

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

September 12, 2017 at 1:30 p.m.

1. [16-21283](#)-C-13 CRAIG MAKISHIMA CONTINUED MOTION FOR RELIEF
ML-1 Cindy Lee Hill FROM AUTOMATIC STAY AND/OR
MOTION FOR ADEQUATE PROTECTION
6-19-17 [[71](#)]

BANK OF AMERICA, N.A. 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 13 Trustee, and Office of the United States Trustee on June 19, 2017. Twenty-eight days' notice is required. That requirement was met.

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. 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 denied as moot.

Bank of America, N.A. seeks relief from the automatic stay with respect to business assets of the debtor as described in the financing documents provided by the Creditor. The moving party has provided the Declaration of Justin Kerstetter to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Kerstetter Declaration states that the Debtor has not made 15 post-petition payments, with a total of \$16,500.00 in post-petition payments past due. The business assets are assets of debtor's dental practice. The

assets themselves appear to be property of the debtor's business. The debtor argues that because the assets are owned by the debtor's business and not the debtor, the assets are not property of the estate. If the assets are not property of the estate, then the automatic stay does not act to stop any enforcement action by the Creditor. Assets of a debtor's business do not automatically become property of the estate. Therefore, the court finds that the automatic stay does not apply to the business assets.

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).

If the parties argue that the assets are found to be property of the estate and the creditor requests relief from stay with respect to the estate assets, the court will grant the relief from stay with respect to the estate assets.

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 Motion for Relief from Stay is denied as moot as the automatic stay does not operate to protect the business assets of Craig S Makishima DDS, a California Corporation.
