UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

April 4, 2017, at 1:30 p.m.

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1. **17-21425-E-13** **JESSIAH WILLARD** **MOTION FOR RELIEF FROM**
KH-1 **Pro Se** **AUTOMATIC STAY**
3-10-17 [10]

SWAY 2014-1 BORROWER, LLC. 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 (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on March 10, 2017. By the court's calculation, 25 days' notice was provided. 14 days' notice is required. FN.1.

FN.1. Movant has not specified clearly whether the Motion is noticed according to Local Bankruptcy Rule 9014-1(f)(1) or (f)(2). The Notice of Motion states that any parting wishing to oppose the Motion must appear at the hearing; no language is provided about filing opposition documents with the court. Based upon the language that opposition may be heard at the hearing, the court treats the Motion as being noticed according to Local Bankruptcy Rule 9014-1(f)(2).

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 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, ----------.

The Motion for Relief from the Automatic Stay is granted.

SWAY 2014-1 Borrower, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 1764 Dover Circle, Suisun City, California ("Property"). The moving party has provided the Declaration of Candice Burney to introduce evidence as a basis for Movant's contention that Jessiah Willard ("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. Movant asserts that Debtor claims sub-tenancy through the master tenants. Movant witness testifies that Movant entered into a lease with Jason and Jackie Hernandez as tenants for the Property. Declaration, p.2:7-8.5; Dckt. 12. The witness further testifies that Hernandez has defaulted in the rent and Movant desires to proceed with unlawful detainer proceeds to obtain possession of the Property. *Id.*, p.2:9-11.5.

Movant's unlawful detainer action in California Superior Court, County of Solano, which has been continued to April 4, 2017, due to the automatic stay in this case.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on March 21, 2017. Dckt. 23. The Trustee states that Debtor's filing is incomplete, and he does not oppose the Motion.

DISCUSSION

Movant has provided a certified copy of the lease agreements and state court action to substantiate its claim of ownership. Based upon the evidence submitted, the court determines that there is no equity in the Property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at *8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief from the automatic stay in a Contested Matter (Federal Rule of Bankruptcy Procedure 9014).

On Debtor's Schedules, he does not list any interest in the Property on Schedule A/B. Dckt. 20. Debtor does not list any obligation owing to Movant on Schedule F. *Id.* On Schedule G Debtor states under penalty of perjury that he has no executory contracts or unexpired leases. *Id.*

The court shall issue an order terminating and vacating the automatic stay to allow SWAY 2014-1 Borrower, LLC, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 1764 Dover Circle, Suisun City, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof. On Schedule J Debtor states that he has a $2,841.00 mortgage or rental payment for his residence. *Id.* This mortgage/rent payment is greater than the $1,750.00 in monthly income stated on Schedule I. *Id.*

Denial of Waiver of Fed. R. Bankr. P. 4001(a)(3)

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests in the prayer that the court waiver Rule 4001(a)(3). The Motion does not state any grounds with particularity upon which such relief is based and why this court determines there is cause to waive the Rule as adopted by the United States Supreme Court. Possibly, if the court were drafting the motion, it would state for Movant grounds and rewrite the motion, but declines to provide such services to one litigant against the other. 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.

Denial of 11 U.S.C. § 362(d)(4) Relief

Movant does state in the Motion, that based on all of the allegations in the Motion, the court should award extraordinary relief under 11 U.S.C. § 362(d)(4). Congress provides that a creditor holding a claim secured by property of the bankruptcy estate may obtain an order granting relief from the stay which will be effective in any further cases filed in the two year period after entry of the order. The plain language of the statute as stated by Congress is:

> (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– . . . .

11 U.S.C. § 362(d)(4) [emphasis added]. A condition of the court granting relief pursuant to 11 U.S.C. § 362(d)(4) is that the stay must relate to the claim of a creditor secured by an interest in real property of the debtor or bankruptcy estate.

