

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Sacramento, California

September 30, 2014 at 1:30 p.m.

1. [14-27159](#)-E-13 CRISOSTOMO VILLANUEVA MOTION FOR RELIEF FROM
PD-1 Pro Se AUTOMATIC STAY
8-19-14 [[25](#)]

COLFIN AH-CALIFORNIA 7, LLC

VS.

Final Ruling: No appearance at the September 30, 2014 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 (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on August 19, 2014. By the court's calculation, 42 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). 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 denied as moot.

Colfin AH-California 7, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 156 Roundhill Court, Vallejo, California (the "Property").

Crisostomo Villanueva's ("Debtor") bankruptcy case was dismissed on August 27, 2014. Dismissing a Chapter 13 case terminates the automatic stay as to that debtor by operation of law, replacing it with the discharge injunction. See 11 U.S.C. § 362(c)(2)(B). There being no automatic stay, the motion is denied as moot as to Debtor. FN.1

FN.1. The Motion contains a "throw away" paragraph which generically states that pursuant to 11 U.S.C. § 362(d)(4) the filing of the current petition was

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part of a scheme to delay, hinder, or defraud Movant that involved multiple bankruptcy cases. The Motion does not state with particularity such multiple filing grounds (Fed. R. Bankr. P. 9013). In checking the Eastern District of California case files, this court could not identify any other cases filed by this Debtor in the Eastern District of California. The bankruptcy petition does not identify any prior bankruptcy cases filed by this Debtor in the prior eight years. Dckt. 1.

On Schedule A Debtor lists the Roundhill property as a "Future Interest." Dckt. 20 at 3. While this is curious, the Motion does not provide any illumination as to how this claim of a "Future Interest" is part of the grounds for relief under 11 U.S.C. § 364(d)(4). Hidden in the Points and Authorities are "grounds" upon which the relief under 11 U.S.C. § 364(d)(4) may be based, with counsel arguing that this Debtor has filed three prior cases in the Eastern District of California which have been dismissed. This factual allegation is neither a "legal point" nor a "legal authority" being presented to the court to be applied to the grounds stated in the Motion.

In looking at the prior cases referenced as being filed by the "Debtor" in the points and authorities, it appears that a person named Candy Villanueva is stated to be the Debtor. The court's records reflect that "Candy Villanueva has filed three bankruptcy cases.

Movant's "short-handing" of the Motion and not stating with particularity grounds upon which the demand for relief could be based under 11 U.S.C. § 364(d)(4) has resulted in the Motion being denied. It may well be that there have been a series of bankruptcy cases which are working to hinder, delay, or defraud creditors, as well as making material misrepresentations to the court and wasting court time and resources. However, the Motion does not provide the court with the basis for making such a determination.

The court denies this Motion without prejudice, leaving Movant free to seek such relief as it deems appropriate, if any.

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 Colfin AH-California 7, LLC ("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 to the extent the Motion seeks relief from the automatic stay as to Crisostomo Villanueva ("Debtor"), the case being dismissed, the Motion is denied without prejudice as moot pursuant to 11 U.S.C. § 362(c)(2)(B).