

UNITED STATES BANKRUPTCY COURT
Eastern District of California

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

December 7, 2016, at 9:30 a.m.

1. [14-29284-E-7](#) CHARLES MILLS MOTION FOR RELIEF FROM
GLF-1 Lucas Garcia AUTOMATIC STAY
11-3-16 [\[449\]](#)
MICHELLE JAPHET VS.

Final Ruling: No appearance at the December 7, 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 7 Trustee, parties requesting special notice, and Office of the United States Trustee on November 3, 2016. FN.1. By the court's calculation, 34 days' notice was provided. 28 days' notice is required.

FN.1. Debtor's counsel filed the Notice of Hearing and Proof of Service as one document. Debtor's counsel is reminded that Local Bankruptcy Rule 9004-1(a) requires compliance with the Revised Guidelines for the Preparation of Documents, Form EDC 2-901. Revised Guideline Section (III)(A) requires that notices and proofs of service be filed as separate documents. Local Bankruptcy Rule 1001-1(g) states that failure to comply with rules is a ground to deny a motion.

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). Failure of the respondent and other parties in interest to file written opposition at least fourteen days prior to the hearing as required by Local Bankruptcy Rule 9014-1(f)(1)(B) is considered to be the equivalent of a statement of nonopposition. *Cf. Ghazali v. Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (upholding a court ruling based upon a local rule construing a party's failure to file opposition as consent to grant a motion). 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 Motion for Relief from the Automatic Stay is granted.

Charles Mills, Jr. (“Debtor”) commenced this bankruptcy case on September 17, 2014. Michelle Japhet (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 6516 Larry Way, North Highlands, California (“Property”). Movant has provided the Declaration of Michelle Japhet to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The Japhet Declaration states that there are three post-petition defaults in the payments on the obligation secured by the Property, with a total of \$3,114.00 in post-petition payments past due. The Declaration also provides evidence that there are five pre-petition payments in default, with a pre-petition arrearage of \$5,190.00.

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 \$174,232.79 (including \$84,232.79 secured by Movant’s second deed of trust), as stated in Movant’s Declaration and Schedule D. The value of the Property is determined to be \$110,000.00, as stated in Schedules A and D.

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 that have come due. 11 U.S.C. § 362(d)(1); *In re Ellis*, 60 B.R. 432.

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 pleaded adequate facts and presented sufficient evidence to support the court waiving the fourteen-day stay of enforcement required under Federal Rule of Bankruptcy Procedure 4001(a)(3), and this part of the requested relief is 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 Michelle Japhet (“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 vacated to allow Michelle Japhet, authorized 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 that 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 to obtain possession of the real property commonly known as 6516 Larry Way, North Highlands, California.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is waived for cause.

No other or additional relief is granted.