

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

February 28, 2017 at 1:30 P.M.

-
1. [15-27112](#)-C-13 BRANDON/JACQUELINE HEATON MOTION FOR RELIEF FROM
JHW-1 Susan Dodds AUTOMATIC STAY
1-19-17 [[79](#)]

FORD MOTOR CREDIT COMPANY,
LLC VS.
DEBTORS DISMISSED:
01/22/2017

Final Ruling: No appearance at the February 28, 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 January 19, 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.

The Motion for Relief From the Automatic Stay is granted.

Ford Motor Credit Company, LLC seeks relief from the automatic stay with respect to a 2013 Ford Expedition.

The Baldwin Declaration states that the Debtor has not made more than 2 post-petition payments, with a total of \$9,160.32 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 \$21,681.65.

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 Toyota Lease Trust, and its agents, representatives and successors, to repossess and/or dispose of the property.

The moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

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 Toyota Lease Trust, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors to repossess and/or dispose of the 2013 Ford Expedition.

No other or additional relief is granted.

2. [16-20615](#)-C-13 GALE BUSH AND JERRY BAKER MOTION FOR RELIEF FROM
DBJ-1 Michael Hays AUTOMATIC STAY
1-19-17 [[62](#)]

WALLACE SCHWARTZ VS.

Final Ruling: No appearance at the February 28, 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 January 19, 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.

The Motion for Relief From the Automatic Stay is granted.

Wallace Schwartz seeks relief from the automatic stay with respect to the real property commonly known as 6414 Cumberland Rd., Magalia, California. The moving party has provided the Declaration of Wallace Schwartz to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Schwartz Declaration states that the Debtors have indicated their intention to surrender the property.

Trustee's Response

Trustee responds to point out that the amended plan reclassifies Wallace Schwartz to class 3 surrender. As a result, the motion is unnecessary.

Discussion

While the court notes that the motion may not be necessary considering the debtors' intention to surrender the property, the property does not appear to have been surrendered as of the hearing date. As a result, the court will grant the motion for relief from stay, and the Creditor, Wallace Schwartz, may exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law regarding the property.

The court shall issue a minute order terminating and vacating the automatic stay to allow Wallace Schwartz, 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 moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving the 14-day stay of enforcement required under Rule 4001(a)(3), and this part of the requested relief is not granted.

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 Wallace Schwartz, 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 6414 Cumberland Rd., Magalia, California.

No other or additional relief is granted.

3. [16-22719](#)-C-13 MATTHEW JUHL-DARLINGTON
MOH-3 Michael Hays

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND MOTION TO
WAIVE FILING FEE
2-14-17 [[83](#)]

MATTHEW JUHL-DARLINGTON 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 February 14, 2017. 14 days' notice is required.

The Motion for Relief from Automatic Stay 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 and Motion to Waive Filing Fee is granted in part and denied in part.

Debtor, Matthew Darlington seeks relief from the automatic stay in order to (1) liquidate or release community property to pay priority debts to the Internal Revenue Service and the Franchise Tax Board, (2) to show good faith by securing voluntary release of some joint assets to pay joint debts, (3) to proceed with a motion to terminate spousal support. Debtor additionally requests that the fee for filing the relief from stay motion be waived.

Trustee's Response

Trustee responds by pointing out a number of procedural deficiencies in the movant/debtor's filing. (1) Debtor has not filed and served a separate Relief from Stay Summary Sheet. (2) the motion is not supported by evidence. No declaration of the debtor has been filed. (3) Debtor requests

a fee waiver without authority. Trustee finally states it does not oppose Debtor's Motion for Relief from the Automatic Stay to the extent Debtor is seeking the division of property.

Discussion

The court notes the several procedural defects relating to the filing of the motion. The court notes that a Relief from Stay Summary Sheet has been filed as well as an amended declaration from the debtor. The court now does have the evidence necessary to grant the Motion for Relief from Stay. The court notes that the request to waive the filing fee is premised on no authority. As a result, the request to waive the filing fee will be denied.

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 Butte County Superior Court proceed in the dissolution of marriage and separation of property proceedings in case no. FL044071 between Jennifer and Matthew Juhl Darlington.

IT IS FURTHER ORDERED that the Motion for Waiver of the Filing Fee is denied without prejudice.

No other or additional relief is granted.

