

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

June 9, 2020 at 1:30 p.m.

**ALL APPEARANCES MUST BE TELEPHONIC
(Please see the court's website for instructions.)**

1. [20-21558-C-13](#) DANIEL CRAIN MOTION FOR RELIEF FROM
[MET-1](#) Mark Briden AUTOMATIC STAY
5-12-20 [21]

BANK OF THE WEST 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 May 12, 2020. By the court's calculation, 28 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 ~~XXXXX~~.

Bank of the West ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2017 Malibu 22MXZ ("Boat and Trailer"). The moving party has provided the

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Declaration of Aimee Nanon to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Daniel Zinn Crain (“Debtor”).

Movant argues Debtor has not made post-petition payments, with a total of \$703.53 in post-petition payments past due. Declaration, Dckt. 24. Movant argues further the Boat and Trailer’s value of \$88,790.00 is less than Movant’s secured claim totaling \$89,498.13. *Id.* Movant also provides testimony that counsel for Debtor reported the Boat and Trailer would be surrendered. Declaration, Dckt. 26.

Debtor’s proposed First Amended Plan provides for Movant’s claim as a Class 3, meaning the Boat and Trailer will be surrendered. Dckt. 39.

DISCUSSION

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$89,498.13. Declaration, Dckt. 24.

As to the value of the Boat and Trailer, the Movant provides a NADA valuation asserting that the value is \$88,790.00. Exhibit 4, Dckt. 25. But, the valuation report lists an average retail of \$88,790, and a high retail of \$100,830.00. In reading the fine print of the report, a “high retail” “reflects those boats in excellent condition.” *Id.*

It does not appear from the evidence that Movant actually inspected the Boat and Trailer to determine whether the average or high retail value applies.

Debtor values the Boat and Trailer at \$90,000.00 on Schedule A/B. Given Debtor’s personal knowledge about the Boat and Trailer’s condition the court finds the Boat and Trailer’s value to be \$90,000.

Therefore, there is a sliver of equity in the Boat and Trailer.

However the court determines that cause exists for terminating the automatic stay pursuant to 11 U.S.C. § 362(d)(1), including defaults in post-petition payments that have come due and Debtor’s expressed intention to surrender the Boat and Trailer.

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 Boat and Trailer, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

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 that the court grant relief from the Rule as adopted by the United States Supreme Court.

Movant has 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 granted.

Relief From § 1301 Co-Debtor Stay

Movant also seeks relief from the co-debtor stay under 11 U.S.C. § 1301(a). The Motion states that Stacey Marie Hill is a co-debtor on the Retail Installment Contract and Agreement.

On the Certificate of Service, it is not indicated that Hill was served as a party in interest with her rights being determined by this Motion. Dckt. 27. Service on the co-debtor is required for relief from the co-debtor stay. *See* 8 COLLIER ON BANKRUPTCY P 1301.03 (16th 2020).

Not having served the co-debtor, the court cannot purport to terminate rights of a person for whom in personam jurisdiction has not been established.

At the hearing, Movant explained the basis for granting this relief without having served Hill
XXXXXXXXXXXXXXXXXX.

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 Bank of the West (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Movant, its agents, representatives, and successors, and all other creditors having lien rights against the Boat and Trailer, under its security agreement, loan documents granting it a lien in the asset identified as a 2017 Malibu 22MXZ (“Boat and Trailer”), and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of the Boat and Trailer to the obligation secured thereby.

~~**IT IS FURTHER ORDERED** that the request to terminate the co-debtor stay of Stacey Marie Hill of 11 U.S.C. § 1301(a) is granted to the same extent as provided in the forgoing paragraph granting relief from the automatic stay arising under 11 U.S.C. § 362(a).~~

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.