

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein

Chief Bankruptcy Judge

Sacramento, California

August 27, 2013 at 1:30 p.m.

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1. [13-24818](#)-C-13 ANDREW/DIANE GARCIA CONTINUED MOTION FOR RELIEF
SW-1 Steele Lanphier FROM AUTOMATIC STAY
7-24-13 [[28](#)]
WELLS FARGO BANK, N.A. VS.

Local Rule 9014-1(f)(2) 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 July 24, 2013. 14 days' notice is required. That requirement was met.

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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion for Relief from the Automatic Stay. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

This matter was continued from August 13, 2013.

Wells Fargo Bank, N.A. seeks relief from the automatic stay with respect to an asset identified as a 2003 Ford Mustang, VIN ending in 9287. The moving party has provided the Declaration of Julie Becking to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Motor Vehicle Contract and Security Agreement was entered into by Debtors, non-bankrupt co-debtor Emilie Arizaga, and Movant. Movant's claim is not provided for by the plan.

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The Becking Declaration states that the Debtor has not made 3 post-petition payments, with a total of \$531.10 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 asset is determined to be \$3,748.84, as stated in the Becking Declaration, while the value of the asset is determined to be \$2,875.00. The asset is not listed on Debtors' Schedules B and D and the value is based on Kelley Blue Book valuation.

The *Kelley Blue Book* valuation is attached as an Exhibit, it is not properly authenticated. The court will *sua sponte* take notice that the *Kelley Blue Book* can be within the "Market reports, commercial publications" exception to the Hearsay Rule, Fed. R. Evid. 803(17), it does not resolve the authentication requirement, Fed. R. Evid. 901. In this case, and because no opposition has been asserted by the Debtor, the court will presume the Declaration of Julie Becking to be that she obtained the *Kelley Blue Book* valuation and is providing that to the court under penalty of perjury. The creditor and counsel should not presume that the court will provide *sua sponte* corrections to any defects in evidence presented to the court.

Trustee, David Cusick, filed a statement of non opposition.

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates. Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted to the court, and no opposition or showing having been made by the Debtor or the Trustee, the court determines that there is no equity in the asset for either the Debtor or the Estate, and the asset is not necessary for any effective reorganization in this Chapter 13 case.

The court shall issue a minute order terminating and vacating the automatic stay to allow Wells Fargo Bank, N.A., and its agents, representatives and successors, and all other creditors having lien rights against the asset, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

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 vacated to allow Wells Fargo Bank, N.A., its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors under its security agreement, loan documents granting it a lien in the asset identified as a 2003 Ford Mustang, and applicable nonbankruptcy law to

obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset to the obligation secured thereby.

2. [13-27957](#)-C-13 TRACIE RIGGS MOTION FOR RELIEF FROM
JWC-1 Pro Se AUTOMATIC STAY
8-9-13 [[28](#)]
LITWIN VS.

Local Rule 9014-1(f)(2) 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 August 9, 2013. 14 days' notice is required. That requirement was met.

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. Below is the court's tentative ruling, rendered on the assumption that there will be no opposition to the motion. Obviously, if there is opposition, the court may reconsider this tentative ruling.

The court's tentative decision is to grant the Motion for Relief from the Automatic Stay. 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. If the court's tentative ruling becomes its final ruling, the court will make the following findings of fact and conclusions of law:

Litwin & W. Laverne Lowe, d/b/a/ Bamboo Tree Mobile Home Park & R.V. Park seeks relief from the automatic stay with respect to the real property commonly known as 8545 Folsom Boulevard, Sacramento, California. The moving party has provided the Declaration of Kirk Bowden to introduce evidence which establishes that Movant is the lessor of the Property which Debtor currently occupies and that Debtor is the lessee of the property pursuant to an oral week-to-week lease agreement that was entered into around March 2, 2013. Movant commenced an unlawful detainer action against Debtor on May 13, 2013 in Sacramento County Superior Court and received a writ of possession on May 20, 2013.

Movant has provided a copy of the complaint and judgment. Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2).

Chapter 13 Trustee filed a statement of non-opposition to the Motion.

The court shall issue a minute order terminating and vacating

the automatic stay to allow Litwin & W. Laverne Lowe, d/b/a/ Bamboo Tree Mobile Home Park & R.V. Park, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 8545 Folsom Boulevard, Sacramento, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

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 Litwin & W. Laverne Lowe, d/b/a/ Bamboo Tree Mobile Home Park & R.V. Park, its agents, representatives, and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 8545 Folsom Boulevard, Sacramento, California.