

VBA BANKRUPTCY LAW SECTION
BENCH-BAR BROWN BAG LUNCH MEETING
with Hon. Colleen A. Brown, U.S. Bankruptcy Judge

United States Bankruptcy Court, Burlington
Tuesday, June 18, 2019 ~ 12:00 to 1:00 PM
Dial-in number: (888) 398-2342. Access code: 846 68 72#
If you dial into the meeting, please use your “mute” function, unless speaking.

AGENDA

- | | |
|-----------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|
| <p>1. <u>CH 11, 12 AND 13 OPERATING ORDERS AND OPERATING REPT FORMS / PROCEDURE</u></p> <p>➤ Update of meetings / progress thus far</p> | <p>Judge Brown, Jan Sensenich
& Lisa Penpraze</p> |
| <p>2. <u>CH 12 ATTY’S FEES & APP FOR RETENTION</u></p> <p>➤ Seeking input on revision to procedure & LR</p> | <p>Judge Brown & Jan Sensenich</p> |
| <p>3. <u>SEMI-ANNUAL MEETING W/Ts, UST & COURT MGRS</u></p> <p>➤ Summary of 4/30/19 meeting held per Bk Rule 9003(b)</p> | <p>Judge Brown & Lisa Penpraze</p> |
| <p>4. <u>TASK FORCE REPORT</u> (Continued discussion; See Attachment)</p> | <p>Judge Brown & Task Force</p> |

Four issues included in the Task Force’s charge, with current status:

- 1. Possible new procedure for dealing w/ notice of mortgage pmt changes from Cs w/ HELOC mtges
*At the 4/5/19 BB mtg J. Hardiman circulated recommendation that a notc of pmt change not req’d unless change in int rate, amortization or escrow amt; disc re option of setting fixed rate for period of time during ch 13 ... **Awaiting revised recommendation from TF on this issue.***

- 2. Possible new procedure for T in CMP cases when D objects to Mortgage Pmt Change Notice
*At the 4/5/19 BB mtg, this was discussed but no conclusion was reached. **Need further discussion.** Additionally, on a related topic, J. Sensenich observed the need to clarify the procedure the parties need to follow when a D objects to a ntc of pmt change and the Ct overrules that obj: How/ when will D cure arrears then due if T doesn’t have it on hand? Must the D file a MTM? Or make a prompt LSP?*

- 3. Possible new procedure & forms for extending the stay under 362(c) [See Attachment]
*On 3/28/19 T. Taylor emailed a proposed Model Form for a motion to extend the automatic stay in a repeat filer case but it was not discussed at 4/5/19. **Need more disc or a recommendation from the TF.** Q: Should the Emergency 362(c) Motion be combined with a Notice of Evidentiary Hrg, as proposed? It may make it easier in allowing D atty to file just 1 document but it may have deleterious effect of delaying the filing of the Motion b/c the Motion needs to be filed with, or immediately after, the petition and the D atty may not yet know who represents the C, when C atty is available for the hrg, whether the C will have a witness, when D is available, whether C will oppose the Motion, etc.*

- 4. Possible revision to LRs re Pro Se use of ECF per new Fed Bk'cy Rules eff 12/1/18
*At the 4/5/19 BB mtg T. Davidson reported that the sub-committee addressing this saw no need for a change to that LR; that recommendation was accepted. **This part of Task Force charge completed.***

5. VBA BANKRUPTCY SECTION'S 19TH ANNUAL HOLIDAY CLE

Don Hayes & Nancy Giese

- December 6, 2019 – location TBD

6. CLERK'S OFFICE UPDATE

Jeff Eaton

- Staffing changes

7. NEW BUSINESS?

The group

2 Attachments: Task Force membership and charge; Todd Taylor's proposed Local Form for §362(c) motion

* Task Force Members: Jeff Hardiman, Tavian Mayer, Rebecca Rice, Jan Sensenich, Susan Steckel, Todd Taylor;
Ex Officio Members: Don Hayes / Nancy Geise (*as VBA Bk'cy Sect co-chairs*), Theresa Davidson (*VTB Clerk's Office*).

These Bench-Bar lunch meetings are coordinated by the Bankruptcy Court.
1 CLE credit is provided for attendance at each meeting.
Contact Maria Dionne @ 802-657-6432 or maria_dionne@vtb.uscourts.gov with any questions.

VTB Ad Hoc 2019 Task Force
Created on 2/19/19 at Bench Bar Meeting

Members: Jeff Hardiman, Tavian Mayer, Rebecca Rice, Jan Sensenich, Susan Steckel, Todd Taylor
Ex Officio Members: Don Hayes or Nancy Geise (*in capacity as VBA Bk'cy Section co-chairs*)
Theresa Davidson (*on behalf of VTB Clerk's Office*)

Purpose: This TF was created to consider, and then make proposals as to, the following issues:

