

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Christopher M. Klein
Bankruptcy Judge
Sacramento, California

January 10, 2017 at 1:30 P.M.

1. [15-23905](#)-C-13 SONEXAY VOBOUXASINH MOTION FOR RELIEF FROM
ETL-1 Michael Noble AUTOMATIC STAY AND/OR MOTION
FOR ADEQUATE PROTECTION
11-29-16 [[20](#)]

TOYOTA LEASE TRUST VS.

Final Ruling: No appearance at the January 10, 2017 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 November 29, 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.

Toyota Lease Trust seeks relief from the automatic stay with respect to a 2014 Lexus IS250.

The Nishimura Declaration states that the Debtor has not made 7 post-petition payments, with a total of \$4,657.03 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 \$31,753.36.

Trustee's Response

The Trustee filed a response that indicated that the plan calls for payments to be made to this creditor outside the plan directly by the debtor. As a result, the Trustee has no basis to oppose the motion.

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 Toyota Lease Trust, and its agents, representatives and successors, to repossess and/or dispose 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 Toyota Lease Trust, its agents, representatives, and successors, and trustee under the trust deed, and any other beneficiary or trustee, and their respective agents and successors to repossess and/or dispose of the 2014 Lexus IS250.

No other or additional relief is granted.

2. [12-24206](#)-C-13 DARREN/DANNA LADD
MRG-1 Steven Shumway

MOTION FOR RELIEF FROM
AUTOMATIC STAY
12-21-16 [[177](#)]

US BANK TRUST, N.A. VS.

Tentative Ruling: The Motion to Value 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).

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

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor, Debtor's Attorney, Chapter 13 Trustee, parties requesting special notice, and Office of the United States Trustee on December 21, 2016. 14 day's notice is required. That requirement is met.

The Motion to Value 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.

US Bank Trust N.A., as Trustee of the PRP II Pals Investments Trust seeks relief from the automatic stay with respect to the real property commonly known as 38303 Kearsarge Mill Road, Alta, California. The moving party has provided the Declaration of Marianne Larkin to introduce evidence to authenticate the documents upon which it bases the claim and the obligation owed by the Debtor.

The Larkin Declaration states that the Debtor has not made 54 post-petition payments, with a total of \$96,859.26 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 \$455,920.94 (including \$300,000.00 secured by movant's first trust deed), as stated in the Larkin Declaration, while the value of the property is determined to be \$300,000.00, as stated in Schedules A and D filed by Debtor.

Trustee's Response

Trustee responds that he does not oppose the motion as the plan calls for the creditor to be paid directly by the debtor.

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 US Bank Trust 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 US Bank Trust 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 38303 Kearsarge Mill Road, Alta, CA.

No other or additional relief is granted.
