

UNITED STATES BANKRUPTCY COURT

Eastern District of California

**Honorable Ronald H. Sargis**

Chief Bankruptcy Judge

Sacramento, California

December 8, 2015 at 1:30 p.m.

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1. [15-28312](#)-E-13 ELIEZER BEAUCHAMP MOTION FOR RELIEF FROM  
RHM-1 Pro Se AUTOMATIC STAY  
11-6-15 [[12](#)]

POWERHOUSE REAL ESTATE, ET  
AL. VS.  
DEBTOR DISMISSED: 11/06/2015

**Final Ruling:** No appearance at the December 8, 2015 hearing is required.  
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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 on November 6, 2015. By the court's calculation, 32 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). 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.**

Eliezer Beauchamp ("Debtor") commenced this bankruptcy case on October 26, 2015. Powerhouse Real Estate and Property Management, Inc. ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 110 Spinnaker Court, Vallejo, California (the "Property"). Movant has provided the Declaration of Robert M. Wells to introduce evidence to authenticate the documents upon which it bases the claim and the obligation secured by the Property.

The instant case was dismissed on November 6, 2015 for failure to timely file documents. Dckt. 10.

December 8, 2015 at 1:30 p.m.

While the Movant asserts various arguments and grounds, the applicable Bankruptcy Code provision for the matter before the court is 11 U.S.C. § 362(c)(1) and (2). This section provides:

In relevant part, 11 U.S.C. § 362(c) provides:

(c) Except as provided in subsections (d), (e), (f), and (h) of this section--

(1) the stay of an act against property of the estate under subsection (a) of this section continues until such **property is no longer property of the estate;**

(2) the stay of any other act under subsection (a) of this section continues until the earliest of--

(A) the time the case is closed;

(B) **the time the case is dismissed;** or

(C) if the case is a case under chapter 7 of this title concerning an individual or a case under chapter 9, 11, 12, or 13 of this title, the time a discharge is granted or denied;

11 U.S.C. § 362(c) (emphasis added).

When a case is dismissed, 11 U.S.C. § 349 discusses the effect of dismissal. In relevant part, 11 U.S.C. § 349 states:

(b) Unless the court, for cause, orders otherwise, a dismissal of a case other than under section 742 of this title--

(1) reinstates--

(A) any proceeding or custodianship superseded under section 543 of this title;

(B) any transfer avoided under section 522, 544, 545, 547, 548, 549, or 724(a) of this title, or preserved under section 510(c)(2), 522(i)(2), or 551 of this title; and

(C) any lien voided under section 506(d) of this title;

(2) vacates any order, judgment, or transfer ordered, under section 522(i)(1), 542, 550, or 553 of this title; and

(3) **revests the property of the estate in the entity in which such property was vested immediately before the commencement of the case under this title.**

11 U.S.C. § 549(c) (emphasis added).

Therefore, as of November 6, 2015, the automatic stay as it applies to the Property, and as it applies to Debtor, was terminated by operation of law. At that time, the Property ceased being property of the bankruptcy estate and was abandoned, by operation of law, to Debtor.

The court shall issue an order confirming that the automatic stay was terminated and vacated as to the Debtor and Vehicle on October 19, 2015, and Huntington Nation Bank.

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 Huntington Nation Bank ("Movant") having been presented to the court, and upon review of the pleadings, evidence, arguments of counsel, and good cause appearing,

**IT IS ORDERED** the court confirms that automatic stay provisions of 11 U.S.C. § 362(a) were terminated as to the Debtor pursuant to 11 U.S.C. § 362(c)(2)(B) and the real property commonly known as 110 Spinnaker Court, Vallejo, California, pursuant to 11 U.S.C. § 362(c)(1) and § 349(b)(3) as of the November 6, 2015 dismissal of this bankruptcy case filed by Eliezer Beauchamp, the Debtor.

2. [13-35992-E-13](#) BURT/SILVIA VARNER  
PAS-1 Peter G. Macaluso

CONTINUED MOTION FOR RELIEF  
FROM AUTOMATIC STAY  
11-6-15 [[51](#)]

CARPET U.S.A. LTD. VS.

**Tentative Ruling:** The Motion for Relief From the Automatic Stay 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).**

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Local Rule 9014-1(f)(2) Motion.

Correct Notice Not Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor and Debtor's Attorney on November 6, 2015. By the court's calculation, 18 days' notice was provided. 28 days' notice is required.

The Motion for Relief From the Automatic Stay 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. At the hearing -----.

**The Motion for Relief From the Automatic Stay is granted.**

Burt and Silvia Varner ("Debtor") commenced this bankruptcy case on December 23, 2015. Carpet U.S.A. Ltd. ("Movant") seeks relief from the automatic stay with respect to an asset identified as insurance proceeds (the "Asset"). Movant asserts that a Movant has a right to seek indemnification from Debtor for subcontractor tile-work done by Debtor in connection with a third party state court proceeding. The Movant is seeking relief to pursue the Debtor's insurance proceeds for indemnification: (1) State Farm Insurance Policy No. 90-BH-V727-6 and (2) State Farm Insurance Policy No. 90-D4-0028-1.

