

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

January 29, 2019 at 1:30 p.m.

-
1. [18-27720-E-13](#) DAVID RYNDA MOTION FOR RELIEF FROM
[ASM-1](#) Tracy Wood AUTOMATIC STAY, MOTION TO
COMPEL ABANDONMENT AND/OR
MOTION FOR ADEQUATE
PROTECTION
1-15-19 [[25](#)]

ELINA MACHADO VS.

No Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient **Not** Notice Provided. The Proof of Service states that the Motion and supporting pleadings were only served on Debtor's Attorney on January 15, 2019. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 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 offer 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. At the hearing, -----.

The Motion for Relief from the Automatic Stay is ~~XXXXXXXXXX~~.

This Motion brings to the court a full plate of bankruptcy and non-bankruptcy issues. As discussed below, while Debtor seeks relief to stop the foreclosure sale and the enforcement of several state court orders and judgments (not all of which have been provided to this court) concerning the ownership of real property commonly known as 9436 Windrunner Lane, Elk Grove, California.

It appears that there has been extensive state court litigation to this point in time, for which various orders and judgments are on appeal. The Third Amended Plan in this case appears to provide a vehicle to cure the default on the property and forestall the foreclosure while the parties litigate their dispute. However, it appears that there is a decision, for which Debtor has filed an appeal *pro se*, determining that Debtor has no interest in the Property and that Movant is to sell the Property.

REVIEW OF MOTION

Elina Machado (“Movant”) seeks relief from the automatic stay with respect to David J Rynda’s (“Debtor”) real property commonly known as 9436 Windrunner Lane, Elk Grove, California (“Property”). Movant has provided the Declaration of Armando S. Mendez, Movant’s counsel, to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Mendez Declaration introduces the following evidence:

1. The Property is scheduled for a foreclosure sale February 15, 2019. Dckt. 27 at ¶¶ 1-2.
2. In state court litigation between Movant and her husband Gabriel Machado, *In Re The Marriage Of Machado*, Superior Court for the County of Sacramento, Case No. 17FL02730 (the “State Court Litigation”), Debtor was ordered to vacate the Property within 30 days of October 16, 2018. *Id.* at ¶¶ 3-4.
3. Debtor has appealed the State Court Litigation.

Id. at ¶ 5.

The Mendez Declaration also authenticates three exhibits: (1) Exhibit A, a Notice of Trustee’s Sale; (2) Exhibit B, a copy of the Findings and Order After Hearing in the State Court Litigation; and (3) Exhibit C, a copy of the Notice of Filing/Notice of Appeal in the State Court Litigation. Dckt. 27.

Grounds Stated in Motion With Particularity

The Motion states with particularity the following grounds:

1. Debtor does not have equity in the Property because the State Court Litigation has already determined that he has no ownership interest. Dckt. 25 at p. 5:1-2, 6:9.5-13.
2. Debtor has appealed the State Court Litigation. *Id.* at 5:3-4.
3. Resolution of the pending State Court Litigation will determine Debtor’s

interest in the Property; this Chapter 13 case has no connection with the ownership disputes. *Id.* at 5:6.5-12.

4. The State Court Litigation determined Debtor's interest in the Property is merely possessory. Debtor is not obligated on the mortgage secured by the Property. *Id.* at 5:17-20.5
5. Movant is at risk of losing her the Property to foreclosure if the Automatic Stay is not lifted. *Id.* at 5:20.5-21.5. Movant's credit is being harmed by Debtor's failure to pay the mortgage which only Movant is obligated to pay. *Id.* at 5:21.5-6:2.
6. Debtor will be unable to demonstrate that the Property is necessary for an effective reorganization as the property is being used solely as a residence and Debtor is not attempting a reorganization. Debtor's bankruptcy petition seeks to re-litigate the issue of ownership in bankruptcy court not reorganize his debts. *Id.* at 6:20.5-7:4.
7. Debtor's only hope in establishing an ownership claim in The Real Property is successfully prosecuting the pending appeal. This can only be accomplished if the Court's lifts the automatic stay to allow the Parties to continue with the State court action. If Debtor is unsuccessful, Property will be of no consequence to the Bankruptcy Estate. *Id.* at 7:7.5-12.
8. If relief from the automatic stay is granted, the court should waive the 14-day stay of Bankruptcy Rule 4001(a)(3) to allow Movant to prevent foreclosure of the Property. *Id.* at 7:20.5-22.5.

In the Motion's request for relief, Movant requests an order "[g]ranting relief from the automatic stay to allow Movant to exercise all available rights and remedies with respect to the Property pursuant to the State court order and applicable nonbankruptcy law; including but not limited to proceeding with eviction proceedings, selling the Property and **allowing the State court to determine Debtor's monetary interest in the proceeds, if any.** Dckt. 25 at p. 8, ¶ a(emphasis added).

