

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

January 30, 2020 at 10:00 a.m.

1. [19-26617-A-7](#) LAYLA GUTIERREZ CONTINUED MOTION FOR RELIEF
[CLH-2](#) Pro Se FROM AUTOMATIC STAY
12-20-19 [28]

INCOME BOOSTER #1 LLC VS.

**This Matter Has Been Sent For a Tentative Ruling,
Notwithstanding the Default of the Debtor Being Entered
to Afford Movant the Opportunity to Address Any Issues
Concerning the Language in the Order Annuling the Stay**

**No Appearance by Counsel For Movant Required
If They Have No Issues Concerning the Order or Ruling**

Tentative Ruling: The Motion For Relief From the 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)(2) Motion— Final Hearing

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, and Office of the United States Trustee on December 20, 2019. By the court's calculation, 19 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

January 30, 2020 at 10:00 a.m.

Page 1 of 8

required by Local Bankruptcy Rule 9014-1(f)(2). Debtor, creditors, the Chapter 7 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.

No opposition was presented at the initial hearing, the defaults of the non-responding parties entered, and the matter set for a final hearing and supplemental briefing on the unopposed request for annulment of the automatic stay.

Upon review of the Motion and supporting pleadings, and the files in this case, the court has determined that oral argument will not be of assistance in ruling on the Motion. The defaults of the non-responding parties in interest are entered.

The Motion for Relief from the Automatic Stay is granted, including annulment of the Automatic Stay.

Income Booster #1 LLC (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 45047 Vine Cliff Street, Temecula, California (“Property”). The moving party has provided the Declaration of Saleem Sheikh to introduce evidence as a basis for Movant’s contention that Layla Gutierrez (“Debtor”) does not have an ownership interest in or a right to maintain possession of 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. Movant commenced an unlawful detainer action in California Superior Court, County of Riverside, with an order granting Movant’s motion for summary judgment for possession having been issued by that court on October 25, 2019. Exhibit B, Dckt. 30.

Movant has provided a properly authenticated copy of the filed Judgment. Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Movant has also provided the court with evidence of there being a series of bankruptcy filings being used to thwart the proceedings in State Court. It does not appear that Debtor has any interest in the property, or to the extent asserted, this case was not filed in good faith, for proper purpose under the Bankruptcy Code.

Additionally, on December 27, 2019, Trustee Susan K. Smith filed a statement of non-opposition. Trustee’s December 27, 2019 Docket Entry Statement.

DISCUSSION

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of

the Property, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Prospective Relief from Future Stays

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay when the court finds that the petition was filed as a part of a scheme to delay, hinder, or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of the secured creditors or court approval or (ii) multiple bankruptcy cases affecting particular property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include recent transfers of assets, a debtor's inability to reorganize, and unnecessary delays by serial filings. *Id.* Here, the Motion states with particularity (Fed. R Bankr. P. 9013) the following grounds for relief pursuant to 11 U.S.C. § 362(d)(4):

- A. Movant has been attempting to obtain possession of the Property since commencing the Unlawful Detainer on August 27, 2019 (which is just four months prior to the date of the hearing on this Motion).
- B. The unlawful detainer action filed four months before the hearing on this Motion due to “fraudulent filing of an attempted removal to Federal District Court by a different Defendant and this bankruptcy petition by this Debtor.”
- C. The District Court entered an order remanding the matter back to the State Court on November 7, 2019. The District Court's order is provided a Exhibit D. This appears to be a standard form order used in the Central District.
- D. Relief should be granted to “prevent this Debtor and others from continually delaying the UD Action by filing frivolous bankruptcy petitions and requests for removal, filed specifically for the purpose of causing such delay.”
- E. Movant commenced its efforts to obtain possession of the property in the Summer of 2019, with the unlawful detainer proceeding commenced on August 27, 2019.
- F. On September 5, 2019, Liam Stokes, Jacob Gonzalez, and Layla Gutierrez, claimed to be tenants in possession and filed a demurrer to the unlawful detainer complaint.
- G. On September 5, 2019, Reynaldo G. Rondero filed a separate motion to strike the unlawful detainer complaint.
- H. Both the demurrer and the motion to strike were denied on September 13, 2019.
- I. On October 18, 2019, Movant filed its motion for summary judgment, with it set for hearing on October 25, 2019.
- J. On October 25, 2019, the State Court granted the motion for summary judgment.

