

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

November 19, 2015 at 9:30 a.m.

1. [14-29661](#)-E-7 AARON/HEATHER BRYANT
ASW-1

AMENDED MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-5-15 [[52](#)]

BANK OF AMERICA, N.A. 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 NOT Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, and Chapter 13 Trustee on October 5, 2015. By the court's calculation, 44 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.

<p>The Motion for Relief From the Automatic Stay is denied without prejudice.</p>
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Bank of America, N.A. ("Movant") seeks relief from the automatic stay

with respect to the real property commonly known as 106 Buttersworth Avenue, Sacramento, California (the "Property"). Movant has provided the Declaration of Wilmor Dolmos to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

OCTOBER 6, 2015

On September 2, 2015, the case was voluntary converted to a case under Chapter 7 of the Bankruptcy Code. Dckt. 39.

At the October 6, 2015 hearing, the court continued the hearing to allow the Movant to serve the Chapter 7 Trustee. Dckt. 59.

DISCUSSION

On October 5, 2015, the Movant filed an Amended Motion and amended papers in support of the Motion. The Movant's Proof of Service of the amended papers states that they were served on October 5, 2015. Dckt. 57. Unfortunately, however, the Movant once again failed to serve the Chapter 7 Trustee. Instead, the Movant once again served David Cusick, the Chapter 13 Trustee prior to the case being converted.

Since the Chapter 7 Trustee was not properly served and noticed of the instant Motion, not all necessary and required parties were provided service. Therefore, the Motion is denied without prejudice.

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 Bank of America, 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 that the Motion is denied without prejudice.