4. [16-26822](#)-C-13 NORMAN WILLIAMS
Stacie Power

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-23-17 [[56](#)]

JERI WILLIAMS VS.

Final Ruling: No appearance at the February 28, 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 January 23, 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.

The Motion for Relief From the Automatic Stay is denied as moot.

Jeri Joanne Williams seeks relief from the automatic stay due to her pending non-judicial foreclosure action. Debtor filed a previous bankruptcy on August 29, 2016, case no. 16-25702 which was dismissed by the court on September 27, 2016 for failure to file required documents.

The debtor did not make a motion for extension of the automatic stay within 30 days from the filing of the instant bankruptcy. As the debtor had filed a previous case within the past year, the automatic stay has expired in the instant bankruptcy case. As a result, the motion for relief from the automatic stay will be denied as moot.

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 moot as the automatic stay provisions of 11 U.S.C. § 362(a)

have expired pursuant to 11 U.S.C. § 362(c)(3)(A) in this
bankruptcy case.

5. [17-20738](#)-C-13 IRIS ROBERSON
MET-1 Harry Roth

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-14-17 [[10](#)]

COMMUNITY FUND, LLC 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 February 14, 2017. 14 days' notice is required.

The Motion for Relief from Automatic Stay 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.

Community Fund, LLC, Movant, seeks relief from the automatic stay in order to continue proceedings in Superior Court of California, County of Solano, Case No. FCM152835. Movant filed an unlawful detainer complaint on December 23, 2016 in the Superior Court of California, County of Solano for restitution and possession of the real property located at and commonly described as 418 Salisbury Circle, Vacaville, California. Further, Movant requests that the court enter its order waiving Federal Rule of Bankruptcy Procedure 4001(a)(3).

The Movant purchased the property on November 29, 2016 and recorded the Deed Upon Sale on December 13, 2016. The Debtor has no right, title, or interest in the subject property and is forcibly detaining the property.

Trustee's Response

Trustee responds that there is no basis to oppose the motion. The

Trustee points out that the debtor has a pending Motion to Extend Automatic Stay set for February 28, 2017.

The court acknowledges the motion to extend automatic stay also set for hearing on February 28, 2017. However, the determination of the court in the instant motion does not rely upon the extinguishment or extension of the automatic stay. Cause exists under 11 U.S.C. § 362(d)(1) to grant the motion for relief from stay as the debtor has no right, title, or interest in the subject 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 Elaine Wang Fong 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 the Automatic Stay is granted to allow the Movant, Community Fund, LLC, to proceed in litigation in the Superior Court of California, County of Solano for restitution and possession of the real property located at and commonly described as 418 Salisbury Circle, Vacaville, California.

6. [13-27192](#)-C-13 ELLA LINDAUER
NLL-1 James Brunello

CONTINUED MOTION FOR RELIEF
FROM AUTOMATIC STAY AND/OR
MOTION FOR RELIEF FROM
CO-DEBTOR STAY
12-29-16 [[48](#)]

JPMORGAN CHASE BANK, N.A.
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, and Office of the United States Trustee on December 29, 2016. Twenty-eight days' notice is required. That requirement was 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). 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 denied.

JPMorgan Chase Bank, N.A. seeks relief from the automatic stay with respect to the real property commonly known as 1701 51st Street, Sacramento, California. The moving party has provided the Declaration of Misty Rowe to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Rowe Declaration states that the Debtor has not made 14 post-petition payments. 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 \$80,340.14 (including \$80,340.14 secured by movant's first trust deed), as stated in the Rowe Declaration, while the value of the property is determined to be \$245,000, as stated in Schedules A and D filed

by Debtor.

Trustee's Response

Trustee responds that the debtor is current under the confirmed plan. The Trustee's records reflect 43 mortgage payments having come due and 43 mortgage payment having been paid. The plan was confirmed at \$596.85 per month for the ongoing mortgage payment to the creditor. The creditor did not object to confirmation. Trustee requests that this be continued to determine whether the debtor maintained property taxes and insurance.

Debtor's Additional Response

Debtor filed an additional response, Dckt. 62, that states that the 2017 property taxes have been paid by the debtor with evidence.

The court finds that the Creditor is being paid through the plan. The Creditor did not object to the plan. The debtor has been making property tax payments. As a result, there is no cause to vacate the protection of the automatic 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 Automatic Stay is denied.
