UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Christopher D. Jaime
Bankruptcy Judge
Sacramento, California

December 6, 2016 at 1:00 p.m.

1.	16-26320-B-13 PGM-1	JANELLE WATSON Peter G. Macaluso	MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA, INC. 11-4-16 [13]

Final Ruling: No appearance at the December 6, 2016, hearing is required.

The Motion to Value Collateral of Santander Consumer USA, Inc. 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 and other parties in interest 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 court's decision is to value the secured claim of Santander Consumer USA, Inc. at $5,000.00.

Debtor's motion to value the secured claim of Santander Consumer USA, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2006 Chevrolet Tahoe LT ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $5,000.00 as of the petition filing date. The Declaration of Janelle Watson states that there are approximately 162,000 miles on the Vehicle and that several items within and on the exterior of the Vehicle are broken or cracked. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 1 filed by Santander Consumer USA, Inc. is the claim which may be the subject of the present motion.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on or about May 2, 2012, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $14,304.22. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of $5,000.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

2. 15-21326-B-13 JEFFREY/ARLEEN MILLS MOTION TO SELL
MRL-1 Mikalah R. Liviakis 11-7-16 [37]

Tentative Ruling: The Motion to Authorize Sale of 21 Hays Street 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.

The matter will be determined at the scheduled hearing.

3. 16-26451-B-13 OSCAR/ARACI PERES — MOTION TO VALUE COLLATERAL OF AUTOVILLE MOTORS
PGM-1 Peter G. Macaluso — 11-7-16 [16]

Final Ruling: No appearance at the December 6, 2016, hearing is required.

The Motion to Value Collateral of Autoville Motors 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 and other parties in interest 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 court's decision is to deny the motion to value collateral without prejudice.

Debtors' motion to value the secured claim of Autoville Motors ("Creditor") is accompanied by Debtors' declaration. Debtors are the owners of a 2005 Ford Freestar ("Vehicle"). According to the motion, Debtors seek to value the Vehicle at a replacement value of $800.00 as of the petition filing date. However, Debtors' declaration states a value at $500.00. The Debtors provide contradictory valuations and have not persuaded the court regarding their position for the value of the Vehicle. The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is denied without prejudice.

The court will enter an appropriate minute order.

4. 13-28856-B-13 JENNIFER AMADI MOTION TO BORROW
SDB-2 W. Scott de Bie 11-3-16 [57]

Final Ruling: No appearance at the December 6, 2016, hearing is required.

The Motion for Order Allowing Debtor to Obtain Credit has been set for hearing on the 28-days' 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 and other parties in interest 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 court's decision is to grant the motion and authorize the Debtor to incur post-petition debt for the purpose of purchasing a single family residence.

The motion seeks permission to purchase a single family residence, the total purchase price of which is $255,000.00, with monthly payments of $1,614.08 over a period of 360 months and 4.783% annual percentage rate of interest on this purchase. Debtor contends that she can make this mortgage payment, which is slightly higher than her current rent payment of $1,500.00, because her net employment income has increased by $268.86 and she will be able to deduct the interest portion of housing payments from her taxes, thus offsetting the loss of child support income.

A motion to incur debt is governed by Federal Rule of Bankruptcy Procedure 4001(c). *In re Gonzales*, No. 08-00719, 2009 WL 1939850, at *1 (Bankr. N.D. Iowa July 6, 2009). Rule 4001(c) requires that the motion list or summarize all material provisions of the proposed credit agreement, "including interest rate, maturity, events of default, liens, borrowing limits, and borrowing conditions." Fed. R. Bankr. P. 4001(c)(1)(B). Moreover, a copy of the agreement must be provided to the court. Id. at 4001(c)(1)(A). The court must know the details of the collateral as well as the financing agreement to adequately review post-confirmation financing agreements. *In re Clemons*, 358 B.R. 714, 716 (Bankr. W.D. Ky. 2007).

The court finds that the proposed credit, based on the unique facts and circumstances of this case, is reasonable. There being no opposition from any party in interest and the terms being reasonable, the motion is granted.

The court will enter an appropriate minute order.

5.	15-29773-B-13 PGM-5	CHARLES HUGHES AND VIRA EISON Peter G. Macaluso	MOTION TO APPROVE LOAN MODIFICATION 11-3-16 [83]

Final Ruling: No appearance at the December 6, 2016, hearing is required.