Congress has established the following defined terms under the Bankruptcy Code for proceedings thereunder:

> § 101. Definitions
>
> In this title the following definitions shall apply:
> . . .
> (5) The term "claim" means–
>
> > (A) right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed, legal, equitable, secured, or unsecured; or
> >
> > (B) right to an equitable remedy for breach of performance if such breach gives rise to a right to payment, whether or not such right to an

> equitable remedy is reduced to judgment, fixed, contingent, matured, unmatured, disputed, undisputed, secured, or unsecured.
>
> . . .
>
> (10) The term "creditor" means--
>
> (A) entity that has a claim against the debtor that arose at the time of or before the order for relief concerning the debtor;
>
> (B) entity that has a claim against the estate of a kind specified in section 348(d), 502(f), 502(g), 502(h) or 502(I) of this title; or
>
> (C) entity that has a community claim.
>
> (12) The term "debt" means liability on a claim.
>
> (13) The term "debtor" means person or municipality concerning which a case under this title has been commenced.

11 U.S.C. § 101(5), (10), (11), and (12).

Movant clearly states that it is not a "creditor" holding a claim secured by the Property, but is the owner of the Property. Whatever obligation may be owed by Debtor to Movant if Debtor's possession of the Property is not proper, it is not a debt secured by the Property.

The request for relief pursuant to 11 U.S.C. § 362(d)(4) is denied.

REQUEST FOR PROSPECTIVE INJUNCTIVE RELIEF

Movant makes **additional requests stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well

known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

> [A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.
>
> Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the "silly" request for unnecessary relief may well be ultimately deemed an admission by SWAY 2014-1 Borrower, LLC and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted SWAY 2014-1 Borrower, LLC and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

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 SWAY 2014-1 Borrower, 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 SWAY 2014-1 Borrower, LLC and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1764 Dover Circle, Suisun City, 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. **16-25884-E-13** **GLORIA RANNALS** **MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY**
AP-1 **Scott Hughes** **2-27-17 [19]**

CIT BANK, N.A. VS.

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.

Local Rule 9014-1(f)(1) 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, and Office of the United States Trustee on February 27, 2017. By the court's calculation, 36 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). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief from the Automatic Stay is xxxxxxxxxx.

Gloria Rannals ("Debtor") commenced this bankruptcy case on September 1, 2016. CIT Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 3500 Liberty Road, Galt, California ("Property"). Movant has provided the Declaration of Daniel Cortina to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Cortina Declaration states that there is a post-petition defaults on the obligation secured by the Property because Debtor failed to maintain hazard insurance. The Declaration provides evidence that Movant secured insurance on the Property on December 21, 2016, in the amount of $3,010.34.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on March 16, 2017, 2017. Dckt. 26. The Trustee reports that Debtor is current under the confirmed plan, having paid $1,200.00 so far. Movant is listed in Class 1 as Freedom Financial having provided a reverse mortgage (with property taxes advanced) for $10,000.00 in arrears with a monthly dividend of $166.67. The scheduled monthly contract installment is $0.00, and Movant has filed Claim 1 with arrears listed as $10,477.27.

DEBTOR'S OPPOSITION

Debtor's Counsel filed an Opposition on March 21, 2017. Dckt. 29. He asserts that Movant filed this Motion without conferring with Debtor and her counsel as required by Local Bankruptcy Rule 4001(b)(1). Debtor's Counsel claims that there is insurance on the Property, despite Movant's contention otherwise. Counsel states that the insurance policy is effective March 20, 2017, and that Debtor did not realize that the insurance had lapsed until this Motion was filed.

Counsel states that Movant can now remove the force placed hazard insurance and receive three-fourths of its unearned premiums back because the Property does not need to be insured twice. Counsel proposes filing a modified plan to cover any post-petition default remaining after Movant receives its unearned premiums back.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be $261,302.01 (including $261,302.01 secured by Movant's first deed of trust), as stated in the Cortina Declaration. This is a "Reverse Mortgage," for which Debtor is not obligated to repay the debt except under specific circumstances not alleged here.