- K. On November 1, 2019, after the entry of the judgment for possession, Layla Gutierrez, the Debtor in this case, filed a notice of automatic stay in the State Court unlawful detainer action.
- L. Reviewing Debtor's Schedules, the Movant notes:
1. Debtor does not reside in the Property.
 2. Debtor does not list Movant as a creditor.
 3. Debtor does not list the State Court unlawful detainer action as a legal proceeding she is a party to.
- M. On November 5, 2019, Jacob Gonzalez filed a notice of removal of the State Court unlawful detainer action, in which the judgment has been entered, to the District Court in the Central District of California.
- N. On November 7, 2019, the District Court issued an order, sua sponte, remanding the removed action back to the State Court.

REVIEW OF BANKRUPTCY DOCUMENTS FILED BY DEBTOR

On her Bankruptcy Petition, Debtor Layla Gutierrez states that she lives at 3109 39th Street, Sacramento, California, and has a mailing address of 45047 Vine Cliff St, Temecula, California. Dckt. 1 at 2.

On Schedule A/B, Debtor states under penalty of perjury that she has no interest in any real property. Dckt. 14 at 2. On Schedule A/B Debtor does not state any assets, interests, or rights relating to the Property.

On Schedule D, Debtor states that she has no creditors with any claims secured by any real or personal property. *Id.* at 14.

On Schedule E/F, Debtor states that she has no creditors with any priority unsecured claims. *Id.* at 16.

On Schedule E/F, Debtor lists four creditors with consumer credit card debt totaling \$6,320.00. *Id.* at 17-18.

On Schedule G, Debtor states that she has no executory contracts or unexpired leases. *Id.* at 20.

On Schedule I, Debtor states that she has no income. *Id.* at 24 - 25.

Though having no income, on Schedule J Debtor states having (\$2,982) in expenses. *Id.* at 27-28.

Additional information is provided by the Debtor on the Statement of Financial Affairs concerning her assets, living situation, and legal proceedings, including:

- A. Debtor is not married and has lived at the 39th Street Address for at least the past three years. Statement of Financial Affairs Part 1 and 2. *Id.* at 30.
- B. Debtor has no income in 2019, while having \$30,000+ income in 2018 and 2017. Statement of Financial Affairs Part 4, *Id.* at 31.
- C. All of the remaining questions for the Statement of Financial Affairs are checked “no.” *Id.*

Movant has provided the court, as Exhibit E (Dckt. 30) with a pleading in the State Court unlawful detainer proceeding titled “Prejudgment Claim of Right to Possession” (“PCRPP”) which purports to have been filed by “Layla Gutierrez,” the same name as the Debtor in this case. This was filed in the State court on September 5, 2019.

“Layla Gutierrez” states under penalty of perjury that she lives at 45047 Vine Cliff St, Temecula, California - the same address Debtor uses as a “mailing address,” but not where she lives. PCRPP ¶ 2, Exhibit E, Dckt. 30.

“Layla Gutierrez” states that she was living in the Vine Cliff Street property on August 27, 2019 when the State Court unlawful detainer action was filed. PCRPP ¶ 4, *Id.*

“Layla Gutierrez” states that “I occupied the premises on the date the complaint was filed . . . I have continued to occupy the premises ever since.” PCRPP ¶ 5, *Id.*

“Layla Gutierrez” states that she has “an oral or written rental agreement with the former owner who lost the property to foreclosure.” PCRPP ¶ 13, *Id.*

The statements under penalty of perjury in the PCRPP are in direct conflict with the statements under penalty of perjury on the Petition, Schedules, and Statement of Financial Affairs.

The Movant has established that this bankruptcy case filing is being used as part of a scheme to hinder, delay or defraud Movant. But this is the one and only bankruptcy case as part of the scheme.

The relief sought by Movant under 11 U.S.C. § 362(d)(4) may be granted upon the court finding that specific circumstances exist:

(d) On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided under subsection (a) of this section, such as by terminating, annulling, modifying, or conditioning such stay—

...

(4) with respect to a stay of an act against real property under subsection (a), **by a creditor whose claim is secured by an interest in such real property**, if the court finds that the **filing of the petition was part of a scheme to delay, hinder, or defraud creditors** that involved either—

(A) **transfer of all or part ownership of, or other interest in**, such real property without the consent of the secured creditor or court approval; or

(B) **multiple bankruptcy filings affecting such real property.**

11 U.S.C. § 362(d)(4) (emphasis added).

The plain language of the above statute allows the court to grant relief to a creditor who has a claim secured by an interest in the real property. Here, Movant clearly states that it is not a creditor having a claim secured by the Property, but is the owner of the Property. Movant is not a creditor who may seek relief pursuant to 11 U.S.C. § 362(d)(4).