The Motion for Order Approving Loan Modification has been set for hearing on the 28 days' 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 and other parties in interest 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 court's decision is to permit the loan modification requested.

Debtors seek court approval to incur post-petition credit. Citimortgage, Inc. ("Creditor"), whose claim the plan provides for in Class 4, has agreed to a permanent loan modification which will reduce Debtors' mortgage payment from the current $1,317.28 a month to $1,250.79 a month. The first modified payment was due November 1, 2016. As of the modification effective date, the principal balance of the loan that will be due and payable is $221,735.40. The interest rate of 3.750% began to accrue on the new principal balance as of October 1, 2016. The maturity date is October 1, 2056.

The motion is supported by the Declaration of Charles E. Hughes. The Declaration affirms Debtors' desire to obtain the post-petition financing. Although the Declaration does not state the Debtors' ability to pay this claim on the modified terms, the court finds that the Debtors will be able to pay this claim since it is a reduction from the Debtors' current monthly mortgage payments.

This post-petition financing is consistent with the Chapter 13 plan in this case and Debtors' ability to fund that plan. There being no objection from the Trustee or other parties in interest, and the motion complying with the provisions of 11 U.S.C. § 364(d), the motion is granted.

The court will enter an appropriate minute order.

6. 16-21082-B-13 SERGIO DE LA CRUZ — CONTINUED MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR ADEQUATE PROTECTION
RCO-1 Ronald W. Holland — 10-14-16 [62]
Thru #7

EVERGREEN MONEYSOURCE MORTGAGE COMPANY VS.

Tentative Ruling: The Motion for Relief From Automatic Stay was originally 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to deny the motion for relief from stay without prejudice.

This matter was continued from November 15, 2016, to be heard in conjunction with the Debtor's motion for reconsideration at Item #7. Evergreen Moneysource Mortgage Company d/b/a Evergreen Home Loans ("Movant") sought relief from the automatic stay with respect to the real property commonly known as 755 Jewell Avenue, Yuba City, California (the "Property"). The motion states that the Debtor is under significant default under the terms of the plan dated February 29, 2016, and confirmed on June 22, 2016. Movant has provided the Declaration of Cloretta Black to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

In response, the Debtor states that his second modified plan will cure the alleged default and nullify the basis for relief from stay. The Creditor did not file any objection to the second modified plan and the time for a timely objection has passed.

Given that the second modified plan is confirmed at Item #7, the motion for relief from stay is denied without prejudice.

Attorneys' Fees and Costs Requested

Although requested in the Motion, Movant has not stated either a contractual or statutory basis for the award of attorneys' fees and costs in connection with this Motion. Movant is not awarded any attorneys' fees.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

7. 16-21082-B-13 SERGIO DE LA CRUZ — MOTION TO RECONSIDER
RWH-2 Ronald W. Holland — 11-15-16 [82]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, the Motion for Reconsideration is deemed brought pursuant to 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.

The court's decision is to grant the motion to reconsider, vacate the court order dated November 10, 2016, that denied confirmation of the second modified plan, and confirm the second modified plan.

The Debtor requests that the court reconsider its decision denying confirmation of the

second modified plan dated September 26, 2016. The confirmation hearing for that plan was held November 8, 2016. The court denied confirmation primarily on the ground that the Debtor did not cure his delinquency in the amount of $702.00, which represented approximately ½ of one plan payment, and the additional plan payment in the amount of $1,357.00 that also became due by the date of that hearing. The Debtor's attorney had represented at the hearing that the Debtor mailed the required payments to the Trustee, but the Trustee stated that its records did not show that the payments were cured. The Debtor's attorney did not have any proof that the payments were made. Thus, the court denied confirmation.

In his motion to reconsider, the Debtor asserts that the plan payments have been cured as evidenced by the Trustee's online records that indicate payment was received and accounted for on November 9, 2016, the day after the confirmation hearing for the second modified plan. The Debtor further contends that the curing of plan payments resolves the issue that the modified plan does not specify a complete cure of the post-petition arrearage owed to Evergreen Home Loans for the months of June, July, and September 2016 totaling $3,131.70.