The dispute arises from a lapse in insurance, that occurred after Debtor failed to pay the property taxes. While the failure to pay the property taxes was an event that caused Movant to proceed with a non-judicial foreclosure sale, the Debtor's Chapter 13 Plan provides for repaying that default (repay the monies Movant had to advance to protect its collateral).

Debtor's default in insurance was a post-petition default which caused Movant to advance monies for forced-placed insurance. Based on that default, Movant now seeks relief from the stay. The Motion is clear and straightforward on these grounds, alleging:

> "While the Debtor is not required to tender monthly contractual mortgage payments on the reverse mortgage, a default exists under the Loan for failure to maintain hazard insurance. As of January 11, 2017, the total post-petition default is $2,484.98 for post-petition insurance advances. (See Declaration)."

Motion, p. 2:19-22; Dckt. 19. The Motion continues to state that payments of $525.36 has been received, with the total cost of the forced place insurance being $3,010.34.

Neither the Motion nor supporting declaration make any reference to communications with Debtor when the lapse of insurance was discovered.

While Debtor's reference to Local Bankruptcy Rule 4001(b)(1) may overstate slightly a meet and confer " requirement," the Local Rule does state, in pertinent part, (emphasis added):

(b) Additional Procedures Applicable to Motions for Relief from Stay in Chapter 12 and 13 Cases.

> "(1) If the **motion alleges** that the **debto**r or the trustee has **failed to maintain** post-petition payments on an obligation secured by real or personal property, including, but not limited to, installment payments and lease payments, the motion shall:
>
> (A) Include a verified statement showing all post-petition payments and other obligations that have accrued and all payments received post-petition, the dates of the post-petition payments, and the obligation(s) to which each of the post-petition payments was applied;
>
> (B) State whether a contract or applicable nonbankruptcy law requires that the debtor be given a statement, payment coupon, invoice, or other comparable document and whether such document was sent to the debtor or the trustee for any post-petition payment(s) allegedly not made by the debtor or the trustee; and
>
> (C) **State whether the debtor** or the trustee **was advised prior to the filing of the motion of the alleged delinquency** and **given an opportunity to cure** it, if a document of the kind described in the preceding subparagraph was not sent, or if a contract or applicable nonbankruptcy law does not require one to be sent."

Debtor's counsel provides his declaration in opposition. While providing some "reporting testimony" of what his client has said, they can form admissions by Debtor. In substance, Debtor "admits" that she erred in her understanding of when her insurance was going to terminate. This seems a bit hard to believe in light of insurance companies providing notices and warnings to customers when insurance is terminating, either due to refusal to renew or a default in payment.

As of the court's April 1, 2017 review of the Docket, Debtor had not provided competent testimony and authenticated documentation of the replacement insurance. Such should be easy to provide and Movant confirm.

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).

It appears that Debtor has remedied the immediate problem - the lack of insurance. Movant, upon confirming that Debtor has insurance in place and it is a loss payee, can cancel the expensive forced place insurance, obtain at least a partial refund, and liquidate the additional amounts owed by Debtor.

Debtor can then determine how that additional amount can be paid back to Movant. Such may be a "simple" amendment to the Plan which does not alter the payments received by other creditors. If so, the Debtor, Trustee, and Movant can cost effectively attempt to obtain such amendment to the Plan by ex parte motion, if they concur such would be a proper procedure.

Debtor's counsel can also determine what other possible financial vulnerabilities may exist for Debtor and what precautions need to be taken. Movant can also evaluate its procedures when insurance lapses and the steps it takes before putting in place high cost forced placed insurance and then just bill it back to the borrower.

At the hearing, **xxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxxx**.

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 CIT Bank, N.A. ("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 Motion is **xxxxxxxxxxxxxxxxxxx**.

