dated January 1, 2016 is attached hereto as *Exhibit 3*.
7. As of the petition date, the payoff under the Contract to Creditor is \$20,000.
8. Based on these facts, the fair market value of the Vehicle is less than the payoff to Creditor under the contract.
9. Therefore, cause exists to lift the automatic stay under 11 U.S.C. § 362(d) because Creditor is not adequately protected, the Debtor does not have equity in the Vehicle, and the Vehicle is not necessary to an effective reorganization.

WHEREFORE, Creditor seeks relief from stay under 11 U.S.C. § 362(d) to exercise its legal rights and remedies under applicable nonbankruptcy law.

UNOPPOSED OBJECTION TO CLAIM

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH**

In re:

SONNY SMITH,

Debtor.

Bankruptcy Number: 16-XXXXX

Chapter 7

Hon. R. Kimball Mosier

OBJECTION TO CLAIM

The Debtor, Sonny Smith, by and through counsel, hereby objects to Proof of Claim No. 3 filed by Granny Smith Finance Co. (the "Creditor") based upon the following:

1. On January 1, 2016, the Debtor filed a petition under Chapter 7.
2. On January 2, 2016 the Debtor filed Schedule F listing an unsecured claim held by Creditor in the amount of \$3,000.
3. On January 11, 2016, the Creditor filed Proof of Claim No. 3 asserting a claim in the amount of \$3,000 secured by a 2001 Chevrolet Impala (the "Vehicle").
4. Attached to Proof of Claim No. 3 is a Promissory Note dated July 2, 2015 in which the Debtor agrees to pay the Creditor \$3,000 on August 1, 2015.
5. There are no documents attached to Proof of Claim No. 3 to show that the Creditor has a security interest in the Vehicle.

WHEREFORE, Debtor objects to Proof of Claim No. 3 and requests the Court enter an order only reclassifying Proof of Claim No. 3 from a secured claim to an unsecured claim in the allowed amount of \$3,000.

OBJECTION TO CLAIM - ORDER

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH**

In re:

SONNY SMITH,

Debtor.

Bankruptcy Number: 16-XXXXX

Chapter 7

Hon. R. Kimball Mosier

ORDER SUSTAINING OBJECTION TO CLAIM

Based upon the Debtor's Objection to Proof of Claim No. 3 and for good cause appearing, the Court,

HEREBY ORDERS, DECREES, AND ADJUDGES THAT:

1. The Debtor's Objection to Proof of Claim No. 3 is GRANTED.
2. Proof of Claim No. 3 shall be disallowed in its entirety. [**THE MOTION ONLY SOUGHT TO RECLASSIFYING THE CLAIM FROM SECURED TO UNSECURED IN THE AMOUNT OF \$3,000**]

-----END OF DOCUMENT-----

OBJECTION TO MOTION TO DISMISS - ORDER

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH**

In re:

SONNY SMITH,

Debtor.

Bankruptcy Number: 16-XXXXXX

Chapter 7

Hon. R. Kimball Mosier

ORDER DENYING TRUSTEE'S MOTION TO DISMISS

Debtor's Objection to the Trustee's Motion to Dismiss came on for hearing. Based upon the Debtor's Objection to the Trustee's Motion to Dismiss and for good cause appearing, the Court,

HEREBY ORDERS, DECREES, AND ADJUDGES THAT:

1. The Debtor's Objection is sustained, and the Trustee's Motion to Dismiss is denied.

-----END OF DOCUMENT-----

ORDER APPROVING SETTLEMENT

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF UTAH**

In re:

SONNY SMITH,

Debtor.

Bankruptcy Number: 16-XXXXX

Chapter 7

Hon. R. Kimball Mosier

**ORDER GRANTING TRUSTEE'S MOTION TO APPROVE
SETTLEMENT WITH GRANNY SMITH FINANCE CO.**

On July 1, 2016, the Chapter 7 Trustee filed his Motion to Approve Settlement with Granny Smith Finance Co. (the "Motion to Approve") (Dkt. No. 10). A hearing was scheduled for July 29, 2016 on the Motion to Approve. Notice was properly served to all parties in interest as required by Fed. R. Bankr. P. 9019. No objections to the Motion to Approve were filed with the Court. Based upon the Trustee's Motion to Approve and for good cause appearing, the Court:

HEREBY ORDERS, DECREES, AND ADJUDGES THAT:

1. The Motion to Approve Settlement is GRANTED. **[ATTACH THE SETTLEMENT AGREEMENT AS AN EXHIBIT TO THE ORDER, AND STATE THAT THE AGREEMENT IS "APPROVED PURSUANT TO FED. R. BANKR. P. 9019."]**
2. The hearing set for July 29, 2016 at 9:00 a.m. is stricken.

-----END OF DOCUMENT-----