With regard to the treatment of the claim of Springleaf Financial, the Debtor states that the correct classification is in Class 3 as stated in the plan and not Class 6 as stated in the motion. The Debtor acknowledges this typographical error.

Provided that Debtor's payment accounted for on November 9, 2016, also resolves the issue with regard to post-petition arrearage owed to Evergreen Home Loans and that he is in fact current, the second modified plan will be deemed to comply with 11 U.S.C. §§ 1322 and 1325(a) and will be confirmed.

The court will enter an appropriate minute order.

8. 16-27290-B-13 JAMES EDWARDS
TLA-1 Thomas L. Amberg

MOTION TO AVOID LIEN OF AMERICAN EXPRESS CENTURION BANK
11-8-16 [8]

Final Ruling: No appearance at the December 6, 2016, hearing is required.

The Motion to Avoid Judicial Lien Pursuant to 11 U.S.C. 522(f) has been set for hearing on the 28 days' 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 and other parties in interest 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 court's decision is to grant the motion to avoid judicial lien.

This is a request for an order avoiding the judicial lien of American Express Centurion Bank ("Creditor") against the Debtor's property commonly known as 9492 Hanfield Drive, Sacramento, California ("Property").

A judgment was entered against Debtor in favor of Creditor in the amount of $26,984.92. An abstract of judgment was recorded with Sacramento County on August 2, 2016, which encumbers the Property. All other liens recorded against the Property total $250,538.00 as stated in the Declaration of James Edwards and Schedule D of the petition.

Pursuant to the Debtor's Schedule A, the subject real property has an approximate value of $345,000.00 as of the date of the petition.

Debtor has claimed an exemption pursuant to Cal. Civ. Proc. Code § 704.730 in the amount of $100,000.00 on Schedule C.

After application of the arithmetical formula required by 11 U.S.C. § 522(f)(2)(A), there is no equity to support the judicial lien. Therefore, the fixing of this judicial lien impairs the Debtor's exemption of the real property and its fixing is avoided subject to 11 U.S.C. § 349(b)(1)(B).

The court will enter an appropriate minute order.

9. 16-27092-B-13 ROBERT BISHOP — MOTION FOR RELIEF FROM AUTOMATIC STAY
WLP-1 Peter G. Macaluso — 11-18-16 [17]

VALHALLA VS.

Tentative Ruling: Because less than 28 days' notice of the hearing was given, Motion for Relief From Automatic Stay is deemed brought pursuant to Local Bankruptcy Rule 9014-1(f)(2). Consequently, the 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. Below is the court's tentative ruling. If there is opposition offered at the hearing, the court may reconsider this tentative ruling.

The court's decision is to grant the motion for relief from stay.

Valhalla Manufactured Housing Community ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 3901 Lake Road, #50, West Sacramento, California (the "Property"). Movant has provided the Declaration of Pam Tyson to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Tyson Declaration states that Movant is the legal owner of the property and that the property was leased to the Debtor. Movant seeks to proceed with an unlawful detainer action filed in state court. The Tyson Declaration states that the Debtor has not made his required monthly rent and utility payments since August 2016, leaving the months of September, October and November 2016 delinquent for a total delinquency of $1,655.71.

Discussion

Movant presents evidence that it is the owner of the Property. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant has not yet commenced an unlawful detainer action but did serve a Three (3) Day Notice to Pay Rent or Quite & Sixty (60) Day Notice to Termination Possession on September 13, 2016. Exh. 2, Dkt. 21.

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).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel in *Hamilton v. Hernandez*, No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427 (B.A.P. 9th Cir. Aug. 1, 2005), relief from stay proceedings are summary proceedings which address issues arising only under 11 U.S.C. Section 362(d). *Hamilton*, 2005 Bankr. LEXIS 3427 at *8-*9 (citing *Johnson v. Righetti (In re Johnson)*, 756 F.2d 738, 740 (9th Cir. 1985)). The court does not determine underlying issues of ownership, contractual rights of parties, or issue declaratory relief as part of a motion for relief

The court shall issue an order terminating and vacating the automatic stay to allow Movant, and its agents, representatives and successors, to exercise its rights to obtain possession and control of property including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

The 14-day stay of enforcement under Rule 4001(a)(3) is not waived.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

10. 16-27293-B-13 ELLE RUBINGER
MS-1 Mark Shmorgon

MOTION TO VALUE COLLATERAL OF SANTANDER CONSUMER USA, INC.
11-2-16 [10]

Final Ruling: No appearance at the December 6, 2016, hearing is required.