DISCUSSION

INSUFFICIENT NOTICE

Federal Rules of Bankruptcy Procedure 7004(b)(9) requires service on the Debtor and his attorney; service on the Debtor's attorney alone is insufficient to require the Debtor to answer and defend. *In re Cossio*, 163 B.R. 150, 154 (B.A.P. 9th Cir. 1994), *aff'd*, 56 F.3d 70 (9th Cir. 1995); *In re Bloomingdale*, 137 B.R. 351, 354 (Bankr.C.D.Cal.1991); *In re Cole*, 142 B.R. 140, 143 (Bankr. N.D. Tex. 1992); *In re Love*, 242 B.R. 169, 171 (E.D. Tenn. 1999), *aff'd*, 3 F. App'x 497 (6th Cir. 2001); *In re Hall*, 222 B.R. 275, 277 (Bankr. E.D. Va. 1998).

Service here was made solely on Debtor's counsel, Tracy L. Wood via email. Dckt. 29.

At the hearing, ~~XXXXXXXXXXXX~~.

FAILURE TO COMPLY WITH LOCAL RULES

Multiple Motions Combined into Single Motion

The court notes that this Motion attempts to join multiple claims for relief in one motion. The first being stay relief pursuant to 11 U.S.C. § 362. The second motion is for abandonment of Property of the Estate as provided in 11 U.S.C. § 554.

Though parties may join multiple claims in an adversary proceeding, with Federal Rule of Civil Procedure 18 being incorporated into Federal Rule of Bankruptcy Procedure 7018, Rule 18 has not been incorporated into bankruptcy contested matters (bankruptcy case motion, objection, application process). FED. R. BANKR. P. 9014(b). Movant has improperly joined the two motions here.

Pleadings Filed as Single Document

Movant filed the Mendez Declaration and Exhibits in this matter as one document. That is not the practice under the Local Bankruptcy Rules in this District. “Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, exhibits, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents.” LOCAL BANKR. R. 9004-2(c)(1). Counsel is reminded of the court’s expectation that documents filed with this court comply as required by Local Bankruptcy Rule 9004-1(a). Failure to comply is cause to deny the motion. LOCAL BANKR. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

MOTION FOR RELIEF

All Movant’s grounds share a common basis: that Debtor was determined in the State Court Litigation to have no interest in the Property.

From the evidence provided to the court, and contrary to the assertions of Movant, Debtor has some to be determined interest in the Property. Among the findings in the State Court Litigation are the following:

1. There was no valid contract for a sale of the real property to Mr. Rynda (joinder) because there is nothing in writing and there was inadequate consideration.
2. Mr. Rynda is ordered to vacate the property within 30 days.

3. That **Mr. Rynda made payments to Elina and Gabriel Machado in 2014 and made payments on the purchase mortgage to the bank. His interest is to be determined at a later time by the court.**
4. Wife may prepare the property for sale and list the property. The proceeds of the sale shall be placed in attorney, Armando Mendez's trust fund for later distribution.

Exhibit B, Dckt. 27(emphasis added).

What was determined during the State Court litigation was that there was no valid contract and no adequate consideration paid by Debtor for the Property. The court specifically reserved the issue of what interest Debtor has in the Property.

Review Third Amended Plan

The Debtor now has filed a Third Amended Plan filed on January 24, 2019. Dckt. 37. Under the terms of the Plan Debtor proposes:

- A. Monthly Plan Payments.....\$2,115.08
- B. Term of Plan.....36 Months
- C. Administrative Expenses
 1. Debtor Counsel Fees.....(\$ 111.11) per Month
 2. Chapter 13 Trustee Fees.....(\$ 169.21) per Month
- D. Class 1 Claims
 1. Windrunner Property Secured Claim
 - a. Current Monthly Payment.....(\$1,280.42) per Month
 - b. (\$14,500) Arrearage Payment.....(\$ 483.33) per Month
- E. Class 2 Claims
 1. Lakeside HOA
 - a. (\$3,618.44) Arrearage Payment.....(\$ 120.61) per Month
- F. Class 3 Surrender Claims.....None
- G. Class 4 Direct Payments

1. Erika Leyva.....(\$100)
2. Erika Leyva.....(\$100)
3. John Rynda.....(\$100)
4. U.S. HUD.....(\$- 0-)

H. Class 5 Priority.....None

I. Class 7 General Unsecured Claims

1. (\$98,358.09) Claims.....0.00% Dividend

No Motion to Confirm the Third Amended Plan has been filed.

Missing Plan Term

The Third Amended Plan is silent on the pending litigation over the ownership of the Windrunner Property. As shown from the Motion, there is pending litigation over ownership. This is consistent with the statements under penalty of perjury in Debtor’s Amended Statement of Financial Affairs, which include:

David J Rynda v Elinia Machado and Gabriel Machado	Superior Court, Sacramento County On Appeal
---	---

Quiet Title for debtor's home located at 9436 Windrunner Ln., Elk Grove, CA. The Machodos sold debtor their home in 2014 and executed, delivered a valid, notarized quitclaim to, debtor, acceptance was notarized. Elina Machado now seeks to kick debtor out of his home via baseless Unlawful Detainer, shifted to family law court when Machado realized UD court would rule in favor of debtor, family court rubber stamped kick out order, debtor appeals.

