

Honorable Ronald H. Sargis
Chief Bankruptcy Judge
Sacramento, California

possession of the Property. 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.

TRUSTEE'S RESPONSE

David Cusick, the Chapter 13 Trustee, filed a Response on December 21, 2016. Dckt. 25. The Trustee notes that Debtor had a twelve-month lease that ended on July 31, 2015, and Debtor listed Movant in Class 1, but the obligation appears to be for rent payments. The Trustee does not oppose the Motion.

JANUARY 10, 2017 HEARING

At the hearing, the court continued the matter to 1:30 p.m. on January 24, 2017, with Opposition to be filed and served by January 18, 2017, and Replies, if any, to be filed and served by January 20, 2017. Dckt. 29.

DEBTOR'S RESPONSE

Debtor filed a Response on January 13, 2017. Dckt. 32. Debtor states that they contacted an attorney "to work something out," but no one has returned Debtor's calls.

Debtor asserts that they have tried to pay past due rent amounts, but the payments have been refused. An organization named Berkeley Food and Housing has been working with Debtor, and Debtor claims that the organization has offered Debtor's landlord four months' worth of rent payments, which have also been refused. Debtor asserts that they are past due only because the landlord will not accept payments.

Debtor has looked for other accommodations, but has not been able to rent another place because the unlawful detainer action shows up on Debtor's credit report.

DISCUSSION

Movant has provided a properly authenticated copy of the Property lease with Debtor to substantiate its claim of ownership. 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*, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at *8–9 (B.A.P. 9th Cir. Aug. 1, 2005) (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 from the automatic stay in a Contested Matter (Fed. R. Bankr. P. 9014).

The court shall issue an order terminating and vacating the automatic stay to allow Angelos Giannakis, and its agents, representatives and successors, to exercise its rights to obtain possession and

control of the real property commonly known as 419 Regency Circle, Vacaville, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from automatic stay for fourteen days after the order is entered, unless the court orders otherwise. Movant requests, for no particular reason, that the court grant relief from the Rule as adopted by the United States Supreme Court. With no grounds for such relief specified, the court will not grant additional relief merely stated in the prayer.

Movant has not 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 not granted.

Movant makes an additional request stated in the prayer, for which no grounds are clearly stated in the Motion. Movant's further relief requested in the prayer is that this court make this order, **as opposed to every other order issued by the court**, binding and effective despite any conversion of this case to another chapter of the Code. As noted by another bankruptcy judge, such (unsupported by any grounds or legal authority),

“request for an order stating that the court's termination of the automatic stay will be binding despite conversion of the case to another chapter unless a specific exception is provided by the Bankruptcy Code is a common, albeit silly, request in a stay relief motion and does not require an adversary proceeding. Settled bankruptcy law recognizes that the order remains effective in such circumstances. Hence, the proposed provision is merely declarative of existing law and is not appropriate to include in a stay relief order.

Indeed, requests for including in orders provisions that are declarative of existing law are not innocuous. First, the mere fact that counsel finds it necessary to ask for such a ruling fosters the misimpression that the law is other than it is. Moreover, one who routinely makes such unnecessary requests may eventually have to deal with an opponent who uses the fact of one's pattern of making such requests as that lawyer's concession that the law is not as it is.”

In re Van Ness, 399 B.R. 897, 907 (Bankr. E.D. Cal. 2009) (citing *Aloyan v. Campos (In re Campos)*, 128 B.R. 790, 791–92 (Bankr. C.D. Cal. 1991); *In re Greetis*, 98 B.R. 509, 513 (Bankr. S.D. Cal. 1989)).

As noted in the 2009 ruling quoted above, the “silly” request for unnecessary relief may well be ultimately deemed an admission by Angelos Giannakis and its counsel that all orders granting relief from the automatic stay are immediately terminated as to any relief granted Angelos Giannakis and other creditors represented by counsel, and upon conversion, any action taken by such creditor is a per se violation of the automatic stay.

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 Angelos Giannakis (“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 Angelos Giannakis and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 419 Regency Circle, Vacaville, California.

IT IS FURTHER ORDERED that the fourteen-day stay of enforcement provided in Federal Rule of Bankruptcy Procedure 4001(a)(3) is not waived for cause.

No other or additional relief is granted.

2. [16-28191](#)-E-13 **MARK FERGUSON**
MET-1 Pro Se

**MOTION FOR RELIEF FROM
AUTOMATIC STAY O.S.T.**
1-17-17 [\[23\]](#)

DEBTOR DISMISSED: 01/12/2017

Tentative Ruling: 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)(C).

Local Rule 9014-1(f)(3) Motion—Hearing Required.

Correct Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 13 Trustee, and Office of the United States Trustee on January 17, 2017. By the court's calculation, 7 days' notice was provided.

The Motion for Relief from the Automatic Stay 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. If any of these potential respondents appear at the hearing and offer 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. At the hearing -----

-----.