The Motion to Value Collateral of Santander USA, Inc. 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 and other parties in interest 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 court's decision is to value the secured claim of Santander USA, Inc. at $3,000.00.

Debtor's motion to value the secured claim of Santander USA, Inc. ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2005 Nissan Altima 3.5 SE Sedan 4D ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $3,000.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on or about December 2011 according to Schedule D of the petition. This is more than 910 days prior to filing of the petition and secures a debt owed to Creditor with a balance of approximately $5,500.70. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of $3,000.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

11.	16-26597-B-13 PGM-2	FAVIOLA VALENCIA-ARANDA AND JOSE ARANDA Peter G. Macaluso	MOTION TO VALUE COLLATERAL OF REAL TIME RESOLUTIONS, INC. 11-7-16 [24]

Tentative Ruling: The Motion to Value Collateral of Real Time Resolutions, Inc. has been set for hearing on the 28 days' 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). Opposition having been filed, the court will address the merits of the motion at the hearing.

The court's decision is to continue the matter and set an evidentiary haring.

Debtors' motion to value the secured claim of Real Time Resolutions, Inc. ("Creditor") is accompanied by the Debtors' declaration. Debtors are the owners of the subject real property commonly known as 7116 Koropp Court, Sacramento, California ("Property"). Debtors seek to value the Property at a fair market value of $165,000.00 as of the petition filing date. As the owners, Debtors' opinion of value is some evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

The valuation of property which secures a claim is the first step, not the end, result of this Motion brought pursuant to 11 U.S.C. § 506(a). The ultimate relief is the valuation of a specific creditor's secured claim.

11 U.S.C. § 506(a) instructs the court and parties in the methodology for determining the value of a secured claim.

> (a)(1) An **allowed claim of a creditor** secured by a lien on property in which the estate has an interest, or that is subject to setoff under section 553 of this title, **is a secured claim to the extent of the value of such creditor's interest in the estate's interest in such property**, or to the extent of the amount subject to setoff, as the case may be, and is an unsecured claim to the extent that the value of such creditor's interest or the amount so subject to set off is less than the amount of such allowed claim. Such value shall be determined in light of the purpose of the valuation and of the proposed disposition or use of such property, and in conjunction with any hearing on such disposition or use or on a plan affecting such creditor's interest.

11 U.S.C. § 506(a) (emphasis added). For the court to determine the creditor's secured claim (rights and interest in collateral), the creditor must be a party who has been served and is before the court. U.S. Constitution Article III, Sec. 2; case or controversy requirement for the parties seeking relief from a federal court.

Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. It appears that Claim No. 4 filed by Real Time Resolutions, Inc. is the claim which may be the subject of the present motion.

Opposition

Creditor has filed an opposition asserting that the motion should be denied because the Debtors cannot modify a claim secured only by a security interest in real property that is the Debtors' principal residence pursuant to 11 U.S.C. § 1322(b)(2) and because the Debtors have undervalued the real property.

The Creditor does not provide any evidence, for instance in the form of a deed of trust, to show that its claim is secured by only a security interest in real property that is Debtors' principal residence.

The Creditors do, however, provide a preliminary broker's price opinion to dispute the valuation of the Property. Dkt. 33, exh. 1. According to the preliminary broker's price opinion, the value of the Property as of November 15, 2016 - which the court notes is after the date in which the petition was filed on October 3, 2016 - was $240,000.00. The Creditor requests that the court continue this matter to allow it additional time to obtain admissible evidence as to the Property's value.

Discussion

Because there is no evidence to support whether the Creditor's claim is secured by only a security interest in real property that is Debtors' principal residence, the court declines to determine whether the Debtors can or cannot modify the rights of Creditor under 11 U.S.C. § 1322(b)(2) at this time.

