

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Bankruptcy Judge
Modesto, California

October 22, 2015 at 10:00 a.m.

1. [14-91500-E-7](#) LAURA AKIN MOTION FOR RELIEF FROM
APN-1 Pro Se AUTOMATIC STAY
9-22-15 [[28](#)]
WELLS FARGO BANK, N.A. VS.

Final Ruling: No appearance at the October 22, 2015 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 7 Trustee, and Office of the United States Trustee on September 22, 2015. By the court's calculation, 30 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 continued to
10:00 a.m. on November 12, 2015.**

Laura Jane Akin ("Debtor") commenced this bankruptcy case on November 6, 2014. Wells Fargo Bank, N.A. ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2013 Ford Fiesta, VIN ending in 7255 (the "Vehicle"). The moving party has provided the Declaration of Marquita Braswell to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Braswell Declaration provides testimony that Debtor has not made 4 post-petition payments, with a total of \$1,200.00 in post-petition payments past due. The authenticated NADA Used Car Guide Report (Fed. R. Evid. 803(17) hearsay exception) provided as Exhibit B quotes a retail value of \$10,750.00 for the Vehicle FN1.

FN.1. Movant's Declaration does not clearly provide testimony that there are 4 post-petition payments in default. Rather, it merely states under penalty of perjury that there is a \$1,200.00 delinquency, with payment due for May 26, 2015. This could be interpreted as saying that there were some pre-petition defaults, Debtor has diligently made all post-petition payments, and Movant is choosing to apply the post-petition payments to the pre-petition defaults.

The court notes that Movant's § 362 Information Sheet provides unauthenticated, non-testimony statements that 4 post-petition payments are in default. The court notes that the Information Sheet states at the top "THIS IS IN THE NATURE OF A PRETRIAL STATEMENT AND IS NOT EVIDENCE." Dckt. 32. Even this non-evidentiary statement could be construed to be that Debtor has made all of the post-petition payments, but Movant is applying them to pre-petition defaults.

Also, though authenticated (the court infers that the Declarant, Dckt. 30, ¶ 4, obtained the on-line report), the Movant has not provided the court with the hearsay exception grounds for the court finding that the NADA Official Used Car Guide, attached as Exhibit C, out of court statement is credible hearsay. Dckt. 31; Fed. R. Evid. 802, 803. While it may seem "obvious" which hearsay exception Movant relies upon, it is even more "obvious" that having stock language used for the NADA or KBB for market reports, quotations, commercial publications, or other complications which are generally relied upon by the public or persons in particular occupations. Fed. R. Evid. 803(17). While apparently simple in this contested matter, the practice of clearly identifying for the court the evidentiary basis for hearsay exceptions is the better practice and can avoid the denial of a more critical motion when it is not so "obvious."

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 \$1,200.00, as stated in the Braswell Declaration, while the value of the Vehicle is determined to be \$10,700.00.

Debtor has not filed an opposition.

REQUEST FOR CONTINUANCE

The Movant filed a request for a continuance to allow the Movant to further review the Debtor's records. The Movant requests the court to continue the hearing to 10:00 a.m. on November 12, 2015.

RULING

In light of the Movant's request for further time to review the Debtor's file and the Debtor not filing an opposition to the instant Motion, the Motion

is continued to 10:00 a.m. on November 12, 2015.

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 Wells Fargo Bank, N.A. ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

IT IS ORDERED the Motion is continued to 10:00 a.m. on November 12, 2015.

2. [11-94410-E-7](#) SAWTANTRA/ARUNA CHOPRA
[14-9033](#) RMY-1
ARTERBURN ET AL V. CHOPRA

MOTION FOR LEAVE TO FILE THIRD
PARTY COMPLAINT AGAINST MID
VALLEY SERVICES, INC.
6-4-15 [[19](#)]

CONTINUED: 8/20/15

Final Ruling: No appearance at the October 22, 2015 hearing is required.

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Plaintiff's Attorney, Chapter 7 Trustee's Attorney, and Office of the United States Trustee on June 4, 2015. By the court's calculation, 28 days' notice was provided. 14 days' notice is required.

The Motion for Leave to File Third Party Complaint Against MID Valley Services, Inc. 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 Leave to File Third Party Complaint Against MID Valley Services, Inc. is continued to 10:00 a.m. on December 17, 2015.

Aruna Chopra ("Defendant-Debtor") filed the instant Motion for Leave to file Third Party Complaint Against MID Valley Services, Inc. on June 6, 2015. Dckt. 19.

The Defendant-Debtor seeks leave from the court to file a third party complaint against Mid Valley Services, Inc. alleging the following causes of action: (1) implied indemnity; (2) equitable indemnity; (3) contribution; and (4) declaratory relief. The Defendant-Debtor states that these claims are based upon the Defendant-Debtor's contentions that the acts and omissions of MID Valley Services, Inc. were a superseding cause of any purported damages suffered by Plaintiffs.