Amended Statement of Financial Affairs Question 9; Dckt. 36.

Marriage of Elina Machado and Gabriel Machado 17FL02730	Sup. Court California, Sacramento County On Appeal
---	--

Machados sold debtor home in 2014, Elina Machado attempted to evict debtor via baseless Unlawful Detainer, while lacking standing as a landlord, Machado's attorney asked for continuance when UD judge stated he would rule for debtor, then filed motion to consolicate, UD case with Machado's divorce case, in family law court that lacks jurisdiction over debtor and his home. Family court ignored lack of jurisdiction, refused to look at quitlciam presented by debtor, ordered debtor vacate, on appeal.

Id.

The Third Amended Plan assumes that Debtor owns the Windrunner Property, Debtor will make the mortgage payments on the Windrunner Property, and Debtor makes no provision to litigate his asserted rights and interests. While the bankruptcy case appears to be holding the foreclosure at bay, it does not address the substantive dispute.

Relief From Stay as to the State Court Litigation

The court may grant relief from stay for cause when it is necessary to allow litigation in a nonbankruptcy court. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.). The moving party bears the burden of establishing a prima facie case that relief from the automatic stay is warranted, however. *LaPierre v. Advanced Med. Spa Inc. (In re Advanced Med. Spa Inc.)*, No. EC-16-1087, 2016 Bankr. LEXIS 2205, at *8–9 (B.A.P. 9th Cir. May 23, 2016). To determine “whether cause exists to allow litigation to proceed in another forum, ‘the bankruptcy court must balance the potential hardship that will be incurred by the party seeking relief if the stay is not lifted against the potential prejudice to the debtor and the bankruptcy estate.’” *Id.* at *9 (quoting *Green v. Brotman Med. Ctr., Inc. (In re Brotman Med. Ctr., Inc.)*, No. CC-08-1056-DKMo, 2008 Bankr. LEXIS 4692, at *6 (B.A.P. 9th Cir. Aug. 15, 2008)) (citing *In re Aleris Int’l, Inc.*, 456 B.R. 35, 47 (Bankr. D. Del. 2011)). The basis for such relief under 11 U.S.C. § 362(d)(1) when there is pending litigation in another forum is predicated on factors of judicial economy, including whether the suit involves multiple parties or is ready for trial. See *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Packerland Packing Co. v. Griffith Brokerage Co. (In re Kemble)*, 776 F.2d 802 (9th Cir. 1985); *Santa Clara Cty. Fair Ass’n v. Sanders (In re Santa Clara Cty. Fair Ass’n)*, 180 B.R. 564 (B.A.P. 9th Cir. 1995); *Truebro, Inc. v. Plumberex Specialty Prods., Inc. (In re Plumberex Specialty Prods., Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

Here, Movant is primarily seeking relief as to the Property. However, in its Motion Movant requests an order “Granting relief from automatic stay to allow . . . allowing the State court to determine Debtor’s monetary interest in the proceeds, if any.” Dckt. 25 at p. 8, ¶ a.

While hidden in a request for authorization to sell the Property, there is also here a request for relief as to the State Court Litigation which would allow the determination of Debtor’s interest in the Property. As discussed, *infra*, without the court knowing what interest the Debtor has, relief cannot be granted as to the Property pursuant to 11 U.S.C. §§ 362(d)(1) or (d)(2).

The court finds that the nature of the State Court Litigation warrants relief from stay for cause. The issues appear to have been substantially litigated, with the remaining issue of Debtor’s interest in the Property reserved for later determination. Therefore, judicial economy dictates that the state court ruling be allowed to continue after the considerable time and resources put into the matter already.

The court shall issue an order modifying the automatic stay as it applies to Debtor to allow Movant to continue the State Court Litigation. The automatic stay is not modified with respect to enforcement of the judgment against Debtor, David Cusick (“the Chapter 13 Trustee”), or property of the bankruptcy estate. Any judgment obtained shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

**Relief for Cause
as to the Property**

Whether there is cause under 11 U.S.C. § 362(d)(1) to grant relief from the automatic stay is a matter within the discretion of a bankruptcy court and is decided on a case-by-case basis. *See J E Livestock, Inc. v. Wells Fargo Bank, N.A. (In re J E Livestock, Inc.)*, 375 B.R. 892 (B.A.P. 10th Cir. 2007) (quoting *In re Busch*, 294 B.R. 137, 140 (B.A.P. 10th Cir. 2003)) (explaining that granting relief is determined on a case-by-case basis because “cause” is not further defined in the Bankruptcy Code); *In re Silverling*, 179 B.R. 909 (Bankr. E.D. Cal. 1995), *aff’d sub nom. Silverling v. United States (In re Silverling)*, No. CIV. S-95-470 WBS, 1996 U.S. Dist. LEXIS 4332 (E.D. Cal. 1996). While granting relief for cause includes a lack of adequate protection, there are other grounds. *See In re J E Livestock, Inc.*, 375 B.R. at 897 (quoting *In re Busch*, 294 B.R. at 140). 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. *W. Equities, Inc. v. Harlan (In re Harlan)*, 783 F.2d 839 (9th Cir. 1986); *Ellis v. Parr (In re Ellis)*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Movant argues cause exists because Debtor has no interest in the Property and is not obligated on the mortgage. Movant argues further that failure to grant relief would risk of foreclosure, and that Movant’s credit is being impacted every day Debtor fails to pay the mortgage (which only Movant is obligated on).