With regard to the valuation of the Property, the court finds the Creditor's preliminary broker's price opinion provides persuasive evidence that the value of the Property is not $165,000.00 as asserted by the Debtors. Nonetheless, the preliminary broker's price opinion values the Property as of November 15, 2016, and not the date the petition was filed on October 3, 2016. An evidentiary hearing is set for January 16, 2017, at 9:30 a.m. Local Bankr. R. 9017-1 shall be applied. Debtors are to submit additional evidence of value, witness direct testimony declarations, and other evidence to Creditor and the court by January 2, 2017. The Creditor is to submit additional evidence of value, witness direct testimony declarations, and other evidence to Debtor and the court by January 9, 2017.

The court will enter an appropriate minute order.

12. 16-23799-B-13 MELISSA REGALA
APN-1 Mark A. Wolff

MOTION FOR RELIEF FROM AUTOMATIC STAY AND/OR MOTION FOR RELIEF FROM CO-DEBTOR STAY
11-7-16 [73]

WELLS FARGO BANK, N.A. VS.

Final Ruling: No appearance at the December 6, 2016, hearing 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 court's decision is to grant the motion for relief from stay.

Wells Fargo Bank, N.A., dba Wells Fargo Dealer Services ("Movant") seeks relief from the automatic stay with respect to an asset identified as a 2008 Acura RDX, VIN ending in 1657 (the "Vehicle"). The moving party has provided the Declaration of Shemeka Winston to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Winston Declaration provides testimony that Debtor has not made 4 post-petition payments, with a total of $1,179.16 in post-petition payments past due.

From the evidence provided to the court, and only for purposes of this motion, the debt secured by this asset is determined to be $15,725.67, as stated in the Winston Declaration, while the value of the Vehicle is determined to be $12,825.00, as stated in the Winston Declaration.

The Debtor has filed a non-opposition to the Creditor's motion.

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 since the Debtor and the estate have 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).

Additionally, once a movant under 11 U.S.C. § 362(d)(2) establishes that a debtor or estate has no equity, it is the burden of the debtor or trustee 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 Vehicle for either the Debtor or the Estate. 11 U.S.C. § 362(d)(2). Moreover, the Debtor has filed a non-opposition to the Creditor's motion for relief from stay, which the court interprets as the Debtor's assertion that the collateral is not necessary to an effective reorganization.

There also being no objections from any party, the 14-day stay of enforcement under Rule 4001(a)(3) is waived.

No other or additional relief is granted by the court.

The court will enter an appropriate minute order.

13. 16-27299-B-13 HEATHER MARTIN
TLA-1 Thomas L. Amberg

MOTION TO VALUE COLLATERAL OF CARMAX AUTO FINANCE
11-8-16 [10]

Final Ruling: No appearance at the December 6, 2016, hearing is required.

The Motion to Value Collateral of Carmax Auto Finance (A/K/A Carmax Business Services, LLC) 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 and other parties in interest 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 court's decision is to value the secured claim of Carmax Auto Finance (A/K/A Carmax Business Services, LLC) at $12,500.00.

Debtor's motion to value the secured claim of Carmax Auto Finance (A/K/A Carmax Business Services, LLC) ("Creditor") is accompanied by Debtor's declaration. Debtor is the owner of a 2009 Nissan Murano ("Vehicle"). The Debtor seeks to value the Vehicle at a replacement value of $12,500.00 as of the petition filing date. As the owner, Debtor's opinion of value is evidence of the asset's value. *See* Fed. R. Evid. 701; *see also Enewally v. Wash. Mut. Bank (In re Enewally)*, 368 F.3d 1165, 1173 (9th Cir. 2004).

No Proof of Claim Filed

The court has reviewed the Claims Registry for this bankruptcy case. No proof of claim has been filed by Creditor for the claim to be valued.

Discussion

The lien on the Vehicle's title secures a purchase-money loan incurred on March 20, 2014, which is more than 910 days prior to filing of the petition, to secure a debt owed to Creditor with a balance of approximately $19,181.00. Therefore, the Creditor's claim secured by a lien on the asset's title is under-collateralized. The Creditor's secured claim is determined to be in the amount of $12,500.00. *See* 11 U.S.C. § 506(a). The valuation motion pursuant to Fed. R. Civ. P. 3012 and 11 U.S.C. § 506(a) is granted.

The court will enter an appropriate minute order.

14. 10-32405-B-13 MARIA BENEL
LP-10 Lewis Phon

MOTION TO EXTEND AUTOMATIC STAY AND/OR MOTION FOR TEMPORARY RESTRAINING ORDER
11-22-16 [145]

Tentative Ruling: Because less than 28 days' notice of the hearing was given, this motion is deemed brought pursuant to 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. If there is opposition, the court may reconsider this tentative ruling.