1. Whether VT LBRs should be revised to specify whether / when HELOC mortgage creditors must file monthly statements.
 - Need to focus on both the cost /burden on HELOC creditors of issuing statements for each change due solely to the number of days in a month AND the risk to debtors if statements are not sent and the debtor then falls into arrears
 - Pillow case offers one option
 - Another option: have debtor & HELOC creditor agree on a monthly payment for a period of time, notwithstanding number of days in the covered months, with an accounting (due to number of days in each of those months) to occur at the end of the period, such that HELOC creditor would only then be required to issue notice of payment change if interest rate or escrow demand changed
2. How much the chapter 13 trustee should pay to the mortgage creditor in a CMP case when the mortgage creditor files a notice of payment change and the D filed an objection to that notice.
 - Should Trustee pay the amount he was previously paying, or the amount in the notice?
 - And, if the Trustee is making payments based upon a TPP agreement, does the Trustee keep making that payment or make the payment in the notice of payment change?
 - In either event, how do the parties or Trustee get a prompt hearing on the issue of how much the Trustee should pay, in order to avoid having the debtor fall into default?
 - Is there something the attorney for the mortgage creditor can do to help resolve this?
 - What happens when no attorney has yet filed a notice of appearance for mortgage creditor?
 - Is a VT LBR revision needed to set forth a procedure for this?
3. Should this District adopt Local Rules and/or Local Forms for use when a Debtor needs to file a motion to extend or impose the automatic stay under § 362(c)?
 - If so, are any of the Rules or Forms other Districts have adopted good options for use in Vt?
 - Alaska, W.D. Mo, and M.D. Md. have all adopted local rules to address 362(c) motions
 - CD Cal, SD Miss, SD Ind, D. Or (& other Bk'cy Cts) have local forms for those motions
4. Should the Local Rules be revised to address right of Pro Se parties to file documents electronically?
 - Currently pro se parties can file documents “electronically” via e-mail but not through CM/ECF
 - If a pro se party seeks permission to file using CM/ECF they need to get training & software
 - This has happened in the past but only when pro se party was an attorney / sophisticated party
 - Current system seems to be working well
 - **Need to include Theresa Davidson in discussion of this topic**

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF VERMONT

In Re:

Debtor

Debtor

Docket Number:_____

**Debtor'(s)' Omnibus EMERGENCY Motion to Extend the Automatic
Stay and Notice of Evidentiary Hearing**

Now Comes the Debtor(s),_____, by Counsel_____,
and hereby Move(s) to Extend the Automatic Stay Pursuant to *11 U.S.C. §362(c)(3)(B)*.

In support thereof, the Debtor(s) allege(s) the following:

A. Predicate Allegations

1. Filing date(s) of Prior Bankruptcy Case(s):_____
2. Docket Numbers of Prior Bankruptcy Case(s):_____
3. Date of Dismissal(s) of Prior Bankruptcy Case(s) : _____

4. Reasons for Dismissal(s) of Prior Bankruptcy Case(s):_____
5. Creditors to Whom Stay is to Apply by this New Bankruptcy Case(s) (state "All Creditors" or List Specific Creditors):

6. Did the Court Attach any Conditions to the Prior Dismissals?; if so, specify:

B. Set Forth All Changes in Financial Circumstances and/or Personal Circumstances Since the Date of the Last Dismissal (Attach as an Exhibit Additional Pages if Necessary or an Affidavit in Support Thereof) :

C. RULE 9014(e) NOTICE OF EVIDENTIARY HEARING { See *Vt. LBR 9014-1(b) & 4001-1(g)* }:

1. A hearing on this Motion is scheduled for [*time*] on [*date*] at [*location*] regarding the above named Debtor(s). Debtor(s)' Counsel has confirmed with the courtroom deputy that this hearing has been scheduled as an evidentiary hearing.
2. [*Amount of time*] has been set aside for this evidentiary hearing.

3. Debtor(s)' Counsel [*has/has not*] contacted the opposing party/interested party regarding the time they believe necessary for presentation of their witnesses and/or cross-examination of my witnesses, at this evidentiary hearing. [*If not, specify why not: _____*].

4. Debtor(s) intend(s) to call the following witnesses, in the following order, and expects each will testify for the following amounts of time:¹

(Note: If an opposing party/interested party requires additional time and/or intends to call additional witnesses, that party must contact the courtroom deputy, at least seven (7) days prior to the hearing, to arrange for additional time, and file and serve a Supplemental Rule 9014(e) Notice.)

5. If you dispute the need for, or the scope of, the hearing described in this Notice, you must

(a) file a written opposition with the Clerk of the Court on or before 4:00 P.M. on [date (*the response deadline must be no later than three (3) business days before the hearing*)] and

(b) serve a copy of that opposition on Debtor(s)' Counsel, the U.S. Trustee, the Case Trustee, if any, and in a Chapter 11 case, the creditors' committee and its counsel or if no committee is appointed, then upon the 20 largest unsecured creditors, by the response deadline.

6. Any additional information Debtor(s)' Counsel deems relevant/necessary for the Court's consideration (e.g., whether, due to the request for an evidentiary hearing, the requesting party agrees to a waiver of 11 U.S.C. § 362(e)): _____

¹ If the list of intended witnesses changes, a supplemental Rule 9014(e) Notice of Evidentiary Hearing shall be filed promptly and notice served at least three (3) business days prior to the date set for the evidentiary hearing. See Vt. LBR 9014-1(b)(3).

D. Please Set Forth All Exhibits (if any) the Debtor(s) Intend(s) to Introduce at the Hearing (such as pay advices, income tax returns, profit and loss statements, balance sheets, medical records, etc.):

E. Certificate of Service *{See F.R.B.P. 7004 (a)-(h)}*: Counsel for Debtor hereby certifies that he has served a copy of this pleading and any attachments on the entire mailing matrix, attached as an Exhibit, through the ECF System that will be sent electronically to the registered participants as Identified on the Notice of Electronic Filing (NEF) generated in connection with these documents, and paper copies were sent either:

1. Via U.S, Mail, postage pre-paid to on_____:

OR:

2. Via Certified or Priority Overnight Mail, return receipt requested, postage pre-paid to on_____:

OR:

3. Via Personal Delivery, Fax Transmission or E-Mail to on_____:

F. Prayer for Relief

Debtor(s) pray(s) that the Motion for Automatic Stay be Extended During the Pendency of this Case.

**This pleading is dated at _____, Vermont, this ____ day
of _____, 20__.**

,Attorney for Debtor(s)