11 U.S.C. § 362(l)(3)(A) ADD-ON TO CALENDAR

3.	**17-21672-E-13**	**GLORIA RANNALS**	**LESSOR'S OBJECTION TO**
	SMR-1	**Pro Se**	**11 U.S.C. § 362(l)(1)(A) CERTIFICATION**
		AMANJOT DHANOA	**3-31-17 [17]**

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.

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11 U.S.C. § 362(l)(3)(A) Hearing
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 March 31, 2017. By the court's calculation, 4 days' notice was provided. 11 U.S.C. § 362(l)(3)(A) require that the court conduct an initial hearing on the Objection within 10 days of it being filed with the court.

The Motion for Relief from the Automatic Stay has been set for hearing on the notice required by the Bankruptcy Code. The court shall consider any opposition presented by Debtor or other party in interest under the procedures of Local Bankruptcy Rule 9014-1(f)(2) and determine whether there is a stated opposition for which further briefing, presentation of evidence, and hearing appropriate.

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.

The Objection to Certification is sustained and the court determines that the Certification by Debtor is not true.

Rowena Keeney, the Debtor, commenced this Chapter 13 bankruptcy case on March 15, 2017. The Clerk of the Court issued a Notice of Incomplete Filings and Intent to Dismiss if the following pleadings were not filed by March 29, 2017:

Chapter 13 Plan
Form 122C-1 Statement of Monthly Income
Schedule A/B - Real and Personal Property
Schedule C - Exempt Property
Schedule D - Secured Creditors
Schedule E/F - Unsecured Claims
Schedule G - Executory Contracts
Schedule H - Codebtors
Schedule I - Current Income

Schedule J - Current Expend.
Statement of Financial Affairs
Summary of Assets and Liabilities

Dckt. 3. The Debtor has filed a Verification of Master Address List which provides the court with addresses for all parties in interest, including creditors. The following persons, other than the Debtor are listed on the Master Address List filed by Debtor:

"AMANJOT DHANOA
CIO Sheldon Hadley, Esq.
230 51h Street
Marysville, CA 95901

SHELDON HADLEY, Esq.
230 5th Street
Marysville, CA 95901"

Dckt. 4.

On March 28, 2017, the day before the missing documents were due, Debtor requested an extension of time for filing such documents. Motion, Dckt. 15. The grounds stated in the Motion are:

"5. Declaration regarding the reason(s) for extension (explain):

I NEED MORE TIME TO REVISE AND COMPLETE ALL SCHEDULES, PARTICULARLY SCHEDULES A, C, E, AND F; THE "STATEMENT OF FINANCIAL AFFAIRS", AND THE B-122C-1 "CURRENT MONTHLY INCOME AND CALCULATION OF COMMITMENT PERIOD", AS WELL AS ADDITIONAL TIME NEEDED FOR THE NECESSITY TO REVIEW ALL CERTAIN STATISTICAL INFORMATION, AND REVIEW REVISED AMENDMENTS THAT WILL NEED TO BE FILED.

I PRAY FOR THE COURT TO HONOR MY REQUEST."

Id. at 2. The court has not yet ruled on the Motion for an Extension of Time to File Documents.

EVICTION JUDGMENT STATEMENT WITH PETITION

In response to Question 11 on the Bankruptcy Petition, Debtor states that she rents her residence and her landlord has obtained an eviction judgment against her. Petition, p. 3; Dckt. 1. Debtor has also filed Official Form 101A, Initial Statement About an Eviction Judgment Against You, which contains the following information:

A. Name of Landlord.....Amanjot Dhanoa

B. Debtor rents her residence.

C. Landlord has obtained a judgment for possession in an eviction, unlawful detainer, or similar proceeding to obtain possession of the residence.

