

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

August 29, 2017, at 1:30 p.m.

1. [17-20220-E-13](#) WILLIAM/FAYE THOMAS CONTINUED MOTION FOR RELIEF
APF-1 Kristy Hernandez FROM AUTOMATIC STAY
6-30-17 [16]
AFFILIATED PROFESSIONAL
SERVICES, INC. VS.

Final Ruling: No appearance at the August 29, 2017 hearing is required.

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

Movant having filed a Notice of Settlement and Request for Withdrawal, which the court construes to be an *Ex Parte* Motion to Dismiss the pending Motion on August 22, 2017, Dckt. 61; no prejudice to the responding party appearing by the dismissal of the Motion; Movant 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; the Ex Parte Motion is granted, Movant's Motion is dismissed without prejudice, and the court removes this Motion from the calendar.

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 Movant having been presented to the court, Movant 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. 61, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED that the Motion for Relief from the Automatic Stay is dismissed without prejudice.

2. [17-24130-E-13](#) DANIEL SHELDON
EAT-1 Pro Se

**MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
7-19-17 [18]**

**WELLS FARGO BANK, N.A. VS.
DEBTOR DISMISSED: 07/21/2017**

Final Ruling: No appearance at the August 29, 2017 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 (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on July 19, 2017. By the court’s calculation, 41 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 under 11 U.S.C. § 362(d)(1) is dismissed, the automatic stay having been terminated upon dismissal of this case on July 21, 2017.

The Motion for Relief from the Automatic Stay under 11 U.S.C. § 362(d)(4) is granted.

Wells Fargo Bank, N.A. (“Movant”) seeks relief from the automatic stay with respect to Daniel Sheldon’s (“Debtor”) real property commonly known as 8819 Fallbrook Way, Sacramento, California (“Property”). Movant has provided the Declaration of Peggy Morrow to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The instant case was dismissed on July 21, 2017, for failure to timely file documents. Dckt. 25.

The applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). That section provides:

In relevant part, 11 U.S.C. § 362(c) provides:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section—

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate**;

(2) the stay of any other act under subsection (a) of this section continues until the earliest of—

(A) the time the case is closed;

(B) *the time the case is dismissed*; or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title—

(1) reinstates—

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) reverts the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of July 21, 2017, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

PROSPECTIVE RELIEF FROM STAYS IN FUTURE CASES

11 U.S.C. § 362(d)(4) allows the court to grant relief from the stay where the court finds that the petition was filed as a part of a scheme to delay, hinder, or defraud creditors that involved either (i) transfer of all or part ownership or interest in the property without consent of the secured creditors or court approval or (ii) multiple bankruptcy cases affecting the property. 3 COLLIER ON BANKRUPTCY ¶ 362.07 (Alan n. Resnick & Henry H. Sommer eds. 16th ed.).

Certain patterns and conduct that have been characterized as bad faith include the presence of recent transfers of assets, inability of filing debtors to reorganize, and unnecessary delays due to serial filings. *Id.* The Court takes notice of a pattern regarding the Property that involves several serial filings.

Since 2016, Caprice Sheldon (aka Caprice Shaw and Caprice Shaw-Sheldon), identified as Debtor's husband in the promissory note upon which Creditor bases its claim, and Daniel Sheldon have filed four bankruptcy cases that affect Movant's interest in the Property. Those cases are:

- A. Caprice Sheldon (aka Caprice Shaw and Caprice Shaw-Sheldon)
 - 1. Case No. 16-25192
 - a. Filed: August 8, 2016
 - b. Type: Chapter 7
 - c. Dismissal Date: September 7, 2016
 - d. Dismissal Reason: Failure to timely file documents. Case No. 16-25192, Order, Dckt. 24.
 - 2. Case No. 16-26692
 - a. Filed: October 7, 2016
 - b. Type: Chapter 7
 - c. Dismissal Date: November 8, 2016
 - d. Dismissal Reason: Failure to timely file documents. Case No. 16-26692, Order, Dckt. 24.

B. Daniel Sheldon

1. Case No. 16-28101
 - a. Filed: December 9, 2016
 - b. Type: Chapter 13
 - c. Dismissal Date: January 11, 2017
 - d. Dismissal Reason: Failure to timely file documents. Case No. 16-28101, Order, Dckt. 18.

2. Case No. 17-24130
 - a. Filed: June 22, 2017
 - b. Type: Chapter 13
 - c. Dismissal Date: July 21, 2017
 - d. Dismissal Reason: Failure to timely file documents. Order, Dckt. 25.

The relief pursuant to 11 U.S.C. § 362(d)(4) may be granted if the court finds that two elements have been met. With respect to the first, the court concludes that the filing of the current Chapter 13 case was part of a scheme by Debtor to hinder and delay Movant from exercising its rights in or to real property.

The fact that a debtor commences a bankruptcy case to stop a foreclosure sale is neither shocking or per se bad faith. The automatic stay was created to stabilize the financial crisis and allow all parties, debtor and creditors, to take stock of the situation. However, the filing of the current Chapter 13 case does not appear to have been for any bona fide, good faith reason in light of Debtor filing this fourth case in a series of bankruptcy attempts. All four cases have been dismissed for failure to timely file documents.