However, the ownership of the Property is still disputed, with Debtor’s interest to be determined. Furthermore, there appears to be little risk of a foreclosure while the automatic stay remains in place and Debtor is making the monthly mortgage payments and curing the arrearage.

On the evidence presented, ~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~.

**Relief Based on Equity
as to the Property**

A debtor has no equity in property when the liens against the property exceed the property’s value. *Stewart v. Gurley*, 745 F.2d 1194, 1195 (9th Cir. 1984). Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity in property, it is the burden of the debtor or trustee to establish that the collateral at issue is necessary to an effective rehabilitation. 11 U.S.C. § 362(g)(2); *United Sav. Ass’n of Texas v. Timbers of Inwood Forest Assocs. Ltd.*, 484 U.S. 365, 375–76 (1988); 3 COLLIER ON BANKRUPTCY ¶ 362.07[4][b] (Alan N. Resnick & Henry J. Sommer eds., 16th ed.) (stating that Chapter 13 debtors are rehabilitated, not reorganized).

As stated, *supra*, the Debtor’s interest in the Property is still to be determined. It appears Debtor paid some sums for the Property in an informal deal, and also made some mortgage payments. Debtor’s interest, if any, may reflect those sums paid.

Furthermore, Movant concedes Debtor is not obligated on any debt on the Property. Several liens appear on Debtor’s Schedule D. However, since Debtor claims to own the property, the debt secured by the Property is a secured claim in this case. 11 U.S.C. § 101(5) and (10), § 506(a). Debtor acknowledges there being such a secured claim, listing the Claim on Schedule D. Dckt. 12 at 13.

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~

Abandonment of Property of the Estate as to the Property

After notice and hearing, the court may order a trustee to abandon property of the Estate that is burdensome to the Estate or of inconsequential value and benefit to the Estate. 11 U.S.C. § 554(a). Property in which the Estate has no equity is of inconsequential value and benefit. *Cf. Vu v. Kendall (In re Vu)*, 245 B.R. 644 (B.A.P. 9th Cir. 2000). In a Chapter 13 case, Debtor has the rights and powers of a trustee. 11 U.S.C. § 1303.

Colliers is an authority discussing the effect of abandonment pursuant to 11 U.S.C. § 554:

Upon abandonment under section 554, the trustee is divested of control of the property because it is no longer part of the estate. Thus, abandonment constitutes a divestiture of all of the estate's interests in the property. **Property abandoned under section 554 reverts to the debtor, and the debtor's rights to the property are treated as if no bankruptcy petition was filed.** Although section 554 does not specify to whom property is abandoned, **property may be abandoned by the trustee to any party with a possessory interest in it.** Normally, the debtor is the party with a possessory interest. However, in some cases, it may be some other party, such as a secured creditor who has possession of the property when the trustee abandons the estate's interest. In any event, property abandoned under subsection (c) (scheduled but not administered property) is deemed abandoned to the debtor.

5 COLLIER ON BANKRUPTCY P 554.02 [3] (16th 2018)(emphasis added).

Movant here requests an order “that the Debtor and the Bankruptcy Trustee abandon The Real Property under 11USC 554.” Dckt. 25 at p. 8, ¶ e. Movant argues this abandonment order is warranted because Debtor has no interest in the property and is not obligated on the mortgage.

From the plain language of the request for relief, it seems Movant misunderstands 11 U.S.C. § 554. That provision is not for the eviction of debtors and trustees. Rather, 11 U.S.C. § 554 permits the trustee to abandon Property of the Estate to any party with a possessory interest—generally the debtor. In effect, Movant here is requesting a federal ruling that Debtor is entitled to possession of the Property.

Notwithstanding Movant's arguments, the court cannot grant the relief requested. The evidence shows that Debtor may have some interest in the Property. Movant has not shown what that interest is, whether of inconsequential value and benefit to the Estate or not.

Request for Attorneys' Fees

In the Motion, almost as if an afterthought, Movant requests that it be allowed attorneys' fees. The Motion does not allege any contractual or statutory grounds for such fees. No dollar amount is requested for such fees. No evidence is provided of Movant having incurred any attorneys' fees or having any obligation to pay attorneys' fees. Based on the pleadings, the court would either: (1) have to award attorneys' fees based on grounds made out of whole cloth, or (2) research all of the documents and California statutes and draft for Movant grounds for attorneys' fees, and then make up a number for the amount of such fees out of whole cloth. The court is not inclined to do either.

If grounds had been shown and evidence provided, the court could have easily made such determination and granted fees (assuming there is a contractual or statutory basis). If an amount of such fees had been included in the motion and prayer, the court and all parties in interest would fairly have been put on notice of the upper limit of such amounts, and the court could have taken the non-opposition and non-response as defaults.

