

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

August 6, 2013 at 1:30 p.m.

1. [12-40739](#)-C-13 ERIC RICH MOTION FOR RELIEF FROM
Scott CoBen AUTOMATIC STAY
6-13-13 [[62](#)]

BURNETT AND SONS PLANING
MILL AND LUMBER COMPANY,
INC. VS.

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 13, 2013. 28 days' notice is required. That requirement was met.

Final 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). 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 respondent 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. No appearance required.

Burnett & Sons Planing Mill & Lumber Company, Inc. ("Movant") seeks relief from the automatic stay in order to recover damages against any insurance policy insuring the debtor Eric Rich d/b/a Window Works pending a resolution of the state court civil action in which the parties are now involved: *Anthony Guess, et al v. Signature at Folsom, LLC*, Sacramento County Superior Court Case No. 34-2010-00094278. The moving party has provided the Declaration of Julio Hernandez to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

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In support of its motion, Movant states that the debtor's bankruptcy does not discharge or affect the potential liability of the debtor's insurer with respect to their matter. See, Cal. Ins. Code §11580(b)(1). Movant asserts that relief from the automatic stay in the instant matter is justified because there is "cause" to grant stay relief within the meaning of 11 U.S.C. § 362(d). "Cause" for stay relief purposes is determined on a case-by-case basis. *In re Tucson Estates, Inc.*, 912 F.2d 1162 (9th Cir. 1990). Cause may be found by balancing the equities and evaluating the relative harm that could be suffered by the parties if say relief is or isn't granted. In this case, the debtor would not be prejudiced if the Movant were to recover from his insurer, whereas the Movant would be prejudiced if it were unable to recover in its civil action. Therefore, "cause" exists to grant relief from the automatic stay with respect to the instant matter.

The court shall issue a minute order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to recover against the Debtor's insurance policies in the aforementioned Sacramento County Superior Court action.

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 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 recover against the debtor's insurance policies in the Sacramento County Superior Court Case No. 34-2010-00094278.

No other or additional relief is granted.