

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

July 11, 2017 at 1:30 p.m.

1. [15-20002](#)-C-13 BRIAN SANCHEZ MOTION FOR RELIEF FROM
KH-1 Gary Fraley AUTOMATIC STAY
6-20-17 [[80](#)]

AIMCO MALIBU CANYON, LLC.
VS.

Tentative Ruling: The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, 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 offers 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

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 June 20, 2017. 14 days' notice is required. That requirement was met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
-----.

The Motion for Relief from the Automatic stay is continued to August 1, 2017 at 2:00 p.m.

AIMCO Malibu Canyon, LLC seeks relief from the automatic stay with respect to the real property commonly known as 5830 N. Las Virgneses Road, Apt. 467, Calabasis, California. The moving party has provided the Declaration of Linda T. Hollenbeck to introduce evidence to authenticate the

documents upon which it bases the claim and the obligation owed by the Debtor.

The Declaration states that the Movant is the legal owner of the property. Movant seeks to proceed with the unlawful detainer action filed in state court on March 16, 2017.

Trustee's Response

The Chapter 13 Trustee states no basis to oppose the motion, but notes that the trustee cannot locate a change of address on PACER for the Debtor to the subject property. Dkt. 88.

Debtor's Opposition

Chapter 13 Debtor, Brian Kenneth Sanchez, opposes the motion on the basis that he has no knowledge of the subject property, subject lease, or unlawful detainer action. Dkt. 91.

Discussion

Movant presents evidence that it is the owner of the Property. Movant has provided a properly authenticated/ certified copy of the lease agreement to substantiate its claim of ownership. Dkt. 85. Based on the responses of Debtor and the Trustee, however, the court is not convinced that Debtor resides at the subject property. Both the lease agreement and state court complaint identify the lessee/defendant as "Brian Sanchez" with neither a middle name nor initial provided. Further, the motion states that the state court, rather than the Debtor, alerted movant to the Debtor's bankruptcy case one day after judgment was entered, thereby voiding the judgment.

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (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 Contested Matter (Fed. R. Bankr. P. 9014).

The court shall continue the matter to allow time for the movant to submit further evidence that Brian Kenneth Sanchez is the proper defendant in the unlawful detainer action as well as the proper signatory of the lease agreement.

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 AIMCO Malibu Canyon, LLC ("Movant") continued to August 1, 2017 at 2:00 p.m.

2. [15-25171](#)-C-13 KING/LINDA EVANGELISTA
APN-1 Gary Fraley

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-1-17 [[44](#)]

SANTANDER CONSUMER USA, INC.
VS.

Final Ruling: No appearance at the July 11, 2017 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, and Office of the United States Trustee on June 1, 2017. Twenty-eight 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.

Santander Consumer USA Inc. seeks relief from the automatic stay with respect to a 2007 Cadillac CTS, Vehicle Identification Number 1G6DM57T670139436. The moving party has provided the Declaration of Marianne Favors to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Declaration states that the vehicle was involved in an accident and declared a total loss by Debtor's insurance carrier on March 24, 2017. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$6,774.20 while the value of the property is determined to be \$0.00 due to a motor vehicle accident rendering the subject vehicle a total loss.

Debtor's Nonopposition

Chapter 13 Debtors King John Lopez Evangelista and Linda Tran Evangelista consent to the motion being granted on the condition that Movant file an amended proof of claim reflecting the new amount owed by Debtors as a result of the vehicle insurance proceeds being applied toward the current balance owed by Debtors. Dkt. 50.

Discussion

The court maintains the right to grant relief from stay for cause when the 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 since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

The court shall issue a minute order terminating and vacating the automatic stay to allow Santander Consumer USA Inc., 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.

Because the moving party has established that there is no equity in the property for the Debtor and no value in excess of the amount of the creditor's claims as of the commencement of this case, the moving party is not awarded attorneys' fees for all matters relating to this Motion.

The moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving 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 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 that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Santander Consumer USA Inc., its agents, representatives, and successors, to exercise any and all rights arising under the security interest and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the 2007 Cadillac CTS, Vehicle Identification Number 1G6DM57T670139436.

No other or additional relief is granted.

3. [17-20571](#)-C-13 KATHRYN KREEGER
AP-1 Mark Wolff

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
6-5-17 [[49](#)]

OCWEN LOAN SERVICING, LLC
VS.

Final Ruling: No appearance at the July 11, 2017 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, and Office of the United States Trustee on June 5, 2017. Twenty-eight 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.