<p>The Motion for Relief from the Automatic Stay is granted.</p>

Mark Ferguson ("Debtor") commenced this bankruptcy case on December 13, 2016, at 4:00 p.m. *See* Dckt. 1 (handwritten "4:00" at the top of the petition). Alvernaz Partners, LLC ("Movant") seeks nunc pro tunc annulment of the automatic stay effective on December 13, 2016, with respect to the real property commonly known as 331 West Chestnut Street, Dixon, California ("Property"). FN.1. Movant seeks such order to validate recordation of the Trustee's Deed upon Sale that was recorded on December 29, 2016, with Solano County. *See* Exhibit 1, Dckt. 26. The moving party has provided the Declaration of Dan Alexander to introduce evidence as a basis for Movant's contention that Debtor does not have an ownership interest in or a right to maintain possession of the Property.

FN.1. Movant filed the Motion and Memorandum of Points and Authorities in this matter as one document. That is not the practice in the Bankruptcy Court. "Motions, notices, objections, responses, replies, declarations, affidavits, other documentary evidence, memoranda of points and authorities, other supporting documents, proofs of service, and related pleadings shall be filed as separate documents."

Revised Guidelines for the Preparation of Documents § (III)(A). Counsel is reminded of the court's expectation that documents filed with this court comply with the Revised Guidelines for the Preparation of Documents in Appendix II of the Local Rules, as required by Local Bankruptcy Rule 9004(a). Failure to comply is cause to deny the motion. Local Bankr. R. 1001-1(g), 9014-1(l).

These document filing rules exist for a very practical reason. Operating in a near paperless environment, the motion, points and authorities, declarations, exhibits, requests for judicial notice, and other pleadings create an unworkable electronic document for the court (some running hundreds of pages). It is not for the court to provide secretarial services to attorneys and separate an omnibus electronic document into separate electronic documents that can then be used by the court.

Retroactive Relief From the Stay

As a preliminary matter, Movant is seeking a "retroactive authorization" rather than *nunc pro tunc* authorization. The Ninth Circuit has noted that *nunc pro tunc* approval is not the proper name for seeking retroactive authorization of actions in a bankruptcy case. *Sherman v. Harbin (In re Harbin)*, 486 F.3d 510, 515 n. 4 (9th Cir. 2007). *Nunc pro tunc* amendments are usually used to correct errors in the record and are extremely limited in scope. *Id.* The Ninth Circuit noted that while it is more accurate to call such after-the-fact authorizations "retroactive approvals," it is customary, but not necessarily correct, to refer to them generically as *nunc pro tunc* in bankruptcy practice. *Id.* The two names stand for the same set of standards and can be used interchangeably. *See, e.g., Atkins v. Wain*, 69 F.3d 970, 974-78 (9th Cir. 1995) (alternating between using *nunc pro tunc* and "retroactive approval" when determining whether a law firm had established exceptional circumstances allowing them to be paid for services to debtor not approved by the court).

Annulment of Automatic Stay

A bankruptcy court can exercise its equitable discretion to grant retroactive authorizations when it is appropriate in order to carry out the Bankruptcy Code and when the approval benefits the debtor's estate. *In re Harbin*, 486 F.3d at 522. Retroactive approvals should only be used in "exceptional circumstances." *Atkins*, 69 F.3d at 974.

Movant presents evidence that it is the owner of the Property. Movant asserts it purchased the Property at a pre-petition Trustee's Sale on December 13, 2016, at 2:30 p.m. Based on the evidence presented, Debtor would be at best a tenant at sufferance.

Movant has provided a properly authenticated copy of the recorded Trustee's Deed Upon Sale to substantiate its claim of ownership. Exhibit 1, Dckt. 26. 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*, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). No. CC-04-1434-MaTK, 2005 Bankr. LEXIS 3427, at *8-9 (B.A.P. 9th Cir. Aug. 1, 2005) (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 from the automatic stay in a Contested Matter (Fed. R. Bankr. P. 9014).

The court shall issue an order annulling, effective upon the filing of this bankruptcy case, the automatic stay to authorize Alvernaz Partners, LLC, and its agents, representatives and successors, to exercise its rights retroactively to obtain possession and control of the real property commonly known as 331 West Chestnut Street, Dixon, California, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

In the alternative, Movant has requested relief from the automatic stay with a waiver of the fourteen-day stay imposed by Federal Rule of Bankruptcy Procedure 4001(a)(3) because the case has been dismissed. *See* Dckt. 21 (dismissing the case for failure to timely file documents).

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from automatic stay for fourteen days after the order is entered, unless the court orders otherwise. The alternative relief requested by Movant does not need to be addressed because the court has granted Movant's request for annulment of the automatic stay.

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 Alvernaz Partners, LLC ("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 annulled retroactively effective on December 13, 2016, as of the commencement of this case, to allow Alvernaz Partners, LLC and its agents, representatives and successors, and all persons transferring title to Movant for the following property pursuant to the nonjudicial foreclosure sale conducted on December 13, 2016, to transfer title to Movant, and to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 331 West Chestnut Street, Dixon, California.

No other or additional relief is granted.