STIPULATION

On June 24, 2015, the Plaintiffs and Defendant-Debtor filed an *ex parte* Application to Approve Stipulation to Extend Deadlines in Scheduling Order and to Continue the Hearing on Motion for Leave to File Third Party Complaint. Dckt. 34. In relevant part, the parties request, through the stipulation and in relevant part, to continue the instant hearing to 10:00 a.m. on August 20, 2015.

The court approved the stipulation on June 25, 2015, approving the requested continuance in light of the parties negotiating the underlying causes

of action. Therefore, the instant Motion was continued to 10:00 a.m. on August 20, 2015.

STIPULATION

On August 14, 2015, the parties filed an ex-parte Application to Approve Second Stipulation to Extend Deadlines in Scheduling Order and to Continue the Hearing on Motion for Leave to File Third Party Complaint. Dckt. 39. In relevant part, the parties request, through the stipulation and in relevant part, to continue the instant hearing to 10:00 a.m. on October 22, 2015.

The court approved and granted this continuance in light of the parties negotiating the underlying causes of action. Therefore, the instant Motion was continued to 10:00 a.m. on October 22, 2015.

STIPULATION

On August 14, 2015, the parties filed an ex-parte Application to Approve Third Stipulation to Extend Deadlines in Scheduling Order and to Continue the Hearing on Motion for Leave to File Third Party Complaint. Dckt. 44. In relevant part, the parties request, through the stipulation and in relevant part, to continue the instant hearing to 10:00 a.m. on December 17, 2015.

DISCUSSION

The court approved granted this continuance in light of the parties negotiating the underlying causes of action. Therefore, the instant Motion is continued to 10:00 a.m. on December 17, 2015.

3. [10-94117-E-7](#) ELDON/PAMELA HENDERSON MOTION FOR RELIEF FROM
BHT-1 Scott D. Mitchell AUTOMATIC STAY
9-22-15 [[94](#)]

DITECH FINANCIAL, LLC VS.

DISCHARGED: 9/23/15

Final Ruling: No appearance at the October 22, 2015 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 7 Trustee, and Office of the United States Trustee on September 22, 2015. By the court's calculation, 30 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 granted.

Ditech Financial LLC F/K/A Green Tree Servicing LLC ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2295 Golfito Way, La Grange, California (the "Property"). Movant has provided the Declaration of Elizabeth M. deCraen to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The deCraen Declaration states that there are 4 post-petition defaults in the payments on the obligation secured by the Property, with a total of \$8,045.24 in post-petition payments past due. FN1.

FN.1. Movant's Declaration and Exhibits do not properly provide that 4 post-petition payments are in default, but do provide evidence that Debtor is \$8,045.24 delinquent. Rather, Movant's § 362 Information Sheet alleges that 4 post-petition payments are in default. The court notes that the Information

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Sheet states at the top "THIS IS IN THE NATURE OF A PRETRIAL STATEMENT AND IS NOT EVIDENCE." Dckt. 96. However, this defect is waived because: (1) the amount in arrears was declared under penalty of perjury; and (2) Debtor did not file an opposition.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the total debt secured by this property is determined to be \$383,091.33 (including \$318,895.33 secured by Movant's first deed of trust), as stated in the deCraen Declaration and Schedule D filed by Eldon Leroy Henderson and Pamela Mason Henderson ("Debtor"). The value of the Property is determined to be \$175,000.00, as stated in Schedules A and D filed by Debtor.

DISCUSSION

The court maintains the right to grant relief from stay for cause when a 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, including defaults in post-petition payments which have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432 (B.A.P. 9th Cir. 1985).

Debtor was granted a discharge in this case on September 23, 2015. Granting of a discharge to an individual in a Chapter 7 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)(C). There being no automatic stay, the motion is denied as moot as to Debtor. The Motion is granted as to the Estate.

The court shall issue an order terminating and vacating the automatic stay to allow Movant, 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.

Movant has not pleaded adequate facts and presented sufficient evidence to support the court waiving 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 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 Ditech Financial 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 immediately vacated to allow Ditech Financial LLC F/K/A Green Tree Servicing LLC, 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 2295 Golfito Way, La Grange, California.

IT IS FURTHER ORDERED that to the extent the Motion seeks relief from the automatic stay as to Eldon and Pamela Henderson ("Debtor"), the discharge having been entered in case, the Motion is denied as moot pursuant to 11 U.S.C. § 362(c)(2)(C).

IT IS FURTHER ORDERED that the fourteen (14) day stay of enforcement provided in Rule 4001(a)(3), Federal Rules of Bankruptcy Procedure, is not waived for cause shown by Movant.

No other or additional relief is granted.