

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

November 22, 2016 at 1:30 P.M.

1. [16-25216](#)-C-13 JAMES MCLAUGHLIN AND MOTION FOR RELIEF FROM
JHW-1 JULIE HUDGEON-MCLAUGHLIN AUTOMATIC STAY
Stephen Murphy 10-21-16 [[18](#)]
DAIMLER TRUST VS.

Final Ruling: No appearance at the November 22, 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, Debtor's Attorney, Chapter 13 Trustee, and Office of the United States Trustee on October 21, 2016. 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 granted.

Daimler Trust seeks relief from the automatic stay with respect to a 2013 Smart SMARTC that was leased to the debtors. The moving party has provided the Declaration of Amy Wetch to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Wetch Declaration states that the Debtor was delinquent in the total amount of \$7,938.94. The lease matured on October 7, 2016 and the vehicle was returned to the movant on October 18, 2016.

The Trustee filed a non-opposition. The debtor has also files a statement of non-opposition.

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 Daimler Trust, and its agents, representatives and successors, and all other creditors having lien rights against the property, to dispose of the 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 automatic stay provisions of 11 U.S.C. § 362(a) are vacated to allow Daimler Trust, its agents, representatives, and successors, and any other beneficiary or trustee, and their respective agents and successors to dispose of the 2013 Smart SMARTC.

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.

2. [16-25917](#)-C-13 JUNE KOGER
SDN-1 Peter Macaluso

MOTION FOR RELIEF FROM
AUTOMATIC STAY
10-11-16 [[31](#)]

WHEELS FINANCIAL GROUP, LLC
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 October 11, 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). 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. 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.

Wheels Financial Group, LLC seeks relief from a 2003 Ford Mustang. The moving party has provided the Declaration of Frank Wambu to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Wambu Declaration states that the Debtor has not made 12 pre-petition and 1 post-petition payment, with a total of \$3,190.79 payments past due. The movant values the property at \$2,063.00 while the debtor values the property at \$900.00.

Trustee Opposition

The Trustee filed an opposition indicating that while the motion states that the vehicle is a 2003 Ford Mustang, the attached declaration identifies the vehicle as a 2004 Toyota Tacoma. The VIN number relates to the Ford Mustang.

Debtor's Response

Debtor asserts that there is no grounds for relief from the automatic stay of the 2003 Ford Mustang.

The debtor is current on plan payments. The vehicle is properly insured and the movant is being treated under the plan.

Creditor's Reply

Creditor replies indicating that the correct vehicle is the 2003 Ford Mustang. Creditor asserts that Debtor has not insured the vehicle, and the evidence attached to her declaration does not include a loss payable endorsement for the Secured Creditor.

Moving party's contention that the mere lack of equity is "cause," as set forth in 11 U.S.C. § 362(d)(1) is not enough to sustain an order to vacate the stay. Lack of equity is one of the two necessary elements for relief from the automatic stay under 11 U.S.C. § 362(d)(2). The fact that the debtor has no equity in the estate is not sufficient, standing alone, to grant relief from the automatic stay under 11 U.S.C. § 362(d)(1). *In re Suter*, 10 B.R. 471, 472 (Bankr. E.D. Penn. 1981); *In re Mellor*, 734 F.2d 1396, 1400 (9th Cir. 1984). Moving party has not adequately plead or provided an evidentiary basis for granting relief for "cause."

The moving party is being paid through the plan. As a result, relief from the automatic stay is not presently required.

The court shall issue a minute order denying the request for relief from the automatic stay.

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 not vacated with respect to the 2003 Ford Mustang.

3. [16-26253](#)-C-13 ALEXI/JENNIFER FANOPOULOS MOTION FOR RELIEF FROM
SW-1 Mikalah Liviakis AUTOMATIC STAY
10-27-16 [[14](#)]

ALLY FINANCIAL VS.

Final Ruling: No appearance at the November 22, 2016 hearing is required.

Ally Financial having filed a "Withdrawal of Motion" for the pending Motion for Relief from Automatic Stay, the "Withdrawal" being consistent with the opposition filed to the Motion, the court interpreting the "Withdrawal of Motion" to be an ex parte motion pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rule of Bankruptcy Procedure 9014 and 7041 for the court to dismiss without prejudice the Motion for Relief from Automatic Stay, and good cause appearing, **the court dismisses without prejudice the Creditor's Motion for Relief from Automatic Stay.**

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.

A Motion for Relief from Automatic Stay having been filed by Ally Financial, the Creditor, Ally Financial having filed an ex parte motion to dismiss the Motion without prejudice pursuant to Federal Rule of Civil Procedure 41(a)(2) and Federal Rules of Bankruptcy Procedure 9014 and 7041, dismissal of the Motion being consistent with the opposition filed, and good cause appearing,

IT IS ORDERED that the Motion for Relief from Automatic Stay is dismissed without prejudice.

WELLS FARGO BANK, 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 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 October 14, 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). 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. 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.

Wells Fargo Bank, N.A. seeks relief from the automatic stay with respect to the real property commonly known as 5028 El Cemonte Ave, Davis, California. The moving party has provided the Declaration of Teresa Barnette to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Barnette Declaration states that the Debtor has not made 58 pre-petition payments and 3 post-petition payments, with a total of \$10,352.39 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 \$732,995.72, as stated in the Barnette Declaration, while the value of the property is determined to be \$660,000.00, as stated in Schedules A and D filed by Debtor.

Trustee's Response

The Debtor is current under the proposed plan but that plan was denied confirmation. The debtor does not have any pending plan and a motion to dismiss was set for November 16, 2016. Debtor is paying Creditor with direct payments. The Trustee has no means to verify if the payments are being made. The Trustee recommends the court grant relief from stay.

Debtors' Response

Debtors respond that they are in the process of obtaining a loan modification through Wells Fargo. Debtors respond that the Creditor is unable to move forward with foreclosure proceedings while also accepting a loan modification. Debtors have made trial payments of the loan modification.

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 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 Wells Fargo Bank, N.A., 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 5028 El Cemente Ave, Davis, California.

No other or additional relief is granted.