While the court could consider the award of attorneys' fees as a post-judgment motion (Federal Rule of Civil Procedure 52(b) and Federal Rule of Bankruptcy Procedure 7052, 9014), the otherwise unnecessary cost and expense of Movant having to file a motion for an award of attorneys' fees for the unopposed Motion in which it made reference to wanting attorneys' fees would well exceed any attorneys' fees that the court would award for a motion such as this. Movant's strategic decision not to provide the court with grounds for and evidence of attorneys' fees has rendered it useless to proceed with a post-judgment motion that would cost more in unawarded (as in unnecessary and unreasonable fees) attorneys' fees.

Request for Waiver of Fourteen-Day Stay of Enforcement as to the Property

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests that the court grant relief from the Rule as adopted by the United States Supreme Court "to preserve and protect The Real Property."

Movant asserts that if the relief is granted so that the State Court proceedings may be prosecuted to determine the respective rights and interests, such proceedings should be prosecuted immediately.

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

Request for Prospective Injunctive Relief

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

[A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.

Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the "silly" request for unnecessary relief may well be ultimately deemed an admission by Elina Machado and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Elina Machado and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

No other or additional relief is granted by the court.

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 Elina Machado (“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) ~~are modified as applicable to David J Rynda (“Debtor”) to allow Elina Machado, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors to proceed with litigation *In Re The Marriage Of Machado*, in Superior Court for the County of Sacramento, Case No. 17FL02730 (the “State Court Litigation”)~~.

IT IS FURTHER ORDERED that the automatic stay is not modified with respect to enforcement of any judgment against Debtor, David Cusick (“the Chapter 13 Trustee”), or property of the bankruptcy estate. Any judgment obtained by Movant shall be submitted to this court for the proper treatment of any claims arising under the Bankruptcy Code.

No other or additional relief is granted.

2. [18-27955-E-13](#) ANGELA WATKINS
[CJC-6](#) Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-3-19 [11]

BENEDICT CANYON EQUITIES,
INC. VS.

CASE DISMISSED: 01/14/2019

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on January 3, 2019. ^{FN.1.} By the court's calculation, 26 days' notice was provided. 14 days' notice is required.

FN.1. Debtor filed its Original Notice on January 3, 2019 and provided notice the same day. Dkts. 12, 16. The Original Notice sought to set the hearing on the Motion for January 31, 2019 at 11:00a.m. No such hearing date/time existing, the court issued a Memo To File Re: Calendar Correction informing Debtor the Motion would not be calendared until an Amended Notice corrected the defect. Dckt. 17.

Pursuant to the written instruction of the court, Debtor filed an Amended Notice seeking to set the hearing for January 29, 2019. Dckt. 18.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 13 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 offer 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. At the hearing, -----.

The Motion for Relief from the Automatic Stay is denied without prejudice as moot, the automatic stay having been terminated by dismissal of this bankruptcy case.

Benedict Canyon Equities, Inc. (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 6192 Riverside Blvd., #C-46, Sacramento, California (“Property”). The moving party has provided the Declaration of Gretchen Jess to introduce evidence as a basis for Movant’s contention that Angela Marie Watkins (“Debtor”) does not have an ownership interest in or a right to maintain possession of the Property, and merely leases the Property. Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance.

Based upon the evidence submitted, Debtor having no interest in the Property, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2).

The instant case was dismissed on January 14, 2019, for failure to timely file documents. Dckt. 23.

The applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). That section provides:

In relevant part, 11 U.S.C. § 362(c) provides:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate**;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) *the time the case is dismissed*; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—

(1) reinstates—

(A) any proceeding or custodianship superseded under section

543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) reverts the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of January 14, 2019, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to Debtor and the Property on January 14, 2019.

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 Benedict Canyon Equities, Inc. (“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 Motion is denied without prejudice as moot, this bankruptcy case having been dismissed on January 14, 2019 (prior to the hearing on this Motion). The court, by this Order, confirms that the automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to Angela Marie Watkins (“Debtor”) pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 6192 Riverside Blvd., #C-46, Sacramento, California, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the January 14, 2019, dismissal of this bankruptcy case.

3.

18-26585-E-13
RHS-1

JULIAN PEREZ
Pro Se

ORDER TO SHOW CAUSE
12-6-18 [40]

Appearance of Julain Perez and Hong Vo at Order to Show Cause Hearing is Mandatory–NO TELEPHONIC APPEARANCE IS PERMITTED

No Tentative Ruling: 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. If the court’s tentative ruling becomes its final ruling, then the court will make the following findings of fact and conclusions of law:

The Order to Show Cause was served by the Clerk of the Court on Debtor (*Pro se*), Hong and Qui Vo, Patric Kelley, Ana Alvarez, Chapter 13 Trustee, and Office of the U.S. Trustee, and other parties in interest as stated on the Certificate of Service on December 9, 2018. The court computes that 51 days’ notice has been provided.

