

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Sacramento, California

July 10, 2014 at 9:30 a.m.

1. [12-34690-E-7](#) FAUSTO VILLALOBOS MOTION FOR RELIEF FROM
SCC-1 Scott J. Sagaria AUTOMATIC STAY
6-6-14 [[122](#)]
COUNTY OF SACRAMENTO VS.

Tentative Ruling: 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).

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.

Local Rule 9014-1(f)(1) Motion - Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 7 Trustee, parties requesting special notice, and Office of the United States Trustee on June 6, 2014. By the court's calculation, 34 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). The defaults of the non-responding parties are entered.

The Motion for Relief From the Automatic Stay is granted pursuant to the parties Stipulation, Dckt. 131.

The County of Sacramento ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 6301 Franklin Boulevard, Sacramento, California (the "Property"). Movant has provided the Declaration of Keith Floyd to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the

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Property.

The Floyd Declaration states that the County of Sacramento has a pending eminent domain action entitled County of Sacramento v. Fausto Villalobos et al, Sacramento County Superior Court Case No. 34-2012-00135789, to acquire a 1,360 square foot public roadway and public utilities easement and a 1,650 square foot construction easement across the wester edge of the real property. Sacramento County Assessor record indicate that title to the properties is currently in the Josefina Villalobos Family Trust.

Movant's contention that the action will not interfere with the Debtor's reorganization as set forth in 11 U.S.C. § 362(d)(2)(B) is without merit. Not necessary for a reorganization is one of the two necessary elements for relief from the automatic stay under 11 U.S.C. § 362(d)(2). The fact that the action will not interfere with the Debtor's reorganization is not sufficient, standing alone, to grant relief from the automatic stay under 11 U.S.C. § 362(d)(2). *In re Suter*, 10 B.R. 471, 472 (Bankr. E.D. Penn. 1981); *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). Moving party has not adequately plead or provided an evidentiary basis for granting relief from the automatic stay.

Furthermore, the court is unable to discern whether the real property is property of the estate or if it is property in a bona fide trust, in which the estate only holds a beneficial interest. Debtor may or may not be the Trustee of the Trust, the court does not have sufficient evidence to determine either way. Based on what has been presented, the court is unable to determine if the subject real property is property of the estate and therefore subject to the automatic stay.

STIPULATION

It appears the Chapter 7 Trustee and Movant have entered into a Stipulation for Relief from the Automatic Stay. Stipulation, Dckt. 131. Pursuant to Federal Rule of Bankruptcy Procedure 4001(d), Agreements relating to relief form the automatic stay must be made by motion. Furthermore, the parties prepared a proposed order to the court to grant the stipulation which basically says, "Yup, relief granted as stated in the Stipulation attached - you all guess what the judge is ordering." The court does not issue vague orders referring to stipulations, which contain superfluous language.

RULING

However, based on the Stipulation between the Chapter 7 Trustee and the Movant, which provides that the MOvant "may proceed for all purposes with the State Court Case" and that the Trustee shall be joined as real parties in interest in the State Court Case, the court issues the following ruling.

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 basis for such relief 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 *Packerland Packing*

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Co., Inc. v. Griffith Brokerage Co. (In re S. Kemble), 776 F.2d 802 (9th Cir. 1985); *Christensen v. Tucson Estates, Inc. (In re Tucson Estates, Inc.)*, 912 F.2d 1162 (9th Cir. 1990); *Santa Clara County Fair Ass'n, Inc. v. Sanders (In re Santa Clara County Fair Ass'n, Inc.)*, 180 B.R. 564 (9th Cir. BAP 1995); *Truebro, Inc. v. Plumberex Specialty Products, Inc. (In re Plumberex Specialty Products, Inc.)*, 311 B.R. 551 (Bankr. C.D. Cal. 2004).

The County of Sacramento has a pending eminent domain action entitled *County of Sacramento v. Fausto Villalobos et al*, Sacramento County Superior Court Case No. 34-2012-00135789, to acquire a 1,360 square foot public roadway and public utilities easement and a 1,650 square foot construction easement across the wester edge of the real property. Sacramento County Assessor record indicate that title to the properties is currently in the Josefina Villalobos Family Trust. The court finds that the nature of the eminent domain court case warrants relief from stay for cause.

The court shall issue a minute order modifying the automatic stay as it applies to the Debtor and to the estate, to allow the County of Sacramento to continue the eminent domain case.

The automatic stay is not modified with respect to the enforcement of the judgment against the Debtor, Trustee, or property of the bankruptcy estate. Any judgment obtained shall be brought back to this court for the proper treatment of any claims under the Bankruptcy Code.

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 the creditor 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 modified to allow the County of Sacramento, its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors to continue the eminent domain action entitled *County of Sacramento v. Fausto Villalobos et al*, Sacramento County Superior Court Case No. 34-2012-00135789.

IT IS FURTHER ORDERED that the automatic stay is not modified with respect to the enforcement of the judgment against the Debtors, Trustee, or property of the bankruptcy estate. Any judgment obtained shall be brought back to this court for the proper treatment of any claims under the Bankruptcy Code.

No other or additional relief is granted.

