

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

March 31, 2020 at 1:30 p.m.

1. [20-20344](#)-C-13 RAYMOND/MARLEN GALLO MOTION FOR RELIEF FROM
[JHR-2](#) Stephan Brown AUTOMATIC STAY
3-16-20 [[72](#)]

CRAIG FILICE VS.

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, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on March 16, 2020. By the court's calculation, 15 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, -----
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The Motion for Relief from the Automatic Stay is granted.

The movants, Craig P. Filice; Craig Filice, as Trustee; the Bastow Family Limited Partnership, a Utah limited partnership; Jeffrey Bastow and Candace Bastow, as Trustees; and Mila J. Murphy, as Trustee ("Movant") seek

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relief from the automatic stay with respect to the real property commonly known as 5801 Folsom Blvd, Suite #120, Sacramento, California ("Property").

Movant argues its Property was leased to Uppal's Select Pizza, Inc., a predecessor to the debtors Raymond Henry Gallo and Marlen Angela Gallo ("Debtor") who entered into the lease by assignment.

Movant argues Debtor has missed 6 prepetition and 2 postpetition payments, totaling \$63,865.06 and \$26,056.91, respectively.

The Exhibits filed in support of the Motion show that a 30 day notice to pay or quit was served October 29, 2019; that an unlawful detainer complaint was filed December 6, 2019. Dckt. 78.

Judgment for possession was also issued January 28, 2020, after this case was filed. Movant argues, relying on In re Windmill Farms, Inc., that the stay was not violated because the lease agreement terminated prior to the case being filed.

Relief From Stay

Movant's argument that the stay was not violated is unexplained. The automatic stay plainly applies to the continuation of a judicial proceeding against the debtor. 11 U.S.C. § 362(a)(1). That rendered the state court judgment violation of the stay and void. Schwartz v. United States (In re Schwartz), 954 F.2d 569, 571 (9th Cir. 1992).

As to the request for relief from stay, 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). Debtor has not presented any argument that the Property is necessary for an effective reorganization.

Therefore, relief is warranted-but the question of whether retroactive relief is warranted remains.

The court has the ability to grant retroactive relief from stay, making the judgment not void. Id. at 573. However, any equitable exception to the automatic stay should be narrow and applied only in extreme circumstances. Phoenix Bond & Indemnity Company, et al., v. Shamblin (In re Shamblin), 890 F.2d 123, 126 (9th Cir. 1989); Mataya v. Kissinger (In re Kissinger), 72 F.3d 107, 109 (9th Cir. 1995).

The court in In re Kissinger recited the rule that a decision to lift the automatic stay is reviewed for abuse of discretion. In re Kissinger, 72 F.3d at 108. The court then reviewed the basis for granting retroactive relief (that the creditor was not at fault for the stay violation, and that leaving the stay would lead to nonsensical results and cause unwarranted hardship) and determined that the bankruptcy court did not abuse its discretion. Id. at 109.

Here, the Movant has not explained in great detail what "extreme circumstances" warrant retroactive relief. Therefore, the court does not find retroactive relief warranted here.

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.

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.

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 Craig P. Filice; Craig Filice, as Trustee; the Bastow Family Limited Partnership, a Utah limited partnership; Jeffrey Bastow and Candace Bastow, as Trustees; and Mila J. Murphy, as Trustee ("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 5801 Folsom Blvd, Suite #120, Sacramento, California .

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.

2. [17-22973](#)-C-13 EDITH MOSLEY
[AP-2](#) Dale Orthner

MOTION FOR RELIEF FROM
AUTOMATIC STAY
2-28-20 [[27](#)]

THE BANK OF NEW YORK MELLON
TRUST COMPANY, N.A. VS.

Final Ruling: No appearance at the March 31, 2020, hearing is required.

Local Rule 9014-1(f)(1) Motion—No Opposition Filed.

Sufficient 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 February 28, 2020. By the court's calculation, 32 days' notice was provided. 28 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 and other parties in interest 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.

The Bank of New York Mellon Trust Company, N.A., as trustee ("Movant") seeks relief from the automatic stay with respect to Edith Velez Mosley's ("Debtor") real property commonly known as 116 Winslow Drive, Roseville, California ("Property").

Movant argues that a stipulation was entered between Movant and Debtor providing for postpetition cure payments related to Debtor's failure to pay insurance and taxes owing on the Property. Movant further argues that Debtor has failed to comply with this Stipulation by again failing to maintain the tax and insurance payments.

The Chapter 13 Trustee, David Cusick ("Trustee"), filed a Response on March 12, 2020, noting that the stipulation required a modified plan to be filed if the taxes and insurance were not provided for and Movant filed a Notice with the court. Dckt. 34.

Debtor's counsel on March 17, 2020, filed a Response conceding that Debtor cannot maintain the tax payments, "cannot afford to pay to stay in her home," and cannot propose a confirmable modified plan. Dckt. 37.

The Trustee thereafter filed a Status Report indicating non-opposition.

DISCUSSION

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 exists here for relief from the stay because Debtor has not maintained tax and insurance payments on the Property, and has conceded Debtor cannot afford the Property.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, 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 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 Bank of New York Mellon Trust Company, N.A., as trustee ("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

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11 U.S.C. § 362(a) are vacated to allow Movant, 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 that is recorded against the real property commonly known as 116 Winslow Drive, Roseville, California, ("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 to obtain possession of the Property.

No other or additional relief is granted.