The court finds that proper grounds exist for issuing an order pursuant to 11 U.S.C. § 362(d)(4). Movant has provided sufficient evidence concerning bankruptcy cases being filed to prevent actions against the Property. Movant has provided the court with evidence that Daniel Sheldon and Caprice Sheldon (aka Caprice Shaw and Caprice Shaw-Sheldon) have engaged in a scheme to hinder, defraud, and delay creditors through the multiple filing of bankruptcy cases.

In granting the 11 U.S.C. § 362(d)(4) relief, the court notes that such is not the end of the game for Debtor. While granting the relief through this case, if Debtor has a good faith, bona fide reason to commence another case while that order is in effect for the Property, the judge in the subsequent case can impose the stay in that case. 11 U.S.C. § 362(d)(4). That would ensure that Debtor, to the extent that some bona fide reason existed, would effectively assert such rights rather than file several bankruptcy cases that are then dismissed.

Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States

Supreme Court. Generally, when no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

However, in this Contested Matter the court *infers* that Movant intended to assert and clearly state with particularity that it was incorporating into a request for the Rule 4001(a)(3) waiver all of the grounds stated with particularity as the grounds stated for 11 U.S.C. § 362(d)(4).

Movant having pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), this part of the requested relief is granted.

Request for Prospective Injunctive Relief

Movant makes an **additional request stated in the prayer**, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. Though stated in the prayer, no grounds are stated in the Motion for grounds for such relief from the stay. The Motion presumes that conversion of the bankruptcy case will be reimposed if this case were converted to one under another Chapter.

As stated above, Movant's Motion does not state any grounds for such relief. Movant does not allege that notwithstanding an order granting relief from the automatic stay, a stealth stay continues in existence, waiting to spring to life and render prior orders of this court granting relief from the stay invalid and rendering all acts taken by parties in reliance on that order void.

No points and authorities is provided in support of the Motion. This is not unusual for a relatively simple (in a legal authorities sense) motion for relief from stay as the one before the court. Other than referencing the court to the legal basis (11 U.S.C. § 362(d)(3) or (4)) and then pleading adequate grounds thereunder, it is not necessary for a movant to provide a copy of the statute quotations from well known cases. However, if a movant is seeking relief from a possible future stay, which may arise upon conversion, the legal points and authorities for such heretofore unknown nascent stay is necessary.

As noted by another bankruptcy judge, such request (unsupported by any grounds or legal authority) for relief of a future stay in the same bankruptcy case:

[A] request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.

Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such

a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the “silly” request for unnecessary relief may well be ultimately deemed an admission by Wells Fargo Bank, N.A. and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Wells Fargo Bank, N.A. and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a *per se* violation of the automatic stay.

RULING

The court shall issue an order confirming that the automatic stay was terminated and vacated as to Debtor and the Property on July 21, 2017. Further, the court shall enter an order granting relief under 11 U.S.C. § 362(d)(4).

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 Wells Fargo Bank, N.A. (“Movant”) having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the court confirms that automatic stay provisions of 11 U.S.C. § 362(a) as to Debtor and 11 U.S.C. § 1301 as to the co-debtor were terminated pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 8819 Fallbrook Way, Sacramento, California, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the July 21, 2017 dismissal of this bankruptcy case filed by Daniel Sheldon.

IT IS FURTHER ORDERED that relief is granted pursuant to 11 U.S.C. § 362(d)(4) with this order granting relief from the stay, if recorded in compliance with applicable state laws governing notices of interests or liens in real property, shall be binding in any other case under this title purporting to affect such real property filed not later than two years after the date of the entry of such order by the court, except as ordered by the court in any subsequent case filed during that period.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on August 15, 2017, indicating that he does not oppose the Motion. Dckt. 61.

DISCUSSION

First, the court notes that Movant has not explained its position in this case to claim that it is provided for in Class 4 of the Plan. A review of the docket reveals the following path to Movant, however:

- A. Class 4 of the Plan lists GMAC Mortgage. Dckt. 7 at 4.
- B. GMAC Mortgage, LLC transferred its claim to Green Tree Servicing LLC on February 12, 2013. Dckt. 47.
- C. Green Tree Servicing LLC merged with Movant on August 13, 2015. Notice of Mortgage Payment Change, filed on January 9, 2017.

A review of the Plan confirms that upon confirmation, Class 4 provides for the automatic stay to be “modified to allow the holder of a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract.” Dckt. 7 at 4.

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 to Confirm Absence of the Automatic Stay filed by 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 Motion is granted, and the court confirms that the automatic stay provisions of 11 U.S.C. § 362 were modified in this bankruptcy case (No. 12-31941) upon confirmation of the Chapter 13 Plan on August 17, 2012, to allow a Class 4 secured claim to exercise its rights against its collateral and any nondebtor in the event of a default under applicable law or contract.