Ocwen Loan Servicing, LLC seeks relief from the automatic stay with respect to the real property commonly known as 306 Coronado Ave, Roseville, California. The moving party has provided the Declaration of Sonja Manderville to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Manderville Declaration states that the Debtor has not made 4 post-petition payments, with a total of \$5,303.04 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$300,076.96 (including \$162,793.96 secured by movant's first trust deed), as stated in the Declaration, while the value of the Debtor's shared interest in the property is determined to be \$107,250.00, and the total value of the property is determined to be 325,000,000, as stated in Schedules A and D filed by Debtor.

The Chapter 13 Trustee filed a statement of nonopposition. Dkt. 59.

The court maintains the right to grant relief from stay for cause when the 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 since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).]

The court shall issue a minute order terminating and vacating the automatic stay to allow Ocwen Loan Servicing, LLC, 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.

The moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving 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 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 that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Ocwen Loan Servicing, LLC, 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 306 Coronado Ave, Roseville, California.

No other or additional relief is granted.

4. 17-23287-C-13 ROBERT AMADOR
RTD-1 Mikalah Liviakis

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
6-26-17 [20]

SCHOOLS FINANCIAL CREDIT
UNION VS.

Tentative Ruling: The Motion for Relief from the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, 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 offers 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.

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)(iii).

Local Rule 9014-1(f)(2) Motion.

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 June 26, 2017. 14 days' notice is required. That requirement was met.

The Motion to Value was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. At the hearing -----
-----.

The Motion for Relief From the Automatic Stay is granted.

Schools Financial Credit Union seeks relief from the automatic stay with respect to the real property commonly known as 12121 Gold Pointe Lane, Gold River, California. The moving party has provided the Declarations of Theresa Estorga and Roxanne Daneri to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtors.

The Estorga Declaration states that the Debtors have not made 2 post-petition payments, with a total of \$1,767.82 in post-petition payments past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property is determined to be \$388,263.18 (including \$133,025.09 secured by movant's junior trust deed),

as stated in the Estorga Declaration, while the value of the property is determined to be 390,000,000, as stated in Schedules A and D filed by Debtor.

The Chapter 13 Trustee filed a statement of nonopposition. Dkt. 32.

The court maintains the right to grant relief from stay for cause when the 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 since the debtor has not made post-petition payments. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).]

The court shall issue a minute order terminating and vacating the automatic stay to allow Schools Financial Credit Union, 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.

The moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving 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 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 that the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Schools Financial Credit Union, 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 12121 Gold Pointe Lane, Gold River, California.

No other or additional relief is granted.

5. [17-23493](#)-C-13 DE'ANGELA REED
SMR-1 Matthew Gilbert

MOTION FOR RELIEF FROM
AUTOMATIC STAY
6-5-17 [[9](#)]

RAMONA COOK VS.

Final Ruling: No appearance at the July 11, 2017 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, and Office of the United States Trustee on June 5, 2017. Twenty-eight 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.

Ramona Gail Cook seeks relief from the automatic stay with respect to the real property commonly known as 2810 Redding Avenue, Unit F, Sacramento, California. The moving party has provided the Declaration of Ramona Gail Cook to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Declaration states that the Movant is the sub-lessor of the property. Movant seeks to proceed with the unlawful detainer action filed in state court on May 15, 2017. On May 23, 2017, at 8:38 a.m., the state court entered the Default against defendant/Debtor following the filing of a Request for Entry of Default with the Sacramento County Superior Court. A Judgment for Possession of the subject premises was thereafter entered in favor of Movant on that same date and at approximately, the same time.

On May 23, 2017, the Debtor's attorney counsel for Movant in the Unlawful Detainer action, that the Debtor had filed a Chapter 13 Voluntary Petition at 3:57 p.m. on May 23, 2017, initiating a stay of the pending action for Unlawful Detainer.

Discussion

Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento. Exhibit B, Dckt. 12.

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (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 Contested Matter (Fed. R. Bankr. P. 9014).

The court shall issue an order terminating and vacating the automatic stay to allow Ramona Gail Cook, and its agents, representatives and successors, to exercise its rights to obtain possession and control of property including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Because the moving party has established that there is no equity in the property for the Debtor and no value in excess of the amount of the creditor's claims as of the commencement of this case, the moving party is not awarded attorneys' fees for all matters relating to this Motion.

The moving party has not pleaded adequate facts and presented sufficient evidence to support the court waving 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 Ramona Gail Cook ("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 Ramona Gail Cook and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 2810 Redding Avenue, Unit F, Sacramento, California.

No other or additional relief is granted.