The court's decision is grant the motion, but for the reasons explained below.

Introduction

Presently before the court is a Motion for Reinstatement of Stay or, Alternatively, for a Temporary Restraining Order filed on November 22, 2016. The motion is fraught with irregularities; however, none are insurmountable.

First, the court is unsure on whose behalf the motion is filed. There is no debtor. Debtor Maria Benel ("Debtor") passed away on December 24, 2010. There also is no representative of the debtor. No party was ever substituted for the Debtor.

Second, the purpose of the motion is to stop a foreclosure sale of real property that the Debtor owned located at 120 Franklin Street, Vallejo, California. The foreclosure sale is scheduled for December 8, 2016. The motion asks the court to prevent the sale from going forward either by reimposing the automatic stay of 11 U.S.C. § 362(a) through § 105(a) or by granting injunctive relief in the form of a temporary restraining order under § 105(a) and Federal Rule of Civil Procedure 7065.

For the reasons explained below, the court will grant the motion, but on grounds other than those stated in the motion. In so doing, the court construes the motion according to its substance rather than its caption.

Background

The Debtor filed a Chapter 13 petition on May 11, 2010. Dkt. 1. Schedule A, also filed on May 11, 2010, lists the Franklin Street property. Dkt. 9. According to Schedule D, also filed with the petition, the Franklin Street property was subject to a $309,000.00 first deed of trust recorded by Bank of America and a $25,000.00 second deed of trust recorded by Chase Bank.[1] Dkt. 9.

On August 11, 2010, the Debtor filed a motion to value the Franklin Street property as the collateral of Bank of America and Chase at $95,000.00. Dkt. 49. The court granted that motion in an order entered on September 8, 2010, which states as follows:

> The motion to value collateral pursuant to Fed. R. Bankr. P. 3012 and 11 U.S.C. § 506(a), is granted. $95,000.00 of Bank of America's claim secured by the first deed of trust on real property located at 120 Franklin Street, Vallejo, CA 94590 ("Property") is a

[1] This is consistent with the motion which states that Bank of America, the successor to Countrywide Bank, held a first deed of trust on the property in the approximate amount of $309,000.00. At some point, Bank of America's loan was assumed by Bank of New York Mellon and is now serviced by Shellpoint Mortgage Servicing. Chase Bank, the successor to Washington Mutual Bank, held a second deed of trust on the property in the amount of $25,000.00.

> secured claim, and the balance of its claim is an unsecured claim. $0.00 of Chase Bank's claim secured by the second deed of trust on the Property is a secured claim, and the balance of its claim is an unsecured claim.

Dkt. 68. No party appealed the valuation order.

Meanwhile, on August 13, 2010, the Debtor filed a first amended plan that classified the secured claims of Bank of America and Chase as Class 2 claims. Dkt. 56. Consistent with the valuation motion, the amended plan proposed to pay Bank of America's $95,000.00 secured claim in full at $1,749.57 per month over the term of the plan. The amended plan also proposed no payments on the balance of Bank of America's unsecured claim or on Chase's wholly unsecured claim.

Bank of America and Chase were served with the amended plan. Dkt. 60. Neither objected to it or opposed the motion to confirm it. The amended plan was confirmed on November 12, 2011. Dkt. 96.

In the meantime, the Debtor passed away on December 10, 2010. The death certificate filed as an exhibit to the motion confirms this. Dkt. 149, Ex. 2.

Following the Debtor's death her son, Jim Ventura, "continued to collect the rents from the property and made all the payments under the plan to the lender as [he] understood that the payments needed to continue." Dkt. 147 at ¶ 3. Mr. Ventura is also "familiar with the [Debtor's] Chapter 13 filing and her finances both before and after her death as [he] [] helped her with the payment of her bills, [he] [] interpreted for her and [he] [] reviewed and explained to her documents that were addressed to her." Dkt. 118 at § 6. Mr. Ventura is intimately familiar with the Debtor's financial affairs. Dkt. 117.

Mr. Ventura completed all payments required by the amended plan, including all payments due on the Bank of America secured claim, and a Notice to Debtor of Completed Plan Payments was filed on June 10, 2015. Dkt. 103.