D. Debtor states under penalty of perjury:

> "I certify under penalty of perjury that:
>
> Under the state or other nonbankruptcy law that applies to the judgment for possession (eviction judgment), I have the right to stay in my residence by paying my landlord the entire delinquent amount.
>
> I have given the bankruptcy court clerk a deposit for the rent that would be due during the 30 days after I file the Voluntary Petition for Individuals Filing for Bankruptcy (Official Form 101)."

Dckt. 9 at 1.

Debtor also filed Form 101B which repeats the above certifications. *Id.* at 2.

For the rent that will be due for thirty post-petition days for the rental of the residence property, Debtor has deposited $10.00 with the Clerk of the Court. March 15, 2017 Docket Entry by Clerk of the Court.

PRIOR BANKRUPTCY CASE FILED BY DEBTOR

In her bankruptcy Petition Debtor states that she has had one prior bankruptcy case filed in the eight years prior to the filing of this case. That prior case was filed on February 8, 2017 and dismissed on March 13, 2017. Bankr. E.D. Cal. 17-20799 ("Prior Bankruptcy Case"). In the Prior Bankruptcy Case, Debtor filed her bankruptcy petition, but failed to file all of the other documents as in the current case. 17-20799; Notice of Incomplete Filing, Dckt. 3. Debtor requested an extension of time to file the required documents, stating the following grounds:

> "I NEED MORE TIME TO CONFER WITH CREDITORS, AND REVISE AND COMPLETE ALL SCHEDULES, PARTICULARLY SCHEDULES A, E, AND F; THE "STATEMENT OF FINANCIAL AFFAIRS', AND THE B-122C-1 "CURRENT MONTHLY INCOME AND CALCULATION OF COMMITMENT PERIOD", AS WELL AS ANY AND ALL OTHER DOCUMENTATION AND INFORMATION AS MAY BE REQUIRED BY THE USBC.
>
> I PRAY THAT THE COURT WILL HONOR MY REQUEST."

Id.; Motion, Dckt. 16 at 2. This is almost identical grounds recounted above as stated in the Motion filed in the current case.

Debtor filed her 101A and 101B statements in the Prior Bankruptcy Case, asserting the right to "cure" the unlawful detainer judgment. *Id.*; Dckt. 11. Debtor identifies the same Landlord as in the current case. The Debtor deposited $10.00 with the court as the amount of rent for thirty-days in the residence that is the subject of the unlawful detainer judgment.

The court granted Debtor's request for an extension of time to file the missing documents, allowing Debtor until March 8, 2017 to have the documents filed, and a Chapter 13 Plan and motion to confirm filed and served on creditors. *Id.*; Order, Dckt. 20.

On March 8, 2017, Debtor had not filed the documents. However, she filed a second motion for an extension of time to file the documents – requesting that she be given until March 15, 2017, by which time she would presumably have all such documents completed and filed. *Id.*; Motion for Additional Time, Dckt. 24 at 2. The court stated three reasons for denial of the
Motion for Additional Time:

> "First, the debtor did not file the documents on March 8 and instead requested a second extension to March 15 without notice to the trustee or to creditors and without setting a hearing.
>
> Second, not only did the debtor fail to follow the court's prior order but if the court were to grant a second extension, it would be impossible for the debtor to set a hearing on the confirmation of a proposed plan within 45 days of the meeting of creditors as required by 11 U.S.C. § 1324(b).
>
> . . .
>
> Third, filing the documents on March 15 will prevent the trustee from conducting a meaningful examination of the debtor at the meeting of creditors on March 16. The documents include the information necessary to determine if the trustee can recommend confirmation of a plan."

Id.; Order, Dckt. 26 at 2, 3:1.

The court entered its order dismissing the Prior Bankruptcy Case on March 13, 2017. *Id.*; Dckt. 30.

