

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

July 1, 2021 at 10:00 a.m.

1. [21-22159-E-7](#) AT HOME ELECTRIC STATUS CONFERENCE RE:
CHAPTER 7 VOLUNTARY PETITION
6-10-21 [1]

Debtor's Atty: Pro Se

Notes:

Set by order of the court filed 6/23/21. [Dckt 20] Ordered to appear: Nikki B. Farris, Chapter 7 Trustee; Attorney for the U.S. Trustee for this case; and Heath V. Fulkerson, who identifies himself as a "operations manager" of the limited liability company debtor, and any attorney who is representing the Debtor.

Order to Show Cause re Dismissal and/or Imposition of Sanctions for Failure to Tender Fees or an Application to Pay Fees in Installments with Bankruptcy Court filed 6/24/21 [Dckt 21]; set for hearing 7/22/21 at 10:30 a.m.

The Status Conference is ~~XXXXX~~.

On June 10, 2021, a Voluntary Bankruptcy Petition was filed for Heath V. Fulkerson, LLC, Debtor, for which the following additional business names were listed on the Petition:

At Home Electric
L. Michael Fulkerson Estate
Heath V. Fulkerson
Christian M. Fulkerson
Silver State Horses, LLC

Petition, Dckt. 1 at 1. The Petition states that Debtor's principal place of business is 747-525 Doyle Grade Rd, Doyle, California, but its mailing address is in Reno, Nevada. *Id.* Since Doyle, California is located on Highway 395 north of Lake Tahoe, it would not be surprising for it to have a mailing address in Reno, Nevada, a mere forty-five (45) miles away. ^{Fn.1.}

FN. 1. Computed using Google Maps,
<https://www.google.com/maps/dir/Reno,+Nevada/Doyle,+CA+96109/@39.7764428,-120.2278814,10z/data=!3m1!4b1!4m13!4m12!1m5!1m1!1s0x809940ae9292a09d:0x40c5c5ce7438f787!2m2!1d-119.8138027!2d39.5296329!1m5!1m1!1s0x809e9e8d263f640f:0xc3a4ad6f14959f04!2m2!1d-120.104056!2d40.0272338>

This Voluntary Petition purports to have been filed in pro se by the limited liability company Debtor. Only a living individual can appear in pro se in federal or California court proceedings. Entities such as corporations, trusts, limited liability companies and the like, must be represented by counsel. *See, Merco Constr. Engineers, Inc. v. Municipal Court*, 21 Cal. 3d 724, 729, 581 P.2d 636, 638 (1978); *Rowland v. California Men's Colony*, 506 U.S. 194, 201 (1993).

The Notice that this Debtor required representation of an attorney was issued by the Clerk of the Court on June 10, 2021. Dckt. 6.

On June 15, 2021, an Amended Petition was filed, on which Debtor's name was changed to "At Home Electric," and three other names used by the Debtor were identified as, "Heath V. Fulkerson, LLC, Health V. Fulkerson DBA At Home Electric, and Heath V. Fulkerson." Dckt. 13 at 2.

The original and amended Petitions appear to have a fictitious entity also operating under the name of the living person, Heath V. Fulkerson. This could appear to be an attempt to file a joint bankruptcy case between a non-human entity, the LLC, and Mr. Fulkerson. The Bankruptcy Code allows for joint bankruptcy cases to be filed "by an individual that may be a debtor under such chapter and such individual's spouse." 11 U.S.C. § 302(a).

On June 15, 2021, this court entered its order denying Debtor's request to pay the filing fee in installment. Dckt. 10.

On June 21, 2021, two Motions to Convert this Case to one under Chapter 11 were filed - again by the Debtor purportedly in *pro se*. Dckt. 17, 18.

Congress provides in 11 U.S.C. § 706(a) that the debtor may convert a case from Chapter 7 to one under Chapter 11, 12, or 13 (if the debtor is an individual) at any time, and such right to convert may not be waived. However, to do such, the limited liability Debtor in this case needs to be represented by counsel.

On June 23, 2021, the court entered an order for a Chapter 7 Status Conference, ordering the Chapter 7 Trustee, an attorney for the U.S. Trustee, and Health V. Fulkerson to appear and address the prosecution of this case.

A review of the Docket on June 30, 2021, the day before the Status Conference reflects that no substitution or appearance by an attorney has been made for the non-individual Debtor LLC.

At the Status Conference **XXXXXXX**

FINAL RULINGS

2. [21-21751-E-11](#) **BIONICA INC.** **MOTION FOR RELIEF FROM**
TF-1 **Roderick MacKenzie** **AUTOMATIC STAY**
MP HOLDINGS, LLC VS. **6-2-21 [27]**

Final Ruling: No appearance at the July 1, 2021 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 11 Trustee, creditors holding the twenty largest unsecured claims, creditors, parties requesting special notice, and Office of the United States Trustee on June 2, 2021. By the court’s calculation, 29 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.

MP Holdings, LLC (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as Building 343, 5112 Bailey Loop, McClellan, California (“Property”). The moving party has provided the Declaration of David Mastro to introduce evidence as a basis for Movant’s contention that Bionica Inc. (“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. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento and a default judgment was entered on March, 22, 2021, with a Writ of Possession having been issued by that court on April 26, 2021. Exhibits D, E, and F, Dckt. 31. This bankruptcy case was filed on May 11, 2021.

Movant has provided a properly authenticated copy of the default judgment and Writ of Possession. 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).

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).

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.

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 MP Holdings Inc. (“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 Building 343, 5112 Bailey Loop, McClellan, California.

No other or additional relief is granted.

3. [20-25057-E-7](#) **DAVID FLETCHER**
[JHW-1](#) **Douglas Jacobs**
TD AUTO FINANCE LLC VS.
3 thru 4

**MOTION FOR RELIEF FROM
AUTOMATIC STAY**
6-1-21 [[209](#)]

Final Ruling: No appearance at the July 1, 2021 hearing is required.

The Motion for Relief from the Automatic Stay is dismissed without prejudice.

TD AUTO FINANCE LLC (“Creditor”) having filed a Notice of Withdrawal, which the court construes to be an *Ex Parte* Motion to Dismiss the pending Motion on June 28, 2021, Dckt. 241; no prejudice to the responding party appearing by the dismissal of the Motion; Creditor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by David Fletcher (“Creditor”); the *Ex Parte* Motion is granted, Creditor’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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 TD AUTO FINANCE LLC (“Creditor”) having been presented to the court, Creditor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 241, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the TD AUTO FINANCE LLC is dismissed without prejudice.

4. [20-25057-E-7](#) **DAVID FLETCHER**
[JHW-2](#) **Douglas Jacobs**
TD AUTO FINANCE LLC VS.

**MOTION FOR RELIEF FROM
AUTOMATIC STAY**
6-1-21 [[216](#)]

Final Ruling: No appearance at the July 1, 2021 hearing is required.

The Motion for Relief from the Automatic Stay is dismissed without prejudice.

TD AUTO FINANCE LLC (“Creditor”) having filed a Notice of Withdrawal, which the court construes to be an *Ex Parte* Motion to Dismiss the pending Motion on June 28, 2021, Dckt. 243; no prejudice to the responding party appearing by the dismissal of the Motion; Creditor having the right to request dismissal of the motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041; and the dismissal being consistent with the opposition filed by David Fletcher (“Creditor”); the *Ex Parte* Motion is granted, Creditor’s Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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 TD AUTO FINANCE LLC (“Creditor”) having been presented to the court, Creditor having requested that the Motion itself be dismissed pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, Dckt. 243, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the TD AUTO FINANCE LLC is dismissed without prejudice.