

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

October 4, 2016, at 1:30 p.m.

1. [16-25669-E-13](#) ANDREAS KAZOS MOTION FOR RELIEF FROM
GME-1 Pro Se AUTOMATIC STAY
8-30-16 [9]

SANLINO HOLDINGS, LLC 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 (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on August 30, 2016. By the court's calculation, 35 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). The defaults of the non-responding parties are entered.

The Motion for Relief From the Automatic Stay is granted.

Sanlino Holdings, LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 4501 Auburn Boulevard, #107B, Sacramento, California ("Property"). The moving party has provided the Declaration of George Eckert to introduce evidence as a basis for Movant's

contention that Andreas Kazos (“Debtor”) does not have an ownership interest in or a right to maintain possession of the Property. Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Sacramento and received a judgment for possession, with a Writ of Possession having been issued by that court on August 18, 2016. Exhibit A, Dckt. 14.

DEBTOR’S OPPOSITION

Debtor filed Opposition on September 20, 2016. Dckt. 26. Debtor opposes the Motion on the following grounds:

- A. The Property is necessary to an effective Chapter 13 Plan because it is where the Debtor earns a living.
- B. The unlawful detainer action was obtained by fraud, and Debtor is drafting a motion to request that the judgment be vacated.
- C. Debtor was never served with the unlawful detainer complaint and was not given notice that the default would be taken.
- D. Proceeding with the eviction process would be inequitable.
- E. Movant has not provided admissible evidence.

DISCUSSION

Movant has provided the Judgment. Exhibit A, Dckt. 14. Debtor’s opposition is that the Superior Court judgment should be ignored because Debtor will have it vacated. Debtor alleges that he was not served with the state court action and a fraud has been committed on that court.

Relief from the automatic stay is a summary proceeding and not one in which the court adjudicates underlying disputes of the substantive rights and interests of the parties. *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005) (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)).

Debtor has filed a Chapter 13 Plan, but unfortunately many of the terms are left blank. Plan, Dckt. 30.

Based upon the evidence submitted, for purposes of this Motion, the court determines that cause exists for termination of the stay pursuant to 11 U.S.C. § 362(d)(1). The court has been provided with a copy of the State Court judgment for possession of the property and the declaration of the attorney who obtained the judgment for Movant. Debtor’s dispute goes to the judgment for possession itself, not merely a debt to be cured. That must be addressed directly with the state court. The proposed plan does not provide for any terms to use a bankruptcy plan as a “stay” pending further proceedings in state court (with the debtor

self-funding a Federal Rule of Civil Procedure 62(c) bond for damages if the automatic or plan stay worked an improper enjoining of the other parties' rights).

The court shall issue an order terminating and vacating the automatic stay to allow Sanlino Holdings, LLC, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the real property commonly known as 4501 Auburn Boulevard, #107B, Sacramento, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The Movant has alleged adequate facts and presented sufficient evidence to support the court waiving the fourteen (14) day stay of enforcement required under Rule 4001(a)(3).

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 Sanlino Holdings, 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 the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Sanlino Holdings, LLC and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 4501 Auburn Boulevard, #107B, Sacramento, California.

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is waived for cause shown by Movant.

No other or additional relief is granted.