**NOVEMBER 24, 2015 HEARING**

Unfortunately, Movant had not provided sufficient notice to several parties. First, Movant's Certificate of Service demonstrated that only 18 days' notice was provided to parties served; under Local Bankruptcy Rule 9014-1(f)(1), 28 days' notice is required. Second, Ocwen Loan Servicing, LLC, filed a request for special notice on all motions in this case. Dckt. 8.

Finally, Movant's Certificate of Service did not state whether David Cusick, the Chapter 13 Trustee, was provided notice. However, this defect is waived by the court as Trustee filed a nonopposition on November 10, 2015.

In light of the court's abbreviated hearing dates during the end of year holidays, rather than denying the motion without prejudice, the court allowed Movant to re-notice the Motion for hearing on December 8, 2015. Dckt. 62.

**NOTICE OF HEARING**

The Movant filed an Amended Notice of Hearing, indicating that the hearing on the Motion is set for 1:30 p.m. on December 8, 2015. Dckt. 60. The Notice was served on the Debtor, Debtor's counsel, Trustee, and Ocwen Loan Servicing on November 25, 2015. Dckt. 61.

**DISCUSSION**

Movant, seeks relief from the automatic stay to may proceed only against the available insurance assets of Debtor in the state law action *Tricorp Construction, Inc. v. Carpet U.S.A. Ltd.*, Sacramento County Superior Court, Case No. 34-2013-00147038 ("the Action"). Recovery will be limited to available insurance coverage, if any. The moving party has provided the Declaration of Patricia Sisemore to introduce evidence to authenticate the documents upon which it bases its claim.

A party may seek relief from stay when the party needs to obtain a judgment against the debtor in name only in order to recover from the debtor's insurer. *IBM v. Fernstrom Storage & Van Co.* (*In re Fernstrom Storage & Van Co.*), 938 F.2d 731 (7th Cir. 1991). When the court is reasonably confident that the policy proceeds will be sufficient to satisfy the creditor's claims paid under the policy, the court should grant relief from the stay to permit an action. Because the policy proceeds will be available only to the creditors with claims covered by the policy, there is no depletion of assets that would otherwise be available to general, unsecured claims, and there is no reason to delay the creditor seeking to recover under the policy. 3 COLLIER ON BANKRUPTCY ¶ 362.07[3][a] (Alan N. Resnick & Henry J. Sommer eds. 16th ed.)

Given that the movant would not seek to enforce any judgements against the debtor and will proceed against the debtor only to the extent its claims can be satisfied from the debtor's insurance proceeds, the court concludes that cause exists for the granting of relief form the automatic stay.

The court shall issue a minute order terminating and vacating the automatic stay, pursuant to 11 U.S.C. § 362(d)(1), to allow the movant to prosecute the claims against the debtor, but not enforce any judgments against the debtor or the estate other than against available insurance coverage, if any.

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 Carpet U.S.A. Ltd. 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 modified to allow Carpet U.S.A. Ltd., its agents, representatives, and successors ("Movant") to allow Movant to file and prosecute to final judgment (including all appeals) a cross-complaint in California Superior Court Case No. 34-2013-00147038, County of Sacramento, against Burt Varner, the Debtor, for defense, indemnification, and other rights relating to the claims asserted by Tricorp Construction, Inc. against Movant. The Stay is modified to the extent that there is insurance to provide a defense for Debtor and to allow Movant to recover monies from the insurance to the extent of the limits of the policy(ies), with the enforcement of any additional amounts determined to be owed by Debtor continuing to be subject to the automatic stay and further proceedings in this bankruptcy case.

No other or additional relief is granted.

3. [15-28108-E-11](#) WILLARD BLANKENSHIP  
RLC-3 Stephen M. Reynolds

MOTION TO INCUR DEBT O.S.T.  
12-6-15 [[28](#)]

**Tentative Ruling:** The Motion to Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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).**

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Local Rule 9014-1(f)(3) Motion.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on parties requesting special notice, and Office of the United States Trustee on December 7, 2015. By the court's calculation, 1 days' notice was provided.

The Motion to Incur Debt was properly set for hearing on the notice required by Local Bankruptcy Rule 9014-1(f)(3). 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. At the hearing -----  
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**The Motion to Incur Debt is granted.**

The motion seeks permission to purchase a replacement home heater, which the total purchase price is not to exceed \$3,000.00, with monthly payments of \$100.00 from January through June 2016 after an initial \$1,000.00 on delivery.

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 Debtor states that the furnace at the Debtor's residence failed. The Debtor has a home warranty plan through an insurance provider and the cost of replacing the existing heater after credit from the insurance provider is \$2,595.00. Top Rank Heating & Air Conditioning, Inc. is the vendor approved by the insurance provider.

The Debtor filed his declaration with the Motion, stating that the heater is necessary for the habitability of his home as well as to ensure the continued value of the Debtor's residence. Dckt. 31.

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 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 to Incur Debt filed by Debtor 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 granted and William Blankenship ("Debtor") is authorized to incur debt not to exceed \$3,000.00 with Top Rank Heating & Air Conditioning, Inc. for the replacement heater pursuant to the terms of the work order, Exhibit A, Dckt. 30.