The Order to Show Cause is ~~XXXXXXXXXX~~.

On October 19, 2018, Julian Perez commenced this Chapter 13 case, in pro se. On his Bankruptcy Petition Mr. Perez states that he has also used the name “AKA TKC TRUST” in the eight years preceding the commencement of this case. Petition, p. 1, Dckt. 1. Debtor states that his residence is 4412 Pinckney Way, Rancho Cordova, California. Id., p. 2. Debtor states that he had filed one prior bankruptcy case in the prior eight years, Case No. 18-24429 in the Eastern District of California.

Debtor’s Prior Chapter 13 Case

Debtor commenced Chapter 13 Case No. 18-24429 on July 16, 2018. That case was dismissed on August 17, 2018. 18-24429; Order, Dckt. 22. On the Petition, Debtor lists his residence as 4412 Pinckney Way, Rancho Cordova, CA. On the Verification of Master Mailing List of Creditors, Debtor listed only two possible creditors:

QUALITY LOAN SERVICE CORP
411 IVY ST
SAN DIEGO, CA 92101

MIDFIRST PLAZA
501 NW GRAND BLVD
OKLAHOMA CITY, OK 73118

Id., Dckt. 9.

The case was dismissed, notwithstanding the court having granted Debtor an extension of

time to file a Chapter 13 Plan, Schedules, and Statement of Financial Affairs. *Id.*; Notice of Incomplete Filing, Dckt. 3, and Order Extending Time, Dckt. 14. Debtor filed his Motion to Extend Time to File Documents using the Central District of California motion form (*Id.*, Dckt. 12), to which he attaches an application for the Extension prepared on lined pleading paper. In the attached Application, which is incorporated into the form motion, Debtor expressly represents to the court and promises:

3. JULIAN PEREZ is an individual and resident of Rancho Cordova, California. Facing foreclosure from property in which he resides, JULIAN PEREZ filed this bankruptcy petition on an emergency basis.

...

6. JULIAN PEREZ is in the process of compiling and organizing the information required to complete the Schedules and Chapter 13 Plan, but finalization of these documents will extend beyond the fifteen day period ending Aug 30, 2018. Due to the press of business and matters incident to the commencement of this case, it has been impracticable for JULIAN PEREZ to assemble all of the information necessary to complete the Schedules and the Chapter 13, and the fifteen (15) day period does not provide sufficient time to accurately complete the Schedules.

7. JULIAN PEREZ believes the extension herein requested will be sufficient time within which to compile all necessary information and accurately complete the Schedules. Good cause exists sufficient to grant this Application. *Id.*; Motion, Dckt. 12, pp. 5-6. The last two pages of the Motion for Extension are a proof of service.

Id.; Motion, Dckt. 12, pp. 5-6.

The last two pages of the Motion for Extension are a proof of service. The proof of service is not signed by the pro se Debtor, but by a “Jay Wilson” (with what is obviously a digital signature stamp). *Id.*, p. 7. On the list of persons served, there is obviously a cut and past of the Debtor’s name into the name of the case at the top of the page. *Id.*, p. 8. Then, the Debtor purports to have served himself with his own Motion. This is a curious act.

Mr. Wilson lists his address as “8291 Main St Apt # 31, CA.” *Id.*, p. 7. Conspicuously absent is the town in which Mr. Wilson’s apartment exists. In conducting a simple internet search the court was unable to identify any such Jay Wilson tied to a 8291 Main St Apt #31 address or a general 8291 Main St address.

Debtor then failed to fulfill his promises and did not file a Plan, Schedules, or Statement of Financial Affairs.

Current Bankruptcy Case Pleadings and Action by Debtor

When Debtor filed the current case he filed a petition, but failed to file a Plan, Form 122C-1 Statement of Monthly Income, Schedules, Statement of Financial Affairs, and Summary of Assets and Liabilities. Notice of Incomplete Filing, Dckt. 3. Debtor filed an Application for Order Extending Time

to file the missing documents. Dckt. 11. Debtor, in pro se, again used the Central District of California form motion and attached to it his uniquely created Application on pleading paper. This appears to be identical to the Application in the prior case, with the exception of changing dates for the requested extension. Debtor's representations and promises in the Application for Extension include:

3. Julian Perez is an individual and resident of Mather, California. Facing foreclosure from property in which she ^{FN.1.} resides, Julian Perez filed this bankruptcy petition on an emergency basis.

...

6. Julian Perez is in the process of compiling and organizing the information required to complete the Schedules and Chapter 13 Plan, but finalization of these documents will extend beyond the fifteen day period ending Dec 1, 2018. Due to the press of business and matters incident to the commencement of this case, it has been impracticable for Julian Perez to assemble all of the information necessary to complete the Schedules and the Chapter 13, and the fifteen (15) day period does not provide sufficient time to accurately complete the Schedules.

7. Julian Perez believes the extension herein requested will be sufficient time within which to compile all necessary information and accurately complete the Schedules. Good cause exists sufficient to grant this Application.

Application, pp. 5-6.

FN.1. The court notes a gender confusion point, with Debtor now using the female gender.

