

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Chief Bankruptcy Judge
Sacramento, California

October 7, 2014 at 1:30 p.m.

1. [14-29122](#)-C-13 DANIEL/PATRICIA BONACHEA MOTION FOR RELIEF FROM
Dale A. Orthner AUTOMATIC STAY
9-22-14 [[16](#)]
GRANITE DRIVE PARTNERS L.P.
VS.

Final Ruling: No appearance at the October 7, 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, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on September 22, 2014. 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). 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.

Granite Drive Partners, L.P. ("Creditor") seeks relief from the automatic stay to proceed with an unlawful detainer action against Daniel and Patricia Bonachea ("Debtors"). Debtors and Creditor entered into a lease agreement dated May 17, 2014 whereby Debtors leased from Creditor real property located at 4810 Granite Drive, Unit A-5, Rocklin, California. Pursuant to the terms of the lease, Debtors were required to remit \$5,320.35 per month to Creditor. Debtors failed to make the required lease payments and Creditor cause a three-day notice to be served on Debtors (Exh. 2, Dkt. 16). A complaint for unlawful detainer was filed by Creditor against Debtors

October 7, 2014 at 1:30 p.m.
Page 1 of 5

on August 28, 2014 (Exh. 4, Dkt. 16). The moving party has provided the Declaration of Brad Sures to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtors.

CHAPTER 13 TRUSTEE

On September 26, 2014, the Chapter 13 Trustee filed a statement of non-opposition to the court granting the requested relief.

DISCUSSION

Based upon the evidence submitted, the court determines there is no equity in the property for either the Debtor or the estate. 11 U.S.C. § 362(d)(2). The court shall issue a minute order terminating and vacating the automatic stay to allow Granite Drive Partners, L.P., 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 Granite Drive Partners, L.P., 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 real property commonly known as 4810 Granite Drive, Unit A-5, Rocklin, California.

No other or additional relief is granted.

2. [14-27196](#)-C-13 JENNIFER SALAZAR
SW-1 Jared A. Day

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-23-14 [[59](#)]

WELLS FARGO BANK, N.A. VS.

Tentative Ruling: The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). Consequently, the Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion. If any of these potential respondents appear at the hearing and offers opposition to the motion, the court will set a briefing schedule and a final hearing unless there is no need to develop the record further. If no opposition is offered at the hearing, the court will take up the merits of the motion.

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, rendered on the assumption that there will be no opposition to the motion. If there is opposition presented, the court will consider the opposition and whether further hearing is proper pursuant to Local Bankruptcy Rule 9014-1(f)(2)(iii).

Local Rule 9014-1(f)(2) Motion.

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 September 23, 2014. Fourteen days' notice is required. That requirement was met.

The Motion for Relief From the Automatic Stay was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(2). The Debtor, Creditors, the Trustee, the U.S. Trustee, and any other parties in interest were not required to file a written response or opposition to the motion.

The Motion for Relief From the Automatic Stay is granted.

Wells Fargo Bank, N.A. ("Creditor") seeks relief from the automatic stay with respect to an asset identified as a 2003 GMC Yukon, VIN ending in 0851. The moving party has provided the Declaration of Elena Schultz to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Schultz Declaration states that the Debtor has not made 1 post-petition payments, with a total of \$345.22 in post-petition payments past due. Debtor has not made 5 pre-petition payments, with a total of \$1,846.69 past due. From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this asset is determined to be \$6,634.27, as stated in the Schultz Declaration, while the value of the

asset is determined to be \$2,900, as stated in the Schultz Declaration. Note, Debtor did not include the vehicle on her schedules.

DEBTOR'S RESPONSE

Debtor filed a statement not opposing the relief requested and affirming that the vehicle was voluntarily surrendered.

DISCUSSION

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 Wells Fargo Bank, N.A., and its agents, representatives and successors, and all other creditors having lien rights against the asset, to repossess, dispose of, or sell the asset pursuant to applicable nonbankruptcy law and their contractual rights, and for any purchaser, or successor to a purchaser, to obtain possession of the asset.

The moving party has 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 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 the automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Wells Fargo Bank, N.A., its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors under its security agreement, loan documents granting it a lien in the asset identified as a 2003 GMC Yukon, VIN ending in 0851, and applicable nonbankruptcy law to obtain possession of, nonjudicially sell, and apply proceeds from the sale of said asset to the obligation secured thereby.

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.

October 7, 2014 at 1:30 p.m.

No other or additional relief is granted.