

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Ronald H. Sargis

Bankruptcy Judge

Modesto, California

January 30, 2025 at 10:00 a.m.

1. [24-90816-E-7](#)
[KTS-1](#)

ANDREW ELLISON AND
THERESA CONWAY
Pro Se

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-14-25 [\[31\]](#)

2017-2 IH BORROWER, LP VS.

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)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, other parties in interest, and Office of the United States Trustee on January 14, 2025. By the court's calculation, 16 days' notice was provided. 14 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). Debtor, creditors, the Chapter 7 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, -----

-----.

The Motion for Relief from the Automatic Stay is granted.

2017-2 IH Borrower, LP ("Movant") seeks relief from the automatic stay with respect to the real property commonly known as 2437 E. Virginia Ave., Anaheim, Ca 92806 ("Property"). The moving party has provided the Declaration of Mariah Barton to introduce evidence as a basis for Movant's contention that Andrew Ellison and Theresa Conway ("Debtor") do not have an ownership interest in or a right to maintain possession of the Property. Decl., Docket 33.

January 30, 2025 at 10:00 a.m.

Page 1 of 7

Movant presents evidence that it is the owner of the Property. Ex. 1, Docket 34. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Orange on September 19, 2024. Decl. ¶ 6, Docket 33. This bankruptcy proceeding halted that action.

Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, 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 (Federal Rule of Bankruptcy Procedure 9014).

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 the Property, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

Federal Rule of Bankruptcy Procedure 4001(a)(3)
Request for Waiver of Fourteen-Day Stay of Enforcement

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the 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.

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 2017-2 IH Borrower, LP (“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 Movant and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 2437 E. Virginia Ave., Anaheim, Ca 92806.

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. [24-90778-E-7](#) **AARON HARVEY AND MONICA** **MOTION FOR RELIEF FROM**
[KTS-1](#) **STILL** **AUTOMATIC STAY**
Pro Se **1-14-25 [29]**

**CSCDA COMMUNITY IMPROVEMENT
AUTHORITY VS.**

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)(2) Motion—Hearing Required.

Sufficient Notice Provided. The Proof of Service states that the Motion and supporting pleadings were served on Debtor (*pro se*), Chapter 7 Trustee, other parties in interest, and Office of the United States Trustee on January 14, 2025. By the court's calculation, 16 days' notice was provided. 14 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). Debtor, creditors, the Chapter 7 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, -----

The Motion for Relief from the Automatic Stay is granted.

CSCDA Community Improvement Authority (“Movant”) seeks relief from the automatic stay with respect to the real property commonly known as 1725 W. Katella Ave., #311, Orange, Ca 92867 (“Property”). The moving party has provided the Declaration of James Gauthier to introduce evidence as a basis for Movant’s contention that Aaron Harvey and Monica Still (“Debtor”) do not have an ownership interest in or a right to maintain possession of the Property. Decl., Docket 31.

Movant presents evidence that it is the owner of the Property. Ex. 1, Docket 33. Based on the evidence presented, Debtor would be at best a tenant at sufferance. Movant commenced an unlawful detainer action in California Superior Court, County of Orange on October 31, 2024. Decl. ¶ 6, Docket 31. This bankruptcy proceeding halted that action.

Based upon the evidence submitted, the court determines that there is no equity in the Property for either Debtor or the Estate. 11 U.S.C. § 362(d)(2). This being a Chapter 7 case, the Property is *per se* not necessary for an effective reorganization. *See Ramco Indus. v. Preuss (In re Preuss)*, 15 B.R. 896 (B.A.P. 9th Cir. 1981).

Movant has presented a colorable claim for title to and possession of this real property. As stated by the Bankruptcy Appellate Panel, relief from stay proceedings are summary proceedings that address issues arising only under 11 U.S.C. Section 362(d). *Hamilton v. Hernandez (In re Hamilton)*, No. CC-04-1434-Mack, 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 (Federal Rule of Bankruptcy Procedure 9014).

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 the Property, including unlawful detainer or other appropriate judicial proceedings and remedies to obtain possession thereof.

**Federal Rule of Bankruptcy Procedure 4001(a)(3)
Request for Waiver of Fourteen-Day Stay of Enforcement**

Federal Rule of Bankruptcy Procedure 4001(a)(3) stays an order granting a motion for relief from the 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.

No other or additional relief is granted by the court.

**11 U.S.C. § 362(d)(4) Relief Granted
In This Case Concerning Other Property**

On January 23, 2025, the court entered an order granting relief from the Automatic Stay for Cathy Bank with respect to real property commonly known as 1657 Sugarloaf Drive, San Mateo, California. Order; Dckt. 42. The grounds stated with particularity in the Motion for Relief From the Stay filed for Cathy Bank included (as summarized by the court):

Movant argues the current bankruptcy case is the fourth to affect the Property in the past four months. Mot. 1:14-23, Docket 23. There was a foreclosure sale scheduled for December 18, 2024, delayed by the most recent filing. The borrowers on the note are Chu Fung Lin and Kuan Hung Lin (“Borrower”). Movant asserts that Chu Fung Lin transferred by Grant Deed all of her interest in the Property, held in her capacity as the Trustee of the Kuan Hung Lin and Chu Fung Lin Revocable Trust dated November 18, 2022, to herself, individually, and the Debtors, as joint tenants. Id.

In addition to this present case, Movant provides evidence of the following cases that have been filed that affect the Property:

A. Case No. 24-30599-DM-13 (Northern District of California)

1. Filed: August 13, 2024
2. Chapter 13
3. Dismissal Date: September 17, 2024

B. Case No. 24-30789-HLB (Northern District of California)

1. Filed: October 23, 2024
2. Chapter 13
3. Dismissal Date: November 7, 2024
4. Reason for Dismissal: Failure to timely file documents

C. Case No. 24-90722

1. Filed: November 26, 2024
2. Chapter 7
3. Dismissal Date: December 16, 2024
4. Reason for Dismissal: Failure to timely file documents

Civ. Minutes, p. 2: Dckt. 41.

For this Motion, Movant alleges that the lease was not with the Debtor but another party. When the unlawful detainer complaint was filed by Movant, it is the Debtor who answered that complaint and claimed a right of possession of the Property. A copy of the answer and Debtor’s asserted right of possession are not included as exhibits to the present Motion.

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 CSCDA Community Improvement Authority (“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 Movant and its agents, representatives and successors, to exercise and enforce all nonbankruptcy rights and remedies to obtain possession of the property commonly known as 1725 W. Katella Ave., #311, Orange, Ca 92867.

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.

FINAL RULINGS

3. [24-90685](#)-E-7
[DVW](#)-1

JENNIFER HOFFMAN
Seth Hanson

MOTION FOR RELIEF FROM
AUTOMATIC STAY
1-8-25 [[13](#)]

21ST MORTGAGE CORPORATION
VS.
WITHDRAWN BY M.P.

Final Ruling: No appearance at the January 30, 2025 hearing is required.

21st Mortgage Corporation (“Creditor”) having filed a Notice of Dismissal, Dckt. 22, pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i) and Federal Rules of Bankruptcy Procedure 9014 and 7041, **the Motion for Relief was dismissed without prejudice, and the matter is removed from the calendar.**