

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

January 24, 2017 at 1:30 P.M.

1. [15-24006](#)-C-13 MICHELE BLAIR AMENDED MOTION FOR RELIEF FROM
AID-1 Mary Ellen Terranella AUTOMATIC STAY OR AMENDED
MOTION TO CONFIRM TERMINATION
OR ABSENCE OF STAY
12-28-16 [[28](#)]
HOUSING GROUP FUND, INC. VS.

Tentative Ruling: The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

Oral argument may be presented by the parties at the scheduled hearing, where the parties shall address the issues identified in this tentative ruling and such other issues as are necessary and appropriate to the court's resolution of the matter.

Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 28, 2016. 14 days' notice is required. That requirement is met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----.

The Motion for Relief from the Automatic stay is denied as moot.

Housing Group Fund, Inc. seeks either relief from the automatic stay with respect to a post-petition state court action for partition or against the state court entering an interlocutory judgment ordering the real property located at 100 Seneca Way, Vacaville, CA to be sold and its proceeds equitably distributed between Movant and debtor or a declaratory judgment that the stay does not apply.

The Movant and debtor each half own the property and debtor has been refusing to allow Movant

physical access to the property . Movant requests relief from the stay “for cause.” The Movant asserts that all claims asserted in the underlying state court action are for post-petition activities by the debtor, and as a result the automatic stay should not apply to stay any proceedings in the state court on this issue.

The Chapter 13 Trustee does not oppose the motion.

The Code is clear that postpetition claims are not stayed by the automatic stay.

The court shall issue a minute order to the effect that the automatic stay does not act to stay the state court proceeding and/or partitioning of the property.

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the Movant having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) do not act to stay a post-petition state court action for partition or against a state court entering an interlocutory judgment ordering the real property located at 100 Seneca Way, Vacaville, CA to be sold and its proceeds distributed between Housing Group Fund, Inc., Movant, and Michele R. Blair, Debtor and therefore the Motion for Relief from Stay is denied as moot.

No other or additional relief is granted.

2. [16-27451](#)-C-13 ANITA RUSSELL
MAS-2 Jamil White

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-27-16 [[30](#)]

SIERRA FOOTHILL PROPERTIES,
LLC VS.

Final Ruling: No appearance at the January 24, 2017 hearing is required.

Local Rule 9014-1(f)(1) Motion - No Opposition Filed.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on December 27, 2016, 201x. Twenty-eight days' notice is required. That requirement is met.

The Motion for Relief From the Automatic Stay has been set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(1). The failure of the respondent and other parties in interest to file written opposition at least 14 days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(ii) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995). Further, because the court will not materially alter the relief requested by the moving party, an actual hearing is unnecessary. *See Law Offices of David A. Boone v. Derham-Burk (In re Eliapo)*, 468 F.3d 592, 602 (9th Cir. 2006). Therefore, the defaults of the non-responding parties are entered. Upon review of the record there are no disputed material factual issues and the matter will be resolved without oral argument. The court will issue its ruling from the parties' pleadings.

The Motion for Relief From the Automatic Stay is granted.

Sierra Foothill Properties, LLC seeks relief from the automatic stay with respect to the real property commonly known as 3879 14th Avenue, Sacramento, California.

The Debtor has not made any payments, with a total of \$82,235.26 owing on the Movant's first deed of trust and \$80,801.99 owing on the Movant's second deed of trust. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$168,632.00 (including \$82,235.26 owing on the Movant's first deed of trust and \$80,801.99 owing on the Movant's second deed of trust), while the value of the property is determined to be \$195,123.00, as stated in Schedules A and D filed by Debtor.

The Chapter 13 Trustee does not oppose the motion for relief from stay.

The court maintains the right to grant relief from stay for cause when the debtor has not been diligent in carrying out his or her duties in the bankruptcy case, has not made required payments, or is using bankruptcy as a means to delay payment or foreclosure. *In re Harlan*, 783 F.2d 839 (B.A.P. 9th Cir. 1986); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985). The court determines that cause exists for terminating the automatic stay since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court shall issue a minute order terminating and vacating the automatic stay to allow Sierra Foothill Properties, LLC, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain

possession of the property.

The court shall issue a minute order substantially in the following form holding that:

Findings of Fact and Conclusions of Law are stated in the Civil Minutes for the hearing.

The Motion for Relief From the Automatic Stay filed by the creditor having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Sierra Foothill Properties, LLC, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the real property commonly known as 3879 14th Avenue, Sacramento, California.

No other or additional relief is granted.
