

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

November 1, 2016 at 1:30 P.M.

1. [15-22745](#)-C-13 ELENA DEMYAN MOTION FOR RELIEF FROM
BJK-1 Pro Se AUTOMATIC STAY
9-30-16 [[44](#)]

NATIONSTAR MORTGAGE, LLC
VS.
DEBTOR DISMISSED: 04/21/2015

Also #2

Final Ruling: No appearance at the November 1, 2016 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 13 Trustee, and Office of the United States Trustee on September 30, 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.

GP Equities, Inc. and Nationstar Mortgage LLC seeks relief from the automatic stay with respect to the real property commonly known as 6537 Ranch Hand Way, Citrus Heights, California.

The Movants assert that the Debtor filed for bankruptcy on April 3, 2015 but did not provide immediate notice of the bankruptcy to the Movants. On April 6, 2015, the property was sold at foreclosure to the Bank of New York Mellon without knowledge of the bankruptcy. Bank of New York Mellon

subsequently sold the property to GP Equities. GP Equities seeks to have the automatic stay annulled in order to clear up any title issues on the property.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property at the time of filing of the petition is determined to be \$433,516.00 (including \$275,000.00 secured by movant's first trust deed), while the value of the property is determined to be \$275,000.00, as stated in Schedules A and D filed by Debtor in her ninth bankruptcy filing in the past seven years (Case No. 15-26749). The instant case was dismissed after just 18 days (and reopened on September 20, 2016) and the Debtor never filed more than a skeletal petition.

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 annulling the automatic stay to validate the April 6, 2015 sale of the property to Bank of New York Mellon, and the subsequent sale of the property to GP Equities, Inc.

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 annulled with respect to the property commonly known as 6537 Ranch Hand Way, Citrus Heights, California.

No other or additional relief is granted.

2. [15-22745](#)-C-13 ELENA DEMYAN
PP-2 Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
9-28-16 [[33](#)]

GP EQUITIES, INC. VS.
DEBTOR DISMISSED: 04/21/2015

Final Ruling: No appearance at the November 1, 2016 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 13 Trustee, and Office of the United States Trustee on September 30, 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.

GP Equities, Inc. and Nationstar Mortgage LLC seeks relief from the automatic stay with respect to the real property commonly known as 6537 Ranch Hand Way, Citrus Heights, California.

The Movants assert that the Debtor filed for bankruptcy on April 3, 2015 but did not provide immediate notice of the bankruptcy to the Movants. On April 6, 2015, the property was sold at foreclosure to the Bank of New York Mellon without knowledge of the bankruptcy. Bank of New York Mellon subsequently sold the property to GP Equities. GP Equities seeks to have the automatic stay annulled in order to clear up any title issues on the property.

From the evidence provided to the court, and only for purposes of this Motion for Relief, the debt secured by this property at the time of filing of the petition is determined to be \$433,516.00 (including \$275,000.00 secured by movant's first trust deed), while the value of the property is determined to be \$275,000.00, as stated in Schedules A and D filed by Debtor in her ninth bankruptcy filing in the past seven years (Case No. 15-26749). The instant case was dismissed after just 18 days and the Debtor never filed more than a skeletal petition.

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 annulling the automatic stay to validate the April 6, 2015 sale of the property to Bank of New York Mellon, and the subsequent sale of the property to GP Equities, Inc.

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 annulled with respect to the property commonly known as 6537 Ranch Hand Way, Citrus Heights, California.

No other or additional relief is granted.

3. [16-23974](#)-C-13 LORENZO NARANJO
SW-1 Gary Fraley

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-17-16 [[35](#)]

ALLY FINANCIAL VS.

Tentative Ruling: The Motion to Value 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, parties requesting special notice, and Office of the United States Trustee on October 17, 2016. By the court's calculation, 14 days' notice was provided. 14 days' notice is required.

The Motion to Value 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 for Relief from the Automatic stay is granted.

Creditor, Ally Financial, seeks relief from the automatic stay with respect to the vehicle commonly referred to as the 2015 Chevrolet Cruze.

The Stephanie Scobee Declaration states that the Debtor has not made 4 post-petition payments and 4 pre-petition payments, with a total of \$17,625.89 due to Ally Financial. The Debtor's schedules list the value of the vehicle at \$9,825.00.

The vehicle in question was part of a lease agreement. The vehicle is now currently in the possession of the movant. The Debtor's statement of intention indicated that he would be surrendering the vehicle.

The Chapter 13 Trustee filed a non-opposition to the motion.

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).

Once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor has no equity, it is the burden of the debtor to establish that the collateral at issue is necessary to an effective reorganization. *United Savings Ass'n of Texas v. Timbers of Inwood Forest Associates, Ltd.*, 484 U.S. 365, 375-76 (1988); 11 U.S.C. § 362(g)(2). Based upon the evidence submitted, the court determines that there is no equity in the property for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2) and the vehicle, having no equity, is not necessary to an effective reorganization.

The court shall issue a minute order terminating and vacating the automatic stay to allow Ally Financial, and its agents, representatives and successors, and all other creditors having lien rights against the property, to repossess and/or dispose 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 Ally Financial, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors to repossess and/or dispose of the vehicle, commonly referred to as a 2015 Chevrolet Cruze.

No other or additional relief is granted.

CAM IX TRUST 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, 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 denied.

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. On October 12, that hearing was continued to November 22, 2016.

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.

October 4, 2016 Hearing

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.

Debtor opposes the Motion, stating that she had determined that the property could be sold for in excess of this claim and will prosecute such sale within six months. Debtor is engaging the services of Lisa McKee, a real estate broker, to immediately market the property. Ms. McKee was present at the hearing and demonstrated that she understood that such employment was to proceeding with a prompt sale of the property and not merely keep the house for six months and market it at an unrealistic price.

As a condition of the court setting the matter for further hearing, in addition to Debtor actively prosecuting a Chapter 13 Plan to sell the property and engaging the services of the real estate broker, the Debtor must also provide adequate protection payments to Movant. The first payment, in the amount of \$1,400.00 shall be made on or before October 14, 2016 by the Debtor, paid directly to Movant (not through the Chapter 13 Trustee) and delivered to Movant's counsel.

Additionally, the Chapter 13 Trustee is authorized to immediately disburse \$841.00 from monies paid into the Plan by Debtor to Movant, to be sent to Movant's counsel.

October 25, 2016 Hearing

Debtor has not made adequate protection payments to the creditor. Hearing was continued to November 1, 2016 in order to allow time for debtor to make payments.

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 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 Automatic Stay is denied and the automatic stay will not be vacated.

No other or additional relief is granted.
