

UNITED STATES BANKRUPTCY COURT  
Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

March 26, 2019 at 1:30 p.m.

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1. [14-29214](#)-C-13 CLEVELAND BELLARD MOTION FOR RELIEF FROM  
Mary Ellen Terranella AUTOMATIC STAY  
2-27-19 [262]

ZANDRA BELLARD VS.

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**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).**

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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, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on February 27, 2019. 14 days' notice is required. That requirement was met.

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, -----  
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**The Motion for Relief from the Automatic Stay is XXXXX.**

Zandra Guiten Bellard ("Movant") seeks relief from the automatic stay to allow *Zandra Guiten Bellard v. Cleveland Bellard, et al.*, Case No. CV-19-189 in the Superior Court of the State of California in Yolo County ("State Court Litigation") to be concluded. Movant has provided the Declaration of Zandra Guiten Bellard to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Cleveland Bellard ("Debtor").

The Zandra Guiten Bellard Declaration states that Debtor does not have an interest in the property pursuant to certain title transfers and a divorce prior to the commencement of this bankruptcy proceeding. Dckt. 272.

## CHAPTER 13 TRUSTEE'S OPPOSITION

David Cuisck ("the Chapter 13 Trustee") filed an Opposition on March 6, 2019. Dckt. 264. The Chapter 13 Trustee asserts that Movant's Motion does not comport with the Local Rules and may require an Adversary Proceeding to obtain requested relief. Dckt. 264.

## DISCUSSION

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 the court notes that the proceeding referenced by Movant appears to have been filed on January 25, 2019, after the commencement of this bankruptcy proceeding September 14, 2014. Dckt. 262, pg. 5.

While stating that relief should be granted because Debtor has no interests at issue in the State Court Action, the relief sought is for a quiet title action in which it is to be determined that Debtor has no interests at issue in the State Court Action. Motion, Dckt. 271.

Movant provides her Declaration, testifying:

1. Movant was married to Debtor in October 1993.
2. Movant and Debtor separated in March 2012. (No testimony is provided as to the married parties getting a divorce.)
3. The Property at issue was purchased in 2002, with Debtor indicating was an "unmarried man."
4. Movant states that in March 2007 Debtor transferred 50% of the property to certain unstated persons.

5. Movant states that in 2009 Debtor transferred the remaining 50% of the property to the same unstated persons.
6. Movant states that in 2001 the unstated parties quitclaimed 50% interest in the property to Debtor as a married man.
7. Movant states that the property was community property and therefore Debtor could have no interest in it because the 50% belongs to Movant as community property.

Declaration, Dckt. 272.

The Declaration makes reference to (but does not authenticate various exhibits attached to the Declaration. These documents are summarized as follows:

Exhibit A - Grant Deed with a January 25, 2002 recording date transferring the property to Debtor, "an unmarried man."

Exhibit B - Grant Deed with a March 2, 2007 recording date transferring 50% interest in the property to Derek and Glorious Jackson.

Exhibit C - Grant Deed with a May 28, 2009 recording date transferring 50% interest in the property to Derek and Glorious Jackson.

Exhibit D - Grant Deed with a March 2, 2007 recording date with Derek and Glorious Jackson transferring 50% interest in the property to Debtor. It is stated that no transfer tax is owed because it is a "family transfer."

*Id.* Debtor lists this property on his Schedule A. Dckt. 1.

At the hearing -----.

~~The court finds that the nature of the State Court Litigation warrants relief from stay for cause. 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.~~

~~-----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 Zandra Guiten Bellard (“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 Cleveland Bellard (“Debtor”) to allow Zandra Guiten Bellard, 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 Zandra Guiten Bellard v. Cleveland Bellard, et al., Case No. CV-19-189 in the Superior Court of the State of California in Yolo County.~~

~~**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.~~

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