Next, if there were a creditor with a claim secured by the Property, the filing of this bankruptcy petition must be found to be part of a scheme to delay, hinder or defraud creditors that involves either one of the two mandatory conditions:

A. The transfer of all or part ownership of, or other interest in the real property. Here, Movant does not allege that there is a transfer of an interest in the property as part of the scheme.

B. The current bankruptcy case is one of multiple bankruptcy filings affecting the real property. Here, Movant clearly states that this is the one and only bankruptcy filing (at least as of now) **involving the Property.**

While it appears that there is a scheme afoot to hinder and delay Movant in prosecuting the unlawful detainer action (something that the State Court judge may want to exercise the remedies for abuse of the State judicial process), Movant's does not meet the requirements for relief pursuant to 11 U.S.C. § 362(d)(4). Collier on Bankruptcy, Sixteenth Edition, ¶ 362.07[6].

RELIEF FROM STAY PURSUANT TO 11 U.S.C. § 362(d)(1)

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)

Cause has been stated for granting relief from the stay in this case pursuant to 11 U.S.C. § 362(d)(1). Under penalty of perjury in this case, Debtor Layla Gutierrez states that she has no interest in, does not reside in, and does not have any lease or rental agreement related to the 45047 Vine Cliff Street, Temecula, California. It may well be that Debtor's identity is being stolen by those perpetrating the abuse of the State Court and the District Court in the Central District.

If Debtor Layla Gutierrez is the same Layla Gutierrez who has made statements under penalty of perjury in the State Court unlawful detainer action that are directly in conflict with her statements made under penalty of perjury in this federal court bankruptcy case, cause is shown for granting relief from the automatic stay (as well as whatever action the U.S. Trustee determines appropriate). Further, Debtor expressly states that she has no interest in the Temecula Property. This case should not impede Movant in the State Court unlawful detainer action.

The automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 45047 Vine Cliff Street, Temecula, California.

REQUEST FOR WAIVER OF FOURTEEN DAY STAY OF ENFORCEMENT

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, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is not granted.

REQUEST FOR ANNULMENT OF STAY

At the hearing on January 8, 2020, the court provided Movant with the opportunity to brief the issue of annulment. Movant filed a Supplemental Brief addressing the issue on January 23, 2020. Dckt. 37.

Movant requests an annulment of the stay of relief pursuant to 11 U.S.C. § 362(d). Movant identifies two factors for the court to analyze a request for retroactive stay relief. The two factors to consider are: (1) whether the creditor was aware of the bankruptcy petition; and (2) whether the debtor engaged in unreasonable or inequitable conduct or prejudice would result to the creditor. *In re Nat'l Env'tl. Waste*, 129 F.3d 1052, 1054 (9th Cir. 1997). Movant cites *In re Fjeldsted*, which expands the factors the court can consider to: the number of times a debtor has filed a petition; the extent of any prejudice, including to a bona fide purchaser; the debtor's overall good faith; the debtor's compliance with the Code; how quickly the creditor moved for annulment; and how quickly the debtor moved to set aside the action which occurred. *In re Fjeldsted*, 293 B.R. 12, 24-25 (B.A.P. 9th Cir. 2003).

Movant alleges four causes for the court to annul the stay: (1) The debtor under oath stated she lived in 45047 Vine Cliff St., Temecula, CA and later stated she did not live in this premise but

rather at 3109 39th Street, Sacramento, CA; (2) The Movant without knowledge of the petition filing obtained a state court judgment for possession of the premises; (3) There is evidence of a common scheme to prevent Movant from obtaining possession of the premises (after Debtor's bankruptcy filing, a co-tenant filed a Notice of Removal of the unlawful detainer to the Central District Court); and (4) Debtor failed to appear at the Meeting of Creditors as required by 11 U.S.C. § 341.

Based on these factors, Movant argues the court should annul the stay as to the judgment for possession obtained by the Movant based upon the factors enumerated above.

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 Income Boosters #1, LLC ("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 vacated to allow Movant and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 45047 Vine Cliff Street, Temecula, California (the "Property").

IT IS FURTHER ORDERED that the automatic stay, as it applies to Movant, its assignees, successors, agents, attorneys, and other representative ("Movant Parties") is annulled effective as of the October 24, 2019 commencement of this bankruptcy case for all purposes relating to acts and actions taken by Movant Parties to obtain possession of the Property, including, without limitation, all proceedings, orders, judgments, service, hearings, and other matters in and related to the California Superior Court Action and other proceedings in the California Superior Court, for the County of Riverside, Action Income Boosters #1 LLC v. Reynaldo Rondero, et al, Case No. SWC 1901294, which includes the Judgment for Possession, Exhibit B (Dckt. 30) and all orders pursuant thereto.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.