On October 16, 2015, the Chapter 13 Trustee ("Trustee") filed a final report and accounting which reported payments on secured claims totaling $95,000.00. Dkt. 106. According to a docket entry on October 19, 2015, there were no objections to the Trustee's final report and accounting.

An order approving the final report and accounting was entered on October 19, 2015. Dkt. 111. The Chapter 13 case was then closed without entry of a discharge by an order entered the following day, November 20, 2015. Dkt. 112. An order reopening the case for purposes of requesting a § 1328 certification waiver and entry of a discharge was entered on November 9, 2015. Dkt. 121.

Discussion

Substitution and Standing

The present motion was filed by attorney Lewis Phon, purportedly on the Debtor's behalf. However, the Debtor is deceased which means the Debtor is not (and cannot be) the moving party. Moreover, no party has substituted as a representative of the Debtor.

The death of a debtor while a Chapter 13 case is pending does not necessarily abate the Chapter 13 case. In relevant part, Federal Rule of Bankruptcy Procedure ("Bankruptcy Rule") 1016 states that in the event a debtor passes away,

> [i]f a . . . case is pending under . . . chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the

death or incompetency had not occurred.

Bankruptcy Rule 7025(a) incorporates Federal Rule of Civil Procedure ("Civil Rule") 25, and also states in relevant part:

> If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Thus, while a Chapter 13 case does not automatically abate due to the death of a debtor the court must make a determination of whether "[f]urther administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or incompetency had not occurred." Fed. R. Bankr. P. 1016. The court cannot make that adjudication until it has a substituted real party in interest for the deceased debtor, and that requires a noticed motion. *See Hawkins v. Eads*, 135 B.R. 380, 383 (Bankr. E.D. Cal. 1991).

The court construes the Debtor's death certificate filed as an exhibit to the present motion as a suggestion on the record of the Debtor's death. The court also construes the present motion to include a request to substitute the deceased Debtor's son, Mr. Ventura, as the Debtor's representative for purposes of this Chapter 13 case.

Mr. Ventura states in his declaration that after his mother passed away he continued to collect rents from the Franklin Street property. He also states that he understood that payments had to be made under the amended plan and he continued to make required plan payments through the conclusion of the plan term. In short, Mr. Ventura is familiar with the Debtor's finances and financial matters.

The court concludes that Mr. Ventura is a suitable person qualified to be appointed as the Debtor's representative for purposes of this Chapter 13 case, and he is hereby so appointed. That appointment vests Mr. Ventura with standing to bring the present motion and to request other relief in the case on the Debtor's behalf. And for the reasons explained below, the court further concludes that the continued administration of this case is possible and in the best interest of the parties.

Actual Relief Requested

The motion requests relief to prevent a foreclosure sale of the Franklin Street property. It contends that foreclosure is unwarranted because Bank of America (and/or its assignee) was paid in full through the plan. That contention has substantial merit.

The motion also suggests that the immediate closure of this case prematurely terminated the automatic stay after all plan payments were completed and before Mr. Ventura or some other individual could be substituted as the Debtor's representative to request a § 1328 certification waiver and discharge. In other words, had there been an opportunity to request substitution, a certification waiver, and entry of a discharge, all of which were likely to have been granted, there would now be no basis for Bank of America and/or its assignee to foreclose. Again, that contention has substantial merit.

The court construes the present motion according to the relief requested and not how it is labeled on the caption. *See United States v. 1982 Sanger 24' Spectra Boat*, 738 F.2d 1043, 1046 (9th Cir. 1984) (instructing court to look at the substantive relief requested in a motion and based on the relief requested may re-characterize the motion accordingly). Thus, the court construes the motion as a Civil Rule 60(b) (applicable by Bankruptcy Rule 9024) request to vacate the order that terminated the automatic stay of § 362(a) which, in this case, is the order closing this bankruptcy case.

There is a distinct difference between an order reopening a closed bankruptcy case and

an order vacating the order closing the bankruptcy case. *See In re Campbell-Bennett*, 2010 WL 4027610 at *1 (Bankr. D. D.C. 2010).