A Certificate of Service is attached to the Application. *Id.*, pp. 8-9. On the Certificate, Debtor again lists on the following two potential creditors:

QUALITY LOAN SERVICE CORP
411 IVY ST
SAN DIEGO, CA 92101

MIDFIRST PLAZA
501 NW GRAND BLVD.
OKLAHOMA CITY, OK 73118

Id., p. 9. This Certificate of Service is executed by Jose Lavarez, who lists his address as "7388 Main st #100, Mather, CA 95655." *Id.*, p. 8.

A Google Maps search states that there is no "Main Street" address in Mather, California.
^{FN.2.} The same is true for a Yahoo search for "Main Street, Mather, California."

It appears that the person or persons who have executed the Certificates of Service may be fictional “persons” or are deliberately misstating their identifies or addresses.

As to the substance of the Motion, in the prior Chapter 13 case Debtor stated that he would have the documents completed by early September 2018. Now, in the present case he states that he needs through mid-December 2018. Though 133 days have passed since the first bankruptcy case has been filed, Debtor has failed to file any Chapter 13 Plan, any one of the Schedules, and no Statement of Financial Affairs. In both cases, other than filing the case and a motion to extend deadline to file documents, the Debtor has been missing in action.

Motion for Relief From Stay

On November 6, 2018, Mary Jenkins, Raymond Cordeiro, and Terese Cordeiro, as Trustees of the Cordeiro Trust, filed a Motion for Relief From the Automatic Stay. Dckt. 17. Debtor chose not to or failed to file any opposition or response to the Motion for Relief From the Automatic Stay. The Motion makes some very concerning allegations concerning the conduct of Debtor and third parties.

The court issued its ruling on the Motion for Relief as stated in the Civil Minutes for the November 20, 2018 hearing. Those findings and conclusions include that Debtor’s bankruptcy case is part of a fraudulent scheme for which relief pursuant to 11 U.S.C. § 362(c)(4)(d) is proper.

The fraudulent scheme relates to real property commonly known as 311 Bromley Cross Drive, San Jose, California ("Property") which is stated to be owned by Hong Xuan Vo (the "True Owner") and her husband Qui Vo. It is alleged that these two owners have been debtors in numerous other bankruptcies (See Exhibits J, K, and L, Dckt. 19) and have caused three additional bankruptcies (including this one) to be filed with three different debtors, to hinder the Cordeiro Trustees from foreclosing on the Property.

The scheme has included recording junior deeds of trust in the names of third parties and then having the third parties file bankruptcy, with the bankruptcy filings of the purported “third party creditor” preventing the Cordeiro Trustees from foreclosing. Exhibit C is identified as a facsimile sent to PLM Loan Management Services (conducting the foreclosure sale for the Cordeiro Trustees) by Hong Vo, one of the two owners of the 311 Bromley Cross Drive property. In it, Hong Vo states:

I have filed a Short Form Deed of Trust which the trust is In a Chapter 13 Bankruptcy fled in the Eastern District. The Trust Name is TKC Trust case No: 18-26585 assigned to Judge Ronald H Sargis. Please Cancel My Auction.

Exhibit C, Dckt. 19 at 18. This contention by Hong Vo is a bit curious. There can be no “trust” that files Chapter 13. 11 U.S.C. § 109(e), limiting Chapter 13 to “individuals.” It is unclear how a “short form deed of trust” is a trust in a Chapter 13 case.

Attached to the facsimile is a copy of the Short Form Deed of Trust. The beneficiary of the

deed of trust is stated to be “TKC Trust, Hong Vo, Co-Trustee.” *Id.*, p. 19.

**ORDER TO SHOW CAUSE
AND ORDER TO APPEAR**

The conduct of Julian Perez, Debtor in the current and prior bankruptcy case raises significant issues as to the good faith, accuracy of information provided under penalty of perjury, and conduct of Mr. Perez in the prior and current bankruptcy cases. Additionally, the purported conduct of Hong Vo in apparently highjacking the Julian Perez bankruptcy case to forestall the foreclosure of the San Jose property appears to be a further abuse of the federal judicial system and the Bankruptcy Code.

Therefore, the court issued an Order To Show Cause on December 6, 2018. Order, Dckt. 40. The court summarizes some of Order’s primary requirements (for the full Order, *See* Dckt. 40) as follows:

1. Julian Perez, the Chapter 13 Debtor in this case shall appear in person at 1:30 p.m. on January 29, 2019, NO TELEPHONIC APPEARANCE PERMITTED.
2. Hong Vo, who purports to have filed or have an interest in this case shall appear in person at 1:30 p.m. on January 29, 2019, NO TELEPHONIC APPEARANCE PERMITTED.
3. Julian Perez shall Show Cause why the court does not impose corrective sanctions and refer this matter to the Chief Judge of the United States District Court for the exercise of that court’s Article III punitive sanction power for Debtor’s conduct in the current and his prior Chapter 13 cases, including:

I. Filing bankruptcy case 18-24429, and:

- a. Failing to take any action to prosecute the case;
- b. Filing the request for extension of time to file Schedules, Statement of Financial Affairs, obtaining such relief, and then failing to file any of the missing documents;
- c. Using a person with an incomplete or unidentifiable address for service of process; and
- d. Not listing the Cordeiro Trustees as creditors to be given notice on the Master Mailing List.

