

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein  
Bankruptcy Judge  
Sacramento, California

October 4, 2016 at 1:30 P.M.

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1. [16-24550](#)-C-13 DARLEEN ARESTAD MOTION FOR RELIEF FROM  
ETL-1 Mark Wolff AUTOMATIC STAY, MOTION FOR  
RELIEF FROM CO-DEBTOR STAY  
AND/OR MOTION FOR ADEQUATE  
PROTECTION  
8-24-16 [[28](#)]

LEXUS FINANCIAL SERVICES VS.

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**Final Ruling:** No appearance at the October 4, 2016 hearing is required.  
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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 August 24, 2016. Twenty-eight days' notice is required. That requirement is 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). 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 granted.**

Lexus Financial Services seeks relief from the automatic stay with respect to the personal property of the Debtor, referred to as a 2014 Lexus GX460. The moving party has provided the Declaration of Cheryl Nishimura to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Nishimura Declaration states that the Debtor has not made 1 post-petition payment, with a total of \$892.94 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 property is determined to be \$42,831.22 (including \$39,772.00 secured by movant's first trust deed), as stated in the Nishimura Declaration, while the value of the property is

determined to be \$39,772.00, as stated in Schedules A and D filed by Debtor.

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).

The court shall issue a minute order terminating and vacating the automatic stay to allow Lexus Financial Services, and its agents, representatives and successors, and all other creditors having lien rights against the property, to conduct a nonjudicial foreclosure sale pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, at the nonjudicial foreclosure sale to obtain possession of the property.

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 Lexus Financial Services, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors under any trust deed which is recorded against the property to secure an obligation to exercise any and all rights arising under the promissory note, trust deed, and applicable nonbankruptcy law to conduct a nonjudicial foreclosure sale and for the purchaser at any such sale obtain possession of the personal property of the debtor referred to as the 2014 Lexus GX460.

No other or additional relief is granted.

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2. [16-22864](#)-C-13 IRIS ROBERSON  
RDW-2 Peter Macaluso

MOTION FOR RELIEF FROM  
AUTOMATIC STAY AND/OR MOTION  
FOR ADEQUATE PROTECTION  
8-24-16 [[36](#)]

CAM IX TRUST VS.

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**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.**

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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 August 24, 2016. 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). Opposition having been filed, the court will address the merits of the motion at the hearing. If it appears at the hearing that disputed material factual issues remain to be resolved, a later evidentiary hearing will be set. Local Bankr. R. 9014-1(g)

**The Motion for Relief From the Automatic Stay is xxx**

CAM IX Trust seeks relief from the automatic stay with respect to the real property commonly known as 418 Salisbury Circle, Vacaville, California. The moving party has provided the Declaration of Natalie Owens and David Ha to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Ha Declaration states that the Debtor has not made 3 post-petition payments, with a total of \$12,600.00 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 property is determined to be \$571,130.02 (including \$548,000.00 secured by movant's first trust deed), as stated in the Owens Declaration, while the value of the property is determined to be \$548,000, as stated in Schedules A and D filed by Debtor.

**TRUSTEE'S RESPONSE**

Trustee responds that debtor's proposed plan was denied confirmation at hearing July 19, 2016, and the debtor has not filed and set for hearing a

new plan. Debtor has made no payments to the Trustee. Trustee has filed and set for hearing on October 12, 2016 a Motion to Dismiss Case.

**DEBTOR'S OPPOSITION**

Debtor objects to the motion on the grounds that approximately 50 houses have been sold in the last 6 months which exceed \$550,000.00 which leads Debtor to believe that the value of the home presently exceeds \$650,000.00. Debtor has contacted a realtor named Lisa McKee to put her house on the market and sell it in short order. Debtor requests that the Motion for Relief from the Automatic Stay is denied, or in the alternative that Debtor be allowed 6 months to sell the home.

**DISCUSSION**

The court has no evidence that favors Debtor's valuation. If the Debtor can prove that she retains equity in the property, the motion should be denied in order to allow her to sell the Vacaville property on the market.

The existence of missed payments by itself does not guarantee relief from stay. Since the equity cushion potentially provides enough protection to the creditor, moving party's motion for relief from stay is premature. *In re Avila*, 311 B.R. 81, 84 (Bankr. N.D. Cal. 2004). The court will grant the Debtor time to obtain a valuation in accordance with the alleged valuation of the Vacaville property.

The court shall issue a minute order continuing the hearing on relief from the automatic stay until November 1, 2016 at 2:00 p.m.

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 hearing on the motion for relief from automatic stay is xxxx

No other or additional relief is granted.

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