OBJECTION TO DEBTOR'S FORM 101(A) AND (B) CERTIFICATIONS

On March 31, 2017, Amanjot Dhanoa ("Landlord") filed an Objection to Certification by Debtor. Dckt. 17. The "Objection" merely states that Landlord "objects to the certification." No specific grounds for objecting are stated. *Id.* at 1. However, appended to the "Objection" is 5 page Memorandum of Points and Authorities with extensive citations, quotations, and arguments made by counsel for Landlord. It appears that the "grounds" stated with particularity are buried in paragraphs 15 and 16 of the Points and Authorities as:

> "15. The regular monthly rent which would come due during the 30-day period following the filing of the Petition is the sum of $1,250.00 (See Declaration of

> Amanjot Dhanoa, Paragraphs 3-4, filed concurrently herewith; See also Unlawful Detainer Complaint, Exhibit "A" to Exhibits being filed concurrently herewith).
>
> 16. Accordingly, the Debtor has failed to deposit with the clerk all rent which would become due during the 30-day period after the filing of the petition as required by 11 U.S.C. section 362 (1) (1) (B)."

Id. at 4.

In this "Objection," Landlord does not appear to object to Debtor's contention that as a matter of California law Debtor may have the judgment for possession vacated merely by paying the delinquent rent amount upon which the judgment for possession was based.

Though titled only as an "Objection," in the prayer Landlord also requests an order pursuant to 11 U.S.C. § 362 that there is no automatic stay in effect in this case with respect to the eviction pursuant to the judgment for possession. It does not appear that Landlord has filed such a motion, paid the filing fee for such a motion, or is properly requesting such relief by a motion in this case. Fed. R. Bankr. P. 9013, 9014; L.B.R. 9014-1; and the provisions of Fed. R. Civ. P. 18 and Fed. R. Bankr. P. 7018 for adversary proceedings not being incorporated into the contested matter (including motion) practice as provided in Fed. R. Bankr. P. 9014(b).

RULING

The court sustains Landlord's Objection to the Certifications by Debtor as stated in Forms 101(A) and 101(B) filed by Debtor. Landlord provides her testimony that the monthly rent for the residence was $1,250.00. Declaration, ¶ 4; Dckt. 20. This does not sound unreasonable to the court. Debtor has not offered the court with credible evidence that $10.00 is thirty-days rent for a residence in Yuba City, California. Landlord also authenticates a copy of the judgment for possession, which is filed as Exhibit B (Dckt. 19 at 8-9). The judgment states that the rental agreement is cancelled and the lease is forfeited. *Id.*

Landlord has provided in her Points and Authorities references to the certification provisions, found in 11 U.S.C. § 362(l). In 11 U.S.C. § 362(l)(3)(A), if the lessor (here Landlord) files an objection to the certification, the court shall conduct a hearing within ten days to determine whether the certifications of (1) that the judgment for possession may be vacated by Debtor and (2) thirty days of rent monies have been deposited with the Clerk of the Court. If determined not to be "true," then "relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property." *Id.*

Debtor has not identified for the court a legal authority for Debtor having the right to pay the dollar amount of the judgment to have the judgment for possession vacated. However, Landlord has not identified any legal authority to counter Debtor's bald assertion of such right in the certification.

However, Landlord has provide the court with evidence that the "certification" by Debtor under penalty of perjury that thirty-days rent is only $10.00 is not "true." The court finds that Landlord's testimony that one month's rent is $1,250.00 to be credible and the correct amount of thirty-days rent for the residence property that is the subject of the Certification by Debtor.

The court sustains the Objection and determines that the Certifications made in the Petition and Forms 101(A) and 101(B) pursuant to 11 U.S.C. § 362(l)(A) to not be true.

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 Objection to the 11 U.S.C. § 362(l)(1) Certifications by Rowena Keeney, the Debtor, filed by Amanjot Dhanoa, the Landlord, 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 Objection is sustained and determines pursuant to 11 U.S.C. § 362(l)(3)(A) that the Certifications made by Debtor in Petition ¶ 11 (Dckt. 1.) and Forms 101(A) and 101(B) (Dckt. 9) are not true.