

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Chief Bankruptcy Judge

Sacramento, California

April 5, 2016 at 1:30 p.m.

1. [13-30919](#)-E-13 BUN AUYEUNG AND SOO TSE MOTION FOR RELIEF FROM
EAT-1 Peter Macaluso AUTOMATIC STAY
2-22-16 [[245](#)]
HSBC BANK USA, N.A. VS.

Final Ruling: No appearance at the April 5, 2016 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, parties requesting special notice, and Office of the United States Trustee on February 22, 2016. By the court's calculation, 43 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). 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.

HSBC Bank USA, National Association, as Trustee for THE BCAP Trust LLC 2006-AA2, Mortgage Pass-Through Certificates Series 2006-AA2 ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 5851 34th Ave, Sacramento, California (the "Property"). Movant has provided the Declaration of Juan Rivera to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Rivera Declaration states that there are 29 post-petition defaults in

April 5, 2016 at 1:30 p.m.

- Page 1 of 3 -

the payments on the obligation secured by the Property, with a total of \$64,746.58 in post-petition payments past due.

David Cusick, the Chapter 13 Trustee, filed a nonopposition to the instant Motion on March 21, 2016.

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 \$191,965.72 (including \$159,199.87 secured by Movant's first deed of trust), as stated in the Rivera Declaration and Schedule D filed by Bun Auteung and Soo Tse("Debtor"). The value of the Property is determined to be \$75,000.00, as stated in Schedules A and D filed by Debtor.

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. *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, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

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.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving 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 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 HSBC Bank USA, National Association, as Trustee for TH EBCAP Trust LLC 2006-AA2, Mortgage Pass-Through Certificates Series 2006-AA2("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 immediately vacated to allow HSBC Bank USA, National Association, as Trustee for THE BCAP Trust LLC 2006-AA2, Mortgage Pass-Through Certificates Series 2006-AA2, 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 5851 34th Ave, Sacramento, California.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived.

No other or additional relief is granted.

2. [15-26656](#)-E-13 GARY STEPHAN
NLG-1 Dale Orthner

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
2-24-16 [[69](#)]

CENTRAL MORTGAGE COMPANY VS.

Final Ruling: No appearance at the April 5, 2016 hearing is required.

Central Mortgage Company d/b/a Central Mortgage Loan Servicing Company having filed a Withdrawal of the Motion for Relief from the Automatic Stay, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041 **the Motion for Relief from Automatic Stay was dismissed without prejudice, and the matter is removed from the calendar.**