II. Filing the current bankruptcy case, 18-26585, and:

- a. Failing to take any action to prosecute the case;
- b. Filing the request for extension of time to file Schedules, Statement of Financial Affairs, obtaining such relief, and then failing to file any of the missing documents;

- c. Using a person with an incomplete or unidentifiable address for service of process;
 - d. Listing “TKC Trust” as a name that Debtor used in the eight years prior to the commencement of the bankruptcy case (which was not listed on the Petition in the prior Chapter 13 case); and
 - e. Not listing the Cordeiro Trustees as creditors to be given notice on the Master Mailing List.
- 4. Julian Perez shall file and serve on the Chapter 13 Trustee and U.S. Trustee written responses on or before January 8, 2019.
- 5. Julian Perez shall present properly authenticated evidence conforming with the Federal Rules of Evidence of the following:
 - a. Documentation of who the persons are that purport to have served documents for the Debtor, their business addresses, and what Debtor paid them for the services provided.
 - b. Copies of all documents by which Debtor did business using the AKA “TKC Trust.”
 - c. Documentation (both testimony and documentary evidence) of “the press of business and matters incident to the commencement of this case, it has been impracticable for Julian Perez to assemble all of the information necessary to complete the Schedules and the Chapter 13” that has precluded Debtor from filing these basic documents since July 16, 2018, when he filed the prior Chapter 13 case through the November 26, 2018 issuance of this Order.
 - d. Documentation of any interests in the property commonly known as 311 Bromley Cross Drive, San Jose, California, including ownership, present or future interests, liens, encumbrances, or other interests.
 - e. Present in court at the hearing originals of all of the copies of documents which were filed in response to this Order to Show Cause.
- 6. Hong Vo shall file and serve on the Chapter 13 Trustee and U.S. Trustee written responses on or before January 8, 2019.
- 7. Hong Vo shall present properly authenticated evidence conforming with the Federal Rules of Evidence of the following:
 - a. Copies of the documents establishing the TKC Trust, appointment of Hong Vo as trustee of said trust, all deeds and deed of trust by which TKC Trust is an owner of beneficiary under a deed of trust or mortgage relating to real property,

security agreements, and the notes for the obligations secured by the deeds of trust, mortgages, or security agreement.

b. The meaning of the statement in Hong Vo's Fax to PLM Loan Management Services (with a fax date of October 24, 2018) sent to "Please Cancel My Auction" of:

I have filed a Short Form Deed of Trust which the trust is In a Chapter 13 Bankruptcy filed in the Eastern District. The Trust Name is TKC Trust case No: 18-26585 assigned to Judge Ronald H Sargis. Please Cancel My Auction. Dckt. 19, p. 18. The explanation shall include how the TKC Trust, for which Hong Vo is stated to be a co-trustee is a debtor in the Julian Perez Chapter 13 Case, No. 18-26585, filed in the Eastern District of California.

c. Copies of the bank records and other documentation of and by which the TKC Trust advanced the \$63,000.00 or any portion thereof to Hong Vo as the Trustor and borrower from TKC Trust (Hong Vo as co-trustee) set forth in the Short Form Deed of Trust (October 24, 2018 recording date, Santa Clara County Recorder No. 24049115) and Note which is purported to be secured by the Deed of Trust.

d. Copies of the three most recent federal and state tax returns filed for the TKC Trust; and

e. Present in court at the hearing originals of all of the copies of documents which were filed in response to this Order to Show Cause.

8. Any responsive pleadings to those filed by Julian Perez or Hong Vo shall be filed and served on or before January 22, 2019.
9. The failure of any of the persons to appear in court as ordered above shall result in the court issuing an order for the U.S. Marshal to take the person or persons failing to appear into custody and present them in open court at the continued hearing date. The U.S. Marshal will have to take the person or persons into custody sufficiently in advance of the continued hearing date, and hold them in appropriate incarceration, to be able to present them at the continued hearing.

TRUSTEE'S RESPONSE

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response in Support of the court's Order on January 15, 2019. Dckt. 45. Trustee states the following:

1. Debtor has made no payments since filing the case.
2. Debtor did not appear at the December 6, 2018, Meeting of Creditors or the January 10, 2019, Continued Meeting of Creditors.

3. The Motion For Relief From Automatic Stay of Mary Jenkins, Raymond Cordeiro, and Teresa Cordeiro (Dckt. 30) was heard and granted.
4. The Motion For Relief From Automatic Stay of Creditor Ocean Point Townhouse Association (Dckt. 44) was heard and granted.

DISCUSSION

A review of the docket shows that no written responses or evidence have been filed by either Debtor or Hong Vo.

At the hearing, **XXXXXX**.

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 Order to Show Cause 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 Order to Show Cause is **XXXXXX**.