

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

October 16, 2018 at 1:30 p.m.

1. [18-22123](#)-C-13 ROBERT/KATHRYN PETERSON ORDER TO SHOW CAUSE
[18-2121](#) 10-1-18 [[8](#)]
SHEKELLE V. PETERSON ET AL

Thru #2

No Tentative Provided

2. [18-22123](#)-C-13 ROBERT/KATHRYN PETERSON
[18-2121](#)
SHEKELLE V. PETERSON ET AL

CONTINUED STATUS CONFERENCE RE:
COMPLAINT
7-23-18 [[1](#)]

No Tentative Provided

3. [18-23503](#)-C-13 MICHAEL YANG
[APN-1](#) Diana Cavanaugh

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-13-18 [[51](#)]

TOYOTA MOTOR CREDIT
CORPORATION VS.

Final Ruling: No appearance at the October 16, 2018 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 13, 2018. Twenty-eight 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 901 4-1(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.

Toyota Motor Credit Corporation, seeks relief from the automatic stay with respect to a 2017 Toyota Sienna, VIN ending in 9877 ("Vehicle"). The moving party has provided the Declaration of Rahnea Spooner to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Michael Yang ("Debtor").

The Spooner Declaration provides testimony that Debtor has not made 3 post-petition payments, with a total of \$1,910.73 in post-petition payments past due. The Declaration also provides evidence that there are no pre-petition payments in default. 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 \$28,250.00.

Trustee responds to the motion indicating that he does not oppose the motion. Trustee points out that the Debtor's Plan includes the Movant in Class 3 reflecting that Debtor intends to surrender. (Dckt. 57).

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 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 Toyota Motor Credit Corporation, its agents, representatives, and successors, and trustee under the agreement, and any other beneficiary or trustee, and their respective agents to exercise all of their non-bankruptcy rights with respect to the 2017 Toyota Sienna.

No other or additional relief is granted.

4. [16-26032](#)-C-13 BRENDA BENNETT
[APN-1](#) Peter Macaluso

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-13-18 [[53](#)]

HYUNDAI LEASE TITLING TRUST
VS.

Tentative Ruling: 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.

Local Rule 9014-1(f)(1) Motion-Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, creditors, parties requesting special notice, and Office of the United States Trustee on September 13, 2018. 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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). The defaults of the non-responding parties and other parties in interest are entered.

The Motion for Relief From the Automatic Stay is granted.

Hyundai Lease Titling Trust, seeks relief from the automatic stay with respect to a 2014 Kia Forte ("Vehicle"). The moving party has provided the Declaration of Gloria Greer to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by Brenda Bennett ("Debtor").

The Greer Declaration provides testimony that Debtor surrendered the leased vehicle to Movant. The Greer Declaration claims that the Debtor has a possessory interest in the property.

TRUSTEE RESPONSE:

Trustee responds to the motion indicating that he does not oppose the motion. Trustee points out that the Debtor's Plan assumes the lease so relief may not be needed. (Dckt. 59). The Trustee also notes that he has paid \$360.42 in pre-petition arrears.

DEBTOR:

Debtor states that the Vehicle was returned on July 13, 2017 and

submitted a Vehicle Return Receipt in support. (Dckt. 63, Exhibit 1)

RULING:

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).

Movant has provided a properly authenticated copy of the lease agreement and certificate of title to substantiate its claim of ownership. Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2).

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.

The court shall issue an order terminating and vacating the automatic stay to allow Hyundai Lease Titling Trust, and its agents, representatives and successors, to exercise its rights to obtain possession and control of the vehicle.

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 Hyundai Lease Titling Trust, its agents, representatives, and successors, and trustee under the agreement, and any other beneficiary or trustee, and their respective agents to exercise all of their non-bankruptcy rights with respect to the 2014 Kia Forte.

No other or additional relief is granted.

5. [18-20375](#)-C-13 ANGELA JAMES
[AP-1](#) Aubrey Jacobsen

MOTION FOR RELIEF FROM
AUTOMATIC STAY AND/OR MOTION
FOR RELIEF FROM CO-DEBTOR STAY
9-17-18 [[37](#)]

CIT BANK, N.A. VS.

Final Ruling: No appearance at the October 16, 2018 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 17, 2018. Twenty-eight 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.

U.S. Bank, N.A., seeks relief from the automatic stay with respect to the real property commonly known as 11192 Norwood Avenue, Riverside, California.

The Justin Roland Declaration states that the original borrower, Anna Jean James died on or about August 22, 2016. Subsequently a Notice of Default and Notice of Sale were recorded in the Riverside County Records Office. On the date of the scheduled sale, the Roland Declaration states that Debtor sent a fax claiming that she is a relative of Anna Jean James, has an interest in the property, and notifying the Movant of her bankruptcy proceeding.

Debtor filed a Non-opposition to the Motion. However, Debtor disputes certain factual allegations made by Movant. Debtor denies being related to the borrower identified in the Motion, denies any interest in the subject real property, and denies sending a fax to Movant in an attempt to delay foreclosure.

Trustee filed a non opposition to the motion.

The court determines that the property is not property of the estate and there does not appear to be any ownership interest owned by the debtor. The property was not listed as an asset on debtor's schedules.

The court shall issue a minute order denying the motion for relief from the automatic stay because the automatic stay does not apply to this property. As a result, the motion for relief from stay is moot.

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 because the a property, 11192 Norwood Avenue, Riverside, California, is not property of the estate in this bankruptcy case 18-20375.

No other or additional relief is granted.
