



UNITED STATES BANKRUPTCY COURT  
CENTRAL DISTRICT OF CALIFORNIA  
LOS ANGELES DIVISION

In re: Mary Katheryn Bryant,  
Debtor.

Case No.: 2:13-bk-39363-ER  
Chapter: 7

**MEMORANDUM OF DECISION (1)  
GRANTING MOTION FOR  
RECONSIDERATION IN PART, (2)  
VACATING LIEN AVOIDANCE ORDER,  
AND (3) SETTING BRIEFING  
SCHEDULE ON DEBTOR'S MOTION TO  
AVOID MCT'S LIEN**

[No hearing required pursuant to Federal Rule  
of Civil Procedure 78(b) and Local Bankruptcy  
Rule 9013-1(j)(3)]

MCT Group, Inc. ("MCT") moves for reconsideration (the "Motion for Reconsideration")<sup>1</sup> of an order avoiding MCT's lien (the "Lien Avoidance Order")<sup>2</sup> against real property located at 17519 Bauchard Court, Carson, CA 90746 (the "Property"). Pursuant to Civil Rule 78(b) and LBR 9013-1(j)(3),<sup>3</sup> the Court finds the Motion for Reconsideration to be suitable for disposition without oral argument. For the reasons set forth below, the Court will vacate the Lien Avoidance

<sup>1</sup> See Motion for Reconsideration of Order Granting Avoidance of Judicial Lien on Real Estate Pursuant to 11 U.S.C. § 522(f) [Doc. No. 97].

<sup>2</sup> See Order Granting Debtor's Motion to Avoid Lien Under 11 U.S.C. § 522(f) (Real Property) [Doc. No. 71].

<sup>3</sup> Unless otherwise indicated, all "Civil Rule" references are to the Federal Rules of Civil Procedure, Rules 1–86; all "Bankruptcy Rule" references are to the Federal Rules of Bankruptcy Procedure, Rules 1001–9037; all "Evidence Rule" references are to the Federal Rules of Evidence, Rules 101–1103; all "LBR" references are to the Local Bankruptcy Rules of the United States Bankruptcy Court for the Central District of California, Rules 1001-1–9075-1; and all statutory references are to the Bankruptcy Code, 11 U.S.C. §§ 101–1532.

Order and set a briefing schedule on the Debtor's motion to avoid MCT's lien (the "Lien Avoidance Motion").

## **I. Background**

On December 16, 2013 (the "Petition Date"), the Debtor filed a voluntary Chapter 7 petition. On August 9, 2019, the Court entered the Lien Avoidance Order, which granted the Debtor's unopposed motion to avoid MCT's lien against the Property (the "Lien Avoidance Motion"). MCT seeks reconsideration of the Lien Avoidance Order on the ground that it was not served with the Lien Avoidance Motion.

## **II. Findings and Conclusions**

Civil Rule 60(b) permits the Court to relieve a party from an order for "mistake, inadvertence, surprise, or excusable neglect" or for "any other reason that justifies relief." Civil Rule 60(b)(1), (6). As discussed below, MCT has established that the Lien Avoidance Motion was not served upon it. Accordingly, MCT is entitled to relief from the Lien Avoidance Order on the grounds of unfair surprise and lack of due process.

According to the Proof of Service attached to the Lien Avoidance Motion, the Motion was mailed to MCT's agent for service of process, MCT's post-office box mailing address, and MCT's office location.

"Under the 'mailbox rule,' 'upon proof that mail is properly addressed, stamped and deposited in an appropriate receptacle, it is presumed to have been received by the addressee in the ordinary course of the mails.'" *Hasso v. Mozsgai (In re La Sierra Fin. Servs., Inc.)*, 290 B.R. 718, 733 (B.A.P. 9th Cir. 2002) (internal citations omitted). "[T]he presumption created by the mailbox rule can be rebutted by specific evidence of nonreceipt ...." *In re Todd*, 441 B.R. 647, 652 (Bankr. D. Ariz. 2011). However, a "bare declaration of non-receipt" is not sufficient to rebut the presumption. *In re Williams*, 185 B.R. 598, 600 (B.A.P. 9th Cir. 1995). Instead, the "presumption can only be overcome by clear and convincing evidence that the mailing was not, in fact, accomplished." *Moody v. Bucknum (In re Bucknum)*, 951 F.2d 204, 207 (9th Cir. 1991).

MCT has presented evidence sufficient to overcome the mailbox rule's presumption of receipt. MCT's evidence establishes that its vice president, Peter Christopher Bulpitt, personally collects all mail sent to MCT's post-office box mailing address and MCT's office location, but that Bulpitt did not receive the Lien Avoidance Motion. The evidence further shows that MCT's agent for service of process, Aimee R. Morris, consistently notifies MCT of mailings she receives, but that Morris did not receive the Lien Avoidance Motion. Finally, the evidence shows that after the Court entered the Lien Avoidance Order, the Debtor (or someone acting on the Debtor's behalf) attempted to file a forged *Acknowledgment of Satisfaction of Judgment* (the "Forged Acknowledgment") with the Los Angeles Superior Court. The Forged Acknowledgment was drafted in a manner to suggest that it had been prepared and submitted by MCT, when in fact it was prepared by the Debtor or someone acting on the Debtor's behalf. When combined with the testimony showing that multiple MCT employees did not receive the Lien Avoidance Motion, the fact that the Debtor (or someone acting on her behalf) submitted the Forged Acknowledgment is sufficient evidence to overcome the mailbox rule's presumption that the Lien Avoidance Motion was in fact mailed to MCT as attested by the Proof of Service attached thereto. If the Debtor or someone acting on her behalf was willing to file the Forged Acknowledgment, it is also plausible that the Debtor did not mail the Lien Avoidance Motion to MCT.

Due process requires that MCT be provided an opportunity to oppose the Lien Avoidance Motion. Accordingly, the Court will vacate the Lien Avoidance Order and set a briefing schedule on the Lien Avoidance Motion.

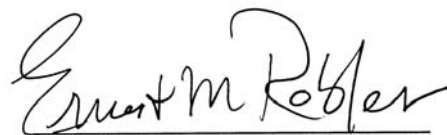
MCT shall file an opposition the Lien Avoidance Motion, which shall contain evidence of the Property's value as of the Petition Date, by no later than **October 9, 2019**. The valuation evidence submitted in connection with MCT's Motion for Reconsideration is insufficient. MCT has submitted a declaration from its vice president, Peter Christopher Bulpitt, in support of its contention that the Property was worth \$400,000 as of the Petition Date. Nothing in Bullitt's declaration establishes that he is a real estate appraiser or is otherwise qualified to testify as to the Property's value.

The Debtor's reply, if any, to MCT's opposition shall be submitted by no later than **October 23, 2019**, at which time the matter shall stand submitted. No hearing on the Lien Avoidance Motion will take place absent further order of the Court.

The Court will enter an order consistent with this Memorandum of Decision.

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Date: September 24, 2019

A handwritten signature in black ink, reading "Ernest M. Robles". The signature is fluid and cursive, with the first name "Ernest" and last name "Robles" clearly legible. The middle initial "M" is smaller and positioned between the first and last names.

Ernest M. Robles  
United States Bankruptcy Judge