An order reopening a closed case does not revive the automatic stay of § 362(a), does not permit the court to invoke § 105(a) to reimpose the automatic stay on a motion, and does not permit the court to grant injunctive relief in the form of a temporary restraining order under § 105(a) and Bankruptcy Rule 7065 in the absence of an adversary proceeding brought under Bankruptcy Rule 7001(7). *In re Canter*, 299 F.3d 1150, 1155 n.1 (9th Cir. 2002); *Menk v. Lapaglia (In re Menk)*, 241 B.R. 896, 914 (9th Cir. BAP 1999); *see also Ramirez v. Whelan (In re Ramirez)*, 188 B.R. 413, 416 (9th Cir. BAP 1995) (Klein, J. concurring) ("In order to have a vacated stay 'reimposed,' one must ordinarily file an adversary proceeding seeking an injunction under 11 U.S.C. § 105.").

However, an order that caused the automatic stay to terminate can be vacated on a motion brought under Civil rule 60(b) and when such an order is vacated it is as if the stay never terminated in the first instance. *State Bank of Southern Utah v. Gledhill (In re Gledhill)*, 76 F.3d 1070, 1079-1080 and n.8 (10th Cir. 1996); *see also Ramirez*, 188 B.R. at 416 ("Occasionally, it might suffice to revive the stay by way of motion for reconsideration under Federal Rules of Civil Procedure 59(e) or 60(b), which are applicable in bankruptcy by virtue of Federal Rules of Bankruptcy Procedure 9021 and 9023 [sic].") (Klein, J., concurring); *cf. Menk*, 241 B.R. at 914 (order reopening closed case will not undo a technical abandonment but order vacating order closing case will).

Inasmuch as the present motion seeks to revive the automatic stay and prevent a foreclosure sale of the Franklin Street property, the court construes it as one to vacate the order that caused the automatic stay to terminate in the first instance, *i.e.*, the order closing this case. So construed, the court concludes that good cause and extraordinary circumstances warrant such relief under Civil Rule 60(b)(6) (applicable by Bankruptcy Rule 9024).

As noted above, Mr. Ventura continued to make payments required by the Debtor's amended plan after the Debtor's death. He intended to - and in fact did - complete the plan by making all required payments. His efforts are commendable. And, more importantly, Mr. Ventura's efforts resulted in the payment in full of the Bank of America secured claim.

Neither Bank of America nor its assignee ever disputed the value of its collateral or the payment in full of its secured claim. Neither objected to the trustee's final report and neither disputed that all payments required by the amended plan were made. Instead, seeking to capitalize on the Debtor's death and the obviously inability of the Debtor to request entry of a discharge, Bank of America (and/or its assignee) disingenuously seek to obtain a windfall by foreclosing based upon a technicality created by the Debtor's death.

Neither Bank of America nor its assignee will suffer any prejudice if the order closing this case is vacated and the automatic stay thereby revived to prevent foreclosure on the Franklin Street property. The secured claim as valued by this court has been paid in full and Bank of American and/or its assignee have received all it was entitled to receive under the Debtor's first amended plan. In short, the Chapter 13 plan was successfully completed.

Therefore, for all the foregoing reasons and for good cause shown, the court intends to adopt this tentative decision as a final order in a separate Civil Minute Order that orders as follows:

(1) IT IS ORDERED that the order closing this case entered on November 20, 2015, shall be and hereby is VACATED.

(2) IT IS FURTHER ORDERED that the order reopening this entered on November 9, 2016, is VACATED AS MOOT.

(3) IT IS FURTHER ORDERED that the automatic stay of 11 U.S.C. § 362(a) is and shall remain in full force and effect in this Chapter 13 case pending further order of

this court.

(4) IT IS FURTHER ORDERED that the foreclosure sale of the Franklin Street property presently scheduled for December 8, 2016, is stayed by operation of the automatic stay. Any foreclosure on the Franklin Street property without further order of this court shall be in violation of the automatic stay of 11 U.S.C. § 362(a) which shall subject the foreclosing creditor to the full extent of any and all damages available under 11 U.S.C. § 362(k).

(5) IT IS FURTHER ORDERED that Mr. Phon shall serve this order by email, facsimile, and certified mail on the creditor purporting to foreclose on the Franklin Street property and any attorney representing that creditor. Service by email and facsimile on any attorney representing the foreclosing creditor shall be deemed service on the foreclosing creditor.