

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

February 14, 2017 at 1:30 P.M.

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1. [13-34908](#)-C-13 SEAN/SARAH STEWART MOTION FOR RELIEF FROM  
AP-1 Matthew DeCaminada AUTOMATIC STAY  
1-12-17 [[113](#)]  
WELLS FARGO BANK, N.A. VS.

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**Final Ruling:** No appearance at the February 14, 2017 hearing is required.  
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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 January 12, 2017. Twenty-eight 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). 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.

<b>The Motion for Relief From the Automatic Stay is continued to February 28, 2017 at 2:00 p.m.</b>
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Wells Fargo Bank, N.A. seeks relief from the automatic stay with respect to the real property commonly known as 5935 Larry Way, North Highlands, California. The moving party has provided the Declaration of Rebekah Roper to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Roper Declaration states that the Debtor has not made 8 post-petition payments, with a total of \$8,145.72 in post-petition payments past due. 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 \$122,423.03 (including \$122,423.03 secured by movant's first trust deed), as

stated in the Roper Declaration, while the value of the property is determined to be \$166,364.00, as stated in Schedules A and D filed by Debtor.

#### **DEBTORS' OPPOSITION**

Debtors allege that the creditor increased mortgage payments on December 1, 2013 without filing a Notice of Mortgage Payment Change pursuant to FRBP 3002.1(d). Debtors have filed an Amended Plan that will cure the post-filing delinquencies to Wells Fargo Bank, N.A. in the amount of \$6,014.78.

#### **TRUSTEE'S RESPONSE**

Trustee responds that the Debtors are delinquent \$7,520.00 under the confirmed plan. The Debtors have filed an Amended Plan and are \$2,480.00 delinquent under the Amended Plan, however a payment is currently pending through electronic transfer.

#### **DISCUSSION**

Wells Fargo Bank, N.A. has introduced evidence that the post-petition arrears due are in the amount of \$8,145.72. The Debtors admit that they have not made payments under the Chapter 13 Plan. The Debtors have indicated that an Amended Plan has been filed, yet it appears that the Amended Plan will not cure the post-filing delinquencies as the Debtors claim.

In light of the fact that the Debtors have made substantial payments into the plan, and due to the fact that the equity cushion provides enough protection to the creditor, the court will continue this motion until after the hearing on the Amended Plan. The court expects that the Amended Plan will properly cure the post-petition deficiencies owed to Wells Fargo Bank, N.A, and if not, the creditor will be granted relief from stay.

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 Motion for Relief from Stay is continued to February 28, 2017 at 2:00 p.m.

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2. [16-23910](#)-C-13 JEFFREY VERBISCIO  
Pro Se

MOTION FOR RELIEF FROM  
AUTOMATIC STAY  
1-26-17 [[21](#)]

COUNTY OF SACRAMENTO VS.  
DEBTOR DISMISSED: 06/27/2016

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**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).**  
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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 (*pro se*), Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on January 26, 2017. 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.

**The Motion for Relief from the Automatic stay is granted.**

The County of Sacramento seeks relief from the automatic stay with respect to the real property commonly known as 10844 Paiute Way, Rancho Cordova, California. The moving party has provided the Declaration of Robert Parish to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

Movant attempted to sell the property at a foreclosure in July of 2009. The debtor filed a bankruptcy petition on the eve of foreclosure to block the sale. Since that time, the Movant has attempted to sell the property at a foreclosure 6 more times. All 6 times, the Debtor filed for bankruptcy on the eve of foreclosure. Each of Debtor's prior cases has been dismissed for failure to file documents.

In the present case, the Debtor has once again failed to file documents. The case was dismissed on June 27, 2016 for failure to file

documents. There seems to be little doubt that the Debtor has used bankruptcy to forestall foreclosure of the property for nearly 8 years.

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 the County of Sacramento, 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.

No other or additional relief is granted by the court.

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 the County of Sacramento, 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 10844 Paiute Way, Rancho Cordova, California.

No other or additional relief is granted.

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