

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

Pursuant to District Court General Order 618, no persons are permitted to appear in court unless authorized by order of the court. All appearances of parties and attorneys shall be telephonic through CourtCall, until further order of the Chief Judge of the District Court. **The contact information for CourtCall to arrange for a phone appearance is: (866) 582-6878.**

MODESTO DIVISION CALENDAR
June 18, 2020 at 10:00 a.m.

-
1. [19-90122-E-11](#) **MIKE TAMANA FREIGHT** **MOTION FOR RELIEF FROM**
[WT-2](#) **LINES, LLC** **AUTOMATIC STAY O.S.T.**
 Reno Fernandez **6-4-20 [514]**
ASHLEY HARRISON 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)(3) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, creditors holding the twenty largest unsecured claims, and Office of the United States Trustee on June 4, 2020. By the court's calculation, 14 days' notice was provided. The court set the hearing for June 18, 2020. Dckt. 513.

The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). Debtor, creditors, 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.

Ashley Harrison, et al. (“Movant”) seeks relief from the automatic stay to allow Movant to proceed with a state court personal injury lawsuit against Debtor in Possession so that Movant can collect from the Debtor in Possession’s Insurance Policies (“State Court Litigation”).

Movant alleges that on June 26, 2018 Movant suffered personal injury from a tractor-trailer driven by an employee of the Debtor in Possession in Washington County, Arkansas. Movant argues that relief from the stay would allow her to move forward with state court litigation against Debtor in Possession’s insurance, only pursuing the Debtor in Possession in name and not seeking relief from the Debtor in Possession, the bankruptcy estate, or any subsequent bankruptcy trustee of the estate. Motion, Dckt. 514.

Joint Stipulation

On June 2, 2020, Movant and Debtor in Possession filed a joint stipulation as it pertains to the requested relief. Dckt. 511. ^{FN.1} The parties stipulate the automatic stay would be terminated with respect to the state court litigation only, and each claimant would have relief to pursue their claims related to the litigation. The Debtor in Possession shall only be a party in name and may only be pursued up to an entry of judgment per the terms of the stipulation. Ashley Harrison, et al. will not file any claim in the bankruptcy case nor seek relief from the bankruptcy estate or property of the bankruptcy estate except what is requested through the stipulation. The parties further agreed to have the hearing heard on shortened time (order entered June 2, 2020, Dckt. 513) and for waiver of the 14-day stay of enforcement provided by FRBP 4001(a)(3).

FN. 1. The court notes that the Stipulation is not filed with the Docket Control Number for this Motion. With the court’s internal file management system that organizes motions for the court’s review, not having the docket control number on all relevant pleadings can result in a document being lost in the hundreds and hundreds (and hundreds more) of filing in this case. Fortunately, the law clerk identified Stipulation without a Docket Control Number and connected it to this Motion.

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).

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 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.

Waiver of Fourteen-Day Stay of Enforcement

Though relief and the grounds therefore are not stated in the Motion, in the prayer there is the added request for the court “2. To waive the 14-days stay of F.R.B.P. 4001(a)(3);” Motion, p. 5:2; Dckt. 514. No grounds are stated for this court to overrule the fourteen-day stay imposed by the Supreme Court in Federal Rule of Bankruptcy Procedure 4001(a)(3).

However, the Motion does state with particularity the grounds and relief sought, and how the parties are acting in a manner to allow the Movants to seek recovery from the insurance maintained by the Debtor. These grounds would be applicable to the waiver for cause of the Rule 4001(a)(3) fourteen-day stay.

The Stipulation expressly states that the parties agree to waive the fourteen-day stay. Stipulation ¶ 6; Dckt. 511.

For purposes of this Motion, and this Motion only, the court will read the one sentence saying the parties are stipulating to waiving the fourteen-day stay into the Motion. Further, that under the following allegations of: (1) the Movants asserting that they were injured in June 2018; (2) that Debtor maintained insurance to pay for such damages if Debtor is liable, (3) Movants agreeing to only seek recovery from the insurance and not assert a claim in this bankruptcy case, (4) the prejudice to Movants with respect to their ability to obtain payment from the insurance policies maintained by the Debtor, and (5) that the Debtor in Possession concurs in such relief being effective immediately, the court finds that cause exists to waive the fourteen-day 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 Ashley Harrison, et al. (“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 Mike Tamana Freight Lines, LLC (“Debtor in Possession”) 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 to proceed with the state court personal injury litigation.

IT IS FURTHER ORDERED that the automatic stay is not modified with respect to enforcement of any judgment against Debtor 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.

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 as stipulated by the parties.

No other or additional relief is granted.

FINAL RULINGS

2. [19-90989-E-7](#) JAMIE/MELISSA BILLMAN CONTINUED MOTION FOR RELIEF
[FRB-1](#) Walter Dahl FROM AUTOMATIC STAY
4-10-20 [[139](#)]
FIRST SAVINGS BANK VS.

Final Ruling: No appearance at the June 18, 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 Debtors, Debtor’s Attorney, Chapter 7 Trustee, Lienholders, and Office of the United States Trustee on April 10, 2020. By the court’s calculation, 55 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.

Pursuant to this court’s Order (Dckt. 186), the Motion for Relief from the Automatic Stay was previously granted, and **this Matter is removed from the calendar.**