

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge
Sacramento, California

January 27, 2015 at 1:30 p.m.

1. [10-41617](#)-E-13 JOSEPH/YVONNE BLAZEK
SCC-1

CONTINUED MOTION TO APPROVE
STIPULATION FOR RELIEF FROM THE
AUTOMATIC STAY
11-25-14 [[54](#)]

COUNTY OF SACRAMENTO VS.

Tentative Ruling: 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).

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.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

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 November 25, 2014. By the court's calculation, 49 days' notice was provided. 28 days' notice is required.

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). The defaults of the non-responding parties are entered.

The Motion for Relief From the Automatic Stay is xxxxxx

The County of Sacramento and David Cusick ("Movant") seek relief from the automatic stay with respect to the real property commonly known as 4459 Pomo

January 27, 2015 at 1:30 p.m.

Circle, Sacramento, California (the "Property"). Movant has provided the Declaration of Keith Floyd to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Floyd Declaration states that the county is seeking to acquire a 58 square foot public roadway and public utilities easement; a 989 square foot public utilities and public facilities easement; a 435 square foot above ground public utility facilities easement; and a 544 square foot temporary construction easement across portions of the Property.

The County of Sacramento has made an offer to purchase the required project easements in the total amount of \$14,800, as specified in its appraisal. The Debtor in this case may obtain his own appraisal and seek a greater amount which he believes represents just compensation for the interests.

David Cusick, the Chapter 13 Trustee, filed a non-opposition on December 22, 2014.

The court maintains the right to grant relief from stay for cause when a 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 request in this case is out of the "normal" category of motions for relief from the automatic stay. Here, the County of Sacramento and the Trustee filed a joint Motion requesting that the automatic stay be lifted so that the County may currently proceed with its efforts to acquire the necessary project easements on the Property.

While the Trustee does join in the Motion and has filed a non-opposition, the Trustee is not the fiduciary who has the authority to consent to the lift of the automatic stay as to the Property and Debtors. The Debtors, as Chapter 13 Debtors, remain the fiduciaries and the only parties who have the authority to consent to the lifting of the automatic stay.

JANUARY 13, 2015 HEARING

The Debtors appeared at the hearing and advised the court that they had not discussed this motion with their attorney. There is only approximately six months left in this case.

Counsel for Sacramento County confirmed at the hearing that the County had been attempting to communicate with the Debtors and Debtors' attorney. This included transmitting an offer, for which no acceptance or counter-offer had been received. The Debtors did not dispute that such communications had occurred.

Because of the modest amount at issue, the court continued the hearing to January 27, 2015 at 1:30 p.m. to allow the County, Debtors, and Debtors' Counsel to talk. Avoiding the cost and expense of state court litigation, if a reasonable amount can be agreed to by the parties, should allow the Debtors to maximize their net recovery. Forcing the County to commence the state court action due to inaction by the Debtors would result in reducing, possibly

significantly, the net recover for the Debtors.

The court additionally noted that if the Parties determine that additional time is required, they may jointly request that the court continue the hearing to a future date. Such request may be filed in this Contested Matter (a motion to continue will not be required for this motion) and the court will continue the hearing to a reasonably requested date.

JANUARY 27, 2015 HEARING

To date, no supplemental pleadings have been filed in connection with this Motion.

At the hearing, ----

The court shall issue an 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 County of Sacramento and David Cusick ("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 xxxxx